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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
Elevation Gold Mining Corporation, *et al.*
Debtor in a Foreign Proceeding.

Chapter 15
Case No. 2:24-bk-06359-EPB
(Jointly Administered)
**Notice of Filing Oral Reasons For
Judgment of the Canadian Court**

PLEASE TAKE NOTICE that the Oral Reasons For Judgment of The Honourable Madam Justice Fitzpatrick of the Supreme Court of British Columbia Vancouver Registry were released by the Canadian Court on December 20, 2024. A true and correct copy of is attached hereto as **Exhibit E**.

DATED this 21st day of December, 2024.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Robert M. Charles, Jr.
Robert M. Charles, Jr.
Katie Rios

AND

By: /s/ Ken Coleman
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CERTIFICATE OF SERVICE

I certify that on this 21st day of December, 2024, I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing and served through the Notice of Electronic Filing automatically generated by the Court’s facilities.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Elevation Gold Mining Corporation (Re)*,
2024 BCSC 2354

Date: 20241217
Docket: S245121
Registry: Vancouver

**In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,
c. C-36, as amended**

- and -

In the Matter of the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended

- and -

**In the Matter of Elevation Gold Mining Corporation, Eclipse Gold Mining
Corporation, Alcmene Mining Inc., Golden Vertex Corp., Golden Vertex (Idaho)
Corp., and Hercules Gold USA, LLC**

Petitioners

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

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Counsel for Nomad Royalty Company Ltd.:	T. Pinos
Counsel for Patriot Gold Corp.:	L. Williams A. Bowron
Counsel for EG Acquisition LLC:	R. Schwill

Counsel for Maverix Metals Inc. and
Triple Flag Precious Metals Corp.:

D. Bish

The Attendee, by video conference:

H. Greenwood

Place and Date of /Hearing:

Vancouver, B.C.
December 17, 2024

Place and Date of Judgment:

Vancouver, B.C.
December 17, 2024

[1] **THE COURT:** I am giving you very brief oral reasons today because I will not have time to give you written reasons that might be relevant to the anticipated application that is going to be made to the US Bankruptcy Court under Chapter 15, which believe is scheduled for December 23, 2024.

Background

[2] These are *Companies' Creditors Arrangement Act* [CCAA] proceedings. I have been the supervising judge in this matter since August 1, 2024, at the time I granted the initial order.

[3] The petitioners are in the business of operating, either directly or indirectly, a mine in Arizona. The organizational chart indicates that Elevation Gold Mining Corporation ("Elevation") is a BC company and it is the sole shareholder of the only operating company, being Golden Vertex Corp. ("GVC"), which is an Arizona company. GVC is the owner and operator of the Moss Mine in Arizona. The other companies in the petitioners' group either have no assets or their assets have been since disposed of, such that those companies do not figure in this application.

Sale Approval Application

[4] The petitioners apply today for an approval and vesting order, pursuant to ss. 36 and 11 of the CCAA. Elevation's counsel has taken me through the substantial background in this matter.

[5] I will first address the sales process. As Elevation's counsel has indicated, there was a substantial sales and investment solicitation process for many years, even before the CCAA filing. In addition, on August 12, 2024, I granted the amended and restated initial order ("ARIO") and also granted an order authorizing a sales and investment solicitation process ("SISP") to be implemented. It is that SISP that has given rise to the current offer for which approval is sought, being an offer by EG Acquisition LLC ("EG").

[6] The essence of the sale is to allow EG to acquire Elevation's shares in GVC.

[7] The matters undertaken within the SISP are set out in much detail in the application materials and also commented on by the Monitor. It is quite apparent to me that there has been a robust and complete SISP, both before and after the CCAA filing. As such, I am fully satisfied that the factors that are normally cited from *Soundair* support that there has been a fulsome and fair process.

[8] The sale approval is brought by the petitioners and supported by the Monitor. The proposed sale has some unusual features. As above, it contemplates a transfer of Elevation's shares in GVC. However, the unusual aspects bears the hallmarks of what is normally described as a transaction completed via a reverse vesting order (or "RVO"). Specifically, the proposed transactions requires that certain "Residual Liabilities" and "Residual Assets" (i.e., those that EG does not wish to have stay in GVC) will be transferred to Elevation. It is anticipated at the end of the day that the sale proceeds, in addition to the Residual Assets, will ultimately rest in Elevation to be distributed in accordance with the priorities that currently exist.

[9] The priorities are fairly straightforward. Maverix appears to be the main secured creditor. As Maverix's counsel has noted, the Monitor has obtained a legal opinion confirming that the security is valid. There is no opinion, *per se*, with respect to priority; however, as noted by the Monitor's counsel, no other person or party has advanced a claim said to stand in priority to that of Maverix. As such, on the face of things, at least as of today, Maverix has a substantial secured claim against the assets of both Elevation and GVC in an amount of approximately \$32.5 million. The proposed sale will not give to anything approaching that amount and therefore, as Maverix's counsel notes, his client will suffer a substantial shortfall.

[10] Two parties object to the sale approval. Those parties are Patriot Gold Corp. and Nomad Royalty Company Ltd., both of which have attended earlier court hearings in this matter. As both companies assert the same position, I will refer to them collectively as "Patriot". Patriot claims that they have been granted a royalty interest by GVC and they assert that they have an interest in the Arizona lands that stands in priority to Maverix's claim. Those positions have been previously stated

before this Court for some months now. The issue is currently before the US Bankruptcy Court for the District of Arizona for a determination of Patriot's claims.

[11] I will add at this point that, on August 27, 2024, the US Bankruptcy Court recognized these proceedings pursuant to Chapter 15 of the US *Bankruptcy Code*. These proceedings were recognized as a foreign main proceeding and the initial order and the ARIO were recognized in respect of recognition and enforcement of the initial order.

[12] Nevertheless, Patriot asserts that this Court should defer the matter of the approval of the sale transaction to the US Bankruptcy Court. Elevation opposes such a result; similarly, the Monitor does not support that position.

[13] Having considered the matter, I agree with the petitioners and the Monitor that it is appropriate that this Court consider the sale approval within these CCAA proceedings. As I have said, the asset that essentially is being transferred here is an asset held by the Canadian parent company. In addition, although the shares held in GVC are in a US company, I am told that the shares are physically in Canada and held by Maverix. All of these, and more, stand as significant factors upon which this Court would exercise its jurisdiction.

[14] I see no reason at this time to defer that matter for consideration by the US court in the context of these proceedings.

[15] Patriot's counsel also argues that there may be issues relating to the sale that might be considered by the US court. For example, counsel says that the US court may undertake a s. 363 analysis, which is the sale provision under the US *Bankruptcy Code*. Of course, I make no comment on whether the US court will undertake that type of analysis or any other type of analysis and what that outcome might be - that is within the jurisdiction and discretion of the US Bankruptcy Court – and will possibly be a consideration when the Monitor seeks to have this sale approval recognized and enforced within the Chapter 15 proceedings.

[16] Accordingly, I reject any effort on the part of Patriot to defer the matter to the US Bankruptcy Court.

[17] I would add that it is significant that the EG sale agreement and the order that is sought specifically provide for Patriots' claims to be determined by the US court. In that respect, I agree with the petitioners and the Monitor that this sale approval is essentially without prejudice to the rights of Patriot to assert their claims in that forum and for the reasons that they have advanced.

[18] This hearing has included much discussion about what are called "Patriot's adversary claims." Patriot's counsel has referred me to the various claims that are advanced in its complaint. Those appear to go beyond simply a determination of the real property claims. In para. 12 of Patriot's application response, counsel has set out alternate type of language which he says will preserve his client's ability to advance those claims in the US. It is my understanding that the petitioners and the Monitor support the addition of this "without prejudice" language. I also agree that this wording should be added to the order.

Releases

[19] The other matter which has caused some controversy is with respect to the proposed releases, as contained in paras 13-15 of the draft order.

[20] Paragraph 14 proposes releases of who I would describe as the usual CCAA participants, including the petitioner's employees, legal counsel and advisors and the Monitor and its legal counsel. No objection is raised with respect to that relief. I am similarly satisfied that the scope of that relief is appropriate in light of the factors discussed in the well-known authorities, including *Harte Gold Corp. (Re)*, 2022 ONSC 653 at paras. 80-86, which have been applied in this Court.

[21] Paragraph 15 proposes a release in favour of INFOR Financial Inc., the company providing the petitioners with financial services. Again, no objection was raised to that release and I am satisfied that this release is also appropriate.

[22] The dispute concerns the proposed releases set out in para. 13 of the draft order as it relates to the directors and officers. The scope of the release is stated to be: (i) the SISP before the commencement of these proceedings; (ii) the petitioners' decision to commence these proceedings; (iii) these proceedings or the administration and management of the petitioners during the course of these proceedings; (iv) the sale transaction; and (v) anything done pursuant to the terms of the sought after order.

[23] Patriot's objection relates to (iii) being the "administration and management of the petitioners during the course of these proceedings". Patriot says that its adversary proceeding in the US essentially incorporates or could incorporate claims of conversion against the directors and officers under Arizona law, presumably with respect to amounts that are said to be owing to them.

[24] Patriot says that this Court should not foreclose its ability to advance those claims against the directors and officers. The well-known case authorities with respect to granting of releases provide in part that the released claims must be rationally connected to the purpose of the restructuring, the parties being released must have contributed to the restructuring and the releases must be fair, reasonable and not overly broad.

[25] As the petitioners' counsel notes, the release would not relate to any decisions or any actions by the directors and officers prior to the commencement of these CCAA proceedings. Therefore, to the extent that Patriot has any conversion claims with respect to that prior time frame, the release would not affect those claims.

[26] Further, paragraph 13 expressly provides that the release would not affect any claim that is not permitted to be released pursuant to s. 5.1(2) of the CCAA. That provision refers to claims that are "based on allegations of misrepresentations made by directors to creditor or of wrongful or oppressive conduct". The latter phrase – "wrongful conduct" could include tortious conduct as is alleged.

[27] There is the matter also of directors and officers insurance, as the Monitor's counsel clarified in his submissions. I agree that there should be a carve out in the release of the directors and officers in respect of any claims that might be advanced against that insurance.

[28] The crux of this issue is whether or not the directors and officers should be released by reason of any of their actions during the course of these proceedings that might, and I stress "might," conceivably be within the scope of Patriot's claims within the adversary proceedings in the US Bankruptcy Court.

[29] My answer to that question is "yes", in that I conclude that such relief is appropriate. On this issue, I agree with the submissions of counsel for the petitioners and the Monitor. As the petitioners' counsel points out, Patriot (and Nomad, I believe) have participated in this proceeding for some time, including from the hearing that led to the ARIO granted on August 12, 2024. At para. 10 of the ARIO, the petitioners were prohibited from making payments to creditors, which may have related to Patriot. In addition, para. 7 of the ARIO stated that the petitioners were entitled to pay certain expenses, including in relation to obligations incurred after the initial order. The directors and officers have obviously relied on the ARIO in terms of their actions in the course of these CCAA proceedings.

[30] In addition, the directors and officers have, as noted by the Monitor's counsel, been keeping the petitioners' ship afloat, so to speak, during this restructuring. That includes directing GVC's limited operations, being the beneficiation operations, that were outlined in previous proceedings and in the fourth report of the monitor dated December 3rd, 2024. At page 25 of in its Fourth Report dated December 3, 2024, the Monitor states that it supports the releases sought in favour of the directors and officers. The Monitor states that the directors and officers have made significant contributions to the continued operations of the petitioners' business during these proceedings and that they were integral in terms of the SISP and the completion of the sale transaction, all of which has been to the benefit of all stakeholders.

[31] What I take from the Monitor's comment is that the directors and officers have made substantial commitments to allow this proceeding to continue to the result that is presented to the Court today. They have done so on the basis that those efforts were implicitly, if not expressly, to benefit all stakeholders, which includes Patriot.

[32] In my view, it is appropriate in all of those circumstances to provide for the releases sought in favour of the directors and officers.

[33] I appreciate that an argument under s. 5.1(2) of the CCAA may still arise at some point in time, depending on the outcome of the US proceeding. If there is an issue concerning whether or not any determination by the US court comes within s. 5.1(2), then that can be brought before the Court in this proceeding for a determination at that time.

[34] Accordingly, with the above referenced amendments to the order, the sale approval order is granted.

"Fitzpatrick J."