

COURT FILE NUMBER 2401 11824
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **CANADIAN IMPERIAL BANK OF
COMMERCE**
DEFENDANTS **KORITE INTERNATIONAL LIMITED
PARTNERSHIP AND KORITE
INTERNATIONAL GP INC.**
DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Ryan Laity/Jennifer Pepper
Borden Ladner Gervais LLP
1900, 520 – 3rd Avenue SW
Calgary, AB T2P 0R3
Telephone: (604) 632-3544/ (604) 640-4106
Email: rlaity@blg.com/ jpepper@blg.com
File No. 500007/005947



pp

C81525

NOTICE TO DEFENDANTS:

You are being sued. You are the defendant(s).

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

The Parties

1. The Plaintiff, Canadian Bank of Commerce (“**CIBC**” or the “**Plaintiff**”), is a chartered bank incorporated under the *Bank Act*, SC 1991, c 46, Schedule I, carrying on business in Alberta and elsewhere in Canada.
2. The Defendant, Korite International Limited Partnership (“**Korite LP**”), is a limited partnership formed pursuant to the laws of the Province of Alberta. The Defendant, Korite International GP Inc. (the “**General Partner**” and, together with Korite LP, the “**Debtors**”), is a corporation existing under the laws of the Province of Alberta and is Korite LP’s general partner. The Debtors have a registered office in Calgary, Alberta.

3. Korite LP operates an independent production and distribution company focused on the mining and refining of ammolite gemstones and ammonite fossils, the finishing of ammolite gemstones into jewelry and ammonite fossils into finished specimens, and the sale of these products to both wholesale distributors and end users.

The Loans and Security

4. CIBC provided credit facilities (collectively, the “**Loans**”) to Korite LP pursuant to a credit agreement dated as of December 18, 2020, as amended by the first amending agreement dated as of January 28, 2021, the second amending agreement dated as of July 10, 2023, and the third amending agreement dated as of December 18, 2023 (collectively, the “**Credit Agreement**”).
5. The Loans made available to Korite LP included (i) a senior secured revolving credit facility (including a letter of credit sub facility), (ii) a senior secured term loan facility, and (iii) a secured demand term loan facility.
6. Korite LP has failed to repay the Loans on or before March 31, 2024 (the “**Maturity Date**”), being the maturity date, as amended, under Credit Agreement.
7. Pursuant to the terms and conditions of the Credit Agreement, the General Partner granted an unlimited guarantee whereby the General Partner guaranteed all of the debts owed by Korite LP to CIBC (the “**Guarantee**”).
8. As security for the debts, liabilities and obligations under the Credit Agreement and the Guarantee, the Debtors granted certain collateral security in favour of CIBC (collectively, the “**Security**”), including without limitation:
 - a) a debenture in the principal secured amount of \$8,750,000 (the “**Debenture**”), granted by Korite LP encumbering certain mineral agreements and mineral rights in connection with the Lands (as defined in **Schedule “A”** hereto); and
 - b) general security agreements (together, the “**Security Agreements**”), granted by each of the Debtors, pursuant to which the Debtors each granted CIBC a security interest in all of their present and after-acquired personal property.
9. CIBC has duly registered its security interests in the Security in the Alberta Personal Property Registry and the Alberta Land Title Office, as applicable.

The Defaults and Demands

10. Korite LP failed to repay the Loans in full on the Maturity Date. As a result of Korite LP's payment defaults, CIBC and the Debtors entered into a Forbearance Agreement dated as of April 1, 2024 (the "**Forbearance Agreement**"), whereby CIBC agreed to forbear from enforcing on the Security until June 30, 2024 (the "**Termination Date**"), on the basis that the Debtors strictly comply with the terms of the Forbearance Agreement.
11. Contrary to the Forbearance Agreement, the Debtors have failed to make payment of the debt owed, liabilities and obligations outstanding under the Credit Agreement, including interest and costs, on or before the Termination Date.
12. Consequently, on July 24, 2024, CIBC issued (through its legal counsel, Borden Ladner Gervais LLP) letters to the Debtors demanding the immediate repayment of all the debts, liabilities and obligations outstanding pursuant to the Credit Agreement, together with all interest, fees and other chargeable costs continuing to accrue (collectively, the "**Demand Letters**"). Enclosed in the Demand Letters were "Notices of Intention to Enforce Security" pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
13. Notwithstanding the Demand Letters, the Debtors have failed to pay the amounts owing.
14. As of August 1, 2024, the Debtors are indebted to CIBC in the total amount of approximately CAD\$4,752,951.00 and US\$3,824,501.59 pursuant to the Credit Agreement, together with interest, fees and other chargeable costs continuing to accrue thereon (collectively, the "**Indebtedness**").

The Proposed Transaction and Receivership

15. On February 25, 2024, CIBC engaged KSV Restructuring Inc. ("**KSV**") as a financial consultant to assist CIBC and Korite LP to conclude a strategic sale of the Debtors' business or assets.
16. The Debtors have been unable to satisfy their obligations to CIBC pursuant to the Credit Agreement in some manner since 2023. Despite efforts by CIBC to work with the Debtors to improve Korite LP's financial condition, including agreeing to forbear enforcement for a period of over three months, Korite LP has made little progress in curing its defaults or otherwise remedying its financial distress. As a result, CIBC has lost confidence in the Debtors' ability to carry on a profitable business and their general ability to remedy Korite LP's financial distress.

17. Since June 2023, the principals of Korite LP (with the assistance from a sale broker, Tailwind Ventures, and the oversight from KSV since February 2024) have undertaken a process to market for sale the Debtors' business (the "**Sales Process**"). The Sales Process has ultimately resulted in an asset purchase agreement dated August 23, 2024 (the "**Asset Purchase Agreement**"), between Korite LP, as vendor, and Buffalo Rock Mining Co. Ltd., as purchaser, to acquire substantially all of Korite's assets (the "**Transaction**"). The terms and conditions of the Asset Purchase Agreement require, among other things, that the sale be approved by the Court of King's Bench of Alberta by way of approval and vesting order granted in the course of receivership proceedings.
18. The appointment of a receiver over the Debtors is just and convenient in the circumstances, and is required to conclude the Transaction. The Transaction is projected to result in a significant net loss to CIBC under its Security. Despite this anticipated outcome, CIBC is nonetheless supportive of concluding the Transaction because, among other things, it results in the best recovery for CIBC.

REMEDY SOUGHT:

19. WHEREFORE, the Plaintiff seeks as follows:
 - a) a declaration that the Debtors are in default under the Credit Agreement, the Guarantee and the Security, as applicable, and that the Guarantee and the Security are valid and have become enforceable;
 - b) a declaration as to the amount owing by Korite LP under the Loans and the Security in an amount not less than the Indebtedness;
 - c) a declaration as to the amount owing by the General Partner under the Guarantee and the Security in an amount not less than the Indebtedness;
 - d) an Order appointing KSV as receiver (in such capacity, the "**Receiver**") of the Debtors;
 - e) an Approval and Vesting Order approving the Transaction pursuant to the Asset Purchase Agreement;
 - f) a Restricted Court Access Order temporarily sealing certain confidential exhibits attached to the proposed receiver's report dated on or about August 26, 2024, containing information with respect to the Debtors' business, the Sales Process and the Asset Purchase Transaction;

- g) an Order discharging the proposed Receiver from its role as Receiver (upon completion of the Transaction) and approving its activities;
- h) an Order authorizing KSV in its discretion (as Receiver), to bankrupt either of the Debtors;
- i) judgment against the Debtors in the amount found to be owing under the Loans, together with interest according to the terms of the Loans, or alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;
- j) costs for this action payable on a solicitor-and-own client, full-indemnity basis, or alternatively, in accordance with the *Alberta Rules of Court*, Alta Reg, 124/2010; and
- k) such other relief as this Honourable Court deems appropriate.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.

SCHEDULE "A"
LANDS

Title No. 731 062 804

FIRST

MERIDIAN 4 RANGE 21 TOWNSHIP 7

SECTION 18

THOSE PORTIONS OF THE NORTH WEST QUARTER
WHICH LIE TO THE EAST OF THE ST. MARY'S RIVER
AS SHOWN ON THE TOWNSHIP PLAN DATED ON THE 27TH DAY OF JUNE 1893
CONTAINING 8.50 HECTARES (21 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SECOND

MERIDIAN 4 RANGE 21 TOWNSHIP 7

SECTION 18

ALL THAT PORTION OF THE NORTH EAST QUARTER
WHICH LIES TO THE EAST OF THE ST. MARY'S RIVER
AS SHOWN ON THE TOWNSHIP PLAN DATED 27 JUNE 1893.
CONTAINING 57.9 HECTARES (143 ACRES) MORE OR LESS. EXCEPTING THEREOUT THE
POTHOLE RIVER AS SHOWN ON
SAID TOWNSHIP PLAN.
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

THIRD

MERIDIAN 4 RANGE 21 TOWNSHIP 7

SECTION 18

ALL THAT PORTION OF THE SOUTH WEST QUARTER
WHICH LIES TO THE EAST OF THE ST. MARY'S RIVER
AS SHOWN ON THE TOWNSHIP PLAN DATED 27 JUNE 1893.
CONTAINING 7.892 HECTARES (19.50 ACRES) MORE OR LESS.
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

FOURTH

MERIDIAN 4 RANGE 21 TOWNSHIP 7

SECTION 18

ALL THAT PORTION OF THE SOUTH EAST QUARTER
WHICH LIES TO THE EAST OF THE ST. MARY'S RIVER
AS SHOWN ON THE TOWNSHIP PLAN DATED 27 JUNE 1893.
CONTAINING 52.802 HECTARES (130.50 ACRES) MORE OR LESS.
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Title No. 159D182

FIRST

ALL MINES AND MINERALS WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 21 TOWNSHIP 7
SECTION 18

THAT PORTION OF THE NORTH EAST QUARTER
BOUNDED ON THE WEST BY THE RIGHT BANK OF ST. MARY'S RIVER AND BY THE EAST
BOUNDARY OF THE WEST HALF OF SAID SECTION,
AND ON THE NORTH BY THE LEFT BANK OF THE POT HOLE RIVER,
AS SHOWN ON THE TOWNSHIP PLAN APPROVED 27 JUNE 1893
CONTAINING 52.44 HECTARES (129.60 ACRES) MORE OR LESS
AND THE RIGHT TO WORK THE SAME

SECOND

ALL MINES AND MINERALS WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 21 TOWNSHIP 7
SECTION 18

THAT PORTION OF THE SOUTH EAST QUARTER DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH EAST CORNER OF SAID QUARTER SECTION,
THENCE SOUTH ALONG THE EAST BOUNDARY THEREOF TO A POINT THEREON
990 FEET NORTH FROM THE SOUTH EAST CORNER THEREOF,
THENCE WEST PARALLEL WITH THE SOUTH BOUNDARY THEREOF TO IS
INTERSECTION WITH THE RIGHT BANK OF SAID ST. MARY'S RIVER,
THENCE NORTHERLY AND WESTERLY FOLLOWING THE SINUOSITIES OF THE
RIGHT BANK OF SAID RIVER TO ITS INTERSECTION WITH THE WEST BOUNDARY OF SAID
QUARTER SECTION,
THENCE NORTH ALONG SAID WEST BOUNDARY TO ITS INTERSECTION WITH THE NORTH
BOUNDARY THEREOF,
THENCE EAST ALONG SAID NORTH BOUNDARY TO THE PLACE OF COMMENCEMENT, AS
SHOWN ON THE TOWNSHIP PLAN APPROVED 27 JUNE 1893
CONTAINING 36.55 HECTARES (90.38 ACRES) MORE OR LESS
AND THE RIGHT TO WORK THE SAME

THIRD

ALL MINES AND MINERALS WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 21 TOWNSHIP 7
SECTION 18

THAT PORTION OF THE WEST HALF
WHICH IS BOUNDED ON THE NORTH WEST, WEST, AND SOUTH WEST BY THE RIGHT BANK
OF ST. MARY'S RIVER,
AS SHOWN ON THE TOWNSHIP PLAN APPROVED 27 JUNE 1893
CONTAINING 16.40 HECTARES (40.50 ACRES) MORE OR LESS
AND THE RIGHT TO WORK THE SAME

(collectively, the "**Lands**").