

Dated: October 22, 2025


Eddward P. Ballinger Jr., Chief Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

MINUTE ENTRY/ORDER

FOR MATTER TAKEN UNDER ADVISEMENT

Bankruptcy Judge: Eddward P. Ballinger, Jr.

Case Name: Elevation Gold Mining Corporation – Chapter 15

Case Number: 2:24-bk-06359-EPB

Adversary Name: Patriot Gold Corp. v. Golden Vertex Corp., et al.

Adversary Number: 2:24-ap-00253-EPB

Subject of Matter: Cross-Motions for Partial Summary Judgment

Date Taken Under
Advisement: September 24, 2025

Date Matter Ruled
Upon: October 22, 2025

This matter came before the Court for oral argument on the parties' cross-motions for partial summary judgment. Both motions relate to Count 1 of Plaintiff Patriot Gold Corp.'s ("Patriot") adversary complaint, which seeks a declaratory judgment that Patriot has a real

property interest in certain minerals at a mine located in Mohave County, Arizona. Defendants Elevation Gold Mining Corporation, Eclipse Gold Mining Corporation, Golden Vertex Corp., Golden Vertex (Idaho) Corp., Alcmene Mining Inc., and Hercules Gold USA LLC (collectively “Defendants”) oppose Patriot’s request for declaratory judgment, countering that Patriot’s interest in the minerals is personalty.

Purchase Agreement

On May 12, 2016, Patriot and Defendant Golden Vertex Corp. (“GVC”) executed a contract titled “Agreement for Purchase and Sale of Mining Claims and Escrow Instructions” (“Purchase Agreement”), whereby Patriot agreed to sell and GVC agreed to buy Patriot’s interest in certain mining claims. (Dkt. 60, Ex. A) Section 1.1 of the Purchase Agreement states, in pertinent part:

When executed and delivered, this Agreement will constitute a binding agreement by Seller to sell, and Buyer to buy, in accordance with the terms and conditions of this Agreement, all of Seller’s right, title and interest in those certain patented and unpatented lode mining claims situated in the Oatman Mining District, Mohave County, Arizona (the “Claims”) ... together with all extralateral and other associated rights, water rights, tenements, hereditaments and appurtenances belonging or appertaining thereto, and all rights-of-way, easements, rights of access and ingress to and egress from the Claims appurtenant thereto and in which Seller has any interest (collectively, the “Property”) subject to a reserved royalty on certain of the Claims as further described on Exhibit “F”...

The Purchase Agreement references several attached exhibits containing forms of deeds the parties were obligated to execute to facilitate the sale. Section 2.2 of the Purchase Agreement required Patriot to execute and acknowledge (1) a Special Warranty Deed in the form attached to the Purchase Agreement as Exhibit C; and (2) a Quit Claim Deed in the form attached to the Purchase Agreement as Exhibit D. Section 2.3 required GVC to execute and acknowledge a Royalty Deed in the form attached to the Purchase Agreement as Exhibit F. In

conformance with these requirements, all three fully executed deeds were recorded simultaneously in Mohave County on May 26, 2016. (Dkt. 60, Exs. B, C, D)

Pursuant to the Special Warranty Deed, Patriot “grants and conveys” to GVC “all right, title and interest in those certain patented and unpatented lode mining claims” identified in an attachment to the Special Warranty Deed. The grant also includes “all extralateral and other associated rights, water rights, tenements, hereditaments and appurtenances belonging or appertaining thereto, and all rights-of-way, easements, rights of access and ingress to and egress from the Claims appurtenant thereto, and all rights and interest that Grantor may hereafter acquire or appear to acquire.” (Dkt. 60, Ex. C)

The Quit Claim Deed “quit-claims and releases” from Patriot to GVC “all right, title or interest, if any, in the unpatented lode mining claims” set forth in an attachment to the Quit Claim Deed. (Dkt. 60, Ex. D)

As with the Special Warranty Deed and the Quit Claim Deed, the Royalty Deed executed by GVC conforms to the deed attached to the Purchase Agreement that was negotiated and agreed to by both Patriot and GVC. The Royalty Deed “grants and conveys” to Patriot a royalty of “3% of Net Smelter Returns from the production of minerals from the Property.” (Dkt. 60, Ex. B). The Royalty Deed defines Net Smelter Returns (“NSR”) as:

the aggregate proceeds received by Payor from time to time from any smelter or other purchaser from the sale of any minerals, ores, concentrates, metals or any other material of commercial value produced by and from the Property after deducting from such proceeds the following charges only to the extent that they are not deducted by the smelter or other purchaser in computing the proceeds:

- (a) The cost of transportation of the ores, concentrates or metals from the Property to such smelter or other purchaser, including related insurance; and
- (b) Smelting and refining charges including penalties.

See Section 2.3.

The Royalty Deed goes on to state:

Covenant Running with the Land. The obligation to pay the Royalty (and Payor's other obligations set forth in this Royalty Deed) shall be a covenant running with the Property and shall be binding on the Payor and its successors and assigns, including any third party who acquires any interest in any portion of the Property. Owner shall be free to sell, pledge or otherwise transfer all or a portion of the Royalty to a third party or parties, subject to the terms and conditions of this Royalty Deed.

See Section 2.6 (emphasis in original).

Bankruptcy Court Proceedings

On August 2, 2024, Defendants filed a Chapter 15 Petition seeking recognition of a foreign main proceeding pending in Canada. After the Court issued its Order Granting Recognition and Related Relief, Defendants sought a determination that the royalty granted to Patriot under the Royalty Deed was merely a personal property interest in the mined minerals. Patriot opposed Defendants' request and ultimately commenced this adversary proceeding. Patriot now moves for summary judgment on Count 1 of its complaint, which seeks a judgment declaring that the royalty granted to Patriot under the Royalty Deed created a real property interest.¹ Defendants oppose Patriot's motion and seek summary judgment in their favor, asserting that Patriot's claim fails as a matter of law.

Summary Judgment Standard

The standard for summary judgment in bankruptcy adversary proceedings is governed by Fed. R. Civ. P. 56, as incorporated by Fed. R. Bankr. P. 7056. Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a

¹ Count 1 of Patriot's adversary complaint also requests additional findings regarding the potential treatment of its royalty interest in Defendants' administrative case. The parties tacitly acknowledge that the treatment of Patriot's royalty is dependent upon a determination of the nature of the royalty interest.

matter of law.” *In re Professional Financial Investors*, 2024 WL 1698059, *6 (9th Cir. BAP Apr. 19, 2024), citing *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008).

Courts must view the evidence in the light most favorable to the non-moving party and determine whether there is a genuine issue for trial. A fact is considered “material” if it could affect the outcome of the case, and a dispute is “genuine” if a reasonable fact-finder could find for the non-moving party. *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

Although the movant bears the initial burden of demonstrating the absence of a genuine issue of material fact, once the movant’s burden is met, the burden shifts to the non-moving party to demonstrate specific facts showing that there is a genuine issue for trial. *Professional Financial Investors* at *6, citing *Horphag Rsch. Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir. 2007). To meet their respective burdens, the parties may rely on a broad range of materials in the record. *Id.* While the Court is permitted to consider any such materials, the Court is only required to consider materials that the parties cite. *Id.* An opposing party may object to certain material cited by the opposing party if it “cannot be presented in a form that would be admissible in evidence.” *Id.*, citing Fed. R. Civ. P. 56(c)(2).

Royalties in Arizona

The parties agree that *Paloma Inv. Ltd. P’ship v. Jenkins*, 194 Ariz. 133 (App. 1998), is the primary authority governing the nature of royalty interests in Arizona. *Paloma* involves a dispute between Paloma and the Jenkins family regarding a water rights agreement associated with a sale of real property. The agreement granted Jenkins the right to a portion of proceeds from the sale, lease, or transfer of water or water rights on the property. *Id.* at 135. Paloma filed

an action challenging the validity of the agreement. Jenkins moved for summary judgment, asserting that the agreement was valid as a deed, mortgage, equitable mortgage, lien, or covenant running with the land, and therefore binding on Paloma. *Id.* at 136. The trial court ruled for Jenkins, finding that the agreement was a valid mortgage, equitable mortgage, and/or lien, and that Paloma had constructive notice of the agreement. *Id.*

On appeal, Paloma argued that the water rights agreement was not a real property interest, as it was not a mortgage, equitable mortgage, or lien, nor a covenant that runs with the land. *Id.* at 137-138. The appellate court agreed that it was not a mortgage, equitable mortgage, or lien, as it did not convey an interest as security but rather conveyed the interest outright. *Id.* The court also determined that the agreement was not a covenant, as it did not involve a promise that burdens the landowner (i.e. Jenkins could not force Paloma to pump or sell the water). *Id.* at 138. Instead, the court found:

Jenkins received a royalty interest. This is a common type of interest in natural resources, such as coal, oil, gas, timber and minerals. The right to unaccrued royalties can be an interest in real property when the parties so intend.

Accordingly, we hold that the trial court correctly decided that Jenkins received a real property interest that binds Paloma as a successor owner of the land. Although that interest is a royalty and not a mortgage, the judgment is correct.

Id. (internal citations omitted).

In support of their position that the Royalty Deed conveyed only a personal property interest, Defendants focus the Court on a singular passage in *Paloma*: “The right to unaccrued royalties can be an interest in real property when the parties so intend.” According to Defendants, this means that *only* unaccrued royalties can be a real property interest, and then *only* when the parties intend.

Defendants argue that Patriot has merely an accrued interest, because their right to payment depends on the production process. Defendants characterize the NSR metric, which necessarily relies on the smelting process, as a “production royalty.” Because Patriot has an accrued interest in the proceeds from the sale of the minerals after they have been smelted, Defendants assert that under *Paloma*, Patriot categorically cannot have a real property interest. Therefore, Defendants argue that the parties’ intent under the Purchase Agreement is irrelevant.

Defendants base their argument on a false dichotomy that royalties must be either “accrued” or “unaccrued.” Patriot’s interest in the accrued proceeds from the mined minerals does not preclude Patriot from having an interest in the unaccrued future proceeds from the unmined minerals. Further, during oral arguments, Defendants acknowledged that even if *Paloma* created a “presumption” that an accrued royalty is a personal property interest, the parties were still free to contract around that “presumption.” (Tr. 28-30)

Paloma requires the Court to consider the parties’ intent. Both Patriot and Defendants assert that their agreement is unambiguous and that intent must be ascertained from the four corners of the operative documents. Patriot focuses on the language of the Royalty Deed, which contains a clear provision that the royalty runs with the land. Defendants focus on the Special Warranty Deed, which conveyed “all” of Patriot’s interest in the property to Defendants without expressly reserving a real property interest. However, neither the Royalty Deed nor the Special Warranty Deed were executed in a vacuum. To determine the parties’ intent, the Court must consider the fully integrated Purchase Agreement in conjunction with the deeds which were contemporaneously executed and recorded by the parties. *See Realty Associates of Sedona v. Valley Nat. Bank of Arizona*, 153 Ariz. 514, 738 P.2d 1121 (App.1986) (“Under Arizona law, substantially contemporaneous instruments will be read together to determine the nature of the

transaction between the parties.”) The language of the Purchase Agreement makes clear that the intent of the parties was to transfer all of Patriot’s rights in the mining claims “subject to a reserved royalty on certain of the Claims as further described on Exhibit ‘F,’” which was the agreed form of the Royalty Deed.

Extrinsic Evidence

Despite asserting that the parties’ intent can be determined from the four corners of the documents, both parties submit extrinsic evidence in support of their position. Defendants rely on partial copies of Patriot’s SEC 10-K Filings suggesting that Patriot did not categorize its royalty interest as a “property holding” for SEC purposes until after a dispute arose over royalty payments. (Dkt. 77, Exs. 3-4) Patriot submits declarations from its principal, Trevor Newton, and Randall Hubbard, the attorney that represented Patriot in negotiating the Purchase Agreement. Defendants object to the declarations to the extent they are being used for the purpose of contract interpretation.

Because intent can be derived from the four corners of the parties’ fully integrated agreement, the Court need not consider the extrinsic evidence offered by the parties. The language of the operative documents in this matter made clear the parties’ intent was that Patriot reserve a real property interest that would run with the land and be binding on GVC’s successors or assigns. The contemporaneously recorded deeds gave effect to that intention. The Court finds that there is no genuine issue of any material fact as to the nature of the royalty interest and Patriot is entitled to judgment as a matter of law on that discrete issue.

Accordingly,

IT IS ORDERED granting Plaintiff Patriot Gold’s motion for partial summary judgment and denying Defendants’ motion for partial summary judgment.