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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

ELEVATION GOLD MINING
CORPORATION, *et al.*

Debtors in a Foreign Proceeding.

Proceedings Under Chapter 15

Case No. 2:24-bk-06359-EPB

(Jointly Administered)

Case Nos. 2-24-bk-06364-EPB
2-24-bk-06367-EPB
2-24-bk-06368-EPB
2-24-bk-06370-EPB
2-24-bk-06371-EPB

**NOMAD ROYALTY COMPANY
LTD.'S OBJECTION TO THE
GROUP'S MOTION TO EXPEDITE
MOTION FOR SUMMARY
JUDGMENT AGAINST NOMAD
ROYALTY COMPANY LIMITED**

Hearing Date: November 19, 2024
Hearing Time: 10:00 a.m.
Hearing Location: 230 N. First Avenue, 7th
Floor, Courtroom 703, Phoenix, Arizona
85003, or Telephonic

Nomad Royalty Company Ltd. ("Nomad") objects to *The Group's Motion to Expedite Motion for Summary Judgment against Nomad Royalty Limited* (the "Motion to Expedite") filed by Elevation Gold Mining Corporation ("Elevation"), Eclipse Gold Mining Corporation ("Eclipse"), and Golden Vertex Corp. ("GVC", and together with Elevation and Eclipse, the "Debtors") on November 12, 2024 at Dkt. No. 85.

1 In the Motion to Expedite, the Debtors request that this Court set an expedited
2 hearing and briefing schedule on the Debtors' Motion for Summary Judgment.¹ As
3 explained in further detail below, this Court should deny the Debtors' Motion to Expedite
4 for at least two reasons. First, the Debtors' Motion for Summary Judgment is nothing more
5 than repackaged version of the Debtors' Motion to Extinguish Royalty Interests² as the
6 Debtors again seek to invalidate Nomad's real property interests. As Nomad has previously
7 argued, the Debtors' challenge to Nomad's property interest must be litigated in an
8 adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(2), not through a
9 contested matter under Rule 9014.³ Second, the Debtors still fail to articulate any exigent
10 circumstances necessitating an expedited hearing and briefing schedule on the Debtors'
11 Motion for Summary Judgment. Accordingly, Nomad respectfully requests that this Court
12 deny the Motion to Expedite.

13 In further support of this Objection, Nomad states as follows:

14 1. On October 14, 2024, the Debtors filed the Motion to Extinguish Nomad's
15 Interest, in addition to similar motions to determine other entities' property interests. *See*
16 Dkt. No. 53. In the Motion to Extinguish Nomad's Interest, the Debtors effectively sought
17 an order from this Court invalidating Nomad's real property interests. *See id.* The Debtors
18 also moved for expedited consideration of their Motion to Extinguish Nomad's Interest.
19 *See* Dkt. No. 55.

20 2. On October 18, 2024, Nomad objected to the Debtors' request for expedited
21 consideration of the Motion to Extinguish Nomad's Interest, explaining that (i) the Debtors'
22 challenge to Nomad's property interest must be litigated in an adversary proceeding under
23

24 ¹ The "Motion for Summary Judgment" refers to *The Group's Motion for Summary*
25 *Judgment against Nomad Royalty Company Limited* filed on November 12, 2024 at Dkt.
No. 83 by the Debtors.

26 ² The "Motion to Extinguish Nomad's Interest" refers to the *Motion to Determine the*
27 *Nature of Nomad Royalty Company Limited's Interest* filed on October 14, 2024 at Dkt.
No. 53 by the Debtors.

28 ³ Nomad also reserves the right to seek certification regarding the nature of Nomad's
property interests (*i.e.*, an issue of Arizona law) to the Arizona Supreme Court.

1 Rule 7001(2), Fed. R. Bankr. P., and (ii) the Debtor failed to demonstrate any need for
2 expedited consideration of their Motion to Extinguish Nomad's Interest. *See* Dkt. No. 60.

3 3. On October 29, 2024, this Court held a scheduling hearing regarding, among
4 other things, the Debtors' request to expedite consideration of the Motion to Extinguish
5 Nomad's Royalty Interests. *See* Dkt. No. 81. At the initial hearing, the Court denied the
6 Debtors' request for expedited consideration of the Motion to Extinguish Nomad's Royalty
7 Interests.

8 4. Even though the procedural resolution to the Motion to Extinguish Nomad's
9 Interest remains pending, and despite the clear requirement that any challenge to Nomad's
10 property interest be litigated in an adversary proceeding, the Debtor filed the Motion for
11 Summary Judgment. *See* Dkt. No. 83. In the Motion for Summary Judgment, the Debtors
12 request that this Court find "that Nomad does not hold a real property interest." *See* Dkt.
13 No. 83 at p. 9, ll. 13-14. The Motion for Summary Judgment is nothing more than a
14 repackaged version of the Motion to Extinguish Nomad's Royalty Interests, with a renewed
15 request to expedite consideration.

16 5. No matter how many different variations of the same motion the Debtors file,
17 the fact remains that any challenge to Nomad's property interest must be litigated in an
18 adversary proceeding under Rule 7001(2). As explained previously, Rule 7001(2) provides
19 that "a proceeding to determine the validity, priority, or extent of a lien or other interest in
20 property" must be brought as an adversary proceeding. The Debtors' request for an order
21 determining the extent of Nomad's property interest falls squarely within Rule 7001(2), and
22 Nomad is entitled to the procedural safeguards of an adversary proceeding. As such, this
23 Court should not deny the Debtors' request for expedited consideration of the Motion for
24 Summary Judgment.

25 6. Additionally, the Debtors still fail to demonstrate any exigent circumstances
26 requiring expedited consideration of the Motion for Summary Judgment. The Debtors again
27 merely argue that expedited consideration of their requested relief is necessary because of
28 a potential sale of the Debtors' assets that is to be considered by the Canadian Court on

1 November 22, 2024. The Canadian Court, however, does not have jurisdiction to effect a
2 sale of Arizona assets, and only this Court may consider a sale of the mine. To the extent
3 a sale of the parent's stock is sought, and such sale is contingent on extinguishing the royalty
4 holders' interests, the desire for speed of the would-be and as-yet unidentified buyer, who
5 appears to be an affiliate of the Debtors' senior lender, cannot trump Nomad's procedural
6 and substantive due process rights. Nor do the Debtors explain why piecemeal
7 consideration of the royalty issue is necessary. Indeed, the Debtors initially sought
8 expedited consideration of all its (improper) motions to avoid/extinguish royalty interests.
9 Has the buyer has now changed its mind, and only Nomad's interests need be extinguished
10 in the near term, or is this a manufactured emergency to gain tactical advantages?

11 7. Exacerbating the questionable timing of the Debtors' latest attempt to jam
12 Nomad's rights, lead counsel for Nomad is currently out of the country, and the other senior
13 lawyer is currently out of state for trial work. No matter the Debtors' true motivations, they
14 cannot escape the clear requirements of Rule 7001, which "sets forth matters that may only
15 be resolved through an 'adversary proceeding,' including the determination of the 'validity,
16 priority, or extent of a lien or other interest in property.'" *In re Mansaray-Ruffin*, 530 F.3d
17 230, 234-37 (3rd Cir. 2008). Bankruptcy Courts have the duty to enforce the Bankruptcy
18 Rules as written. *See generally In re Smith*, 514 B.R. 331 (Bankr. S.D. Ga. 2014). Although
19 they are not part of the Bankruptcy Code, the Bankruptcy Rules have the force and effect
20 of law. *See Hanna v. Plumer*, 380 U.S. 460, 471 (1965) (addressing the service requirements
21 of Fed. R. Civ. P. 4(d)(1)).

22 8. Thus, "[w]hen a situation is covered by one of the Federal Rules, . . . the court
23 has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory
24 Committee, [the U.S. Supreme] Court, and Congress erred in their prima facie judgment
25 that the Rule in question transgresses neither the terms of the Enabling Act nor
26 constitutional restrictions." *Id.* at 471. In short, "[i]t is settled that a Rule 9014 motion
27 cannot be used to circumvent the requirement of an adversary proceeding." *In re Van Ness*,
28 399 B.R. 897, 904 (Bankr. E.D. Cal. 2009); *see also In re Golden Plan*, 829 F.2d 705, 711-

12 (9th Cir. 1986).

9. These are not trifling matters. Nomad's property rights at issue are protected by the Fifth Amendment's Due Process Clause, which "forbids the deprivation of a property right without due process of law." *In re Smith*, 514 B.R. 331, 338-39 (Bankr. S.D. Ga. 2014). The "adoption of a Rule of Procedure by the judiciary constitutes the template for assessing due process." *Id.* (requiring adversary proceeding rather than disregard the Bankruptcy Rules and their inherent "procedural safeguards"). To the extent the Debtors can demonstrate an actual need for expedited consideration (which they have not to date), they may still seek (and Nomad may oppose) expedited scheduling within the context of a duly commenced adversary proceeding. They may not, however, use a motion, including a slap-dash motion for summary judgment based on a prior motion, "to circumvent the requirement of an adversary proceeding." *Van Ness*, 399 B.R. at 904. The Motion to Expedite should be denied based on its procedural impropriety alone.

10. In light of the Debtors' utter unwillingness to comply with the Federal Rules of Bankruptcy Procedure, Nomad intends to commence a proper adversary proceeding regarding its royalty interests forthwith. The nature of these royalty interests is an important issue of state law, one that deeply impacts the entire Arizona mining industry, and Nomad reserves the right to seek certification of these questions to the Arizona Supreme Court in connection with its adversary proceeding.

11. The Court should deny Debtors' request for expedited consideration of its Motion for Summary Judgment as an improper attempt to divest Nomad of its protected property interests on a needlessly expedited basis, without the procedural safeguards guaranteed to Nomad under Rule 7001 and applicable law.

WHEREFORE, for the foregoing reasons, Nomad respectfully requests that this Court deny the Debtor's Motion to Expedite.

1 DATED this 15th day of November, 2024.

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