



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00696874-00CL DATE: November 21, 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MAGNA GOLD CORP.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
Aiden Nelms	Counsel for the Applicant, Magna Gold Corp.	nelmsa@bennettjones.com

For Respondent:

Name of Person Appearing	Name of Party	Contact Info

For Other, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Shayne Kukulowicz	Counsel for the Court-Appointed Monitor, KSV Restructuring Inc.	skukulowicz@cassels.com
Stephanie Fernandes		sfernandes@cassels.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. On March 3, 2023, Magna Gold Corp. ("Magna") filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA") (the "NOI Proceedings"). KSV Restructuring Inc. was appointed the proposal trustee (in such capacity, the "Proposal Trustee") in the NOI Proceedings.
2. On March 27, 2023 (the "Filing Date"), Magna brought a motion in the NOI Proceedings before the Ontario Superior Court of Justice (Commercial List) (the "Court") to have the NOI Proceedings taken up and continued under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). Pursuant to a Court order made on March 27, 2023 (the "Initial Order"), Magna was granted protection under the CCAA (the "CCAA Proceedings"), and KSV was appointed monitor (in such capacity, the "Monitor").
3. The Initial Order was supported by a funding agreement. The applicant hoped to protect its equity in various subsidiaries through the CCAA restructuring process.
4. Substantially all of Magna's value is derived through its equity interests in its direct and indirect subsidiaries in Mexico (collectively, the "Subsidiaries", and together with Magna, the "Magna Group"). Concurrent with the commencement of the NOI Proceedings, Magna's indirect subsidiary, Molimentales del Noroeste, S.A. de C.V ("Molimentales"), filed an application for restructuring and provisional creditor protection before the Second District Court for Insolvency Matters located in Mexico City, Mexico (the "Molimentales Proceedings").
5. The Initial Order, among other things, granted charges:
 - a. in the amount of \$300,000 on Magna's current and future property, assets and undertaking (collectively, the "Property") to secure the fees and disbursements of Magna's legal counsel, Bennett Jones LLP ("Bennett Jones"), as well as the fees and disbursements of the Monitor and its independent legal counsel, Cassels Brock & Blackwell LLP ("Cassels") (the "Administration Charge"); and
 - b. in the amount of \$300,000 on the Property in favour of Magna's directors and officers (the "D&O Charge").
6. In order to avoid bankruptcy, on June 22, 2023, Molimentales terminated all unionized mine employees (61 employees in total). Accordingly, no mining is currently being conducted at the Molimentales mine. Molimentales still employs non-unionized individuals to provide critical services related to care and maintenance. The goal of the care and maintenance activities is to complete a safe shut down which is compliant with Mexican environmental regulations.
7. As a result of the shut-down, Molimentales is no longer generating any revenue and is only able to fund Magna's critical costs, including salaries and employee benefits for Magna's three employees. As such, there is no longer any funding available for professional fees associated with the CCAA Proceedings.
8. The Monitor updated the court and Magna's stakeholders about this development in its Second Report dated July 6, 2023 (the "Second Report"). At that time, the Monitor understood from Magna that it was in discussions with certain parties regarding a potential investment in Magna which would allow it to fund ongoing costs.
9. In early August 2023, the Monitor was advised by Magna that it had entered into a letter of intent to sell its shares in a "Proposed Transaction".
10. In early August 2023, the Monitor and Magna's counsel advised Magna that they required funding to pursue any transaction (including the Proposed Transaction), and they provided Magna and the acquirer under the Proposed Transaction a fee estimate to implement the Proposed Transaction. Since that time, Magna has advised the Monitor on numerous occasions that it was attempting to secure funding but these efforts have unfortunately not been successful. Given the lack of funding, there is no means to continue the CCAA Proceedings and the Monitor is of the view that the CCAA Proceedings should be terminated. Magna is administratively insolvent.

11. This motion was served on Magna and the stakeholders on the service list and no one appeared or indicated any objection to the relief that is sought, including for an order:
 - a. terminating the CCAA proceedings;
 - b. discharging KSV in its capacity as the Monitor of Magna;
 - c. confirming the continuation of the Administration Charge and the D&O Charge over Magna's property in Canada after the discharge of the Monitor and the termination of the CCAA proceedings;
 - d. authorizing the registration of security interests against the Property of the applicant debtor;
 - e. granting releases in favour of the Monitor and its counsel (the "Released Parties");
 - f. approving certain of the fees and disbursements of the Monitor and its counsel; and
 - g. approving the First Report of the Monitor dated May 23, 2023 (the "First Report"), the Second Report of the Monitor dated July 6, 2023 (the "Second Report"), the Supplement to the Second Report of the Monitor dated November 16, 2023 (the "Supplemental Report"), and the activities referred to therein.
12. In the circumstances, the termination of the CCAA proceedings and the discharge of the Monitor are necessary and appropriate, in the absence of any funding for their outstanding fees or to fund fees for any continuing work.
13. The remaining relief sought on this motion is primarily ancillary to the termination and discharge orders. The motion was made on notice to the service list and no one is opposed to the relief sought.
14. The fees of the Monitor and its counsel for which approval is sought are properly supported and appear to be reasonable in the circumstances. The future fees are estimated and include their work for attendance on this motion.
15. According to the Monitor, currently, counsel to Magna, the Monitor and the Monitor's Counsel are owed unpaid fees in excess of the Administration Charge and there are also currently \$237,000 of director and officer obligations outstanding. As a result of these unpaid amounts, the Administration Charge and D&O Charge are proposed to continue notwithstanding the termination of the CCAA Proceedings. This is fair and reasonable in the circumstances. They should have whatever benefit may accrue to them from the continuation of those charges to cover outstanding and unpaid amounts. At the court's request, paragraphs 9 and 10 of the draft order have been revised so as not to restrict, rather than specifically authorize, registration of security interests against the Property of the applicant debtor. These registrations, if made, are intended to give notice of the court authorized charges against the debtor's Property.
16. The requested approval of the reports of the Monitor and the activities described therein is appropriately qualified so as to restrict reliance upon such approval to the Monitor. The Monitor's activities described in its reports appear to have been carried out in accordance with the authority and mandate it was granted under the Initial Order and the Monitor appears to have acted reasonably and in the best interests of the Debtor's stakeholders.
17. There was some confusion arising from the filed materials about the releases being sought, but it was clarified to be limited to releases in favour of the Monitor and its counsel (and their representatives, defined as the "Released Parties") for work done in connection with the CCAA proceedings. While releases are not "pro forma" it is common for the Monitor and, by extension its counsel, to be granted releases upon the termination of CCAA proceedings. In this case, there is no plan being implemented, but the rationale for granting release, tied to the importance of the work that is done by the Monitor and its counsel in the context of such proceedings for the benefit of all stakeholders, is widely recognized.
18. The Releases provided under the proposed CCAA Termination Order do not waive, discharge, release, cancel or bar, among other things, any claim against a Released Party that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA or with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct or gross negligence. 17. The proposed Releases are appropriate in the circumstances, sufficiently narrow in scope and are granted in furtherance of the timely completion of these CCAA Proceedings.

19. The orders sought are appropriate and are granted pursuant to, *inter alia*, s.11 of the CCAA.
20. Order to go in the amended form signed by me today without the necessity of formal issuance and entry.

A handwritten signature in cursive script that reads "Kimmel J." with a period at the end.

KIMMEL J.