

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF PURE GOLD
MINING INC.

PETITIONER

NOTICE OF APPLICATION

Names of applicants: Sprott Private Resource Lending II (Collector), LP, Sprott Resource Lending Corp., and Sprott Resource Lending II (CO), Inc. (collectively, "**Sprott**")

To: the Service List

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on June 27 - 28, 2023 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. a declaration that the mortgage between Sprott Resource Lending Corp as mortgagor and Pure Gold Mining Inc. ("**Pure Gold**") as mortgagee, which was registered in the Land Registry Office #23 in Kenora, Ontario, on August 6, 2019, under KN91467 (the "**Sprott Mortgage**") is a charge on the lands and premises described therein (the "**Mine Lands**"), ranking in priority to any interest in the Mine Lands of the respondents, Veolia Water Technologies Inc. ("**Veolia**"), Epiroc Canada Inc. ("**Epiroc**"), SCR Mining and Tunneling L.P. ("**SCR**"), and Nuna Logistics Limited ("**Nuna**"), together with Veolia, Epiroc, and SCR, the "**Lien Claimants**"), and each of them and their respective heirs, executors, administrators, successor and assigns and all persons claiming by, through or under them;
2. an order directing West Red Lake Gold Mines Ltd. (the "**WRLG**") to release from trust the Unissued Shares, as defined in the "**Approval and Reverse Vesting Order**" granted by

this court in these proceedings on May 29, 2023, to Sprott Private Resource Lending II (Collector), LP ("**Sprott LP**"), pursuant to the Approval and Reverse Vesting Order;

3. the Lien Claimants, and each of them, to pay Sprott's costs of, and relating to this application on a solicitor and own client basis; and
4. such further and other relief as this Court may consider just and appropriate.

Part 2: FACTUAL BASIS

Background of Mine

1. The Pure Gold Red Lake Gold Project (the "**Mine**") is a mine project covering more than 4,600 hectares in the Red Lake gold camp of Northwestern Ontario.
2. The Mine is centred around the historical "Madsen Mine", which is an underground gold mine approximately 7 kilometres southwest of Red Lake which was discovered in the 1930s.
3. Between the 1930s and 2000, significant development of the Madsen Mine itself took place.
4. Before Pure Gold's operation, the last time that the Madsen Mine operated was from 1995 to approximately 2000. The mine closed around 2000, was permitted to flood, and the openings to the surface were temporarily closed. Pure Gold then purchased the Madsen Mine in 2014.
5. On August 7, 2019, Pure Gold announced that it would start to develop and operate the Mine Project.
6. Around August-October of 2019, the Mine had been pumped down to below 4 Level so that it was no longer flooded, and the major infrastructure of the Mine as well as the major roadway infrastructure was in place such that the Mine was operational again.
7. Unfortunately, in 2022, Pure Gold ran into financial difficulties and effective October 24, 2022, Pure Gold suspended active mining operations and placed the Mine on care and maintenance with a materially reduced workforce.
8. Pure Gold was granted protection pursuant to the *Companies' Creditors Arrangement Act*, 1985, c. C-36 (the "**CCAA**") on October 31, 2022.
9. The Mine remained on care and maintenance throughout the balance of these CCAA proceedings.

Sprott Financing

10. Sprott Resource Lending Corp. ("**Sprott Corp.**") is the security agent to Sprott LP and Sprott Resource Lending II (CO), Inc. ("**Sprott Lending**", together with Sprott Corp. and Sprott LP, "**Sprott**").
11. Sprott holds the Sprott Mortgage that was registered in the Ontario Land Registrar's Office against the Mine Lands on August 6, 2019.
12. The Sprott Mortgage secures three lending facilities to Pure Gold beginning in August 6, 2019 (the "**Sprott Financing**") for the Mine. The Sprott Financing supported bringing the Mine into operation prior to October 2019, advancing upwards of \$50,000,000.
13. Sprott continued to fund the operations of the Mine thereafter into 2022, with the last advance made October 5, 2022.
14. Sprott is also the lender of the "**DIP Facility**" in the maximum principal amount of US \$15 million pursuant to Court orders dated October 31, 2022 and March 7, 2023 (as amended an restated) in these CCAA proceedings.
15. Sprott is owed approximately US \$146.3 million (approximately CDN \$193 million) plus interest and costs which continue to accrue in respect of its pre-filing debt, and approximately US \$13.3 million (approximately CDN \$17.5 million) in respect of post-filing secured advances under the DIP Facility that is near fully drawn.

Sales Process and Transaction Approval

16. After being granted CCAA protection, Pure Gold implemented a Court-approved sale and investment solicitation process (the "**SISP**"), that began on July 11, 2022, although Pure Gold had also been following a sale process for the Mine even prior to the CCAA.
17. Pure Gold's SISP resulted in a proposed transaction for the sale of its business through an approval and reverse vesting order and a "**Share Purchase Agreement**" dated May 17, 2023 between PGM ResidualCo Inc., as vendor, and WLRG as purchaser (the "**Transaction**").
18. On May 29, 2023, the Court made the Approval and Reverse Vesting Order, thereby approving the Transaction.
19. The Monitor's Sixth Report values the Transaction at between CDN \$49,400,000 and CDN \$58,400,000.
20. Sprott stands to suffer substantial losses in the approximate amount of CDN \$213,000,000 following completion of the Transaction.

21. Sprott was obviously unhappy in suffering this large shortfall, but supported the Petitioner's application for the approval of the Transaction because it was clear that this was the current market value and supporting the CCAA via the Interim Financing any longer was only leading to further losses for Sprott.

The Claims Process For Lien Claimants

22. A few days prior to the Court granting the Approval and Reverse Vesting Order, the Lien Claimants filed materials to oppose the distribution of proceeds involved in the Transaction.
23. While the Lien Claimants conceded that they rank behind Sprott's DIP Facility, the Lien Claimants argued that under section 78(1) of the Ontario *Construction Act*, they should have priority to proceeds from the Transaction ahead of the Sprott Mortgage.
24. To avoid holding up the Approval and Reverse Vesting Order, and recognizing that the parties would require further time to address the priority arguments of the Lien Claimants, the parties agreed to the "**Claims Process Order**" made on May 29, 2023.
25. Under the Claims Process Order the Purchaser post closing will hold in trust a number of the Consideration Shares (as defined in the Monitor's sixth report) equal to the total amount of the registered construction lien of the Lien Claimants, pending either agreement of Sprott and the Lien Claimants, or a determination by this Court on the validity of the lien amounts and the priority between the parties.
26. Sprott brings this application in connection with Claims Process Order.

The Lien Claimants

i. Nuna

27. Pure Gold entered into a Master Services Agreement with Nuna around May 1, 2022 (the "**Nuna MSA**").
28. Nuna alleges that it provided services to Pure Gold under the Nuna MSA from approximately November 2021, until October 2022.
29. During this period, Nuna would use its own equipment and labourers to crush ore, haul waste and ore between specified locations on the Mine Lands, and ultimately dump the waste and ore at specified locations on the Mine Lands.
30. Hauling and crushing ore are part of the daily business operations of a functioning gold mine. These services do not relate to infrastructure on the Mine Lands which were completed in 2019 using the Sprott Financing.

31. On October 24, 2022, Pure Gold informed Nuna that the Mine was ceasing full operations and going on "care and maintenance" mode, following which Nuna demobilized its operations. Nuna removed all of their equipment from site and were off of the Mine Lands within a number of hours.
32. Pure Gold did not purchase any of Nuna's equipment.
33. Nuna filed its lien on the Mine Lands on October 31, 2022.

ii. SCR

34. In or about June of 2022, SCR submitted a proposal to Pure Gold to rent mining equipment and provide miners to operate that equipment on the Mine (the "**SCR Proposal**").
35. Following the SCR Proposal, Pure Gold and SCR executed various purchase orders for renting drilling equipment and hiring miners to operate underground mining equipment (the "**SCR POs**").
36. SCR provided these services to Pure Gold in September, October and November 2022. SCR used its own equipment to perform these services.
37. Mining and drilling services are part of the daily business operations of a functioning gold mine. These services do not relate to infrastructure on the Mine Lands.
38. SCR filed its lien on the Mine Lands on November 1, 2022.

iii. Epiroc

39. Pure Gold and Epiroc entered into two Service Provider Agreements (the "**Epiroc SPAs**"). Under each of the Epiroc SPAs, Epiroc provided one fulltime dayshift Product Support Technician, starting on January 1 and August 25, 2021 (respectively) to December 31, 2022. The Epiroc technicians' responsibilities included servicing Epiroc brand mining equipment and providing technical assistance when required.
40. In addition to the Epiroc SPAs, Epiroc provided other services related to Epiroc vehicles for Pure Gold from approximately November of 2019, until October of 2022.
41. All of the services Epiroc provided related to leasing, servicing, and repairing portable mining equipment. Such services are part of the daily business operations of a functioning gold mine, and do not relate to infrastructure on the Mine Lands.
42. Epiroc filed its lien on the Mine Lands on November 1, 2022.

iv. Veolia

43. In or about March 2020, Veolia and Pure Gold agreed Veolia would design, fabricate, supply, and transport a mobile water treatment facility to the Mine Project lands (the "**Veolia WTF Agreement**") and complete work under purchase orders (the "**Veolia POs**").
44. Veolia began services under the Veolia WTF Agreement and the Veolia POs around March of 2020. Under these agreements, Pure Gold contracted Veolia to design, supply, and transport to the Mine a temporary and mobile water treatment facility (the "**Mobile WTF**") for use at the Mine.
45. Before Veolia transported the Mobile WTF to the Mine, Pure Gold was responsible for preparing all infrastructure for the Mobile WTF to be placed on.
46. The Veolia WTF Agreement set out a contract price of \$4,886,572.00, including tax. To date, Pure Gold has paid Veolia over \$9,360,276.35 with respect to the Mobile WTF. Accordingly, Pure Gold completed any payments owing under the original Veolia WTF Agreement to develop the Mobile WTF sometime in 2020.
47. After the work was complete (in or about May 2020), the Veolia work and invoices since then has been operational in nature, including labour to maintain the Mobile WTF, to rent the Mobile WTF itself and for the purchase of parts and inventory for the operation and maintenance of the Mobile WTF (the "**WTP Rental Agreement**").
48. The Veolia WTF Agreement provides that Veolia can demobilize the Mobile WTF by dismantling and removing all temporary facilities and construction equipment from the Mine Project lands.
49. Veolia filed its lien on the Mine Lands on November 29, 2022.

Part 3: LEGAL BASIS

Construction Act - Overview

1. Section 78 of the *Construction Act*, R.S.O. 1990, c. C.30 (the "**Construction Act**") sets out the priority scheme between construction liens and registered mortgages.
2. More particularly, section 78(1) provides construction liens have priority over registered mortgages subject to the exceptions listed in section 78. The onus is on the lien holder to prove that their lien arises from an "improvement" as defined by the *Construction Act*, following which the onus is on the mortgage holder to bring itself clearly within one of the exceptions set out in section 78.

Easter Limited v. Dupont Developments Ltd., 2021 ONSC 6579 [***Easter Limited***] at para. 46.

3. The Lien Claimants do not have a lien arising from an improvement under section 78(1) of the *Construction Act*.

4. Even if any of the Lien Claimants could prove a lien arising from an improvement, the Sprott Mortgage still holds priority over the Transaction proceeds because it falls under the “prior mortgage” exception listed under section 78(3) and 78(4) of the *Construction Act*.

None of the Lien Claimants can prove a Lienable Claim

5. Section 78(1) states the following:

Priority over mortgages, etc.

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner’s interest in the premises. (emphasis added)

6. Under section 78(1), the Lien Claimants bear the onus of proving that they have a lienable claim, such that their lien arises from an “improvement” as defined by the *Construction Act*.

Easter Limited, supra, at para. 46.

7. The determination of whether the work provided is an “improvement” is a fact driven exercise, driven by the question of whether there has been “value added” to the property.

On Point Ltd. v. Conseil des Écoles Catholiques du Centre Est et al., 2023 ONSC 1341 [“**On Point**”] at para. 41.

8. The *Construction Act* defines an “improvement” under section 1 as the following:

“improvement” means, in respect of any land,

(a) any alteration, addition or capital repair to the land,

(b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or

(c) the complete or partial demolition or removal of any building, structure or works on the land;

Construction Act, R.S.O. 1990, c. C.30 [the “**Construction Act**”] s. 1.

9. The *Construction Act* must be strictly construed in determining whether any lien claimant is a person actually given a lien. The intention of the *Construction Act* was to include only building construction and building repair industries.

Kennedy Electric Ltd. v. Rumble Automation Inc., 2007 ONCA 664 at para. 14 ["**Kennedy Electric**"], citing *Ace Lumber Ltd. v. Clarkson Co.*, [1963] S.C.R. 110 (SCC) at p. 114; *On Point, supra*, at para. 81, citing *Kennedy Electric*.

10. When examining whether or not movable equipment brought to a property is considered an "improvement", Ontario Supreme Courts have found that "equipment designed and used for the operations of the business within the structure, not integral to the structure, do not thus become improvements."

On Point, supra, at para 58, citing *Chubb Security Safes v. Larken Industries Ltd.*, 1990 CarswellBC 683 at para. 25.

11. Similarly, the Ontario Court of Appeal found that "in most cases, the installation or repair of machinery used in a business operated in a building, particularly where the machinery is portable, will not give rise to lien rights under the *Construction Act*. On the other hand, where machinery is installed in a building for use of a business and is completely and permanently integrated into the building, a lien claim will arise."

Kennedy Electric, supra, at para. 50.

12. In this case, none of the Lien Claimants meet the threshold requirement that their lien constitutes an "improvement". None of the Lien Claimants provided a permanent structure integral to the structure of the land, but instead provided equipment and services for the daily operations of the business within the already-existing structure of the Mine.

i. The Nuna Claim

13. Nuna did not provide services that constitute an "improvement" under the *Construction Act*. Instead, Nuna provided equipment and labourers to haul waste and ore between specified locations on the Mine Lands, crushing ore, and ultimately dumping the waste and ore at specified locations on the Mine Lands. These are daily operational services.

14. The following factors indicate that the services provided under the Nuna MSA do not constitute an "improvement", but instead constitute operational services performed in the normal course of business:

- (a) A review of the terms in the Nuna MSA clearly indicates that the Nuna MSA is an agreement to extract resources from the land, thereby assisting Pure Gold in its business operations on the land. None of the provisions relate to construction on the Mine Lands or altering infrastructure in a manner that would be considered an "improvement".

For example, the "Scope of Work" is defined as work where Nuna "will haul waste and ore between [specified] locations as described within this Scope of Work", following which Nuna "will leave the site in a clean and orderly fashion... All [Nunas] equipment will be removed from site unless purchased by the Owner." The

Scope of Work does not include the construction, alteration, installation, or demolition of any infrastructure to the lands.

Further, Schedule A sets out the base monthly rates for renting mining equipment, as well as base rates for use of that equipment, labourer charges for operating that equipment, and hourly surcharges. Schedule A does not include provisions relating to construction, alteration, installation, or demolition of any infrastructure to the lands.

- (b) Nuna used its own equipment and machinery to perform the services under the Nuna MSA. None of the equipment was integral to any building structure on the Mine Lands because it was not fixed to the Mine Lands or installed in the infrastructure of the Mine. Instead, the equipment remained Nuna's property following the end of the Nuna MSA and was entirely mobile, including the ore crusher.
- (c) Nuna's invoices charge Pure Gold for operational services. More particularly, the services that Nuna's invoices describe are for hourly rates charged to rent and operate equipment to crush and haul ore, and demobilization costs.
- (d) On October 24, 2022, Pure Gold advised Nuna that the Mine was ceasing full operations and going on "care and maintenance" mode, and that their services would no longer be required. As a result, Nuna demobilized its equipment and operations from the Mine Lands, and were off-site in a matter of hours.

The ease and speed at which Nuna could demobilize its entire operation from the Mine Lands strongly indicates that its equipment was designed and used for the operations of the business within the existing structure, not integral to that structure, and is thus not an improvement.

- 15. In *1140676 Ontario Inc. v. 2650997 Ontario Inc. et al.*, the Ontario Supreme Court found that the extraction of resources from a specific site is not considered an "improvement to the land" but instead is considered an agreement to assist a business in regular operational services performed in the normal course of business.

1140676 Ontario Inc. v. 2650997 Ontario Inc. et al., 2020 ONSC 8176 at para. 13.

- 16. It is clear that the extraction, crushing, and disposal of ore are daily operational services that do not constitute an "improvement to the land". Accordingly, Nuna does not have a "lien arising from an improvement" under section 78(1).

ii. The SCR Claim

- 17. SCR did not provide services that constitute an "improvement" under the *Construction Act*. Instead, SCR rented drilling equipment to Pure Gold and provided miners to operate that underground mining equipment at the Mine. These are daily operational services.

18. The following factors indicate that the services provided by SCR under the SCR POs do not constitute an "improvement", but instead constitute operational services performed in the normal course of business:
- (a) A review of the terms in the SCR POs clearly indicates that the services assist Pure Gold in its business operations on the Mine Lands, and do not relate to the infrastructure of the Mine in a manner that would be considered an "improvement".
 - (b) SCR used its own equipment to perform the services under the SCR POs. None of the equipment was integral to any building structure on the Mine Lands because it was not fixed to the Mine Lands or installed in the infrastructure of the Mine. Instead, the equipment remained SCR's property following the end of the contractual relationship between the parties.
 - (c) SCR's invoices charge Pure Gold for operational services. More particularly, the services that SCR's invoices describe are for labour costs, labourer travel and accommodation costs, equipment rental costs, and materials related to operating that equipment.
19. In this case, it is clear that renting mining equipment used for daily operations and providing miners to operate that equipment are services that do not constitute an "improvement to the land". Accordingly, SCR does not have a "lien arising from an improvement" under section 78(1).

iii. The Epiroc Claim

20. Epiroc did not provide services that constitute an "improvement" under the *Construction Act*. Instead, Epiroc leased, serviced, and repaired portable mining equipment used for daily mining operations, as well as technicians to service this equipment. These are daily operational services.
21. The following factors indicate that the services provided by Epiroc do not constitute an "improvement", but instead constitute operational services performed in the normal course of business:
- (a) A review of the terms in various purchase orders and the Epiroc SPAs clearly indicates that Epiroc's services assist Pure Gold in its daily business operations on the Mine Lands, and do not relate to the infrastructure of the Mine in a manner that would be considered an "improvement".
 - (b) Epiroc used its own equipment to perform the services under the various agreements. None of the equipment was integral to any building structure on the Mine Lands because it was not fixed to the Mine Lands or installed in the infrastructure of the Mine. Instead, the equipment remained SCR's property following the end of the contractual relationship between the parties.

- (c) Epiroc's invoices charge Pure Gold for operational services. More particularly, the services that Epiroc's invoices describe are for hourly rates for the supply of two Product Support Technicians, repair costs for various mobile equipment, charges to lease specific mobile equipment, and the purchase of various consumable materials, like bits and steel.
22. In this case, it is clear that leasing, servicing, and repairing portable mining equipment for use in daily operations are services that do not constitute an "improvement to the land". Accordingly, Epiroc does not have a "lien arising from an improvement" under section 78(1).

iv. The Veolia Claim

23. Veolia designed, fabricated, supplied, and transported the Mobile WTF facility to the Mine Lands. However,
- (a) Before Veolia transported the Mobile WTF to the Mine, Pure Gold was responsible for preparing all infrastructure for the Mobile WTF to be placed upon;
 - (b) Pure Gold completed any payments owing under the Veolia WTF Agreement some time ago, having paid over \$9,360,276.35 with respect to the Mobile WTF, almost twice the original contract price of \$4,886,572.00 in the Veolia WTF Agreement;
 - (c) The Veolia WTF Agreement provides that Veolia can demobilize the Mobile WTF by dismantling and removing all temporary facilities and construction equipment from the Mine Project lands;
 - (d) The Veolia work and invoices since May 2020, after the work on the Mobile WTF was completed, have been operational in nature, including labour to maintain the Mobile WTF, to rent the Mobile WTF itself and for the purchase of parts and inventory for the operation and maintenance of the Mobile WTF;
 - (e) Veolia WTF Agreement sets out the minimum rental period for the Mobile WTG, as well as a rental rate for the rental of the related equipment and service rate;
 - (f) Veolia used its own equipment to perform the services under the various agreement;
 - (g) None of the equipment was integral to any building structure on the Mine Lands because it was not fixed to the Mine Lands and instead the equipment remains Veolia's property until the parties determine the rental period is over and Veolia demobilizes the Mobile WTF from the Mine Lands; and
 - (h) Veolia's outstanding invoices all reflect Pure Gold operational services describing equipment rental, operation support, and the purchase of chemicals used to treat water in the Mobile WTF.

24. Accordingly, Veolia does not have a "lien arising from an improvement" under section 78(1).

In the Alternative and 78(1) applies - The Sprott Mortgage falls under the section 78(3) and 78(4) exceptions

25. In the alternative that section 78(1) does apply, the *Construction Act* sets out a number of exceptions.
26. In this instance, the relevant sections are sections 78(3) and (4). Section 78(2) does not apply because it addresses building mortgages, and at least after October 2019 the Sprott Financing was used for operational purposes of the Mine. At October 2019, the Mine had been pumped down to below 4 Level so that it was no longer flooded, and the major infrastructure of the Mine as well as the major roadway infrastructure was in place such that the Mine was operational again.
27. Section 78(3) states as follows:

Prior mortgages, prior advances

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
 - (i) advanced in the case of a mortgage, and
 - (ii) advanced or secured in the case of a conveyance or other agreement.

Construction Act, supra, at s. 78(3).

28. As of October 2019 when the Mine was operational again, Sprott
- i. The Sprott Mortgage was registered prior to the time that the first lien arose***
29. With respect to the first element, section 15 of the *Construction Act* provides that "a person's lien arises and takes effect when the person first supplies services or materials to the improvement."

Construction Act, supra, at s. 15.

30. In this case, Sprott registered its lien on August 6, 2019.
31. There is no doubt that the Sprott Mortgage was registered well before any of the five Lien Claimants' alleged liens arose. The Lien Claimants allege their services were performed as follows:
 - (a) Nuna - from November 28, 2021 to October 26, 2022;
 - (b) SCR - from June 1, 2022 to October 31, 2022;
 - (c) Epiroc - from August 25, 2021 to October 25, 2022.
 - (d) Veolia - from February 1, 2020 to November 29, 2022.

ii. The actual value of the Mine Lands at the time that the liens first arose

32. The case law provides that the "actual value of the premises" means the most probable price that a property would bring in a competitive and open market, under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably.

Avenue Structures Inc. v Pacific Empire Development Inc., 2000 CarswellOnt 2959
[**"Avenue Structures"**], at para. 31.

33. When a court evaluates the "actual value of the property", the court will engage in a fact-based assessment with the available evidence, which often includes: the history of the property; current municipal assessment and realty taxes; site description; land use controls; improvements and the existing state of construction; and a market overview.

Avenue Structures, supra, at paras. 36-57.

34. Not surprisingly, the case law on valuation at the time the lien arose centers around traditional construction and real estate. There is no jurisprudence relating to operating mines where the infrastructure has already been completed utilizing monies advanced by the original mortgagee.
35. In this case, Pure Gold is essentially a single asset company, with the Mine being its single asset. Traditional real estate appraisals cannot accurately gauge the value of a mine because they do not accurately reflect the value of the potential value of the underground minerals (with the minerals ultimately being the largest contributor to the value of the Mine).
36. Instead, lenders use market capitalization rates and feasibility studies as tools to value mines.
37. The market capitalization rate reflects what the public views the company to be worth at any given point in time.

38. The way to determine market capitalization is to multiply company's share price by its total number of outstanding shares at that point in time. In the case of Pure Gold, this information is public making the projection using the share price easy to attain.
39. Tracking Pure Gold's market capitalization for all trading days starting from August 7, 2019 (when the parties entered into the Sprott Financing) to March 17, 2023, Pure Gold was valued at CDN ~\$215,700,000 on August 7, 2019. The value based upon market capitalization when each Lien Claimant alleges they began work at the Mine is as follows:
 - (a) Veolia - February 1, 2020, is approximately CDN \$297,500,000;
 - (b) SCR - June 1, 2021, is approximately CDN \$655,300,000;
 - (c) Epiroc - August 25, 2021, is approximately CDN \$467,500,000; and
 - (d) Nuna - November 28, 2021 is approximately \$343,000,000.
40. At the outset of the SISF, Sprott believed the value of the Mine and Pure Gold was in excess of CDN \$198 million.
41. The results from the SISF were obviously disappointing for Sprott. The Transaction leaves Sprott facing a substantial shortfall in excess of CDN \$213,000,000 on the amounts it financed to Pure Gold.
42. It is submitted that there could be no market valuation of the Mine of any kind at the time the liens allegedly arose which would produce a value less than the amounts advanced by Sprott before the liens allegedly arose.
43. Therefore, the relevant section in this case is 78(3)(b) - the total amounts advanced by Sprott prior to the time the liens arose.

iii. The total amounts advanced by Sprott by the time each lien allegedly arose

44. With respect to Nuna, Sprott had advanced approximately CDN \$145,387,550 under the Sprott Mortgage by November 28, 2021 when Nuna alleges its lien first arose.
45. With respect to Epiroc, Sprott had advanced approximately CDN \$145,387,550 under the Sprott Mortgage by November 28, 2021 when Epiroc alleges its lien first arose.
46. With respect to SCR, Sprott had advanced approximately CDN \$135,474,762 under the Sprott Mortgage by November 28, 2021 when SCR alleges its lien first arose.
47. With respect to Veolia, Sprott had advanced approximately CDN \$47,654,250 under the Sprott Mortgage by February 1, 2020 when Veolia alleges its lien arose.

iv. Summary of Section of 78(3) Analysis

48. The Monitor's Sixth Report values the Transaction between CDN \$49,400,000 and CDN \$58,400,000.
49. The Sprott DIP Facility has priority to the first CDN \$18,000,000 of proceeds from the Transaction leaving CDN \$40,400,000 of proceeds value at issue between the Lien Claimants and the Sprott Mortgage, using the Monitor's highest valuation of the Transaction.
50. In order for any of the Lien Claimants to have priority over the Sprott Mortgage, they each must prove that at the time their alleged lien first arose, either (i) the actual value of the Mine Lands was less than \$40,400,000; or (ii) the total amount Sprott advanced in the Sprott Mortgage was less than \$40,400,000. This is not possible.
51. The following table uses each of the Lien Claimants' best facts to complete the analysis under section 78(3):

Lien Claimant	Approximate Actual Value of the Mine Lands at the date the alleged lien first arose (CAD)	Approximate amount Sprott advanced in the Sprott Mortgage at the date the alleged lien first arose (CAD)
Nuna	\$343,000,000	\$145,387,550
Epiroc	\$467,500,000	\$145,387,550
SCR	\$655,300,000	\$135,474,762
Veolia	\$297,500,000	\$47,654,250

52. Even using each of the Lien Claimants' best facts (earliest date and the maximum value of the proceeds), Sprott had advanced over \$40,400,000 before any liens arose. Veolia is the closest Lien Claimant, and it is still over \$7,000,000 out of the money on its best facts.
53. Thus, the Sprott Mortgage falls within the exception set out in section 78(3), such that Sprott has priority over the Lien Claimants.

v. Section 78(4) Analysis

54. Section 78(4) states as follows:

Prior mortgages, subsequent advances

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

55. In other words, in the absence of receiving written notice of a construction lien or the existence of a preserved or perfected lien on the premises, the Sprott Mortgage registered before the first construction lien arose will have an additional priority with respect to any advances made under the mortgage.

J. Sousa Contractor Ltd. v. Kinalea Development Corp., 1994 CarswellONt 946 at para. 16.

56. Neither Pure Gold nor Sprott received any written notice nor were the Lien Claimants' respective liens registered until after the CCAA commenced and Sprott had already advanced a total amount of approximately CAD \$150,000,000 to Pure Gold.
57. Accordingly, the Sprott Mortgage falls within the exception set out in section 78(4), such that Sprott has priority over the Lien Claimants for all of its advances made before the Lien Claimants' liens were perfected against the Mine Lands.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Michael Procyk, made June 15, 2023;
2. Affidavit #1 of Narinder Nasgar, made May 25, 2023;
3. Affidavit #2 of Narinder Nasgar, made June 15, 2023;
4. Monitors Sixth Report, dated May 19, 2023.

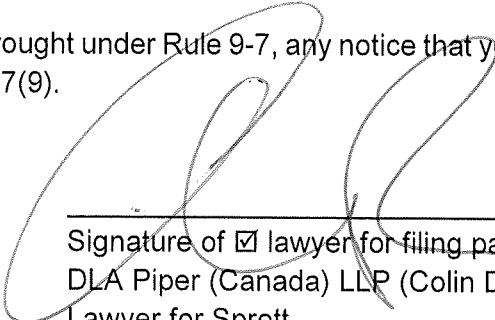
The applicants estimate that the application will take one day.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master. Justice Walker is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

June 15, 2023
Dated _____



 Signature of lawyer for filing parties
 DLA Piper (Canada) LLP (Colin D. Brousson)
 Lawyer for Sprott

<p>To be completed by the court only:</p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

Date: _____
Signature of Judge Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

No. S-228723
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND
ARRANGEMENT OF PURE GOLD MINING INC.

PETITIONER

NOTICE OF APPLICATION

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Fax No. 604.687.1612

File No.: 101992-00007

CDB/day