

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

GLOBAL RESOURCE FUND

Applicant

- and -

TAMERLANE VENTURES INC. and PINE POINT HOLDING CORP.

Respondents

**FACTUM OF THE RECEIVER**

**GOODMANS LLP**

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

Melaney J. Wagner LSUC#: 44063B

Tel: (416) 979-4258

Fax: (416) 979-1234

Lawyers for Duff & Phelps Canada  
Restructuring Inc., in its capacity as  
Receiver

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

GLOBAL RESOURCE FUND

Applicant

- and -

TAMERLANE VENTURES INC. and PINE POINT HOLDING CORP.

Respondents

**FACTUM OF THE RECEIVER**

**PART I. INTRODUCTION**

1. Tamerlane Ventures Inc. (“**Tamerlane**”) and Pine Point Holding Corp. (together with Tamerlane, the “**Company**”) were granted protection in proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceedings**”) pursuant to an Order of this Honourable Court dated August 23, 2013 (the “**Initial Order**”), and Duff & Phelps Canada Restructuring Inc. (“**D&P**”) was appointed Monitor of the Company. Pursuant to an Order of this Honourable Court dated January 30, 2014 (the “**CCAA Termination Order**”), the CCAA Proceedings were terminated and D&P was discharged as Monitor. By Order of this Honourable Court dated the same day (the “**Receivership Order**”), D&P was appointed receiver (the “**Receiver**”) of the assets, properties and undertakings of the Company (the “**Property**”). The principal purpose of the receivership proceedings in respect of the Company (the “**Receivership Proceedings**”) is to continue the sale and investment solicitation process (“**SISP**”) for the Company’s business and assets, which commenced during the CCAA Proceedings.

2. The Receivership Order authorized the Receiver, *inter alia*, to sell the Property or any part thereof outside of the ordinary course of business with the approval of the Court for any transaction in which the purchase price exceeds \$100,000, and to apply for any vesting order necessary to convey the Property or part thereof to a purchaser thereof.

Receivership Order, paras. 3(m) and (n), Appendix C to the Second Report, Motion Record, Tab 2C, at pages 66 and 67.

3. The Receiver is seeking an Order (the “**Approval and Vesting Order**”), among other things:
  - (a) approving a transaction regarding the exercise of an additional option (the “**Century Transaction**”) under a Property Option Agreement dated February 13, 2004 (the “**Property Option Agreement**”) between Tamerlane and Century Mining Corporation (“**Century**”) contemplated by a letter agreement among the Receiver, Samson Bélair / Deloitte & Touche Inc., in its capacity as court-appointed receiver of the assets, properties and undertakings of Century (the “**Century Receiver**”), and the Carolin Mines Purchaser (defined below) dated October 28, 2014 (the “**Sale Agreement**”), and vesting in the Century Receiver or as the Century Receiver may direct all of Tamerlane’s and the Receiver’s right, title and interest in and to the additional option property (the “**Additional Option Property**”) described in the Sale Agreement and the Property Option Agreement;
  - (b) approving a distribution to Global Resource Fund (“**GRF**”), in its capacity as DIP Lender (as defined in the Initial Order), of the net proceeds of sale from the Century Transaction, which amount shall be applied to reduce the amount owing to GRF pursuant to the DIP Term Sheet (as defined in the Initial Order);
  - (c) sealing the confidential supplement (the “**Confidential Supplement**”) to the Second Report of the Receiver dated October 28, 2014 (the “**Second Report**”); and
  - (d) approving the actions and conduct of the Receiver as detailed in the Second Report and approving the matters referenced therein.

4. The Receiver has considered its options and alternatives regarding the Additional Option Property. The Receiver is of the view the exercise of the additional option in accordance with the Property Option Agreement and the terms of the Century Transaction are fair and reasonable. The Receiver recommends approval of the Century Transaction as the best transaction available in the circumstances.
5. The Century Transaction is supported by GRF, the Company's senior secured creditor and provider of debtor-in-possession financing, and the only party that appears to have an economic interest in the Company.
6. The use of the proceeds from the Century Transaction to pay obligations of the Company secured by the priority DIP Lender's Charge is appropriate in the circumstances.
7. The Receiver is also seeking a sealing order in respect of the Confidential Supplement in order to keep confidential certain commercially sensitive information and protect information provided to the Receiver on a confidential basis.
8. For the reasons outlined in the Second Report, the Receiver applies to this Honourable Court for approval of the Century Transaction and the granting of the Approval and Vesting Order.

## **PART II. THE FACTS**

### **A. The Century Transaction**

9. The Additional Option Property is composed of Tamerlane's remaining interest in certain mineral claims and surface rights to mineral claims located in British Columbia (the mineral claims and surface rights to mineral claims are referred to as the "**Carolin Mines**", with Tamerlane's remaining interest therein referred to as the "**Additional Option Property**").
10. Pursuant to the Property Option Agreement, Century has the right to pay Tamerlane \$6,667 for each 1% interest that Tamerlane owns in the Carolin Mines.

11. The Carolin Mines are currently owned by Century (60%), Tamerlane (30%) and New Carolin Gold Corp. (10%). The Carolin Mines are not operating.
12. The Century Receiver undertook a marketing process with respect to the Carolin Mines, which process culminated in an Asset Purchase Agreement between the Century Receiver and a third party (the “**Carolin Mines Purchaser**”) dated July 10, 2014 (the “**APA**”). Pursuant to the APA, Century intends to: (i) exercise its rights under the Property Option Agreement to acquire the Additional Option Property by paying Tamerlane the option price thereunder; and (ii) sell its then 90% interest in the Carolin Mines to the Carolin Mines purchaser (the “**Carolin Mines Transaction**”).
13. Subject to this Honourable Court’s approval, the Receiver expects to complete the Century Transaction to the Century Receiver simultaneously with closing of the Carolin Mines Transaction, which is expected to close in the Fall and early Winter.

**B. Distribution of Proceeds**

14. The DIP Lender’s Charge (as defined in the Initial Order) continues to constitute a charge on all of the assets, property and undertaking of the Company (the “**Property**”) in the receivership proceedings with the priority set out in the Receivership Order until all obligations under the DIP Term Sheet are paid in full.
15. During the CCAA Proceedings, GRF advanced approximately US\$1.1 million to the Company under the DIP Term Sheet, which amount was secured against all of the pursuant to the DIP Lender’s Charge. Approximately US\$700,000 remains outstanding under the DIP Term Sheet, plus interest.

**C. Sealing of Confidential Supplement**

16. Details of the Carolin Mines Transaction were provided to the Receiver on a confidential basis and remain confidential. Both the APA and the Sale Agreement contain confidential information. If the terms of the APA are not sealed, future bidders would have access to, among other things, the amount that was accepted by the Century Receiver, which could be prejudicial to a subsequent sale process. The Century Receiver

has requested that the Receiver seek a sealing order with respect to the APA and the Century Sale Agreement.

17. Additional facts are set forth in the Second Report.

### **PART III. ISSUES AND THE LAW**

#### **A. COURT APPROVAL OF THE CENTURY TRANSACTION**

18. *Royal Bank v. Soundair Corp.* sets out the following principles a court should consider when it is asked to approve a sale transaction in a receivership context (the “*Soundair principles*”):

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

*Royal Bank v. Soundair Corp.*, 4 O.R. (3d) 1, 83 D.L.R. (4<sup>th</sup>) 76 (Ont. C.A.)  
[*Soundair*] at para. 16.

19. The appropriateness of a particular sales process is dependent on the nature of the asset being sold and the pool of potential purchasers. Where it is highly unlikely that a commercially viable sale of the debtor’s business can be made to anyone other than a very limited number of purchasers, the receiver acts wisely and reasonably when it negotiates only with such limited number of purchasers, including if only one remains.

*Soundair* at para. 18.

20. The support of a secured creditor with an economic interest in the proceeds of a sale transaction is an important factor in determining whether a sale transaction should be approved:

[W]here there is a small number of creditors who are the only parties with a real interest in the proceeds of the sale (i.e. where it is clear that the highest price attainable would result in recovery so low that no other creditors, shareholders, guarantors, etc. would possibly benefit therefore), the wishes of the interested creditors should be very seriously considered by the receiver.

*Soundair* at para. 73.

21. The court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should assume that the receiver is acting properly unless the contrary is clearly shown. The court should be reluctant to second-guess the considered business decisions made by its receiver.

*Soundair* at para. 14.

22. The Century Transaction satisfies the *Soundair* principles and should be approved because, among other things:
  - (a) the Property Option Agreement contains an additional option whereby Century has the right to pay Tamerlane \$6,667 for each 1% interest that Tamerlane owns in the Carolin Mines and the price to be paid by the Century Receiver pursuant to the Century Sale Agreement is the price set forth in the Property Option Agreement;
  - (b) Tamerlane entered into the Property Option Agreement, on terms acceptable to it, as a sophisticated party with knowledge of British Columbia mining properties;
  - (c) Ms. Kent, the Executive Chair and Chief Financial Officer of Tamerlane prior to its receivership proceedings, advised the Receiver that Century has fulfilled all of its obligations under the Property Option Agreement and is eligible to exercise its rights under the Property Option Agreement;
  - (d) the Century Receiver undertook a marketing process for the Carolin Mines, which culminated in the APA and the condition therein that the Century Receiver exercise its additional option under the Property Option Agreement;

- (e) after considering the marketing process undertaken by the Century Receiver and the estimation of value implied by the results of that marketing process, as well as the time, cost and uncertainty entailed in order for the Receiver to pursue other alternatives, and after consulting with GRF, the Receiver believes that the consideration to be received under the Sale Agreement is the best available in the circumstances;
- (f) the Additional Option Property is an unusual asset, as it comprises a minority 30% interest in the Carolin Mines and is subject to the Property Option Agreement, which Tamerlane and Century entered into in 2004;
- (g) given Century's existing 60% majority interest in the Carolin Mines, Century or a party interested in Century's majority interest is the most likely and highest value purchaser of the Additional Option Property - the pool of potential purchasers of the Additional Option Property, which represents a minority interest in the Carolin Mines, is limited by virtue of Century's majority interest therein;
- (h) the Receiver acted reasonably in negotiating the Century Transaction with the Century Receiver in accordance with the terms of the pre-existing Property Option Agreement; and
- (i) GRF, the Company's DIP Lender, senior secured lender and only party that appears to have an economic interest in the Company, supports approval of the Century Transaction.

Second Report, section 3.0, Motion Record, Tab 2, at pages 17 - 20.

- 23. The Receiver recommends that this Honourable Court approve the Century Transaction.

**B. DISTRIBUTION OF PROCEEDS FROM THE CENTURY TRANSACTION**

- 24. Pursuant to the CCAA Termination Order, each of the Charges (as defined in the Initial Order, which Charges include the DIP Lender's Charge) shall continue to constitute a



charge on the Property in the Receivership Proceedings, with the priority set out in the Receivership Order.

CCAA Termination Order, para. 11, Appendix B to the Second Report, Motion Record, Tab 2B, at page 59.

Receivership Order, para. 24, Appendix C to the Second Report, Motion Record, Tab 2C, at pages 74 and 75.

25. The use of the sale proceeds from the Century Transaction to pay obligations of the Company secured by a priority Court-ordered charge over the Property is appropriate. Repaying a portion of the Company's obligations under the DIP Term Sheet secured by the DIP Lender's Charge will reduce the interest expense incurred by the Company, in the interests of the Company's stakeholders.
26. The Receiver requests that that this Honourable Court approve the distribution of the proceeds from the Century Transaction to the DIP Lender, as outlined above.

**C. SEALING THE CONFIDENTIAL SUPPLEMENT**

27. The Receiver requests that this Honourable Court seal the Confidential Supplement, which contains the Sale Agreement and the APA. Both the Sale Agreement and the APA contain sensitive commercial information, and the APA and the details of the Carolin Mines Transaction were provided to the Receiver by the Century Receiver on a confidential basis.

Second Report, section 3.1, Motion Record, Tab 2, at page 18.

28. This Honourable Court has the discretion pursuant to subsection 137(2) of the *Courts of Justice Act* (Ontario) and pursuant to its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

*Courts of Justice Act*, R.S.O. 1990, c. C-43, subsection 137(2).

29. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada adopted the following test to determine when a sealing order should be made:

A confidentiality order under [Rule 151 of the Federal Court Rules] should only be granted when:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

*Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] S.C.R. 522 [*Sierra Club*] at para. 53.

30. With respect to the first branch of the *Sierra Club* test, the Sale Agreement and the APA contain sensitive commercial information relating to the Carolin Mines. If the Confidential Supplement is not sealed, future bidders in respect of the Carolin Mines would have access to, among other things, the purchase price that both the Receiver and the Century Receiver accepted in respect of interests in the Carolin Mines, which could be prejudicial to a subsequent sale process.

Second Report, section 3.1, Motion Record, Tab 2, at page 18.

31. With respect to the second branch of the *Sierra Club* test, the Receiver submits that keeping this information confidential will not have any deleterious effects and the salutary effects of sealing the Confidential Supplement outweigh any conceivable deleterious effects.
32. The Receiver requests that the Confidential Supplement be sealed by this Honourable Court pending further Order of this Court.

#### **PART IV. ORDER REQUESTED**

For the reasons set out above, the Receiver requests that this Honourable Court approve the Century Transaction and grant the relief requested in the Approval and Vesting Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

*Melaney J. Wagner pm: csc*

Melaney J. Wagner

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

- 1        *Royal Bank v. Soundair Corp.*, 4 O.R. (3d) 1, 83 D.L.R. (4<sup>th</sup>) 76 (Ont. C.A.)
- 2        *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522

**SCHEDULE “B”  
STATUTORY REFERENCES**

***COURTS OF JUSTICE ACT*  
R.S.O. 1990, c. C-43, as amended**

s. 137(2)

*Sealing documents* – A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

GLOBAL RESOURCE FUND

and

TAMERLANE VENTURES INC. and  
PINE POINT HOLDING CORP.

Court File No. CV-14-10417-00CL

Applicant

Respondents

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

---

**FACTUM OF THE RECEIVER  
(Returnable November 3, 2014)**

---

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Melaney J. Wagner LSUC#: 44063B

Tel: (416) 979-4258  
Fax: (416) 979-1234

Lawyers for Duff & Phelps Canada  
Restructuring Inc., in its capacity as  
Receiver