
CANADA / JUDGMENT

Veris Gold Corp. (Re)

2015 BCSC 1204

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Supreme Court of British Columbia

DECIDED

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2015 BCSC 1204 Veris Gold Corp. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Veris Gold Corp. (Re),

2015 BCSC 1204

Date: 20150710

Docket: S144431

Registry: Vancouver

In the Matter of the Companies' Creditors Arrangement Act,

R.S.C., 1985, c. C-36, As Amended

And

In the matter of the Canada Business Corporations Act,

R.S.C. 1985, c. C-44

And

In the matter of the Business Corporations Act,

S.B.C. 2002, c. 57

And

In the Matter of Veris Gold Corp., Queenstake

Resources Ltd., Ketz River Holdings, and Veris Gold USA, Inc.

Petitioners

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

May 28, 2015

Place and Date of Judgment:

Vancouver, B.C.

July 10, 2015

Introduction

- [1] This is a proceeding pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA"). The assets of the petitioner companies (collectively, "Veris Gold") principally comprise a gold mine in the State of Nevada, United States of America and mining properties in Yukon, Canada.
- [2] There has been no shortage of effort in these proceedings to restructure the considerable debt or monetize the assets of Veris Gold for the benefit of the stakeholders. However, in the face of considerable operational setbacks and disappointing refinancing and sale results, those stakeholders now face two stark options: (i) allow the interim lender to deal with the assets in a receivership or liquidation scenario; or (ii) allow an orderly transfer of the assets to that interim lender by way of a credit bid which would allow operations in the U.S. to continue.
- [3] The court-appointed monitor, Ernst & Young Inc., (the "Monitor") now applies to complete the sale to a new entity created by the interim lender, which is said to provide the best result achievable in less than desirable circumstances.

Background Facts

- [4] Much of the history of these proceedings was set out in my reasons for judgment issued earlier this year: Veris Gold Corp. (Re), 2015 BCSC 399. For the purposes of this application, I will summarize that history as follows.
- [5] On June 9, 2014, this Court granted an initial order. This filing was necessary in light of the imminent steps that were to be taken by Veris Gold's major secured creditor, Deutsche Bank A.G. ("DB") to collect its debt of approximately US\$90 million.
- [6] The Canadian filing was immediately followed by the Monitor commencing proceedings in Nevada pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

- [7] Arising from orders granted in both the Canadian and Nevada proceedings and the agreements reached between Veris Gold and DB, matters were stabilized. Those orders and agreements allowed Veris Gold to continue its efforts to restructure its debt and equity with the assistance of Raymond James & Associates. In addition, firm milestone dates were put in place to conclude any refinancing and also to commence a sales process if those refinancing efforts were not successful.
- [8] In October 2014, this Court approved interim financing to be obtained from WBox 2014-1 Ltd. ("WBox") in the amount of US \$12 million.
- [9] On November 18, 2014, this Court approved a detailed sale and solicitation process to be conducted by Moelis and Company ("Moelis"), again with firm deadlines for such matters as receipt of qualified bids. Although certain of the deadlines under the sales process were extended, no qualified bids were received by the extended bid deadline, January 30, 2015.
- [10] Following these disappointing sale results, the Monitor engaged in discussions with Veris Gold and the two stakeholders who appeared to have the only economic interest remaining in the assets, being DB and WBox. What was critical at this time was allowing Veris Gold to continue to operate in the ordinary course while these stakeholders considered their next steps.
- [11] In mid-February 2015, DB issued various notices of default under its security and the agreements reached earlier with Veris Gold. This also resulted in an immediate default under the interim financing agreements between Veris Gold and WBox. With a view to securing greater oversight over the continued operations of Veris Gold, DB later applied for and was granted an order expanding the powers of the Monitor on February 23, 2015. That order was later recognized by the U.S. court in the Chapter 15 proceedings on March 2, 2015.
- [12] By late March 2015, both DB and WBox were continuing to consider their options, including the possibility of making a credit bid for the assets. WBox conducted due diligence of the assets toward that possibility. The Monitor reported at that time that, absent a credit bid from DB, a credit bid from WBox was the only viable alternative.
- [13] Accordingly, on March 30, 2015, this Court granted an order extending the stay of proceedings to April 7, 2015 to enable completion of discussions in relation to a credit bid transaction whereby certain of Veris Gold's assets would be transferred to a nominee of WBox.
- [14] On April 2, 2015, Veris Gold suffered yet another operational setback when a fire occurred at the processing plant, causing an estimated shutdown of one week. The already tenuous cash problems were therefore exacerbated by the deferral of revenue of approximately US\$4 million as a result of the shutdown. The timing of this difficulty was unfortunate, in that by this time, the Monitor had negotiated an agreement in principle with WBox for the purchase of the assets and an increase in the interim funding to allow operations to continue to the closing date.

- [15] Not surprisingly, the fire and ensuing difficulties caused WBox to delay any credit bid and the provision of further financing while it considered, among other things, the impact on the cash requirements of continuing operations. In addition, in light of what the Monitor described as the "mounting challenges", the Monitor and WBox moved to a consideration of liquidation scenarios. Preliminary work on various shutdown options, including care and maintenance, indicated that significant monies would have to be expended even before the assets could be transferred on an orderly basis to environmental regulators.
- [16] On April 7, 2015, this Court extended the stay of proceedings to April 24, 2015 in order to enable WBox and other interested parties to assess their options and to allow the Monitor time to have further discussions with the environmental regulators. During this extension of the stay period, WBox renewed discussions with the Monitor in respect of a potential transaction that would involve the equity participation of a financial partner. It was discussed that this partner could participate in WBox's nominee, which would be the entity to hold and operate Veris Gold's mining assets.
- [17] Discussions were also ongoing at this time whereby WBox would provide increased financing to Veris Gold in order to allow further time to finalize a transaction.
- [18] On April 24, 2015, this Court granted an order extending the stay of proceedings to June 12, 2015. In addition, at the request of the Monitor, an order was granted increasing the interim funding from WBox by US\$3 million to US\$15 million, which would allow Veris Gold's operations to continue. WBox approved a cash flow forecast and it was agreed that WBox would maintain control over payments made from this further facility. On April 29, 2015, the U.S. court approved this amendment to the interim financing facility.
- [19] On May 28, 2015, Veris Gold entered into an asset sale agreement (the "Agreement") with WBVG, LLC ("WBVG"). WBVG is an entity wholly owned by WBox although, as anticipated, WBox sought and obtained the future participation of another equity partner. The transaction provides that WBox will transfer a majority interest in WBVG to 2176423 Ontario Ltd., a company owned by Eric Sprott. Mr. Sprott was already involved in Veris Gold, having a 20% equity interest and also having a royalty interest in the Nevada mining properties.
- [20] The salient terms of the Agreement are as follows:
- a) WBVG will purchase all tangible and intangible assets of Veris Gold, subject to certain defined excluded assets;
 - b) the Monitor is to continue efforts to sell the Ketz assets in Yukon over a 60-day period with any sale proceeds being payable to WBVG. If no sale occurs, then those assets will be transferred to WBVG;
 - c) WBVG is to assume certain obligations arising under assumed contracts, including all bonds, and also pay any "cure costs" relating to such assumed contracts, limited to US\$10 million;

- d) WBVG will assume the amounts owing to WBox under the interim lending facility and will pay certain of the court-ordered charges, such as the administration charges, having priority over the interim lender's charge in favour of WBox to a maximum of US\$1.8 million;
 - e) WBVG will not assume any liabilities for pre-closing obligations;
 - f) all employees of Veris Gold are to be terminated on closing and WBVG may offer employment to some or all of them; and
 - g) a "DIP Financing Cash Reserve" fund estimated in the amount of US\$3.1 million is to be established to pay certain post-filing obligations that will be outstanding as of the closing date, including employee wages and amounts due to suppliers and contractors for the supply of goods and services. Any funds remaining in the DIP Financing Cash Reserve after these payables have been satisfied shall be returned to WBVG.
- [21] The Agreement is still conditional in that it is subject to approval by both this Court and the U.S. court. Further conditions relate to obtaining an assignment of certain critical contracts, such as bonding agreements and other arrangements with the Nevada environmental regulators.

Statutory Framework

- [22] The authority of this Court to approve the sale is found in s. 36 of the CCAA. Section 36(3) of the CCAA sets out a list of non-exhaustive factors to be considered by the court:
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
- [23] A more general test has been restated, as discerned from the above factors, namely to consider the transaction as a whole and decide "whether or not the sale is appropriate, fair and reasonable": *Re White Birch Paper Holding Co.*, 2010 QCCS 4915 at para. 49, 72 C.B.R. (5th) 49, leave to appeal ref'd 2010 QCCA 1950.

[24] In addition, the principles identified in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 at 6 (C.A.) are helpful in considering whether to approve a sale:

1. Whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
2. The interests of all parties;
3. The efficacy and integrity of the process by which offers were obtained; and
4. Whether there has been any unfairness in the sales process.

[25] Various authorities support that, in considering the test under s. 36 of the CCAA, the principles of *Soundair* remain relevant and indeed overlap some of the specific factors set out in s. 36(3): *Re Canwest Publishing Inc.*, 2010 ONSC 2870 at para. 13; *White Birch* at para. 50; *Re PCAS Patient Care Automation Services Inc.*, 2012 ONSC 3367 at para. 54.

Discussion

(a) CCAA Factors

[26] I am more than satisfied that the factors set out in s. 36(3) of the CCAA support the granting of the order approving the Agreement with WBVG.

[27] I have already outlined the extensive process by which Veris Gold's assets were exposed to the market by Moelis in accordance with the court-approved sales process. That process, which took place over many months, unfortunately did not yield any realistic offers, despite an extension of the bid deadline.

[28] The Monitor did receive a non-binding expression of interest from a party on May 8, 2015. Some of the persons behind this expression of interest had been involved in the unsuccessful sales process. However, despite the purchase price being slightly above the WBox borrowings (US\$20 million), the Monitor's view was that it would not be pursued by reason of the numerous significant conditions and the reality that the delay in pursuing any offer would place Veris Gold's operations at significant risk given its precarious financial (cash) condition. On May 13, 2015, this indicative offer was increased to US\$23 million but that increase did not elicit any support from either WBox or the Monitor.

[29] In response to the concerns of WBox and the Monitor, this party submitted a non-binding indicative offer on May 22, 2015 with additional materials indicating that financing had been tentatively obtained. Even so, the Monitor supported WBox's continued position that this offer should not be pursued further given the risk and delay in doing so. DB did not challenge this assessment.

- [30] It should be noted that, with the possible exception of DB, no one was more interested in obtaining an offer to purchase the assets than WBox in terms of seeing some recovery under the interim financing. In large part, WBVG's offer is made somewhat reluctantly by WBox as the only real alternative to obtaining some value from the assets secured under its court-ordered charge.
- [31] The Monitor has been extensively involved throughout these proceedings and the sales efforts, particularly given the Monitor's role in brokering the peace between Veris Gold and DB that allowed the refinancing and sale efforts to continue without much controversy. To that extent, the Monitor was very much involved in fashioning the sales process that was eventually approved by the court on November 18, 2014.
- [32] At this time, the stark reality is that no other viable options exist other than this sale or a receivership and liquidation, with the latter providing considerable uncertainty in terms of future operations. That uncertainty has justifiably caused some concern with the regulators, both in Nevada and Yukon, who must necessarily address any environmental issues that might precipitously arise from a failure to continue operations.
- [33] In my view, the process leading to this transaction was fair and reasonable in the circumstances. No person has suggested that these efforts were insufficient or inadequate.
- [34] Needless to say, the Monitor, being the applicant, is in favour of the transaction with WBVG and recommends its approval by the court. The Monitor has been involved in the negotiations and finalization of the asset sale agreement throughout.
- [35] The reasons to approve the sale to WBVG and to do so quickly are outlined in the Monitor's sixteenth report to the court dated May 25, 2015. The portions of the report that highlight those reasons are:

[Veris Gold] would unlikely be able to recover from a further significant interruption of operations. The result would likely be the commencement of a liquidation process with the resultant loss of jobs, supply chain benefits and heightened environmental risks related to the need to transition care and maintenance activities to the Nevada environmental regulators on an extremely short timeline.

The [transaction] is essentially a realization process by [WBox], which has no viable alternatives. The operations continue on borrowed time, and prolonging any process results, in the Monitor's view, in significant risk to numerous stakeholders - [WBox], employees, suppliers of goods and services, and the environmental regulators.

[I]t is urgent to have an expedited resolution to these proceedings. The alternative, which would involve facilitating due diligence by the EOI Party or other late emerging parties, together with the related purchase agreement negotiations and discussions with the environmental regulators, translates into an extended timeframe and a higher risk of non-completion or future operational disruption. The party exposed to the risk of loss in the event on non-completion is [WBox].

- [36] There has obviously been extensive consultation with WBox throughout these proceedings since the interim financing was initially approved in October 2014.
- [37] Since February 2015, when it was clear that no sales had materialized, DB's interest in these proceedings has undoubtedly lessened. This is largely due to the realization that there was likely no value beyond what was owed to WBox under its interim financing, which stands in priority to the secured debt of DB. In essence, DB's lack of opposition to this sale is in recognition that it will obtain no recovery of the substantial debt owed by Veris Gold to it in excess of US\$90 million.
- [38] Other creditors junior in priority to DB have not been consulted; however, it has been abundantly clear since January 2015 that DB stood little chance of collecting even a portion of its debt, let alone realize a refinancing or sale that would see these junior creditors recover from any excess. Therefore, the proposed transaction will have no material effect on these other creditors.
- [39] It has also necessarily been the case that the various parties, and in particular the Monitor, WBox, Mr. Sprott and WBVG, have been in extensive discussions with the environmental regulators throughout these proceedings and specifically regarding the proposed transaction with WBVG. Discussions were held with the Nevada Division of Environmental Protection and the U.S. Forest Service in connection with the proposed transaction and any alternative scenarios. Those regulators were either in support or not opposed to the relief sought on this application, having secured terms in the proposed court order to address any concerns on their part.
- [40] While the outcome for DB and other pre-filing creditors is complete non-recovery, the benefits for various other stakeholders, being WBox, the employees, suppliers and the environmental regulators, is evident enough. It is these stakeholders who will suffer in the event that Veris Gold's operations do not continue and the environmental regulators in Nevada are left with the significant care and maintenance responsibilities for the mine site in a liquidation scenario. This transaction will see a continuation of Veris Gold's operations in Nevada. Accordingly, I agree with the Monitor that this is the best outcome for these operational stakeholders.
- [41] The operations in Yukon have been dormant for some time. Discussions between the Monitor and the Yukon regulators are continuing at this time toward a potential purchase of the Ketz assets by Yukon and a relinquishment of Veris Gold's mineral claims and mining leases there. The Agreement contemplates that these discussions will continue, hopefully toward a satisfactory conclusion.
- [42] The Monitor and WBox have also addressed in part concerns expressed by the court concerning the ongoing supply of goods and services and the uncertainty of payment for those goods and services while the Agreement was being negotiated. As noted above, upon the closing of the transaction, employees and suppliers to the Nevada mine site will be paid by Veris Gold for goods and services supplied up to the time of closing. As it relates to the

employees, this addresses the requirement in the CCAA, s. 36(7) in that the court is satisfied that employee-related claims will be paid. Additional benefits will also redound to all of these stakeholders by either the potential of continued employment with WBVG or the continuation of many of the supply contracts which are to be assumed by WBVG post-closing.

- [43] I also conclude that the history of these proceedings, as outlined above, demonstrates that the consideration to be received for Veris Gold's assets is reasonable and fair, taking into account their market value. While no appraisals of the assets have been obtained, that fair market value is reflected in the market response to the extensive sales efforts undertaken.
- [44] No one misunderstands that if the transaction is not approved WBox will withdraw funding and Veris Gold will almost certainly have to commence an orderly wind down of its operations and liquidation of its assets to satisfy the debt owed to WBox. It is more than likely that WBox will suffer a shortfall in a liquidation scenario. A liquidation scenario will also likely result in the Nevada environmental regulators taking over care and maintenance of the mine site on an expedited basis, at significant expense and with the possibility of environmental damage resulting from a surrender of the mine site without the lead time needed by the regulators.
- [45] In all the circumstances, a consideration of all the factors in s. 36 of the CCAA supports the conclusions that the proposed transaction is fair and reasonable and that the Agreement should be approved.

(b) Assignment of Contracts

- [46] The asset sale agreement provides that WBVG will be assigned the "Assigned Contracts", which are defined as meaning "all Designated Seller Contracts" and also described as "Required Assigned Contracts". All of these contracts are listed in a schedule attached to the purchaser disclosure schedule delivered by WBVG to Veris Gold.
- [47] The Monitor seeks approval of the assignment of the Designated Seller Contracts, save to the extent that consents from counterparties have not already been obtained.
- [48] The relevant statutory authority to approve such assignments is found in s. 11.3 of the CCAA:
- 11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.
- .
- (3) In deciding whether to make the order, the court is to consider, among other things,
- (a) whether the monitor approved the proposed assignment;

- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
 - (c) whether it would be appropriate to assign the rights and obligations to that person.
 - (4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement -- other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation -- will be remedied on or before the day fixed by the court.
 - (5) The applicant is to send a copy of the order to every party to the agreement.
- [49] The Monitor's report and recommendations are in support of approval of these assignments. These approvals are part of the Monitor's overall recommendations in favour of the Agreement. WBVG has indicated its willingness to continue the operations of Veris Gold in Nevada on a going concern basis. The participation of WBox and Mr. Sprott lend credibility to its ability to do so, while performing any obligations under these contracts.
- [50] In that context, it is appropriate that WBVG obtain the benefit of contracts that will facilitate its ability to continue these operations. Indeed, some of the contracts are critical or necessary for future operations.
- [51] In addition, the Agreement contemplates the payment of "cure costs" which are defined in the Agreement in relation to statutory obligations arising under both s. 11.3(4) of the CCAA and s. 365(b)(1) of the Bankruptcy Code where the assignment of contracts is approved. Cure costs are defined in the Agreement as follows:
- "Cure Cost" means, as applicable with respect to any Seller, (i) any amounts or assurances required by Section 365(b)(1) of the U.S. Bankruptcy Code under any applicable Designated Seller Contract or (ii) any amounts required to satisfy monetary defaults in relation to the applicable Designated Seller Contract pursuant to Section 11.3 of the CCAA.
- [52] Each of the Designated Seller Contracts and related anticipated cure costs are set out in a schedule to the Agreement. Pursuant to the Agreement, such cure costs are payable on closing. The order sought provides that upon payment, and upon assignment:
- 10. the Required Assigned Contracts [aka the Designated Seller Contracts] shall be deemed valid and binding and in full force and effect at the Closing, and the Purchaser shall enjoy all of the rights and benefits under each such Required Assigned Contract as of the applicable date of assumption.
- [53] Section 11.3 of the CCAA came into force in September 2009. Prior to that time, there was little case authority in terms of a CCAA court approving assignments of contracts over the objections of counterparties. One of those early cases is Playdium Entertainment Corp., Re, [2002] 31 C.B.R. (4th) 302 (Ont. S.C.J.); additional reasons [2002] 31 C.B.R. (4th) 309 (Ont. S.C.J.).

- [54] In *Re Nexient Learning Inc.*, [2010] 62 C.B.R. (5th) 248 at 258 (Ont. S.C.J.), Wilton-Siegel J. cited both Spence J. in *Playdium* and Tysoe J. (as he then was) in *Re Woodward's Ltd.* (1993), 79 B.C.L.R. (2d) 257 (S.C.), in framing the test as being whether the assignment was "important to the reorganization process". Also of relevance was the effect of the assignment on the counterparty and the principle that third party rights should only be affected as is absolutely required to assist in the reorganization and in a manner fair to that counterparty: see the additional reasons in *Playdium* at 319; *Nexient* at 259. See also discussion in *Barafield Realty Ltd. v. Just Energy (B.C.) Limited Partnership*, 2014 BCSC 945 at paras. 107-108.
- [55] The approach of the courts in these earlier cases was essentially confirmed in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, where the Court stated the basis upon which relief might be "appropriate" and that any relief should result in "fair" treatment to all stakeholders:
- [70] The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.
- [Emphasis added.]
- [56] Like many other amendments to the CCAA in September 2009, s. 11.3 was intended, in my view, to codify what had been the general approach to assignment issues, while also clarifying certain matters that had been to that time uncertain. One example of certainty achieved, although irrelevant on this application, arises by s. 11.3(2) which excludes certain contracts from the statutory authority of the court in s. 11.3(1).
- [57] Since its enactment, judicial consideration of s. 11.3 is scarce. In *Re TBS Acquireco Inc.*, 2013 ONSC 4663, D.M. Brown J. (as he then was) approved the assignment of certain leases and designated contracts, finding that this would result in the continuation of the business in the greatest number of stores and the continued employment of the greater number of people. Cure costs were also to be paid: see paras. 19-25.

- [58] I do not see the result in TBS as deviating from the previous approach of the courts in considering whether to approve an assignment based on the twin goals of assisting the reorganization process (i.e., the sale in this case) while also treating a counterparty fairly and equitably. These considerations can be discerned in particular from the factors set out in s. 11.3(3) set out above.
- [59] That brings me to the only issue that arises here in relation to the assignments. While no objection was raised to the assignments by persons who did not otherwise consent, the Monitor's counsel was candid in advising the court that only those persons on the service list were served with the Canadian application materials. It is not therefore apparent that the counterparties to the contracts did in fact receive a copy of the application materials.
- [60] This is not an approach that I would endorse. It may often be the case that a counterparty is not a creditor of the estate and therefore, that party would not get notice of the filing at the commencement of those proceedings. Further, even if that is the case, no assignment issue may be apparent at the time of initial service to the point that such person would take steps to be placed on the service list.
- [61] The best practice in these circumstances is to serve all counterparties to the particular contracts that are sought to be assigned, whether they are on the service list or not. Section 11.3(1) specifically provides that the application is to be "on notice to every party to an agreement". Common sense dictates that the person to be directly affected by the assignment should have the ability to consider whether the applicant debtor company has satisfied its burden that the order is appropriate, including the factors set out in s. 11.3(3). Only by service will that counterparty be made aware of the need to consider its position if such approval is granted and possibly advance evidence and considerations that would be equally relevant to the court's decision on the issue.
- [62] Before proceeding with the application in TBS, Brown J. was satisfied that the applicant had given notice of the request to seek a court-authorized assignment of the contracts: para. 25.
- [63] As I have mentioned, there was urgency in approving the Agreement so that Veris Gold's operations could continue in the ordinary course. Further delay was not feasible nor was it in the interests of all the stakeholders. The Monitor's counsel advised that all of the counterparties were in the U.S. and most of those counterparties, being capital lessors, were represented by Nevada counsel. Finally, I was advised that all of these counterparties were served with the U.S. application materials in anticipation of an application in Nevada to also approve the Agreement immediately after this application. Therefore, specific notice of the terms of the Agreement and the fact that approval of the assignment was sought would have been provided in any event, albeit in the context of the U.S. court materials.

[64] In these exigent and extraordinary circumstances, I approved the assignments on the terms sought, but subject to the U.S. court being satisfied with the notification to and service on the counterparties to the Required Assigned Contracts who did not receive direct notice of this application. In that way, these counterparties will have been given the ability to attend the U.S. hearing and make submissions on the relief sought, all of which is a required condition to closing the Agreement.

Conclusion

- [65] Veris Gold has faced a number of operational challenges and adverse events over the course of this restructuring proceeding. Initially at least, they faced significant opposition by their major secured creditor, DB. Efforts to refinance or sell the assets have been met with little interest and certainly no offer was received by that process on which to base a transaction.
- [66] As matters stand, Veris Gold's operations are undercapitalized and susceptible to further disruptions unless stability is achieved quickly to avoid a liquidation process. That process would undoubtedly result in a loss of jobs, disruption of supply arrangements and heightened environmental risk.
- [67] The only realistic alternative is the one before the court on this application; namely, a credit bid by WBox, the interim lender, which would see a continuation of the operations in Nevada. The Monitor's view is that proceeding to close the Agreement on an expedited basis is necessary to protect the interests of the principal stakeholders in Veris Gold's operations, namely WBox, the employees, suppliers of goods and services and the environmental regulators.
- [68] The statutory requirements of the CCAA in ss. 36 and 11.3 have been satisfied by the Monitor toward approval of the Agreement, including approving the assignments of the Required Assigned Contracts. I am also satisfied that the orders sought are appropriate in the circumstances and consistent with the objectives of the CCAA.
- [69] The relief sought by the Monitor is granted. The Agreement is approved and Veris Gold and the Monitor are authorized to proceed to finalize the transactions with WBVG. The vesting of the assets on closing will be subject to an order of the U.S. court approving the Agreement and making such other ancillary orders as are appropriate in accordance with the Bankruptcy Code. The order provides that any issues that may be raised by the U.S. environmental regulators will be addressed by the U.S. court. Accordingly, this Court requests the aid, recognition and assistance of the U.S. court in terms of the carrying out of the terms of the order granted.
- [70] Finally, all orders sought with respect to the approval of the assignment by Veris Gold to WBVG of the Required Assigned Contracts are granted on the terms sought, including that such approval is subject to the payment of the cure costs.

"Fitzpatrick J."

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