

SUPREME COURT OF YUKON

Citation: *Yukon (Government of) v.
Yukon Zinc Corporation*, 2020 YKSC 18

Date: 20200526
S.C. No. 19-A0067
Registry: Whitehorse

BETWEEN

GOVERNMENT OF YUKON
as represented by the Minister of the Department of
Energy, Mines and Resources

PETITIONER

AND

YUKON ZINC CORPORATION

RESPONDENT

Before Madam Justice S.M. Duncan

Appearances:

John T. Porter and
Laurie A. Henderson

Counsel for the Petitioner

No one appearing

Yukon Zinc Corporation

No one appearing

Jinduicheng Canada Resources Corporation Limited

H. Lance Williams

Counsel for Welichem Research General Partnership

John Sandrelli and
Cindy Cheuk

Counsel for PricewaterhouseCoopers Inc.

REASONS FOR JUDGMENT (Application of the Receiver re: Increase Borrowing Charge)

INTRODUCTION

[1] This is an application by PricewaterhouseCoopers Inc. (the “Receiver”) to increase the amount of the Receiver’s Borrowing Charge from \$3 million to \$7.5 million

in priority to all valid and enforceable security interests. Arguments were heard by telephone on April 29, 2020.

BACKGROUND

[2] The background and analysis set out in *Yukon (Government of) v. Yukon Zinc Corporation, 2020 YKSC 17*, applies to this application.

ORDER GRANTED

[3] There is no objection to the requested increase to the Borrowing Charge. On May 7, 2020, the Receiver requested that this Court grant the Order for the increase so that necessary payments could be made. The Receiver advised by letter to the Court that it would be short of funds to pay employees on site and contractors, as well as their own fees as of May 15, 2020. As a result, I granted the Order to increase the Borrowing Charge of the Receiver to \$7.5 million on Monday, May 11, 2020, without making a determination about what property is charged, or the priority of the Receiver's charge. The following sets out my reasons for granting the request to increase the Charge.

ANALYSIS

Increase in Borrowing Charge

[4] Section 24 of the Receivership Order, dated September 13, 2019, provides authority to increase the Receiver's Borrowing Charge. It authorizes the Receiver's borrowing of up to "\$3 million (or such greater amount as this Court may by further Order authorize)."

[5] The purpose of the increase is to continue funding care and maintenance, as well as pay professional restructuring costs, up to and including December 31, 2020.

[6] The Receivership Order authorizes and empowers the Receiver to carry out care and maintenance through a number of sections. Direct authorization is provided by

s. 3(s), while other powers set out in subsections 3(a), (b), (c), (d), (i), (p), and (t) also set out authorities related to the carrying out of these duties.

[7] Care and maintenance activities include:

- i) Maintenance of access road, air strip and other roads around the site of the Wolverine Mine (the “Mine”);
- ii) Control of water on site (groundwater, surface water, underground water and the tailings storage facility);
- iii) Treatment of underground water and environmental monitoring reporting as required;
- iv) Maintenance of power generation on site to power camp and equipment;
- v) Repair and maintenance of essential equipment; and
- vi) Continued supply of fuel for power in general, equipment operation and camp/cooking requirements.

[8] This work is necessary to protect the environment and public health and safety. It also helps to preserve the assets of Yukon Zinc Corporation (“YZC”).

[9] Currently, the cost of care and maintenance comprises over two-thirds of the expenditures associated with the receivership. The costs are expected to increase in part because record snowfalls in the Yukon over the 2019 – 20 winter have created more work, requiring additional personnel. After spring freshet there is a more acute need to continue environmental monitoring and in particular the tailings storage facility discharge.

[10] The balance of the proposed increase is to fund the restructuring costs, including professional fees, which have increased in part because of the contested applications before the Court and the general complexity of the management of the site.

CONCLUSION

[11] On review of the Receiver's Reports and submissions, I am of the view that they support an increase of the Borrowing Charge to \$7.5 million to allow the Receiver to carry on its work.

Priority of Increased Borrowing Charge

[12] Welichem Research General Partnership ("Welichem"), the first secured creditor of YZC, objects to the Receiver's proposal to subject the items listed in Schedule A to the Master Lease Agreement between Welichem and YZC ("Master Lease Items") to the Receiver's Borrowing Charge. The issue is who should bear the cost of the work that is being done by the Receiver, to ensure care and maintenance at the Mine site and any necessary environmental remediation is continued.

[13] As noted in *Yukon (Government of) v. Yukon Zinc Corporation, 2020 YKSC 17*, I have requested further legal submissions on two issues related to this question. Those issues are:

1. Whether the true lease/financing lease dichotomy has relevance to the consideration of whether the Master Lease Items can be considered the property of the debtor; and
2. Whether the Master Lease Items are fixtures.

[14] As a result I have deferred the decision on this question until receipt and review of those submissions.