

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF OTSO GOLD CORP., OTSO GOLD OY, OTS GOLD AB, and
2273265 ALBERTA LTD.

PETITIONERS

APPLICATION RESPONSE

Application response of: Pandion Mine Finance LP (“Pandion”)

THIS IS A RESPONSE TO the Notice of Application of the Petitioners, filed on December 9, 2021 (the “**Stay Extension Application**”).

PART 1: ORDERS CONSENTED TO

Pandion consents to the granting of **NONE** of the orders set out in Part 1 of the Stay Extension Application.

PART 2: ORDERS OPPOSED

Pandion opposes the granting of **ALL** of the orders set out in Part 1 of the Stay Extension Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

Pandion takes no position on **NONE** of the orders set out in Part 1 of the Stay Extension Application.

PART 4: FACTUAL BASIS

1. Pandion is the principal secured creditor of the Petitioners.
2. On December 3, 2021, this Court pronounced an initial order (the “**Initial Order**”) that provided for a stay of proceedings (the “**Stay**”) in favour of the Petitioners to December

13, 2021, and an administration charge (the “**Administration Charge**”) in the amount of \$100,000.

3. The Petitioners application for the relief contained in the Initial Order was supported by Affidavit #1 of Victor Koshkin, sworn December 3, 2021 (the “**First Koshkin Affidavit**”) and Affidavit #2 of Victor Koshkin, sworn December 3, 2021 (the “**Second Koshkin Affidavit**”).
4. The First Koshkin Affidavit and the Second Koshkin Affidavit appended monthly and weekly cashflow statements, respectively.
5. As detailed in the Second Koshkin Affidavit, the weekly cashflow statement (the “**Weekly Cashflow Statement**”) attached thereto as Exhibit “A” was prepared “based on the same information as set out in the Monthly Cash Flow” (a copy of which was attached as **Exhibit “BBBB”** to the First Koshkin Affidavit).
6. The Weekly Cashflow Statement provided for the following equity payments from the Petitioners’ shareholders to fund ongoing operations at the Otso Gold Mine:
 - (a) December 10, 2021: \$2,051,282;
 - (b) December 17, 2021: \$3,333,333;
 - (c) December 24, 2021: \$3,333,333;
 - (d) December 31, 2021: \$4,487,179;
 - (e) January 7, 2022: \$128,205;
 - (f) January 14, 2022: \$1,666,667; and
 - (g) January 21, 2022: \$1,794,872.
7. On December 8, 2021, the Petitioners served the Stay Extension Application which seeks *inter alia* an extension of the Stay through to January 14, 2022, and Affidavit #3 of Victor Koshkin, sworn December 8, 2021 (the “**Third Koshkin Affidavit**”).
8. The Third Koshkin Affidavit states at paragraphs 11 and 12 that due to the expiry of a mine plan on December 17, 2021, the Petitioners intend to shut-down production at the Otso Gold Mine until mid-January 2022.

9. The Third Koshkin Affidavit frames the suspension as necessary due to the expiry of the mine plan which is stated to be “an essential document that sets out how the mine operates, and is required from an operational and safety perspective.”
10. Attached as Exhibit “D” to the Third Koshkin Affidavit is a revised cashflow (the “**Revised Cashflow**”) for the Petitioners through the projected stay period. The Revised Cashflow no longer contemplates the equity injections because these payments are stated to be unnecessary “if the mine is not fully operational.”
11. On December 11, 2021 (local time in Finland), representatives of Pandion, the Petitioners, and A&M had a call to discuss these issues and to better understand the safety and operational issues.
12. During that call, and as detailed in Affidavit #1 of Malcolm Keith Buck (the “**Buck Affidavit**”), it was stated numerous times that the primary reason for suspending operations at the Otso Gold Mine was due to a working capital issue, not a safety issue.

PART 5: LEGAL BASIS

1. In order to obtain the extraordinary relief provided for under the *Companies’ Creditors Arrangement Act*, a debtor company must satisfy the court that it is acting in good faith and with due diligence. The burden of demonstrating good faith and due diligence is on the applicant.

Century Services Inc v Canada (Attorney General), 2010 SCC 60, at para 69

Canada v Canada North Group Inc, 2021, SCC 30, at para 21

2. With respect to circumstances that *will not* satisfy the good faith and due diligence requirements, the Ontario Court of Appeal stated the following in *Elan Corp v Comiskey*:

A debtor company should not be allowed to use the Act for any purpose other than to attempt a legitimate reorganization. If the purpose of the application is to advantage one creditor over another, to defeat the legitimate interests of creditors, to delay the inevitable failure of the debtor company, or for some other improper purpose, the court has the means available to it, apart entirely from s. 3 of the Act, to prevent misuse of the Act. In cases where the debtor company acts in bad faith, the court may refuse to order a meeting of creditors, it may deny interim protection, it may vary interim protection initially given when the bad faith is shown,

or it may refuse to sanction any plan which emanates from the meeting of the creditors

Elan Corp v Comiskey, 1990 CanLII 6979 (ONCA)

3. Pandion opposes the relief sought in the Stay Extension Application because it is evident that the Petitioners have not satisfied the baseline/threshold considerations of good faith and due diligence:
 - (a) the Third Koshkin Affidavit is, at best, misleading as to the primary reason for suspending operations at the Otso Gold Mine;
 - (b) the Weekly Cashflow Statement provided for equity injections by the Petitioners' shareholders in order to fund operations at the Otso Gold Mine, and these payments are no longer contemplated in the Revised Cashflow;
 - (c) the primary reason for suspending operations at the Otso Gold Mine, as detailed in the Buck Affidavit, is a cashflow issue which is an issue of the Petitioners' own making, as without the projected equity injections the Petitioners cannot fund operations;
 - (d) the First Koshkin Affidavit contained misleading information regarding the missing MKS funds (see paragraph 175 thereof), which was subsequently corrected after Pandion's counsel requested that the circumstances regarding these funds be corrected and clarified (see Exhibit "H" to Affidavit #1 of Laura Ferguson, filed December 9, 2021).
4. Suspension of operations at the Otso Gold Mine is a material change in these proceedings, and the Revised Cashflow contemplates a significant deviation from the cashflows filed by the Petitioners in support of the extraordinary relief provided for in the Interim Order obtained on December 3, 2021.
5. The suspension of operations at the Otso Gold Mine is tied to the Petitioners' cashflow issues and, even if the relief sought in the Stay Extension Application is granted, it is apparent that the Petitioners will still require additional funding in order to finance operations on an ongoing basis.
6. Given the foregoing, Pandion states that:

- (a) it is unrealistic to expect that the Petitioners will be able to propose a plan that will satisfy Pandion, their sole secured creditor;
- (b) the reason for seeking an extension of the Stay is to prevent the Petitioners' sole secured creditor (Pandion) from enforcing on its security; and
- (c) to grant the relief sought in the Stay Extension Application will therefore only delay the inevitable.

7. Accordingly, the Stay Extension Application ought to be dismissed in its entirety

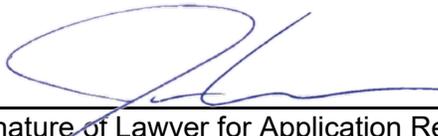
PART 6: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Victor Koshkin, sworn December 3, 2021;
- 2. Affidavit #2 of Victor Koshkin, sworn December 3, 2021;
- 3. Affidavit #3 of Victor Koshkin, sworn December 8, 2021;
- 4. Affidavit #1 of Laura Ferguson, sworn December 8, 2021;
- 5. The First Report of the Monitor, dated December 11, 2021;
- 6. Affidavit #1 of Malcolm Keith Buck, sworn December 12, 2021; and
- 7. Such further and other materials as counsel may advise.

The application respondents estimate that the application will take two hours.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

December 12, 2021
Dated _____



Signature of Lawyer for Application Respondent,
Pandion Mine Finance LP
Mary I.A. BATTERY, Q.C. and Jared Enns
Cassels Brock & Blackwell LLP