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SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-063053-231

DATE: October 15, 2025

BY THE HONOURABLE KAREN M. ROGERS, J.S.C.

IN THE MATTER OF The Companies' Creditors Arrangement Act:

STORNOWAY DIAMONDS (CANADA) INC.

-and-

11272420 CANADA INC.

Debtors /Applicants

-and-

DELOITTE RESTRUCTURING INC.

Monitor

WINSOME RESOURCES LTD.

Respondent

JUDGMENT ON APPLICATION FOR THE ENFORCEMENT OF A CONTRACTUAL
RIGHT TO A BREAK FEE

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OVERVIEW

[1] As a first step, the Court must determine whether clause 2.3 (5) (b)(i) of the *Second Amendment and Restated Call Option Agreement (SARCO)* is sufficiently clear regarding the obligation of Winsome Resources Ltd (**Winsome**) to pay \$2,000,000 following its unilateral voluntary termination of SARCO, which occurred shortly before the expiry of the Call Option¹.

[2] Each party maintains that the clause is clear, though they disagree on its meaning. Winsome submits that since its termination occurred prior to the expiry of the Call Option, the clause does not impose upon it an obligation to pay the \$2,000,000. In contrast, the Debtors and the Monitor argue that the clause clearly requires payment under such circumstances.

[3] On August 22, 2025, the Court scheduled a hearing to receive submissions from the parties on the basis that SARCO is clear. That hearing was held on September 16, 2025. If the Court finds the clause to be sufficiently clear, no further hearing will be necessary. If, however, the clause is found to be ambiguous with respect to Winsome’s obligations, a subsequent hearing will be convened to allow the parties to adduce evidence relevant to its interpretation.

CONTEXT

[4] Stornoway Diamonds (Canada) Inc. (**SDCI**) and 11272420 Canada Inc. (**1127**) (**together the Debtors**) are subject to proceedings under the Companies’ Creditors Arrangement Act (**CCAA**), under the supervision of the undersigned Judge.

[5] SDCI is a corporation that operated mining activities, notably at its Renard diamond mine located in north-central Québec.

[6] Deloitte Restructuring Inc. (**Monitor**) was appointed as Monitor to the Debtors and continues to act in that capacity.

¹ Unless otherwise defined herein, all capitalized terms in this judgment have the meaning ascribed to them in SARCO.

[7] On October 27, 2023, the Court approved and ratified the sale and investment solicitation process (**SISP**) and authorized the Debtors, in consultation with the Monitor and the SISP Agent, to conduct and implement the SISP.

[8] On April 4, 2024, the Court approved a Call Option Agreement entered into between Winsome and the Debtors, granting Winsome an exclusive call option to acquire, at its election and in its sole discretion either (i) all the issued capital of SDCI from 1127 or (ii) all or substantially all of the assets of SDCI, both pursuant to a Court approved order (**Call Option Agreement**).

[9] Between April 4, 2024, and February 24, 2025, various applications and orders were brought before the Court in connection with subsequent steps under the Call Option Agreement, including extensions granted to Winsome. However, for the purposes of the present decision, it is neither necessary nor relevant to recount that procedural history.

[10] On February 24, 2025, the Court approved SARCO which provided Winsome with the right to extend the Call Option Period until August 31, 2025, in consideration of an additional payment by Winsome of \$8,500,000 by no later than February 21, 2025 (**the Extension Consideration**).

[11] Winsome availed itself of the right to extend the Call Option Period to August 31, 2025, and paid the Extension Consideration.

[12] On July 28, 2025, Winsome terminated the SARCO citing clause 10.1(2), which reads as follows:

10. 1 Termination of Agreement

(...)

(2) Prior to the delivery of the Call Notice, the Optionee may terminate this Agreement at any time upon providing the Optionors with written notice.

[13] Based on their interpretation of clause 2.3 (5) (b) (i) of SARCO, the Debtors and Monitor, on July 28, 2025, requested that Winsome pay the fee of \$2,000,000. They asserted that Winsome became obligated to pay this amount upon its voluntary termination of SARCO and that payment was due within five business days, namely on or before August 4, 2025.

[14] As Winsome did not remit payment by August 4, 2025, the Debtors issued a formal demand for payment by demand letter.²

² Exhibit R-8.

[15] On August 11, 2025, Winsome responded by letter, asserting that it does not owe the amount of \$2,000,000. Winsome contends that its termination of SARCO was done pursuant to clause 10.1(2) of the SARCO and that clause 2.3(5)(b)(i) is therefore inapplicable. Specifically, Winsome states:

However, the Break Fee claimed by your client is not payable. Section 2.3(5)(b) of the Agreement provides that the Break Fee is payable if Winsome does not provide a Call Notice to the Monitor and the Optionors prior to expiry of the Call Option Period and Winsome subsequently terminates the Agreement without cause or the Agreement automatically terminates pursuant to Section 10.1(5). Those conditions do not exist because Winsome did not terminate the Agreement subsequent to the expiry of the Call Option Period nor did the Agreement automatically terminate pursuant to Section 10.1(5). Rather, Winsome terminated the Agreement pursuant to Section 10.1(2), prior to the expiry of the Call Option Period. When Winsome terminated the Agreement pursuant to Section 10.1(2), the Agreement became void and of no effect with no liability of any Party to any other Party pursuant to Section 10.1(6). Indeed, Section 10.1 grants Winsome a clear right to unilaterally terminate the Agreement without cause or further formalities. Furthermore, the Parties decided that Section 2.3(5)(b)(i) was not a provision that survived the termination of the Agreement under Section 10.1(6).³

ANALYSIS

1. IS CLAUSE 2.3 (5)(B) (I) CLEAR AS TO WINSOME'S OBLIGATION TO PAY THE \$2,000,000 FEE?

1.1 Conclusion

[16] For the reasons set forth below, the Court finds that clause 2.3(5)(b)(i) of SARCO is clear and unambiguous and that Winsome must pay the \$2,000,000 fee to the Debtors.

1.2 Legal principles

[17] Where a contract is clearly drafted, the Court must defer to its terms and refrain from engaging in further interpreting, to avoid departing from the clearly expressed intention of the parties. As the Supreme Court of Canada stated in *Uniprix inc. v. Gestion Gosselin et Bérubé inc.* (*Uniprix*)⁴:

[34] The first step in interpreting a contract is to determine whether its words are clear or ambiguous (*Droit de la famille — 171197*, 2017 QCCA 861, at para. 62 (CanLII); *Samen Investments Inc. v. Monit Management Ltd.*, 2014 QCCA 826, at para. 46 (CanLII)). The purpose of this step, which some authors refer to as the

³ Exhibit R-9.

⁴ 2017 SCC 43, para. 34.

clear act rule (règle de l'acte clair) (Gendron, at p. 27), is to prevent judges from departing, deliberately or unexpectedly, from a clearly expressed intention of the parties. In short, a judge must defer to a clear contract. This step thus [TRANSLATION] “serves as a bulwark’ against the risk of an interpretation that deviates from the true intention of the parties and subverts the scheme of their agreement” (Baudouin and Jobin, at No. 413 (citation omitted); see also Lluelles and Moore, at No. 1570).

[35] Although this step is based first and foremost on a reading of the words themselves, it is not necessarily limited to that in every case, as there may be situations in which a contract’s language is not faithful to the parties’ common intention (Lluelles and Moore, at No. 1574; *Droit de la famille — 171197*, at para. 62). Indeed, [TRANSLATION] “[w]hen considered in the context of the agreement’s other clauses or of the circumstances in which it was concluded, the seemingly clear words of a clause may [sometimes] prove to be ambiguous and to be inconsistent with the scheme of the contract, the true intention of the parties” (Baudouin and Jobin, at No. 413; see also Lluelles and Moore, at Nos. 1572-74; Tancelin, at No. 316; Gendron, at pp. 27, 31 and 34; *Éolelectric inc. v. Kruger, groupe Énergie*, 2015 QCCA 365, at paras. 18-19 (CanLII); *Rouge Resto-bar inc. v. Zoom Média inc.*, 2013 QCCA 443, at paras. 78-79 (CanLII)). Likewise, a clause that might be perceived to be ambiguous may be perfectly clear when considered in its context.

[36] If the words of the contract are clear, the court’s role is limited to applying them to the facts before it. If, on the other hand, the court identifies an ambiguity, it must resolve the ambiguity by proceeding to the second step of contractual interpretation (Baudouin and Jobin, at No. 413; Lluelles and Moore, at Nos. 1584-86; *Samen Investments*, at paras. 46-47). The distinction between these two steps can be difficult to see, but it is fundamental. At the first step, the judge might, for example, consider the context of the conclusion and performance of the contract in order to confirm that its language is clear (see e.g. *Habitations Gilles Stébenne inc. v. 9166-9929 Québec inc.*, 2016 QCCS 2953, at paras. 34 and 41-47 (CanLII)). In principle, however, the judge should not have recourse to the principles of interpretation set out in arts. 1425 to 1432 of the *Code* (Baudouin and Jobin, at No. 413; Lluelles and Moore, at No. 1571). In this sense, the interpretation of the contract is more superficial at the first step than at the second (Lluelles and Moore, at No. 1572).

[It is Court’s underlining and emphasis]

[18] In the *Uniprix*, the Supreme Court of Canada cited the work of Professors Luelles and Moore⁵ in its discussion of the “clear act rule” as part of the first step in contract

⁵ Didier LLUELLES et Benoît MOORE, *Droit des obligations*, 3^e éd., EYB2018THM171, para 1571 et ss.

interpretation. The authors emphasize the delicate exercise a judge must undertake in determining whether the words of a contract are clear or ambiguous.

1571. *L'ambiguïté ou l'obscurité ne résulte pas de la seule divergence de vues des plaideurs sur la portée d'une clause. Forcément constatée par le juge, l'obscurité nécessite un travail préliminaire d'analyse du contrat. Il s'agit de la phase préinterprétative, au terme de laquelle le tribunal conclut, le cas échéant, qu'il y a doute sur l'intention des parties, et donc matière à interprétation. Assez curieusement, au cours de cette phase préliminaire, le juge se trouve en quelque sorte à interpréter le contrat mais de manière superficielle seulement, parce que l'on a déjà qualifié d'interprétation de filtrage. En principe, le juge ne devrait pas, lors de cette étape préliminaire, recourir aux articles 1425 et suivants, puisque cette phase vise, précisément, à déterminer s'il y a lieu ou non de les utiliser.*

1572. *Mais, la phase préinterprétative est parfois traitée avec les mêmes matériaux que ceux de la phase interprétative. Ainsi, la globalité du contrat, règle majeure d'interprétation, peut servir aussi au niveau de la découverte de l'ambiguïté. En effet, une clause claire, isolée du reste du contrat, peut devenir ambiguë, si elle est lue avec d'autres éléments du texte. Inversement, une clause apparemment ambiguë peut devenir claire si elle est coordonnée avec d'autres clauses du contrat. On peut, à cet égard, comprendre que d'aucuns doutent de la pertinence de la double phase (pré-interprétation/interprétation), remettant en cause, de lege ferenda, la nécessité d'un texte ambigu.*

1573. *Le doute naît parfois de l'emploi d'un terme inadéquat ou d'une contradiction entre deux clauses. Mais l'ambiguïté émane le plus souvent d'un défaut de précision, bien que le manque de précision ne soit pas nécessairement synonyme d'ambiguïté. Le manque de précision peut être évité par l'usage des définitions, quoique la technique puisse être, elle aussi, porteuse d'ambiguïté ou, tout au moins, difficile d'application aux faits de l'affaire !*

1574. *Il convient de se méfier des apparentes clartés. Un texte peut être clair, pris isolément, mais se révéler obscur, mis en perspective avec le reste de la convention, ou être, formellement, dénué de toute ambiguïté, mais contredire le but manifestement poursuivi par les parties. Le juge pourra, en ces cas, conclure au doute et appliquer les règles d'interprétation. En effet, la règle voulant que le texte clair « reflète fidèlement l'intention des parties » n'est qu'une présomption relative. Lorsque la lettre du document contractuel (l'instrumentum) trahit la commune intention des parties (le negotium), le tribunal peut même aller jusqu'à rectifier le texte du contrat ainsi que celui de formulaires administratifs officiels (en matière fiscale, notamment), remplis à la suite de la conclusion du contrat. Pareille « réconciliation de la volonté des parties et de l'écrit instrumentaire », qui peut prendre la forme d'un simple remplacement judiciaire de pièces originellement déposées, exige cependant que sa demande soit légitime et que la mesure rectificatrice ne nuise pas aux tiers.*

1575. Pour conclure au doute, le juge doit se convaincre que la difficulté de compréhension est sérieuse au point d'embarrasser une personne normalement intelligente. Une maladresse de rédaction ne suffit pas pour que l'on puisse conclure au doute.

[It is Court's underlining and emphasis]

[19] At the first step of interpreting a contract, the Court may superficially consider the contract as a whole to determine whether a clause is ambiguous or clear. This is to ensure that the interpretation remains faithful to the parties' clearly expressed intentions and avoids any inadvertent departure from the contractual framework they agreed on.

[20] In the absence of ambiguity, the Court cannot resort to the rules of interpretation.⁶

1.3 Relevant sections of SARCO

[21] The relevant provisions of SARCO include the following:

Section 2.3: Call Option Period and Additional Call Option Consideration

(...)

(5) Subject to Winsome having delivered the Extension Notice in accordance with Section 2.3(4):

(...)

(b) if (i) Winsome does not provide a Call Notice to the Monitor and the Optionors prior to expiry of the Call Option Period and Winsome **subsequently** terminates this Agreement without cause or this Agreement automatically terminates pursuant to Section 10.1(5), or

..., then Winsome shall pay an amount of \$2,000,000 to the Monitor's trust account within five (5) Business Days of such termination, which amount will be fully earned and non-refundable.

(It is Court's underlining and emphasis)

[22] The parties admit that Winsome's termination of SARCO was done without cause and that it had not provided a Call Notice.

[23] Other relevant clauses are:

3.2 Exercise of Call Option

⁶ *Samen Investments Inc. c. Monit Management Ltd.*, 2014 QCCA 826, para. 46; *Pépin c. Pépin*, 2012 QCCA 1661, para. 86-87.

(8) In the event that Winsome has not provided the Call Notice to the Monitor and the Optionors prior to the expiry of the Call Option Period, the Call Option shall expire and this Agreement shall be terminated.

10.1 Termination of Agreement

(1) This Agreement may be terminated by mutual written consent of all of the Parties.

(2) Prior to the delivery of the Call Notice, the Optionee may terminate this Agreement at any time upon providing the Optionors with written notice.

(...)

(5) This Agreement shall be automatically terminated if Winsome has not provided the Call Notice to the Monitor and the Optionors prior to the expiry of the Call Option Period, in accordance with Section 3.2(8).

(6) If this Agreement is terminated pursuant to this Section 10.1, this Agreement shall become void and of no effect without liability of any Party (or any shareholder, director, officer, employee, consultant, independent contractor, agent, representative or advisor of such Party) to any other Party hereto, except that (i) the provisions of this Section 10.1 and Sections 1.6, 8.2, 11.1, 13.1, 14.1, 14.5, and 14.6 (including all related definitions and interpretation provisions set forth herein) shall survive such termination (ii) the provisions of the Confidentiality Agreement shall survive such termination, and (iii) neither the termination of this Agreement nor anything contained in this Section 10.1 shall relieve or have the effect of relieving any Party in any way from liability for damages incurred or suffered by any other Party as a result of an intentional or wilful breach of this Agreement prior to such termination. Moreover, and for greater certainty, any amounts paid by Winsome in accordance with Sections 2.2 and 2.3 and any amounts paid by, as applicable, the Designated Purchaser, in accordance with Sections 2.2 and 2.3 shall be fully earned and nonrefundable.

1.4 Discussion

[24] Winsome's argument hinges on the meaning to give to the word "subsequently" found in clause 2.3(5)(b) of the SARCO. Winsome contends that the \$2,000,000 fee is only payable under these three scenarios, namely:

24.1. Winsome does not provide a Call Notice prior to the expiry of the Call Option Period **and** Winsome subsequently terminates the SARCO without cause; or

24.2. Winsome does not provide a Call Notice to the Monitor and the Debtors prior to expiry of the Call Option Period **and** the SARCO automatically terminates pursuant to Section 10.1(5); or

24.3. Winsome exercises the Call Option but does not complete the Winsome Deliverables such that the SARCO automatically terminates pursuant to Section 10.1(4).

[25] As Winsome terminated SARCO before the expiry of the Call Option Period, only the first of these scenarios is relevant to the present matter.

[26] A cursory and isolated reading of clause 2.3(5)(b)(i) may suggest that the term “subsequently” refers to a voluntary termination occurring after the expiry of the Call Option Period, rather than merely following the absence of a Call Notice.

[27] This is the position Winsome has taken. Since Winsome’s voluntary termination occurred prior to the expiry of the Call Option Period, Winsome submits it is not required to pay the \$2,000,000.

[28] This reading of the clause is, however, inconsistent not only with the language of clause 2.3 (5) (b) (i), but also with the termination provisions of SARCO referred to in the clause itself and cited by Winsome in support of its arguments.

[29] In fact, clause 2.3(5)(b) (i), refers to two possible scenarios in which Winsome is obligated to pay the \$2,000,000 fee as a result of the termination of SARCO and Winsome’s failure to provide a Call Notice, namely:

29.1. Winsome does not provide the Call Notice before the expiry of the Call Option Period and “subsequently” voluntarily terminates SARCO without cause or

29.2. SARCO automatically terminates pursuant to clauses 10.1(5) and 3.1(8) as a result of Call Option expiring due to Winsome’s failure to deliver the Call Notice before the expiry of the Call Option Period.

[30] Winsome’s interpretation that the word “subsequently” used in the first scenario set out in clause 2.3 (5)(b)(i) refers to a voluntary termination occurring after the expiry of the Call Option Period does not withstand scrutiny. Clause 10.1 (5) of SARCO confirms that if Winsome does not exercise the Call Option prior to the expiry of the Call Option Period, SARCO automatically terminates. Accordingly, Winsome’s suggestion that its obligation to pay the \$2,000,000 fee is triggered only by a voluntary termination occurring **after** the expiry of the Call Option Period is flawed for two reasons. First, by that time, SARCO would have already automatically been terminated pursuant to clause 10.1(5) rendering any voluntary termination by Winsome legally irrelevant. Second, the automatic termination of SARCO due to Winsome’s failure to exercise the Call Option before the expiry is precisely the second scenario described in clause 2.3(5)(b)(i), which independently triggers Winsome’s obligation to pay the \$2,000,000 fee.

[31] Accordingly, for the reference in clause 2.3(5)(b)(i) to Winsome's "termination without cause" to be coherent, the termination must occur *prior* to the expiry of the Call Option Period, in a situation where Winsome has not yet delivered a Call Notice.

[32] Clearly, the word "subsequently" must be understood as referring to a voluntary termination that occurs subsequent to Winsome's failure to deliver a Call Notice, but not after the expiry of the Call Option Period. In this context, Winsome's termination prior to expiry, in the absence of a Call Notice, falls squarely within the scope of clause 2.3(5)(b)(i) and Winsome is obliged to pay the \$2,000,000.

[33] Therefore, whether SARCO is terminated by Winsome prior to the expiry of the Call Option Period without having delivered a Call Notice, or is automatically terminated due to such failure, both scenarios trigger Winsome's obligation to pay the \$2,000,000 fee.

[34] Winsome's obligation to pay under clause 2.3(5)(b)(i) was triggered by its voluntary termination of SARCO prior to the expiry of the Call Period Option. Clause 2.3(5)(b) (i) specifies that the \$2,000,000 must be paid within 5 business days of such termination.

[35] The clause is clear. Winsome must pay.

[36] Winsome also argues that their obligation to pay the \$2,000,000, if it exists, does not survive the termination of SARCO. Winsome refers to clause 10.1 (6) of SARCO, which specifies certain obligations that survive termination and does not mention the payment of \$2,000,000 under clause 2.3.

[37] There is no need to refer to clause 10.1 of SARCO because clause 2.3(5)(b) clearly states that, in the event of the termination of SARCO, "Winsome shall pay an amount of \$2,000,000 to the Monitor's trust account within five (5) Business Days of such termination, which amount will be fully earned and non-refundable." (The Court's underlining.).

[38] Again, the clause is clear. Winsome must pay.

FOR THESE REASONS, THE COURT:

[39] **ORDERS** Winsome Resources Ltd. to pay the sum of \$2,000,000 to the Monitor's Trust account, the whole with interest at the legal rate, plus the additional indemnity contemplated in article 1619 C.C.Q. as of August 8, 2025.

[40] The Whole with Legal Costs.

KAREN M. ROGERS, J.S.C.

Me Charlotte Dion

charlotte.dion@nortonrosefulbright.com

Me Guillaume Michaud

guillaume.michaud@nortonrosefulbright.com

NORTON ROSE FULBRIGHT CANADA
STORNOWAY DIAMONDS (CANADA) INC. and
11272420 CANADA INC.
For Debtors/Applicants

Me Sandra Abitan

sabitan@osler.com

Me Jack M. Little

jlittle@osler.com

OSLER, HOSKIN & HARCOURT, S.E.N.C.R.L./s.r.l.
For Monitor

Me Mélanie Martel

melanie.martel@dlapiper.com

Me Edmond Lamek

Edmond.Lamek@dlapiper.com

Me Marie-Philippe Lavoie

marie-philippe.lavoie@dlapiper.com

DLA PIPER (CANADA) S.E.N.C.R.L.
For Respondent WINSOME RESOURCES LTD.

Me Frédérique Drainville

fdrainville@mccarthy.ca

MCCARTHY TÉTRAULT S.E.N.C.R.L., S.R.L.
For Investissement Québec

Me Éliane Dupéré-Tremblay

edtremblay@fasken.com

FASKEN MARTINEAU DUMOULIN SENCRL
For Caisse de dépôts et placements Qc.

Me Danny Duy Vu

ddvu@stikeman.com

STIKEMAN ELLIOT S.E.N.C.R.L., S.R.L.
For Streamers

Hearing date: September 16, 2025