

Court File No. CV-18-601307-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
IN THE MATTER OF RECEIVERSHIP OF SAGE GOLD INC.

and

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.
1990, C. C.43, AS AMENDED**

FRESH AS AMENDED MOTION RECORD
(returnable December 21, 2018)

December 20, 2018

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Wael Rostom
wael.rostom@mcmillan.ca
Tel: 416-865-7790

Stephen Brown-Okruhlik
stephen.brown-okruhlik@mcmillan.ca
Tel: 416-865-7043
Fax: 416-865-7048

Lawyers for the Receiver,
Deloitte Restructuring Inc.

TO: **SERVICE LIST**

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1990, C. C.43, AS AMENDED

FRESH AS AMENDED NOTICE OF MOTION
(returnable December 21, 2018)

Deloitte Restructuring Inc., in its capacity as receiver (the “**Receiver**”) of Sage Gold Inc. (“**Sage Gold**”), will bring a motion before the Honourable Justice Dunphy on Friday, December 21, 2018, at 10 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) An order, if necessary, abridging the time for service of this Notice of Motion and motion materials of the Receiver and dispensing with any further service thereof;
- (b) An order amending Paragraph 16 of the Order of Justice Dunphy dated July 30, 2018 (the “**Receivership Order**”) to permit the Receiver to abandon all or any of the Property (as defined in the Receivership Order)

on two business days' notice to the Director of Mine Rehabilitation without any requirement to obtain leave of the Court; and,

- (c) Such further and other relief as to the Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) On July 30, 2018, the Honourable Justice Dunphy granted the Receivership Order, appointing Deloitte Restructuring Inc. as Receiver pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) and s. 101 of the *Courts of Justice Act* (Ontario) of all the assets, undertakings and property of Sage Gold;
- (b) Paragraph 16 of the Receivership Order requires the Receiver to seek leave of the Court in order to abandon all or any of Sage Gold’s property on a motion with reasonable notice to the Director of Mine Rehabilitation and to Sage Gold’s secured creditor, CRH Funding II Pte. Ltd. (“**CRH**”), with a copy to the Service List;
- (c) Sage Gold is a Toronto based company incorporated pursuant to the Ontario *Business Corporations Act*;
- (d) Sage Gold’s principal assets are mining interests in properties located in Ontario, including the Clavos Property (as defined in the Receiver’s various reports to the Court);
- (e) After being appointed, the Receiver continued Sage Gold’s engagement of Ritchie Services, a mine management services provider, to carry out a care and maintenance program at the Clavos Property in consultation with the Ministry of Mines and Northern Development and other government authorities (the “**Ministries**”);
- (f) On December 18, 2018, the Receiver served a notice of motion on the Service List in respect of a motion returnable on December 21, 2018 for leave to abandon the Clavos Property;

- (g) The Receiver has been in discussions with the Ministries with respect to an abandonment of the Clavos Property since December 17, 2018;
- (h) There is a strong possibility that the Receiver will not be able to secure additional funding for this receivership beyond January 3, 2018 and will have to abandon the Clavos Property on that date;
- (i) In the present circumstances, all parties have notice that an abandonment of the Clavos Property on January 3, 2018 is a strong possibility. There is no practical need for the Receiver to incur the costs to Sage's estate (which lacks funding) of returning to Court for a motion for leave to abandon the Clavos Property;
- (j) The relief sought by the Receiver would still require it to provide the Director of Mine Rehabilitation with two business days' advance notice of any abandonment;

Other Grounds for this Motion

- (k) The circumstances that exist make the Order sought by the Receiver appropriate;
- (l) The provisions of the BIA, as amended, and this Honourable Court's equitable and statutory jurisdiction thereunder;
- (m) The grounds set out in the Third Report of the Receiver to the Court (to be filed); and,
- (n) Such other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Order of the Honourable Justice Dunphy, dated July 30, 2018;
- (b) The Order of the Honourable Justice Hainey, dated August 29, 2018;

- (c) The Third Report of the Receiver to the Court (to be filed); and,
- (d) Such further material as counsel may advise and this Honourable Court may permit.

December 20, 2018

MCMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Wael Rostom
Tel: 416-865-7790

Stephen Brown-Okruhlik
Tel: 416-865-7043
Fax: 416-865-7048

Lawyers for the Receiver,
Deloitte Restructuring Inc.

TO: **SERVICE LIST**

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and**

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101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

Court File No. CV-18-601307-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE DECEMBER 21, 2018)**

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Wael Rostom LS#: 43165S
Tel: 416.865.7790
Fax: 416.865.7048

Stephen Brown-Okruhlik LS#: 66576P
Tel: 416.865.7043
Fax: 416.865.7048

Lawyers for the Receiver,
Deloitte Restructuring Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

CRH FUNDING II PTE. LTD.

Applicant

- and -

SAGE GOLD INC.

Respondent

**SUPPLEMENT TO THE
SECOND REPORT OF THE RECEIVER
DELOITTE RESTRUCTURING INC.
DATED DECEMBER 20, 2018**

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INTRODUCTION AND PURPOSE OF REPORT

1. The purpose of this report is to provide this Honourable Court with an update regarding recent material events in the Receivership proceedings since our second report filed on December 12, 2018 (the “**Second Report**”) and seek directions and obtain appropriate relief.
2. Capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Second Report.

BACKGROUND

3. As noted in the Second Report, the Receiver has been administering the final stages of the sale and investment solicitation process approved by this Court on August 29, 2018 and, until the occurrence of the events described below, the Receiver had been in the process finalizing one or more transactions (including the CRH Credit Bid.)
4. In connection with those transactions, and with CRH’s consent and support, the Receiver served a motion returnable on December 18, 2018 for an order approving the Priority Claims Process and an order increasing the Receiver’s Borrowings Charge from \$1.0 million to \$2.0 million.
5. Throughout the receivership proceedings, CRH has provided funding on an as needed basis since the commencement of these Receivership Proceedings. The Receiver has issued five (5) separate Receiver’s Certificates evidencing advances totaling \$899,000 in borrowings authorized under the Receiver’s Borrowings Charge. Advances have been used to fund operations, primarily at the Clavos Project¹, including the environmental Care and Maintenance Program described in the Second Report.

¹ Clavos Property means (i) the area located about 46 kilometres northeast of Timmins, Ontario, and centred at 514000 E and 5384000 N in NAD83, Zone 10, presently consisting of 73 contiguous leased and/or patented claims, unpatented claims and mining leases covering 2,540 hectares, as further described in the schedules to the SISF; (ii) and any and all real property interests, mineral claims, mineral leases, and any related rights, concessions or interests, owned or in respect of which an interest is held in respect of the Clavos Project, directly or indirectly, by Sage and includes all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any

6. In light of the higher operating costs being incurred during the winter and the upcoming holiday season as part of the Care and Maintenance Program during the week ending on December 14th, and minimal cash in the Receiver's bank account, the Receiver urgently requested an additional \$100,000 to provide funding within the authorized Receiver's Borrowings Charge, plus an amount to be determined prior to December 21st on the basis that the requested increase to the Receiver's Borrowings Charge would be granted by this Honourable Court. CRH indicated to the Receiver that it was concerned with the ongoing carrying costs of the mine.

DECEMBER 14, 2018

7. Over the course of December 14, 15, 16 and 17, 2018, the Receiver engaged CRH in urgent business discussions to obtain a commitment from CRH to fund operations during the holiday period and during the period up to January 31, 2019 in order to complete the sale and investment solicitation process. The Receiver was unable to secure committed funding by the morning of December 18, 2018.
8. In light of the insufficient funding in place for the Receiver, the Receiver advised CRH that it would be taking immediate steps to notify the Director of Mine Rehabilitation, along with representatives of the Ministry of the Environment, Conservation and Parks and the Ministry of Northern Development and Mining, that the Receiver may have no choice but to abandon the Clavos Property as early as December 27, 2018. Such communication was provided to the various government authorities on the morning of December 18, 2018.

governmental authority; (iii) any term extension, renewal, replacement, conversion or substitution of any such real property interests, mineral claims, mineral leases, and any related rights, concessions or interests, owned or in respect of which an interest is held, directly or indirectly, by Sage; and (iv) and all other present and after-acquired real or personal property or other assets and rights (including water rights and surface rights) of Sage in respect of the Clavos mining, exploration and development project described in the Affidavit of Andrew Wehrley sworn on July 10, 2018 in support of the appointment of the Receiver.

DECEMBER 18, 2018

9. On December 18, 2018, the Receiver's counsel appeared before the Honourable Justice Dunphy to request the adjournment of the motion to approve the Priority Claims Process and to advise the Court of the uncertainty of additional funding and the potential need for the Receiver to abandon the Clavos Property.
10. On the evening of December 18, 2018, the Receiver's counsel served a short notice of motion on the e-service list for a motion to abandon the Clavos Property returnable on December 21, 2018.

DECEMBER 19-20, 2018

11. The Receiver and its legal counsel had several discussions with CRH and its counsel over the course of December 19 and December 20, 2018. At CRH's request, the Receiver provided its most up to date funding projections which were prepared under various scenarios, including the costs associated with putting the Clavos Property into a formal "state of inactivity" in accordance with applicable environmental legislation.
12. The Receiver and its counsel also continued its discussions with representatives of the Director of Mine Rehabilitation to discuss a smooth turnover of the Clavos Property on or before December 27, 2018, should such a turnover be required. In addition, representatives of the Director of Mine Rehabilitation attended at the Clavos Property on December 19, 2018 to conduct a pre-abandonment inspection.

DECEMBER 20, 2018

13. On the afternoon of December 20, 2018, the Receiver received confirmation from CRH that it had initiated a wire in the amount of \$190,000 to the Receiver's trust account. This amount is sufficient to continue activities at the Clavos Property until January 3, 2019. The short-term funding was provided by CRH in order to give the Receiver an opportunity to finalize one or more sale agreements with the SISP Participants, in light of CRH's withdrawal of the CRH Credit Bid.
14. In the event that the Receiver is successful in obtaining sale agreements acceptable to CRH, it expects CRH to provide such additional funding as may be necessary to close those transactions.

15. In the meantime, the Receiver is currently discussing the parameters on which CRH would be prepared to continue funding the receivership proceedings in order to transition the Clavos Property to a “state of inactivity” should an acceptable transaction be unavailable. Those discussions have included detailed plans for financing the necessary operational work and a potential path through to early spring, along with a possible further attempt to sell the inactive Clavos Property.
16. While those discussions continue, the Receiver is mindful that absent committed financing, it may need to abandon the Clavos Property as early as January 3, 2019. Accordingly, given the funding and time constraints at play, the Receiver believes that it is reasonable and appropriate to amend the Receivership Order to allow the Receiver to abandon the Clavos Property on two (2) business days notice to the Director of Mine Rehabilitation, rather than having to schedule a further court appearance.

CONCLUSIONS AND RECOMMENDATIONS

17. We submit this Supplementary to the Second Report to in support of the Receiver’s motion to this Honourable Court making orders:
 - a. amending paragraph 16 of the Receivership Order in accordance with the draft order attached to the Receiver’s motion record; and
 - b. Providing such other relief that this Honourable Court considers just and warranted in the circumstances.

All of which is respectfully submitted at Toronto, Ontario this 20th day of December, 2018.

Deloitte Restructuring Inc.,
solely in its capacity as the
Receiver of Sage Gold Inc., and not in its personal
capacity

A handwritten signature in blue ink, appearing to read "Philip Reynolds".

Per:

Philip J. Reynolds, CPA, CA, CIRP, LIT
Senior Vice-President

A handwritten signature in blue ink, appearing to read "Rob Biehler".

Per:

Rob Biehler, CPA, CA, CIRP, LIT
Senior Vice-President

Court File No. CV-18-601307-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

THE HONOURABLE)	TUESDAY, THE 21 st
)	
JUSTICE DUNPHY)	DAY OF DECEMBER, 2018
)	

IN THE MATTER OF RECEIVERSHIP OF SAGE GOLD INC.

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 1990, C. C.43, AS AMENDED**

ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Sage Gold Inc. (“**Sage Gold**”) for an order amending Paragraph 16 of the Order of the Honourable Justice Dunphy dated July 30, 2018 appointing the Receiver (the “**Receivership Order**”) was heard this day.

ON READING hearing the submissions of counsel for the Receiver and Counsel for the Director of Mine Rehabilitation:

1. **THIS COURT ORDERS** that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Paragraph 16 of the Receivership Order be and hereby is deleted in its entirety and replaced with the following:

“16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management

(separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession. The Receiver shall be deemed not to have taken possession of any of the Property for the purpose of Environmental Legislation or the Mining Act, R.S.O. 1990, C. M.14 during the period up to August 31, 2018 while it assesses the environmental condition of the Property and the requirements of completing the process of placing the Debtor's mines on care and maintenance. The Receiver will have the option at any time of abandoning all or any part of the Property on two business days' written notice to the Director of Mine Rehabilitation describing the abandoned Property (with a copy of any notice of abandonment to be served on the Service List). Any exercise of the Receiver's right to abandon all or any of the Property pursuant to this paragraph is without prejudice to the Debtor's interest in such property and rights and interests of creditors (including creditors with security arising as a consequence of this Order) to the abandoned Property and all such rights and interests are expressly reserved. Nothing in this Order affects the ability or the Receiver to abandon all or any of the Property in accordance with Section 14.06(4) of the *BIA* and the protections provided to the Receiver under that Section."

IN THE MATTER OF RECEIVERSHIP OF SAGE GOLD INC.

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AMENDING ORDER

McMILLAN LLP

Brookfield Place

181 Bay Street, Suite 4400

Toronto, ON, M5J 2T3

Wael Rostom LS#: 43165S

Tel: 416.865.7790

Fax: 416.865.7048

Stephen Brown-Okruhlik LS#: 66576P

Tel: 416.865.7043

Fax: 416.865.7048

Lawyers for the Receiver,
Deloitte Restructuring Inc.

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian Environmental Protection Act, the Ontario Environmental Protection Act, the Ontario Water Resources Act, or the Ontario Occupational Health and Safety Act and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession. The Receiver shall be deemed not to have taken possession of any of the Property for the ~~purposes~~purpose of Environmental Legislation or the Mining Act, R.S.O. 1990, C. M.14 during the ~~Review Period (as defined below)~~ period up to August 31, 2018 while it assesses the environmental condition of the Property and the requirements ~~for~~of completing the process of placing the Debtor's mines on care and maintenance. The Receiver will have the option at any time ~~up to and including August 31, 2018 (the "Review Period")~~ of abandoning all or any part of the Property ~~at any time upon filing a certificate with this court so certifying and~~ on two business days' written notice to the Director of Mine Rehabilitation describing the abandoned Property, ~~all~~ (with a copy of any notice of abandonment to be served on the Service List). Any exercise of the Receiver's right to abandon all or any of the Property pursuant to this paragraph is without prejudice to the Debtor's interest in such property and rights and interests of creditors ~~to the~~ (including creditors with security arising as a consequence of this Order) to the abandoned Property and all such rights and interests are expressly reserved. ~~The Receiver shall~~

~~provide prior written notice to the Director of Mine Rehabilitation and CRH (with a copy to the Service List) of its intention to file a certificate of abandonment at least ten business days~~ Nothing in ~~advance of filing such certificate with this Court prior to the expiry of the Review Period. In the event that this Order affects the ability or~~ the Receiver ~~seeks~~ to abandon all or any ~~part~~ of the Property ~~at any other time during these proceedings, save and except for abandonment pursuant to section~~ in accordance with Section 14.06(4) of the BIA, the and the protections provided to the Receiver under that Section. ~~Receiver may do so only with leave of the Court obtained on motion with reasonable notice to the Director of Mine Rehabilitation and CRH (with a copy to the Service List).~~

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181 Bay Street, Suite 4400

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Wael Rostom LS#: 43165S

Tel: 416.865.7790

Fax: 416.865.7048

Stephen Brown-Okruhlik LS#: 66576P

Tel: 416.865.7043

Fax: 416.865.7048

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Deloitte Restructuring Inc.