

SUPREME COURT OF YUKON

Citation: *Sumitomo Canada Limited v Minto Metals Corp.*,
2025 YKSC 62

Date: 20250922
S.C. No. 23-A0086
Registry: Whitehorse

BETWEEN:

SUMITOMO CANADA LIMITED

PETITIONER

AND

MINTO METALS CORP.

RESPONDENT

Before Chief Justice S.M. Duncan

Counsel for
PricewaterhouseCoopers Inc

Bryan C. Gibbons and
E. Hirst

Counsel for Selkirk First Nation

Greg Fekete

Counsel for Government of Yukon

Dorothy J. Miller by videoconference
and Julie DesBrisay

Counsel for Capstone Mining Corp.

Claire Hildebrand by videoconference

Counsel for Dyno Nobel Canada
Inc, Thyssen Mining Construction of
Canada Ltd. and BQE Water Inc

Terrence Warner

REASONS FOR DECISION

Introduction

[1] On June 13, 2025, this Court granted two orders on application by the Receiver: a) approving the sale of the assets set out in the Intangibles Sale Agreement from the Receiver of Minto Metals Corp, PricewaterhouseCoopers Inc., LIT, to the purchaser, 843093 Yukon Inc (843), a company owned by Selkirk First Nation, and vesting the purchased assets in 843, free and clear of any claims; and b) approving the Receiver's activities set out in the last five reports to the Court between August 26, 2024, and May 29, 2025.

[2] The following sets out my reasons for issuing these orders.

Background

[3] This Court's previous reasons for decision, dated June 14, 2024 (*Sumitomo Canada Limited v Minto Metals Corp*, 2024 YKSC 28), and January 21, 2025 (*Sumitomo Canada Limited v Minto Metals Corp*, 2025 YKSC 6) describe the background of this receivership and of the sales transaction. Briefly, Minto Metals Corp (Minto) owned and operated a copper-gold-silver mine near Pelly Crossing, Yukon, 250 kilometres northwest of Whitehorse. It was located on Selkirk First Nation Category A settlement land, which provides the First Nation with rights equivalent to fee simple to the surface of the land and full fee simple title to the subsurface. Minto abandoned the mine on May 13, 2023, and was successfully petitioned into a limited receivership on June 29, 2023, by Sumitomo Canada Limited, the exclusive purchaser of the concentrate and a secured lender with a first ranking security interest in the concentrate. PricewaterhouseCoopers Inc., LIT (the Receiver) was appointed by the

Court as the Receiver over all the assets, undertakings, and property of Minto on July 24, 2023. The Yukon government performed care and maintenance activities to protect the environment and human health and safety and then used the reclamation bond in the amount of \$75.2 million that had been posted by Minto to begin reclamation and closure work.

[4] Between August 2023 and May 2024, the Receiver conducted a Sales and Investment Solicitation Process (SISP) to market and sell the mine property *en bloc*. The SISP was unsuccessful, and the Receiver was authorized by the Court to proceed with the liquidation plan. The Receiver engaged Maynards Industries Canada II Ltd. (Maynards) as auctioneer to assist with the implementation of the liquidation plan. The implementation was delayed because the barge required for transportation of the assets to be liquidated was out of operation. During that hiatus, further expressions of interest in the mine's assets were received. Selkirk First Nation's bid, through 843, received at that time was recommended for acceptance by the Receiver, among other reasons, because the terms of their bid exceeded those of all other proponents and had the potential to realize more value for Minto's assets and provide significant benefits to Selkirk First Nation as a key stakeholder.

[5] Specifically, 843's proposed purchase price for the building infrastructure and rolling equipment exceeded the Forced Liquidation Value (FLV) of the assets; they confirmed their intention by making a 20% refundable down payment; they committed to fund the reclamation security bond if the mine restarted; they negotiated an agreement with the Yukon government allowing the government to use mine equipment for their reclamation work; they engaged technical consultants to assist with a feasibility study

for exploration towards mine restart and to manage the ongoing reclamation work with the new exploration activities; and they committed to do exploration work within a year.

[6] This Court accepted the Receiver's recommended approach of approving 843's bifurcation of the proposed sales transaction into two, in order to provide them more time to resolve two complex issues: i) obtaining confirmation that Zurich Insurance Company Ltd. (Zurich), the holder of the bond used by the Yukon government to fund the reclamation security, will continue to make it accessible even while 843 is conducting exploration activities; and ii) confirming that the Receiver can hold the licences and permits necessary for the mine operation for a period of time without reporting or any other obligations. While these two issues remained stumbling blocks to a sale, 843 and Selkirk First Nation had advanced the discussions on both issues more than any other bidder.

[7] As a result, orders were granted approving the sale transaction and authorizing the Receiver to execute the sale agreement for the purchase of mine site building infrastructure and rolling equipment for mining operations; and approving the exclusivity agreement for 843 to negotiate the purchase of mineral claims, permits, licences and contracts (the intangible assets), and authorizing the Receiver to execute it.

[8] The first transaction for the sale of the tangible assets closed on September 10, 2024, and the Receiver and 843 continued to negotiate the second transaction for the intangible assets. No additional offers were received for the intangible assets.

Approval of the Intangibles Sale Agreement

[9] The two outstanding issues creating the need for a bifurcated sales transaction have now been resolved to the satisfaction of the relevant entities.

i) Confirmation that Zurich will continue to fund the reclamation security

[10] The surety bond dated December 2, 2013, with Minto as principal, Zurich as surety, and the Yukon government as obligee, grants access to and use of the security monies by the Yukon government for the purpose of reclamation. The bond is guaranteed by Capstone Mining Corp. (Capstone). The Yukon government made written demand pursuant to the bond shortly after the mine was abandoned and entered into a confidential agreement with Zurich in September 2023. The Yukon government was concerned that their access to the bond may be jeopardized as a result of 843's plan to conduct exploration activities and potentially restart mine operations.

[11] The Receiver did not participate in the discussions between the Yukon government and Zurich. However, the Receiver has been informed that the Yukon government has received the requested confirmation from Zurich that continued access to and use of the bond for ongoing reclamation work simultaneously with the exploration activities will be provided.

ii) Regulatory permits and licences

[12] As noted in reports to the Court from the Receiver, 843 intends to carry out a drilling and exploration program starting in the summer of 2025 and continuing until approximately mid-2026. During this time, 843 will decide whether it will restart mining activities at the mine site.

[13] In order to carry out this program, a Class 4 Quartz Mining Land Use Approval (exploration permit) is required and a Type B Water Licence, allowing for the barge operation across the river, while not required, may be useful. Under the Intangibles Sale Agreement, 843 agreed to apply for approval from the Yukon government for an assignment from the Receiver of the exploration permit immediately after closing (three days after court approval) and apply for approval from the Water Board for an assignment from the Receiver of the water licence no later than December 31, 2025.

[14] The Receiver holds two other valid licences necessary for the mining operations. One is a Quartz Mining Licence, and the other is a Type A Water Licence. The Receiver and 843 agreed that the Receiver would continue to hold these licences for up to five years from the date of closing of the Intangibles Sale Agreement. The alternative to the Receiver holding them is that the licences would lapse and 843 would be required to re-apply for both, a lengthy and costly process. As a condition to holding the licences, the Receiver sought assurances from the Yukon government that it will not enforce any of the licence obligations.

[15] An assurance letter from the Yukon government to the Receiver is attached as an appendix to the Intangibles Sale Agreement. The Yukon government in that letter assured the Receiver it would not enforce any licence obligations against the Receiver on certain conditions precedent, all of which have been satisfied: the Yukon government approved the Intangibles Sale Agreement terms; the approval and vesting order was granted by the Court; the Yukon government received unqualified confirmation from Zurich of continued access to the bond for reclamation work; and the Yukon government received confirmation that Selkirk First Nation supports the sales

transaction and supports the arrangement of the Yukon government not enforcing the licence obligations. The other conditions were subsequent to signing the agreement and they included the closing of the transaction and the payment of the purchase price, and the ongoing condition of the Receiver ensuring they advise the Yukon government if they gain knowledge of anyone other than 843 using the mine site camp, or conducting activities under either of the licences.

[16] The assurance letter was satisfactory to the Receiver, which in turn prompted them to make this court application for approval.

[17] Other factors in support of the transaction were: the purchase price for the intangible assets was \$740,000, payable in cash, and was an increase from the original price of \$300,000 set out in the exclusivity agreement, part of the first transaction allowing 843 and Selkirk First Nation to continue to negotiate exclusively with the Receiver and others to finalize this transaction. This purchase price was successfully renegotiated between the Receiver and 843 to reflect the increased administration costs arising from the lengthy meetings and negotiations to reach the agreement and to retain value for the stakeholders.

[18] The Intangibles Sale Agreement was subject to approval by the Executive Council of the Yukon government. This approval was obtained on or about April 24, 2025, including parameters for finalizing the agreement without the need for further approval.

Law

[19] The legal authority for the Receiver to enter into the Intangibles Sale Agreement is found in the Receivership Order. Section 2 of the Order authorizes the Receiver to:

- a) take possession of and exercise control over all the assets, undertakings and property of Minto, including the proceeds thereof (s. 2(a));
- b) execute, assign, issue, and endorse documents of whatever nature in respect of any of the property for any purpose pursuant to the Order (s. 2(h));
- c) market any or all of the property, including advertising and soliciting offers in respect of the property or any parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate (s. 2(j)); and
- d) sell, convey, transfer, lease or assign the property or any part or parts thereof out of the ordinary course of business (s. 2(k)).

[20] Further, s. 243(1)(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*), authorizes a receiver to take any action the court considers advisable, as long as it is just and convenient. This has been interpreted by courts (the Ontario Court of Appeal and the Nova Scotia Supreme Court) to apply to the approval of vesting orders in court-appointed receiverships on the basis that they are incidental to the receiver's power to sell (*Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 (*Dianor*) at para. 87; *Royal Bank of Canada v Eastern Infrastructure Inc.*, 2019 NSSC 297 at para. 2).

[21] Factors to be considered in approving a sale in a receivership proceeding were set out in the well-known and oft-quoted decision of *Royal Bank of Canada v Soundair Corp* (1991), 4 OR (3d) 1 (CA) (*Soundair*) at 7-8:

- whether the receiver has made a sufficient effort to get the price and has not acted improvidently;

- the interests of all parties;
- the efficacy and integrity of the process by which the offers are obtained;
and
- whether there has been unfairness in the working out of the process.

[22] In the receivership of a complex asset, such as an airline or a mine, the court must place confidence in and rely upon the actions taken and opinions provided by the receiver, who has the business acumen, expertise and knowledge to manage a sales process. Only if there is clear evidence that the receiver is not acting appropriately, should the court second-guess or question their actions. The court is otherwise entitled to assume the receiver is acting in a prudent and reasonable manner (*Soundair* at 6).

[23] Once a court is satisfied that a receiver has acted reasonably, prudently, fairly, and not arbitrarily it will only intervene contrary to the receiver's recommendation in an exceptional circumstance (*Soundair* at 26, citing *Crown Trust C. v Rosenberg* (1986), 60 OR (2d) 87 at 111).

Application to the facts of this case

[24] Here, the Receiver has satisfied the *Soundair* factors through the process of developing and negotiating the Intangibles Sale Agreement in the following ways.

[25] First, it made a sufficient effort to get the price and did not act improvidently:

- it initially ran a SISF, terminated it after receiving no appropriate offers, and proceeded with a liquidation plan in order to maximize value;
- it accepted new bids arising during the liquidation process, and pursued the most attractive one, from 843/ Selkirk First Nation;

- it negotiated the terms of the sales transaction and promoted the bifurcation of the transaction into tangible and intangible assets to allow for a practical solution and positive outcome;
- it negotiated an increased purchase price for the intangible assets agreement to reflect the increased costs resulting from the lengthy negotiations. The price offered by 843/Selkirk First Nation exceeded the anticipated FLV of Minto's assets.

[26] The Receiver's decisions to liquidate the assets after receiving no appropriate bids, to consider the new bids for the intangible assets during the delay in the liquidation process caused by the breakdown and need for repair of the barge, to negotiate with 843 and recommend the division of the proposed transaction into two parts given the complexity of the outstanding issues, to facilitate the progress made towards resolution given the evident commitment by 843/Selkirk First Nation to proceed with the transaction, and finally the Receiver's facilitation of the finalizing of the second transaction by ensuring satisfactory resolution of the outstanding issues were provident decisions.

[27] Second, the Receiver considered the interests of all parties and stakeholders; in particular Selkirk First Nation, the Yukon government, Capstone, Minto, and the lienholders. While initially Selkirk First Nation considered the Receiver's rejection of one of the earlier bids by Fiore Corporation in favour of a liquidation plan as dismissive of their interests, it became clear that 843's own proposed transaction promoted their interests better. As noted by counsel for 843/Selkirk First Nation the reasons for Selkirk First Nation's desire to pursue the transaction was threefold:

- a) maintaining and enforcing high standards of environmental stewardship and developing and implementing new ways of environmental management of mining development, operations and remediation;
- b) providing economic stimulation and skills development for the First Nation and its citizens, in line with the objectives in Chapter 22 of the Selkirk First Nation Final Agreement to provide Yukon First Nations with the opportunity to participate in the Yukon economy and to derive economic benefits from the Final Agreement;
- c) to promote economic self-reliance for the First Nation.

[28] The interests of the Yukon government were considered as the facilitated agreement ensured their continued access to the reclamation bond funding, and permitted them to continue the reclamation activities even while the exploration activities are being conducted.

[29] The interests of Capstone, the bond guarantor, were considered because the liquidation plan was chosen instead of a second SISP process and the proposed transaction was able to close with the outstanding issues resolved.

[30] The interests of the lienholders and Minto were considered with the acceptance of the 843/Selkirk First Nation bid which exceeded the anticipated price obtained through liquidation, and by the re-negotiation of the purchase price for the intangible assets to take into account the increased administrative costs caused by the lengthy negotiations, and to maximize value in the remaining assets for those with a financial interest.

[31] The holder of certain equipment (Finning (Canada), a Division of Finning International Inc) was permitted to maintain ownership of and be compensated for certain equipment assets from the receiver.

[32] Third, the process used by the Receiver to obtain offers was efficient and had integrity. This aspect of the Receiver's activities up to and including the first stage of the 843/Selkirk First Nation proposed transaction was canvassed in some detail in the decisions dated June 14, 2024, and January 21, 2025, and will not be repeated here. In those reasons, the steps taken by the Receiver, the opposition of some entities to some of those steps, and an explanation of why the Receiver took those steps and why they were considered appropriate were thoroughly canvassed.

[33] Fourth, there was no unfairness in working out of the process resulting in the Intangibles Sale Agreement. The objections of some bidders to the Receiver's continued pursuit of the 843/Selkirk First Nation new bid despite the lack of resolution of the two outstanding issues were outweighed by the unequivocal commitment made by 843 to the process, the higher purchase price offered by 843, their assumption of the reclamation security, their cooperation with the Yukon government to allow reclamation activities to continue simultaneously with exploration activities, among other things.

[34] This is not an exceptional case in which the court should intervene and not accept the Receiver's recommendations. The Receiver through its many and detailed reports to the Court, through its responses to the objections raised by various interested entities throughout the process, and through its reliance not only on its general expertise in receivership matters, but also on its previous expertise in acting as a receiver of other abandoned mines in the Yukon, has demonstrated a prudent and

commercially reasonable approach. It has worked hard with the other major stakeholders to arrive at a creative solution to a complex and challenging receivership with unique features. The achieved result is of benefit to the First Nation, the Yukon government, the creditors, and the broader community.

Approval of the Receiver's Activities

[35] The Receiver's activities have been approved up to and including its fifth report to the Court. It seeks approval of the activities set out in the confidential supplement to the fifth report, the second supplement to the fifth report, and the sixth, seventh, and eighth reports to the Court.

[36] The activities are set out in detail in those five reports. They describe the processes undertaken to arrive at the sales transaction, and the role of the Receiver in facilitating and encouraging that process. In particular, they provide details of the purchase price for the 843/Selkirk First Nation bid, details of the agreements, details of the other bids and reasons for their rejection, details of the agreement to compensate Finning for certain assets at the mine site in which they had an ownership interest, and details of the negotiation and finalizing of the Intangibles Sale Agreement.

Law

[37] Section 243 of the *BIA* authorizes a court to appoint a receiver on application by a secured creditor to do the following:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by that insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable

[38] Courts have interpreted this section and particularly (c) to provide a court with broad powers to respond to the many circumstances arising in the course of a receivership (*DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226 (*DGDP-BC Holdings Ltd*) at para. 20). They are to be guided in the exercise of this authority by what “justice dictates” and “practicality demands” in the context of the purpose of receiverships which is: “to enhance and facilitate the preservation and realization of the assets for the benefit of creditors” (*Dianor* at para. 73 quoting *Hamilton Wentworth Credit Union Ltd. (Liquidator of) v Courtcliffe Parks Ltd.* (1995), 23 OR (3d) 781). This has been interpreted to include liquidation of assets or authorizing a sale of the debtor’s property by the Receiver (*Dianor* at para. 57, *DGDP-BC Holdings Ltd* at para. 20).

[39] A receiver is a court-appointed officer with expertise in the insolvency field. It is applying that expertise to the work that the court would otherwise be required to do. A receiver is entitled to considerable deference, and in particular with respect to business decisions. Normally, the court should not second-guess with the benefit of hindsight, the Receiver’s business decisions.

[40] The policy and practical reasons for court approval of a Receiver’s activities during an insolvency process are: allowing the receiver to move forward with the next steps in the proceeding; requiring the receiver to be accountable to the court and the stakeholders for its activities; allowing for the concerns of stakeholders to be addressed and problems to be rectified; protecting creditors from delay and disruption caused by litigation of issues and indemnity claims by the receiver; providing protection for

receivers for activities done that may not be provided by the *BIA* or the receivership order; and allowing the court to be satisfied that the receiver is acting in a prudent, diligent and commercially reasonable way (*Target Canada Co (Re)*, 2015 ONSC 7574 at paras. 22-23).

Application to the facts of this case

[41] Here, the activities conducted by the Receiver are set out in the various reports that have been filed with the Court. They are authorized by s. 2 of the Receivership Order and serve the purpose of enhancing and facilitating the realization of Minto property for the benefit of its creditors. An order approving the activities is within the Court's mandate set out in s. 243(1)(c) of the *BIA*.

Conclusion

[42] The orders have been filed in accordance with the above decision and reasons.

Observation

[43] As noted above, the purchase of the assets of a mine by a First Nation with the intention of conducting exploration and possible resumption of operation may be a historic event. This is a promising solution to the abandonment of this mine, proposed by Selkirk First Nation and facilitated by the work of the Receiver, the flexibility and reasonableness of the Yukon government, and the support of the other major stakeholders. While Selkirk First Nation's counsel realistically noted that the First Nation's ongoing operation of the mine over time is unlikely to be sustainable, (assuming it resumes operation) he noted that the First Nation plans to maintain a significant role in the decision-making about the mine's activities. Selkirk First Nation's plan to provide economic benefits for their members may be a positive outcome of a potentially costly mine failure. Further, the First Nation's commitment to environmental

stewardship in the implementation of this project, including finding environmentally responsible ways of developing, operating and remediating the mine, if successful, may assist future mine development in the Yukon and may help to prevent the remediation costs of abandoned mines or of mine disasters being borne by taxpayers in future. All parties and especially Selkirk First Nation, are to be commended for their efforts in achieving this promising next step in the story of this receivership.

DUNCAN C.J.