

SUPREME COURT OF YUKON

Citation: *Norman Ross v. Ross Mining Limited et al.*
2010 YKSC 20

Date: 20100510
Docket S.C. No.: 09-A0014
Registry: Whitehorse

BETWEEN:

NORMAN ROSS

Plaintiff

AND:

ROSS MINING LIMITED, MACKENZIE PETROLEUMS LTD.
and GOLDEN HILL VENTURES LIMITED PARTNERSHIP

Defendants

Before: Mr. Justice R.S. Veale

Appearances:

Murray Leitch
John Sandrelli
Jocelyn Barrett
Geoffrey Thompson

Counsel for the Plaintiff
Counsel for Ross Mining Limited
Counsel for MacKenzie Petroleum Ltd.
Counsel for the Monitor
Price Waterhouse Coopers Inc.

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): Norman Ross applies to vary the receivership order dated July 29, 2009, to make PricewaterhouseCoopers Inc. the Receiver Manager of Ross Mining Ltd. In particular, the receiver is interested in pursuing a lease of the mining property in the 2010 mining season, which is already upon us. The application is supported by the receiver, of course by Mr. Ross, and one stakeholder, MacKenzie Petroleum Ltd. The application is opposed by Golden Hill Ventures, which is owned by Mr. Rudolph, the owner of the property presently under receivership. For background

information, reference should be made to my decision in *Ross v. Ross Mining Limited*, 2009 YKSC 55, which decision was made on July 29, 2009.

Background

[2] The mining property consists of some 415 placer claims on Dominion Creek south of Dawson City, Yukon. It was owned and operated by Norman Ross since 1979 but sold subsequently to Mr. Rudolph in 2005. Under the name Ross Mining Limited, Mr. Rudolph mined the property for three years, 2006, 2007 and 2008, at significant losses in each year. Mr. Ross applied for a receivership in June of 2009 and the parties initially agreed to an order permitting the property to be monitored in June of 2009 in order to get Mr. Rudolph some operating time and the ability to find a financier to assist in paying the \$3.4 million owed at that time to the vendor, Mr. Ross. Mr. Rudolph was not successful, and the receivership order was made by my judgment of July 29, 2009.

[3] The initial objective of the receiver was to prepare a marketing plan, which it did, and to sell to a new owner so they could start operations in the mining season of 2010. In order to prepare the marketing plan and sell the property all parties had to provide the documentation to assist in selling the property, such as drilling reports. In its first Receiver's Report, dated November 27, 2009, the receiver indicated that, despite repeated requests of Golden Hill Ventures to release a drilling map prepared by Underhill Geomatics or to authorize Underhill to release it, Golden Hill Ventures has not either delivered the report or consented to the release by Underhill Geomatics.

[4] Also, in October of 2009, the receiver made the decision to suspend the sale process for a variety of reasons, set out in its report of November 27, 2009, at pages 13

and 14, and those can be summarized as follows: The timing of the sale process; it was felt that a longer sales process timeline would be better to find potential purchasers and also allow them to conduct their due diligence on the property, which may include drilling. Secondly, the general economic climate for financing in the fall of 2009 was generally very negative, given the current state of the world economy and capital markets at that time. It was also a better opportunity to give the new purchaser operating time in 2010. Of course, the receiver wished to have additional parties to the 25 parties that had indicated an initial interest in looking at the property. Finally, the receiver pointed out that there were unresolved issues regarding who the stakeholders in the mining property are, and that relates to a lien claim that has been put forward by Golden Hill Ventures that remains unresolved at this date.

[5] The receiver indicated that the future actions were to cease all active efforts to sell the assets and await the outcome of the dispute between Golden Hill Ventures and Norman Ross regarding the Golden Hill Ventures miner's lien claim.

[6] The receiver has indicated that Mr. Ross has loaned or intends to loan the receiver \$80,000 in order to provide continuing funding for the receivership. The sales process has been deferred since to December 2010. The receiver and Mr. Ross claim that adding the power to manage the property and enter into a lease is to the benefit of all parties involved, and they have a party under consideration but with whom no agreement has been reached, and that is a person named Mr. Hollis, who is already mining a small two-person operation on the mining property.

[7] The reasons in favour of having the lease entered into for the 2010 mining season in particular are set out at page 5 of the second Receiver's Report, dated April 9, 2010, and they can be summarized as follows: It will provide positive cash flow for the receivership; it will permit maintenance of the machinery on site by the leaseholder; it will provide security for the camp during the summer months when additional security will be required; it will assist with the due diligence process and also permit some drilling and exploration for future reserves.

[8] Mr. Rudolph, on behalf of Golden Hill Ventures, opposes the expansion of the receiver's mandate for four reasons. These reasons are that he is concerned that the use of Ross Mining Limited's machinery will depreciate that asset further and reduce the value as part of the mine. He is also concerned that the exposed ground, which is a primary selling feature of the mine, will be removed and lost as an asset in the sale of the property, and he is also concerned about the reduction of available ore going forward, as well as the security costs for the mine if there is a placer mine in operation during the summer.

[9] I have concluded that the application of Mr. Ross should be granted. Mr. Ross is the largest stakeholder with an established interest in the amount of some \$3.8 million at this stage and the only person offering, and of course the person responsible for financing the continued receivership.

[10] Mr. Rudolph and Golden Hill Ventures, on the other hand, do not have an established claim at this time, although they may in the future, but that remains to be seen. Further, he has not been particularly cooperative with the receiver in terms of

obtaining the drilling map prepared by Underhill Geomatics, which would assist a great deal in the sale of the property. I am also of the view that the Court should rely on the expertise of the receiver as set out in the *Royal Bank v. Soundair Corp.*, (C.A.) 4 O.R. (3d) 1, at pages 5 and 6. In addition to that general principle, I am of the view that, on the merits of this application, the operation of the mine property by way of a lease of the property is in the interests of all the stakeholders and should be pursued.

[11] Further, my receivership order of July 29, 2009, contained paragraph 4, which required all persons to advise the receiver of any documents they had and to assist the receiver to obtain possession or control of those, and my view is that I do not need to make any further order with respect to that but just to indicate to Mr. Rudolph and Golden Hill Ventures that that is the order of the Court. The application is therefore granted and the July 29, 2009 order will be amended accordingly.

VEALE J.