

# SUPREME COURT OF YUKON

Citation: *Hy's North Transportation Inc. v Finlayson Minerals Corporation dba Yukon Zinc Corporation*,  
2016 YKSC 41

Date: 20160830  
S.C. No.15-A0019  
Registry: Whitehorse

Between:

**HY'S NORTH TRANSPORTATION INC.**

Petitioner

And

**FINLAYSON MINERALS CORPORATION D.B.A. YUKON ZINC CORPORATION,  
YUKON ZINC CORPORATION, ATNA RESOURCES LTD., EQUITY EXPLORATION  
CONSULTANTS LTD., 8248567 CANADA LIMITED, ROYAL GOLD, INC.,  
CATERPILLAR FINANCIAL SERVICES LIMITED/LES SERVICES FINANCIERS  
CATERPILLAR LIMITEE, DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.  
SERVICES FINANCIERS DE LAGE LANDED CANADA INC., SANDVIK CUSTOMER  
FINANCE LLC, FORD CREDIT CANADA LIMITED - CREDIT FORD DU CANADA  
LIMITEE, PROCON MINING & TUNNELLING LTD., PROCON MINING  
PARTNERSHIP, KASKA ALLIANCE/PROCON JOINT VENTURE, TRANSMINE  
TRADING S.A., JINDUICHENG CANADA RESOURCES CORPORATION LIMITED,  
MAYNARDS FINANCIAL LIMITED PARTNERSHIP, HONG KONG XIANGGUANG  
INTERNATIONAL HOLDINGS LIMITED AND FORD CREDIT CANADA LEASING**

Respondents

Before Mr. Justice L. F. Gower

Appearances:

Alison M. Latimer  
Kibben Jackson and Danielle Toigo  
G. Bowman  
H. Lance Williams

Counsel for the Petitioner  
Counsel for the Respondent Yukon Zinc.  
Counsel for P.S. Sidhu Trucking Ltd.  
Counsel for PricewaterhouseCoopers Inc.

## REASONS FOR JUDGMENT

[1] This is an application by the petitioner, Hy's North Transportation Inc. ("Hy's North") for an order permitting it to reopen its application heard February 29, 2016,

seeking a declaration that it has a valid miners lien against the Wolverine Mine operated by Yukon Zinc Corporation ("Yukon Zinc"). That latter application is parallel to a similar application to this Court by P.S. Sidhu Trucking Ltd. ("Sidhu"), heard on February 17, 2016, S.C. No. 15-A0009, seeking a declaration that it has a valid miners lien against the same mine. Subsequent to the hearing on February 17, 2016, Sidhu applied to reopen the application for the purpose of adducing three documents referred to therein as the "additional evidence". Hy's North filed a similar application to reopen on March 23, 2016, essentially piggybacking on Sidhu's application to reopen. In particular, if this Court allows Sidhu's application to reopen, then Hy's North seeks an order permitting it to reopen its application heard February 29, 2016 for exactly the same reason, i.e. to admit the additional evidence in the context of this proceeding. The application to reopen was heard on May 20, 2016.

[2] Although Yukon Zinc has insisted that the petitions filed by each of Sidhu and Hy's North be treated separately, such that separate decisions are rendered by this Court in due course, there was agreement by counsel at the hearing of the respective applications, that Sidhu could rely upon affidavit material in the Hy's North proceeding, and similarly, Hy's North could rely upon affidavit material in the Sidhu proceeding.

[3] In my reasons cited as 2016 YKSC 40, I allowed Sidhu to reopen its case and adduce the additional evidence. Accordingly, I make the same order with respect to Hy's North. Specifically, the three pieces of the additional evidence are found in the affidavit of Julie Hutchinson, sworn March 18, 2016, in the Sidhu proceeding. However, I wish to make it clear, as I did in the Sidhu reasons cited above, that the only exhibits which the parties are entitled to rely upon in Ms. Hutchinson's affidavit are:

1. the Receiver's Second Report;
2. the Sale Order; and
3. Mr. Lu's affidavit sworn March 13, 2015.

[4] As Hy's North was successful on its application to reopen, I award it costs in the cause for the hearing on May 20, 2016.

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GOWER J.