

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) WEDNESDAY, THE 7th
JUSTICE MORAWETZ)
DAY OF AUGUST, 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMSTOCK CANADA LTD., CCL
EQUITIES INC., AND CCL REALTY INC.

Applicants

ORDER
(Lien Regularization)

THIS MOTION, made by Comstock Canada Ltd. ("Comstock"), CCL Realty Inc. ("CCL Realty"), and CCL Equities Inc. ("CCL Equities" and together with Comstock and CCL Realty, the "Applicants" or the "Comstock Group"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Dennis Forlin sworn August 2, 2013 (the "Forlin Affidavit") and the Exhibits thereto, and the Third Report to Court dated August 6, 2013 (the "Third Report") of PricewaterhouseCoopers Inc. ("PwC") in its capacity as the Monitor (in such capacity, the "Monitor") of the Comstock Group, and on hearing the submissions of counsel for the Comstock Group, counsel for Bank of Montreal, and those other parties listed on the Counsel Slip, no one appearing for any other person although duly served as appears from the Affidavit of Service of Shenaz Mohammed, sworn August 2, 2013,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions shall apply:

- (a) **"Bonded Off Lien"** means a lien that attaches to the land and has been the subject of a registered claim for lien and any certificate of action in respect of that lien, or where notice of lien has been given where the lien does not attach to the land, which has been vacated from title upon the posting of security, which security is subject to claims of all persons having a lien pursuant to applicable Provincial Lien Legislation;
- (b) **"Comstock Project"** means a project to which Comstock is a contracting party;
- (c) **"Filing Date"** means June 28, 2013;
- (d) **"Holdback"** means Statutory Holdback and Notice Holdback;
- (e) **"Lien Claims"** mean the rights of any person who supplied services and/or materials to preserve or perfect their liens pursuant to the relevant Provincial Lien Legislation;
- (f) **"Notice Holdback"** means any further amounts beyond Statutory Holdback required to be withheld from one of the Applicants as a payee by a payer as a result of notice by any person claiming a lien pursuant to Provincial Lien Legislation;
- (g) **"Provincial Lien Legislation"** means the provincial mechanics, builders or construction lien legislation set out in **Schedule "A"** hereto; and
- (h) **"Statutory Holdback"** means the 10%, or the other applicable percentage required by each Provincial Lien Legislation, of the value of services or materials supplied under a contract or subcontract required to be withheld by a payer from one of the Applicants as a payee.

3. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Initial Order dated July 9, 2013 as Amended and Restated on July 26, 2013 (the "**Amended and Restated Initial Order**").

4. **THIS COURT ORDERS** that, without limiting the generality of the Amended and Restated Initial Order, any Lien Claim in respect of a Comstock Project be and hereby is stayed and any person seeking to enforce such a claim shall be required to seek the rights and remedies set out in this Order.

5. **THIS COURT ORDERS** that any Person who has registered a Lien Claim in respect of a Comstock Project (defined as the "**Registered Lien Claimant**"), which is not a Bonded Off Lien as of August 7, 2013, be and is hereby vacated on terms that any person having such a Lien Claim shall be deemed to have provided the Lien Notice referred to in paragraph 7 on the date of registration of such Lien Claim, and shall be entitled to the Lien Charge referred to in paragraph 8, and that separate orders of this Court may be taken out by Comstock or the Monitor, upon presentation of this Order, to effect this result in each particular relevant jurisdiction.

6. **THIS COURT ORDERS** that any person having a Bonded Off Lien shall be deemed to have provided the Lien Notice referred to in paragraph 7 on the date of registration of such Lien Claim, and shall also be entitled to the Lien Charge referred to in paragraph 8.

7. **THIS COURT ORDERS** that unless deemed to have provided a Lien Notice, any person who wishes to assert a Lien Claim after the Filing Date in respect of a Comstock Project (the "**Asserting Lien Claimant**"), whether in respect of materials and/or services supplied before or after the Filing Date shall serve a notice in the form attached as **Schedule "B"** hereto, on the Monitor attention: Pritesh Patel: pritesh.r.patel@ca.pwc.com with a copy to Robin Schwill, counsel to the Monitor, rschwill@dwpv.com and with a copy to Comstock: c/o Gowlings: alex.macfarlane@gowlings.com and frank.lamie@gowlings.com, within the timeframes prescribed by the applicable Provincial Lien Legislation in order to preserve and perfect their Lien Claim for that project (the "**Lien Notice**"). For the purposes of this Order, any Registered Lien Claimant shall be deemed to be an Asserting Lien Claimant.

8. **THIS COURT ORDERS** that the Asserting Lien Claimant, upon serving or being deemed to have provided a Lien Notice, pursuant to this Order, be and is hereby granted a

charge equivalent to the rights and obligations of a person who had taken all steps necessary pursuant to the applicable Provincial Lien Legislation to enforce the Lien Claim described in the Lien Notice in the Courts of the Province in which the project is situate, including, without limiting the generality of the foregoing, over the property of Comstock or of any owners of the property pertaining to the Comstock Project in question where applicable, including any Holdback in the hands of a payer of Comstock and including any rights under any lien bond, or any other security posted with respect to any Bonded Off Lien (the "**Lien Charge**"), without prejudice to the right of any party who has posted a lien bond to seek the release of the lien bond or any other security posted with respect to any Bonded Off Lien.

and any other related relief.

9. **THIS COURT ORDERS** that all persons with an interest in the property subject to a Lien Charge and any payor of any level above Comstock (the "**Interested Parties**") shall have the same rights and remedies to challenge the (i) timeliness of a Lien Notice, and (ii) quantum of the amounts set out in the Lien Notice under the Provincial Lien Legislation applicable to the Comstock Project in question, subject to the procedure set out in paragraph 10 herein.

10. **THIS COURT ORDERS** that in furtherance of the rights and remedies preserved under paragraph 9, herein, upon delivery or the deemed delivery of a Lien Notice, the Monitor is hereby authorized and directed, at the appropriate time, to undertake a review of the Lien Notice, and as may be applicable, the underlying Lien Claim, or Bonded Off Lien in order to determine (a) the validity of the Lien Notice; (b) the proper quantum of the Lien Claim, or Bonded Off Lien; (c) the timeliness of a Lien Notice; and, (d) whether the Asserting Lien Claimant is entitled to the Lien Charge as prescribed in paragraph 8, above. Upon the conclusion of such review, if the Monitor determines that (i) the Asserting Lien Claimant is entitled to the Lien Charge, the Monitor shall deliver to the Asserting Lien Claimant and to the Interested Parties, a notice of acceptance of the Lien Notice (the "**Notice of Acceptance**") setting out the Monitor's basis for acceptance of the Lien Notice and the quantum of the Lien Claim; or, (ii) the Asserting Lien Claimant is not entitled to the Lien Charge, or the quantum of the Lien Claim is incorrect, or if the Lien Notice is otherwise invalid, the Monitor, shall deliver to the Asserting Lien Claimant and to the Interested Parties a notice of disallowance (the "**Notice of Disallowance**") setting out the Monitor's basis for disallowing, in whole or in part, the Lien Notice and the applicable Lien Claim or Bonded Off Lien. Within fifteen (15) days after delivery of the Notice of Acceptance or the Notice of Disallowance by the Monitor, the Asserting Lien Claimant, or the Interested

Parties, as the case may be, shall deliver to the Monitor, Comstock, the Asserting Lien Claimant, and to the Interested Parties a notice of objection (the “**Notice of Objection**”) to the Notice of Acceptance or the Notice of Disallowance. In the event that the Monitor, the Asserting Lien Claimant, or the Interested Parties, are unable to resolve the issues as set out in the Notice of Acceptance or the Notice of Disallowance the Monitor shall seek an order from this Court, or from a claims officer (the “**Claims Officer**”) appointed pursuant to any claims procedure that may be established by further order of this Court which shall provide for rights of appeal, on notice to the Asserting Lien Claimant, Comstock, any payer of any level above the Asserting Lien Claimant on the relevant Comstock Project, and the Interested Parties to determine the issues in dispute regarding the Lien Notice, the applicable Lien Claim, or the Bonded Off Lien.

11. **THIS COURT ORDERS** that a Lien Charge shall rank (i) subsequent to the Administrative Charge, DIP Lender's Charge, and the Director's Charge, and (ii) otherwise equal in priority to other Lien Charges in accordance with the priorities accorded by Provincial Lien Legislation to classes of persons related to a Comstock Project.

12. **THIS COURT ORDERS** that Lien Charges created by this Order, shall not be rendered invalid or unenforceable and the rights and remedies of the Lien Claimants entitled to the benefit of the Lien Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds Comstock, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Lien Charge, shall neither create nor be deemed to constitute a breach by Comstock of any Agreement to which it is a party;
- (ii) the payments made by Comstock, or any other person or entity, ~~of Comstock~~ pursuant to this Order and the granting of the Lien Charge, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue,

oppressive conduct, or other challengeable or voidable transactions under any applicable law; and

- (iii) the Lien Charge shall be enforceable in any bankruptcy proceedings of Comstock with the same priority as set out in paragraph 11 as against the property secured by the Lien Charge, including any Holdback.

13. **THIS COURT ORDERS** that, subject to the paragraphs 17 and 18 (pertaining to the approval of the Cost Reimbursement Agreement) and paragraphs 46, 49 and 51 (pertaining to the granting and priority of the DIP Lender's Charge) of the Amended and Restated Initial Order any person who is in possession of Holdback funds be and hereby is restrained from paying, setting-off, or encroaching upon the Holdback funds until the day after the last day upon which a claim for lien can be registered/delivered for the relevant contract pursuant to the applicable Provincial Lien Legislation, at which time such person shall pay the Holdback funds to the Monitor or such other time as agreed to by the relevant payor and the Monitor, save and except for any right of set-off claimed against Notice Holdback Funds, any exercise of which shall be subject to review by the Monitor in consultation with the persons who delivered Lien Notices for the applicable Comstock Project and may be challenged by the Monitor or the persons who delivered Lien Notices on the applicable Comstock Project on motion to this Court or to any Claims Officer, if appointed by this Court, irrespective of whether any Lien Claims or Lien Notices have been made, delivered, preserved or perfected or written notice of any Lien Claim or Lien Notice has been received, and that upon doing so any person in possession of Holdback funds shall be deemed to be in the same position as if no Lien Claims had been made, delivered, preserved, or perfected or written notice of any Lien Claim had not been received, and shall have no further liability for such Holdback funds to any person once such Holdback funds have been paid to the Monitor. For greater certainty, any person who is in possession of Holdback funds, and who receives a written Notice of Lien or Lien Notice or other notice of a Lien Claim, shall not be required to retain Notice Holdback with regard to that written Notice of Lien or Lien Notice or other notice of a Lien Claim, provided that such Holdback funds have been paid to the Monitor.

14. **THIS COURT ORDERS** that the Monitor shall provide, upon receipt of any Holdback funds, a report (the "Holdback Report") to (a) the persons who have filed a Lien Notice or who have been deemed to have provided a Lien Notice in respect of the Comstock

Project to which the Holdback fund applies, (b) Comstock; (c) the DIP Lender; (d) any payer of any level above an Asserting Lien Claimant, and (e) all other persons having an interest in the Holdback funds as to the recommendation of the Monitor regarding entitlement to those funds, and unless the Monitor reaches a consensual agreement with all persons identified in (a) through (d) above regarding the entitlement to the Holdback funds, the Monitor shall seek a determination by this Court or by the Claims Officer if appointed by this Court on notice to the persons to whom the Holdback Report was provided regarding the distribution of the Holdback funds.

15. **THIS COURT ORDERS AND DECLARES** that, upon the issuance of this Order, any payer of any level above the level of Comstock to any Comstock Project, may, without jeopardy, make payments in accordance with this Order, on any contract or subcontract with respect to such Comstock Project, subject to any other term of this Order.

16. **THIS COURT ORDERS** that any general contractor, owner, and/or ^epayor of any level above the level of Comstock in connection with a Comstock Project shall have no liability whatsoever, whether pursuant to any applicable Provincial Lien Legislation, any other law, equity, or otherwise, save and except for any gross negligence or wilful misconduct on its part, to any Person (including any subcontractor of any level to Comstock, any other supplier of any level to Comstock, or creditor of Comstock) in connection with amounts provided on or after the Filing Date by any general contractor, or owner, and/or ^epayor of any level above the level of Comstock (i) to Comstock, (ii) to any subcontractor of any level to Comstock, (iii) to any supplier of any level to Comstock, and/or (iv) to any creditor of Comstock, during the CCAA proceedings of Comstock in accordance with any contract or pursuant to this Order or any prior Court Order issued in these CCAA proceedings, including without limiting the generality of the foregoing, (i) as a result of the operation of paragraphs 12(c) and 13 of the Amended & Restated Initial Order, (ii) as a result of any Person not being paid their full contract price with respect to any contract; or (iii) as a result of any Person having a secured, unsecured, or trust claim against Comstock.

17. **THIS COURT ORDERS** that the Monitor shall forthwith serve a copy of this Order on any person known to the Monitor who is or may be in possession of a Holdback fund.

18. **THIS COURT ORDERS** that upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge and the DIP Lender thereafter exercising any of its rights and remedies against any of the Applicants pursuant thereto, the repayment of any amount then owing to the DIP Lender, pursuant to the Definitive Documents, shall not be made other than pursuant to a further Order of this Court made on notice to the Service List, which order shall, determine the appropriate source and allocation of the funds against the property of Comstock and the applicable Comstock Project to be used to effect such repayment. For greater certainty, in the event of a default under the Definitive Documents or the DIP Lender's Charge, no lien or trust claimant shall be paid any amount before the amount secured by the DIP Lender's Charge is fully repaid, and BMO shall not be required to wait for realizations from a different source before being repaid.

19. **THIS COURT ORDERS** that, notwithstanding this Order, nothing herein shall have any effect on the Cost Reimbursement Agreement made as of July 9, 2011, between Comstock and Rio Tinto Alcan Inc., or the St. Joseph's Hamilton Healthcare Settlement Agreement dated July 25, 2013 (the "**St. Joes' Settlement**") and the Order of this Court dated July 26, 2013 approving the St. Joe's Settlement.

20. **THIS COURT ORDERS** that, for greater certainty, and subject to paragraph 16 of this Order, nothing in this Order or the Amended and Restated Initial Order shall affect the rights of any person under Provincial Lien Legislation with respect to any trust rights created by such legislation nor any rights with respect to any labour and material payment bonds or performance bonds, posted in favour of any person named in such bonds, nor with respect to any non-lien claims for damages or delay except that any such claims against the Applicants and/or their directors and officers shall require consent of the Monitor or leave of this Court to be commenced or continued.

21. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in respect of the discharge of its powers and duties hereunder.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Comstock, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to Comstock and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order.

23. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



AUG 07 2013

Schedule "A"

Provincial Lien Legislation

1. *Construction Lien Act*, R.S.O., 1990, c. C.30.
2. *Builders' Liens Act*, C.C.S.M., c. B-91.
3. *Builders' Lien Act*, R.S.A. 2000, c B-7.
4. *Builders Lien Act*, S.B.C. 1997, c 45.

Schedule "B"
[Form of Notice to Monitor]

Name of the Lien Claimant:

Address for Service:

Name of Owner:

Address:

Name of person to whom lien claimant supplied services or materials:.....

Address:

Time within which services or material were supplied:
from.....to.....
(date supply commenced) (date of most recent supply)

Short description of services or materials that have been supplied:

.....
Contract price or subcontract price: \$.....
Amount claimed as owing in respect of services or materials that been supplied: \$.....

(Use A where the lien attaches to the premises; use B where the lien does not attach to the premises).

- A. The lien claimant (if claimant is personal representative or assignee this must be stated) claims a lien against the interest of every person identified above as an owner of the premises described in Schedule A to this claim for lien.
- B. The lien claimant (if claimant is personal representative or assignee this must be stated) claims a charge against the holdbacks required to be retained under either the (i) *Construction Lien Act*, R.S.O., 1990, c. C.30, (ii) *Builders' Liens Act*, C.C.S.M., c. B-91, (iii) *Builders' Lien Act*, R.S.A. 2000, c B-7, or (iv) *Builders Lien Act*, S.B.C. 1997, c 45, and any additional amount owed by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or materials that have been supplied by the lien claimant in relation to the premises at:

.....
(address or other identification of the location of the premises)

Date: Per:
(signature of claimant or agent)
I have authority to bind the Corporation

SCHEDULE A TO NOTICE TO MONITOR

To the claim for lien of
.....

Description of premises:

(Where the lien attaches to the premises, provide a description of the premises sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be).

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMSTOCK CANADA LTD., CCL
EQUITIES INC., AND CCL REALTY INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER
(Lien Regularization)

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Lawyers for the Applicants, Comstock Canada
Ltd., CCL Realty Inc., and CCL Equities Inc.

August 7, 2013.

On ~~the~~ consent. The parties,
after completely long and difficult
negotiations have agreed
on a form of consent order
- The Inter Regulatory Order.
This ^{form of} consent order is acceptable
to the court and is granted.
It is specifically noted that
the provisions of the Inter
Regulatory Order shall not
apply to, or affect the respective
rights and workable
obligations of 339 1205 Canada Inc.,
conducting business as German
Frere ("German Frere") and

Potash Company of ~~Canada~~ Saskatchewan
Inc ("PCS") with respect
to the Picadilly Mine
Project ~~mentioned~~ referred to
in the lien action commenced
by Germain & Freese against
PCS and Comstock
Canada Ltd in the NBQB
as Cause # S/C /583/10,
the "Germain Freese Action."

AG Freese

July 19/13

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
COMSTOCK CANADA LTD., CCL EQUITIES
INC., AND COMSTOCK REALTY INC.

Applicants

MOTION RECORD

3

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Lawyers for Cofely Adelt Ltd., Rexel Canada
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Trade, Class 1 Incorporated, Emco Corporation and
NCS International Co.

July 19 2013,

Referred to July 25, 2013



Without objection by any party present,
The relief sought in Paragraph
of the Notice of Motion ~~has~~
been withdrawn, with prejudice


JUL 19 2013

