



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00722252-00CL

DATE: July 24, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: Nevada Copper Inc. et al

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] Nevada Copper, Inc. is the foreign representative with respect to the Chapter 11 proceedings of itself and its affiliates (the “Foreign Representative”). On June 21, 2024, Justice Penny recognized the Chapter 11 proceedings of these Debtors as a foreign main proceeding under Part IV of the *CCAA*. On the same day, Justice Penny also recognized a series of interim and final first day orders in the Chapter 11 proceedings, including an interim order for DIP financing.
- [2] On this motion, the Foreign Representative seeks two forms of relief.
- [3] First, the Foreign Representative seeks recognition of four final orders that correspond to the interim orders that Justice Penny recognized on June 21. These final orders relate to the Debtors’ DIP financing, insurance, prepetition wages and cash management. Each of these final orders was entered by the U.S. Bankruptcy Court on July 15, following a merits hearing on July 12.
- [4] Second, the Foreign Representative seeks recognition of the Bidding Procedures Order, which the U.S. Bankruptcy Court entered on July 22, 2024. The Bidding Procedures Order authorized a sales process which, the Debtors believe, will result in a transaction that will allow their business to continue as a going concern and maximize the potential value of their assets for the benefit of their creditors and other stakeholders. The U.S. Bankruptcy Court has determined that the procedures set out in the Bidding Procedures Order are fair, reasonable, and appropriate and reasonably designed to promote a competitive and robust bidding process.
- [5] The background facts for this motion are set out in the factum of the Foreign Representative.
- [6] The issue on this motion is whether the Court should recognize the Final Orders and the Bidding Procedures Order under section 49 of the *CCAA*. Section 49 of the *CCAA* provides that this Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of the debtor company’s property or that the order is in the interests of creditors. Section 50 of the *CCAA* further provides that an order made under Part IV of the *CCAA*, including pursuant to section 49, may be made on any terms and conditions that the court considers appropriate in the circumstances.
- [7] When a Canadian court considers whether it should recognize a foreign order, it should consider, among other things, (i) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (ii) the need to accord respect to foreign bankruptcy and insolvency legislation unless it diverges radically from the process in Canada; (iii) whether stakeholders will be treated equitably regardless of the jurisdiction in which they reside; and (iv) the importance of allowing enterprises to reorganize globally, including allowing one jurisdiction to lead the principal administration of the enterprise’s reorganization.
- [8] I am satisfied that the Final Order, consisting of the Final DIP Order, the Final Cash Management Order, the Final Prepetition Wages Order, and the Final Insurance Order should be recognized.

Justice Penny recognized interim versions of these final orders. When he did so, Justice Penny emphasize that recognition of those interim orders accorded with comity and helped ensure that stakeholders in Canada and the U.S. are treated fairly and equally. Justice Penny held that the interim orders represented in substance the kinds of relief that are frequently granted in *CCAA* proceedings in Canada and that nothing in those interim orders was contrary to public policy in Canada. I agree with these holdings, which apply on the motion before me.

- [9] The Information Officer notes in its First Report that it believes that this Court's recognition of the Final Orders is reasonable and appropriate in the circumstances. The Information Officer notes that the Final Orders are, for the most part, common in Chapter 11 proceedings and are substantially consistent with the interim orders previously recognized by this Court.
- [10] The Foreign Representative also seeks recognition of the Bidding Procedures Order. The Bidding Procedures Order is a central pillar of the Debtors' restructuring. The sale process authorized by the Bidding Procedures Orders is intended to result in a transaction that will both allow the business to continue as a going concern and maximize the potential value of the assets of the benefit of creditors and other stakeholders. After a hearing on the merits, the Bankruptcy Court determined that the bidding procedures authorized by the Bidding Procedures Order are fair, reasonable and appropriate and reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtors' business resulting in the highest or otherwise best offer.
- [11] The Foreign Representative intends to return before this Court to seek, among other potential relief, Canadian recognition of the Bankruptcy Court's order approving a sale that materializes from the bidding procedures.
- [12] I am satisfied that recognition of the Bidding Procedures Order is necessary to ensure that the *CCAA*'s purposes are achieved and that the Debtors have the best opportunity to restructure their affairs.
- [13] Order to issue in form of Order signed by me today.