



No. S-227894
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
GREAT PANTHER MINING LIMITED

PETITIONER

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the Monitor (in such capacity, the “**Monitor**”) of Great Panther Mining Limited (“**GPML**”, or the “**Petitioner**”).

To: The Service List, a copy of which is attached hereto as Schedule “A”.

TAKE NOTICE that an application will be made by the Monitor to the Honourable Justice Walker at the courthouse at 800 Smithe Street, Vancouver, B.C., on Thursday, November 3, 2022 at 10:00 a.m. for the orders set out in Part 1, below.

PART 1: ORDERS SOUGHT

1. The Monitor seeks an order in substantially the form of draft order attached hereto as Schedule “B” (the “**Sealing Order**”) that the Confidential Supplement to the Third Report of the Monitor dated November 2, 2022 (the “**First Confidential Report**”) be filed under seal.

PART 2: FACTUAL BASIS

A. Overview

1. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Third Report of the Monitor dated November 2, 2022 (the “**Third Monitor’s Report**”) to be filed in these proceedings.
2. The Monitor seeks an order that the First Confidential Report be filed under seal. The First Confidential Report contains: (a) details of the Sales Advisor Compensation, which is information that is required to be kept confidential under the provisions of the Sales Advisor Agreement; and (b) a summary of the key terms of the marketing proposals put forward by the Other Banks. The foregoing is commercially sensitive information the disclosure of which is likely to cause significant prejudice to RBC and the Other Banks.
3. Accordingly, the Sealing Order is required to prevent this prejudice and is the proportionate remedy to achieve this purpose.

B. Background

4. On September 6, 2022, GPML filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”). A&M consented to act as proposal trustee on behalf of GPML in these NOI proceedings (the “**NOI Proceedings**”).
5. On October 4, 2022, this Court granted an initial order (the “**Initial Order**”) in these proceedings pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”). Among other things, the Initial Order provided: (a) that A&M was appointed Monitor of GPML; and (b) for a stay of proceedings in favour of GPML (the “**Stay of Proceedings**”) until October 14, 2022.
6. On October 14, 26, and 27, 2022, this Court granted an amended and restated initial order (the “**ARIO**”), and a series of amendments thereto, which, among other things, provided that: (a) the Stay of Proceedings was extended to November 3, 2022; and (b) on that same

date, GPML was granted short leave to bring an application for approval of a sales and investment solicitation process.

7. On November 2, 2022, GPML filed a Notice of Application returnable November 3, 2022 (the “**November 2 Application**”) seeking, among other orders:

(a) an order (the “**Stay Extension Order**”):

(i) approving, as it relates to GPML, a sales and investment solicitation process (the “**SISP**”) in respect of: (i) the GPML Property (as defined therein); and (ii) the present and after-acquired assets, undertakings, and properties of Mina Tucano Ltda, Beadell (Brazil) Pty Ltd., and Beadell (Brazil 2) Pty Ltd. (collectively, the “**Tucano Parties**”, and collectively with GPML, the “**Group**”); and

(ii) approving the engagement letter between, among others, GPML and RBC Dominion Securities Inc. (“**RBC**”) dated October 5, 2022 (the “**Sales Advisor Agreement**”), in respect of the engagement of RBC as the sales advisor for the SISP (in such capacity, the “**Sales Advisor**”), and including payment by GPML of its portion of certain fees and expenses (collectively, the “**Sales Advisor Compensation**”) to be secured by:

(A) a charge on the Property (as defined in the ARIO) as security for the payment by GPML of the Work Fees (as defined in the Sales Advisor Agreement) to the Sales Advisor up to the maximum amount of \$75,000 (the “**Work Fee Charge**”); and

(B) a charge on all proceeds from a Transaction (as defined in the Sales Advisor Agreement) payable to GPML, including, for certainty and without limiting the generality of the foregoing, in respect of any intercompany indebtedness owing to GPML that is repaid in connection with such Transaction, as security for the payment by GPML to the Sales Advisor of all Sales Advisor Compensation (the

“Proceeds Charge”, and together with the Work Fee Charge, the **“Sales Advisor Charges”**); and

- (b) an order (the **“GPML Sealing Order”**) sealing the Affidavit #8 of Sandra Daycock sworn November 2, 2022 (the **“Confidential Affidavit”**) and all exhibits thereto pending further order of this Court.
- 8. The Confidential Affidavit contains, among other things: (a) a complete, unredacted copy of the Sales Advisor Agreement attached as an exhibit; and (b) a detailed breakdown of the Sales Advisor Compensation.
- 9. An copy of the Sales Advisor Agreement with the details of the Sales Advisor Compensation redacted is attached to the Affidavit #7 of Sandra Daycock sworn November 2, 2022, as Exhibit “A”. Among other things, the Sales Advisor Agreement provides that it be kept confidential.

C. The First Confidential Supplement

- 10. As noted in the First Monitor’s Report of the Monitor dated October 13, 2022, at the outset of these CCAA Proceedings, GPML and the Monitor undertook discussions with a number of investment banks regarding an engagement to assist with a sales and investment solicitation process and received marketing proposals from three banks, including RBC.
- 11. Like the Confidential Affidavit, the First Confidential Supplement also contains a detailed breakdown of the Sales Advisor Compensation, and further contains a summary of the key terms of the marketing proposals (including proposed fee and compensation structures) put forward by the two other investment banks (together, the **“Other Banks”**) that were ultimately not selected to act as Sales Advisor in respect of the SISP.

PART 3: LEGAL BASIS

- 1. The Monitor relies on the CCAA, the *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court.

2. This Court has the authority to order that certain materials filed with the court be sealed in the court file. In *Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”), the Supreme Court of Canada “recast” the long-standing test set forth in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, to help clarify its “core prerequisites” “without altering its essence”. As clarified, the Court held that the presumptive openness of court proceedings may be appropriately limited by the grant of a sealing order where the applicant establishes that:
 - (a) court openness (i.e. not sealing the documents in question) poses a serious risk to an important public interest;
 - (b) the sealing order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and
 - (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.¹
3. *Sherman Estates* has been followed by Canadian insolvency courts, including in cases where sealing orders were granted to keep confidential commercially sensitive information.²
4. The need to keep the First Confidential Supplement confidential fits squarely within the test described in *Sherman Estate*. The First Confidential Supplement contains details of the Sales Advisor Compensation, which is information that is required to be kept confidential under the provisions of the Sales Advisor Agreement, as well as details of fee structures proposed by the Other Banks. This information is commercially sensitive and not generally available to the public or to RBC’s and the Other Banks’ competitors. Accordingly, disclosure of the Confidential Supplement would pose a serious risk of significant prejudice to RBC and the Other Banks. There is a public interest in preventing such prejudice. The Sealing Order is necessary to prevent this risk in the absence of reasonable

¹ *Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”), paras. 37-38, and 43.

² *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347, paras. 23-24, 26-27; see also: *Just Energy Group Inc. et al.*, 2021 ONSC 7630.

alternative measures. Accordingly, the benefits of the Sealing Order outweigh its negative effects, including any limitation to the presumptive openness of these CCAA proceedings.

5. For the foregoing reasons, the Monitor submits that the Sealing Order is appropriate and should be granted. The Monitor has complied with the procedure for obtaining a sealing order set out in the Supreme Court of British Columbia Practice Direction 58, “Sealing Orders in Civil and Family Proceedings” (effective February 10, 2020).

PART 4: MATERIAL TO BE RELIED ON

1. Third Report of the Monitor, dated November 2, 2022;
2. Affidavit #7 of Sandra Daycock sworn November 2, 2022;
3. Confidential Affidavit #8 of Sandra Daycock sworn November 2, 2022;
4. First Report of the Monitor dated October 13, 2022; and
5. such further and other materials as counsel may advise and this Honourable Court may allow.

The Applicant estimate that the application will take **5 minutes**.

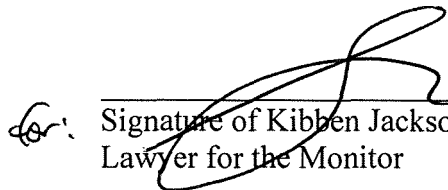
This matter is not within the jurisdiction of a master. The Honourable Mr. Justice Walker is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and

- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
- (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 03-Nov-2022


for: Signature of Kibben Jackson
Lawyer for the Monitor

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

Date:

.....
Signature of ☐ Judge ☐ Master

The Solicitors for the Monitor are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/285937.00013)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- X OTHER

SCHEDULE “A”

Service List

NO. S227894
VANCOUVER REGISTRY

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PETITIONER

SERVICE LIST

As at November 3, 2022

Party	Counsel
Great Panther Mining Limited 1330 - 200 Granville Street Vancouver, BC V6C 1S4	McCarthy Tétrault LLP Barristers & Solicitors Suite 2400, 745 Thurlow Street Vancouver, BC V6E 0C5 Lance Williams lwilliams@mccarthy.ca Nathan Stewart nstewart@mccarthy.ca Forrest Finn ffinn@mccarthy.ca Sue Danielisz sdanielisz@mccarthy.ca

Party	Counsel
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<p>Directors of Great Panther Mining Limited</p>	<p>Torys LLP 79 Wellington Street West 30th Floor (deliveries)/ 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2</p> <p>David Bish dbish@torys.com</p>
<p>Asahi Refining Canada Ltd. 130 Glidden Road Brampton, ON L6W 3M8</p>	<p>Aird & Berlis LLP Suite 1800 – 181 Bay Street Toronto, ON M5J 2T9</p> <p>Kyle Plunkett kplunkett@airdberlis.com</p> <p>MLT Aikins LLP Suite 2600 – 1066 West Hastings Street Vancouver, BC V6E 3X1</p> <p>William E. J. Skelly wskelly@mltaikins.com</p>

Party	Counsel
His Majesty the King in Right of Canada	Department of Justice Canada British Columbia Regional Office 900 - 840 Howe Street Vancouver, BC V6Z 2S9 Aminollah Sabzevari Aminollah.Sabzevari@justice.gc.ca Julio Paoletti Julio.Paoletti@justice.gc.ca Khanh Gonzalez Khanh.Gonzalez@justice.gc.ca

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SCHEDULE "B"

Draft Sealing Order

IN THE SUPREME COURT OF BRITISH COLUMBIA

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PETITIONER

SEALING ORDER

BEFORE)	THE HONOURABLE)	
)	JUSTICE WALKER)	November 3, 2022
))	

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the Monitor (in such capacity, the “**Monitor**”) of the Petitioner, Great Panther Mining Limited, coming on for hearing at Vancouver, British Columbia on November 3, 2022, and on hearing Kibben Jackson and Glen Nesbitt, counsel for the Monitor, and those counsel listed in Schedule “A” attached hereto; AND UPON READING the material filed, including the Third Report of the Monitor dated November 2, 2022, and the Confidential Supplement to the Third Report of the Monitor dated November 2, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

1. Access to Sealed Items permitted by:

[**X**] Counsel for the Petitioner and
counsel for the Monitor

Items to be sealed

Document Name	Date filed <i>(Date on Court Stamp)</i>	Number of copies filed, including any extra copies for the judge	Duration of sealing order: <i>(to specific date or until further order)</i>	Sought:	Granted	
					Yes	No
<u>(2) Specific Document</u> Confidential Supplement to the Third Report of the Monitor dated November 2, 2022	To be filed	One copy, to be sealed.	Until further Order of this Court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>(3) Clerk's Notes</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>(4) Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kibben Jackson
Lawyer for the Monitor

BY THE COURT

REGISTRAR

SCHEDULE “A”

Counsel Appearing

Counsel	Party Represented
H. Lance Williams/ Forrest Finn	Great Panther Mining Limited
William Skelly	Asahi Refining Canada Ltd.
David Bish	Directors of Great Panther Mining Limited

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**ORDER MADE AFTER APPLICATION
(SEALING ORDER)**

FASKEN MARTINEAU DuMOULIN LLP

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Counsel: Kibben Jackson
Matter No: 286051.00072

