

Endorsement

March 25, 2022

Dear counsel,

I have reviewed this matter again having regard to Mr. Choi's objection to agreeing to a timetable for costs submissions.

Bryton sought the relief claimed in its Amended Notice of Application. I set out this relief in my endorsement dated March 2, 2022. In its factum for this application, Bryton identified the issues to be determined as (i) whether a vesting order should be granted, (ii) whether the creditors' application to challenge the validity of the Option is barred by the December 3 order and the principles of *res judicata*, and (iii) whether the creditors have *bona fide* claims under ss. 95 and 96 of the BIA, given the judicial determinations already made in the Option Motion. In its factum, Bryton sought a vesting order and the declaratory orders requested in the Amended Notice of application.

In my endorsement, I addressed these issues and dismissed Bryton's application.

Bryton has now advised that my decision does not address whether the DIP Charge facility became terminated pursuant to its terms. Bryton's submissions in relation to the DIP charge were made as part of Bryton's submission that a vesting order should be made by which encumbrances, including the third mortgage, the CPL, and the DIP charge, should be discharged. Bryton submitted at the hearing that it would pay \$200,000 into court if a vesting order were made, pending determination of whether the DIP charge is valid. Cardinal opposed the granting of a vesting order that would vest out the DIP charge. The claim for a vesting order was dismissed, so it was not necessary to decide whether the DIP charge should be discharged.

There was no separate claim in the Amended Notice of Application for an order discharging the DIP charge if the claim for a vesting order were to be dismissed, and Bryton did not seek this relief in its factum.

If Bryton wishes to seek an order discharging the DIP charge as relief that is separate from its claim for a vesting order, it is entitled to do so.

If an appointment is needed to settle the timetable for costs submissions, I will make myself available next week in the afternoon at 2:00 on Tuesday or

Wednesday. Please make arrangements, if needed, through the Commercial List Office.

Justice Cavanagh