

Filed by consent and pursuant to the order of the Registrar dated September 16, 2010.
Original Statement of Claim filed October 27, 2008.



No. S-084670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TNR GOLD CORP. and SOLITARIO ARGENTINA S.A.

PLAINTIFFS

AND:

**MIM ARGENTINA EXPLORACIONES S.A., MINERA ANDES INC.,
MINERA ANDES S.A., LOS AZULES MINING INC.,
and ANDES CORPORACION MINERA S.A.**

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, TNR Gold Corp. ("TNR"), is a British Columbia company with offices at Suite 620, 650 West Georgia Street, Vancouver, British Columbia. It is a junior mining company engaged in identifying, exploring and developing mineral properties in North and South America, on its own and through subsidiary and affiliated companies.
2. The Plaintiff, Solitario Argentina S.A. ("Solitario"), is a corporate body established under the laws of Argentina with offices in San Juan, Argentina. It is a wholly-owned subsidiary of TNR engaged in the identification, exploration and development of mineral properties in Argentina.
3. The Defendant, MIM Argentina Exploraciones S.A. ("MIM"), is a corporate body established under the laws of Argentina with offices at Emilio Civil 375 (5500), Mendoza, Argentina. MIM is a member of the Xstrata Group of Companies led by Xstrata plc ("Xstrata"), with headquarters in Zug, Switzerland. Xstrata is a mining company which operates worldwide.
4. The Defendant, Minera Andes Inc. ("MAI"), is a company incorporated pursuant to the laws of Alberta and is extra-provincially registered in British Columbia with a head office located at 111 Magnesium Road, Suite A, Spokane WA, 99208, United States.

MAI is a mining exploration company, its shares trade on the TSX and it is a reporting issuer in most Canadian jurisdictions, including British Columbia.

5. The Defendant Minera Andes S. A. (“MASA”), is a company incorporated pursuant to the laws of Argentina with an office located at Peru 930, 2 Piso, Mendoza, CP M5500FAQ in Argentina. MASA is a wholly owned subsidiary of MAI.
6. The Defendant, Los Azules Mining Inc. (“LAMI”), is a company incorporated pursuant to the laws of the Cayman Islands with an office for service in this action at 1600-925 West Georgia Street, Vancouver British Columbia, V6C 3L2. LAMI is a wholly owned subsidiary of MAI .
7. The Defendant, Andes Corporacion Minera S.A. (“Andes”), is a company incorporated pursuant to the laws of Argentina with an office for service in this action at 1600-925 West Georgia Street, Vancouver British Columbia, V6C 3L2. Andes is a wholly owned subsidiary of MAI.

The Insertion of the 36-Month Restriction

8. Solitario acquired mining and exploration rights in an area known as Los Azules, in the Province of San Juan, in Argentina more particularly described as: Escorpio I (File 153-F18-96), Escorpio II (File 154-F18-96), Escorpio III (File 155-F28-96), Totorá I (File 0483-C-99), Totorá II (File 0496-C-99) and Cateo Valle Hermosa (File 545054/P/94, until the Cateo expired). These rights are referenced herein as the “Property”.
9. Solitario and MIM agreed to terms and conditions regarding the Property in a Letter of Understanding dated May 15, 2003.
10. In the Letter of Understanding, Solitario sold an option to MIM to acquire all of the Property and explore the Property, and retained a “back-in” right, which is a right to re-acquire an interest in the Property in specified circumstances. Solitario’s back-in right is correctly described in clause 10 of the Letter of Understanding as follows:
 10. Back-in Right: SA will have the right to buy back equity up to the level of 25% of the Property at any time within 120

days of the completion of a feasibility study on any part of the Property, on the following basis:

- a) By paying MIM two (2) times the corresponding percentage proportion of MIM's actual expenditures (e.g. should MA [*sic* SA] seek to purchase back to 25% from 0% equity it would pay MIM 2 times 25% of MIM's actual expenditure).
 - b) Actual expenditures will refer only to work carried out within SA properties and any equity purchased will only be equity in SA properties.
 - c) MIM's expenditures will be calculated up to the time SA indicates unequivocally that it will exercise this Back-in Right.
11. In clause 15 of the Letter of Understanding, MIM committed to preparing a full draft agreement within 90 days of the Letter of Understanding being accepted. In fact, Solitario and MIM operated under the Letter of Understanding for approximately a year, and the full agreement was not signed until approximately May 15, 2004 (the "MIM-Solitario Option Agreement").
12. Notwithstanding the agreement as to Solitario's back-in right, as correctly recorded in clause 10 of the Letter of Understanding, MIM unilaterally changed the back-in provision in the final draft of the MIM-Solitario Option Agreement. MIM inserted the words "If, within 36 months of exercising the Option..." at the beginning of the back-in clause (the "36-month restriction") so that the re-drawn back-in provision read as follows, in the MIM-Solitario Option Agreement as signed:

7. BACK-IN RIGHT

- 7.1 If, within 36 months of exercising the Option, Xstrata* completes a feasibility study on any part of the Property, Xstrata* must notify Solitario, and Solitario will have the right to elect to "buy back" up to a maximum 25% equity in the Property at any time within 120 days of receiving the said notification (the "Back-in Right") by giving written notice to Xstrata* of the exercise of the Back-in Right.

(emphasis added)

*"Xstrata" is synonymous with MIM for the purposes of this notice of civil claim.

13. MIM prepared the final draft of the MIM-Solitario Option Agreement, introducing the 36-month restriction, on or about April 21, 2004, nearly a year after the Letter of Understanding and shortly before the MIM-Solitario Option Agreement was signed, in May, 2004. The final draft contained numerous other amendments as well, none of which were substantial. In all other respects, the drafts leading to the MIM-Solitario Option Agreement reflected what the parties had agreed to, as recorded in the Letter of Understanding.
14. Solitario and MIM never discussed the 36-month restriction which MIM inserted unilaterally, and MIM did not notify Solitario, orally or in writing, that it was inserting the 36-month restriction. In the result, Solitario missed noticing the change created by the 36-month restriction before it signed the full agreement.
15. The 36-month restriction would effectively destroy the commercial purpose of the back-in provision. It would mean that so long as MIM chose not to complete a feasibility study within 36 months of exercising the option, Solitario would lose all back-in rights, unless it was able to waive the completion of a feasibility study within the 36 month period and exercise the back-in right.
16. Solitario first noticed the 36-month restriction in 2008, at which time it amended the writ in this action to plead rectification.

Rectification

17. Solitario asks this Court to rectify the MIM-Solitario Option Agreement, to make it accord with the agreement on back-in rights reached between Solitario and MIM, as evidenced in clause 10 of the Letter of Understanding (see para. 10 above).
18. Alternatively, Solitario asks this Court to rectify the MIM-Solitario Option Agreement because of Solitario's unilateral mistake in believing that the 36-month restriction formed no part of the agreement and when the 36-month restriction was:
 - (a) contrary to the agreement between Solitario and MIM, as correctly recorded in the Letter of Understanding;
 - (b) included in the agreement only because Solitario did not notice its insertion;
 - (c) not expressly brought to the attention of Solitario; and
 - (d) not commercially reasonable.

Unenforceability for Want of Consideration

19. If rectification is not granted, the 36-month restriction is unenforceable in any event for want of consideration.

Breach of Implied Term

20. Alternatively, if the 36-month restriction is enforceable, which is denied, it was an implied term of the MIM-Solitario Option Agreement that MIM would exercise its best efforts to complete a feasibility study within 36 months of exercising its option. MIM made no such efforts.
21. In 2005, MIM and MASA began discussing a plan whereby MASA would take over the exploration efforts on the Property and MIM would retain a contractual right to back-in to the project.

22. In April 2006, MASA, having reviewed the MIM – Solitario Option Agreement, decided together with MIM, that rather than comply with the implied obligation to complete a feasibility study within 36 months, they would attempt to extinguish Solitario’s interest in the Property. The plan which MASA and MIM developed was based on the 36 month restriction which MIM had inserted into the MIM – Solitario Option Agreement, such that MIM would quickly exercise its option to commence the tolling of the 36 month period, yet neither MIM nor MASA would complete a feasibility study within that period. In this way, MASA and MIM hoped to prevent Solitario from being able to back-in to the project, and hoped to thereby extinguish Solitario’s interest in the Property.
23. To that end, MIM exercised its option under the MIM – Solitario Option Agreement on April 23, 2007. That meant that if the 36 month restriction applied, Solitario’s back-in right had to be exercised by close of business on April 23, 2010.
24. On November 2, 2007, MIM entered into an agreement with MASA (the MIM-MASA Option Agreement”) whereby MIM transferred its interest in the Property to MASA, while retaining a right to back-in to 51% of the development of the project, and alternatively a right of first refusal over any future disposition by MASA of the Property. Solitario, ignorant of the plan that MIM and MASA had developed to extinguish Solitario’s interest in the Property, consented to MIM entering into an agreement with MASA, although it was not advised of the specific terms thereof.
25. On May 29, 2009, MASA’s assignees, LAMI and Andes, delivered an earn in notice to MIM in accordance with the MIM-MASA Option Agreement such that MIM transferred the Properties to Andes, subject to Solitario’s underlying interest. In accordance with the MIM-MASA Option Agreement, on October 29, 2009, LAMI exercised its option and acquired MIM’s interest in the Property.
26. In taking 100% of MIM’s interest in the Property, MASA, LAMI and Andes, or any of them, assumed the implied obligation of MIM to complete a feasibility study within 36 months of MIM’s exercise of the option on April 23, 2007, but failed to complete the same.

Escorpio IV

27. Additionally, Solitario claims here as follows with respect to a property interest known as "Escorpio IV".
28. The Letter of Understanding described the property optioned by Solitario to MIM as:

Manifestaciones: Escorpio I (Expte. 153-F18-96), E[s]corpio II (Expte. 154-F18-96), Escorpio III (Expte. 155-F28-96), Totorá I (Expte. 0483-C-99), and Totorá II (Expte. 0496-C-99) and Cateo: 545054/P/94.
27. As a matter of Argentinian law, a Cateo provides preliminary exploration rights over relatively large areas of mineral property and requires the payment of modest government fees. Once preliminary exploration work has been performed the owner of a Cateo must reduce the scope of the property it wishes to explore further. The exploration rights over the reduced property are described as a Manifestacione. Manifestaciones require payment of larger government fees.
28. The rights granted by Cateo 545054-P-94 expired in June 2003, a fact which was known to MIM at the time. In June 2003, pursuant to an agreement complimentary to the Letter of Understanding (the "Complimentary Agreement"), Solitario and MIM jointly filed Manifestacione 435213-C-2003 with respect to a portion of the former Cateo 545054-P-94 property. The Manifestacione was referred as "Escorpio IV".
29. The Complimentary Agreement provided that if MIM abandoned its rights with respect to Escorpio IV, the property would become the property of Solitario alone.
30. By written instrument in October 2003 MIM assigned its joint interest in Escorpio IV to Solitario and thereby abandoned any interest in that property.
31. After abandoning its interest in Escorpio IV, MIM continued work on the Property subject to the Letter of Understanding. Escorpio IV is not a part of the Property. Solitario and TNR alone have made all payments and have taken all steps necessary to keep Escorpio IV in good standing.

32. The schedule of optioned properties referred to in the MIM – Solitario Option Agreement listed the same properties referred to in the Letter of Understanding. The schedule did not include Escorpio IV, MIM having abandoned its interest in that property in October 2003.
33. The MIM – Solitario Option Agreement did not provide MIM an option to acquire Escorpio IV.
34. On or about April 23, 2007, MIM exercised the option referred to in the MIM – Solitario Option Agreement.
35. Despite the express terms of the MIM – Solitario Option Agreement and contrary to the abandonment of its interest in Escorpio IV, MIM has wrongfully taken the position that Escorpio IV was included in the MIM – Solitario Option Agreement and was acquired by MIM upon exercise of its option.
36. TNR and Solitario have rightfully asserted that Escorpio IV was not subject to the MIM – Solitario Option Agreement or to any other right in favour of MIM.
37. MIM has nonetheless made public statements asserting its position with respect to Escorpio IV and has threatened legal action against TNR and Solitario, and has and continues to unlawfully interfere with the economic interests of TNR and Solitario.
38. In accordance with the transactions detailed above, MIM has purported to transfer its alleged interest in Escorpio IV to MASA, which has assigned the same to Andes. MIM, MASA, and Andes have thereby caused, and are continuing to cause loss, damage and expense to TNR and Solitario.

Part 2: RELIEF SOUGHT

TNR and Solitario ask for:

- (a) rectification of the MIM – Solitario Option Agreement;
- (b) a declaration that such rectification is enforceable as against MAI, MASA, LAMI and Andes;
- (c) alternatively, a declaration that the 36-month restriction is unenforceable for want of consideration;
- (d) in the further alternative, damages for breach of the implied term that the Defendants would exercise best-efforts to complete a feasibility study within 36 months of MIM exercising its option;
- (e) a declaration that Escorpio IV was not included in the option granted to MIM;
- (f) a declaration that the Defendants have no right to any interest in Escorpio IV;
- (g) alternatively, damages in relation to the appropriation of Escorpio IV;
- (h) interest;
- (i) costs;
- (j) further relief which appears just to this Court.

Part 3: LEGAL BASIS

1. The Plaintiffs' claims are based in the common law of contract, including the law of rectification, implied terms, lack of consideration, assignment and abandonment of interest, as detailed above.

Plaintiffs' address for service:

Farris, Vaughan, Wills & Murphy LLP
Barristers & Solicitors
2500 - 700 West Georgia Street
Vancouver, British Columbia V7Y 1B3

Fax number address for service (if any): 604-661-9349

E-mail address for service (if any): shern@farris.com

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street,
Vancouver, BC V6Z 2E1

Dated: September 24, 2010

"George K. Macintosh"

Signature

Plaintiff

Lawyer for plaintiffs

George K. Macintosh, Q.C.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action involves a dispute arising out of a mining contract respecting a property located in Argentina.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: Nil.