

CITATION: Crystallex International Corporation (Re) 2019 ONSC 408
COURT FILE NO.: CV-11-9532-00CL
DATE: 2019/01/15

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR. JUSTICE)
)
GLENN A. HAINEY) TUESDAY, THE 15TH DAY OF
)
) JANUARY, 2019

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 CRYSTALLEX INTERNATIONAL CORPORATION

ENDORSEMENT

[1] This is a motion for an order approving an Amended and Restated Settlement Agreement dated September 10, 2018 between the Applicant and the Republic of Venezuela (the “Amended Settlement Agreement”) and sealing the motion materials marked “Confidential” as well as those redacted portions of the Monitor’s Twenty-Seventh Report.

[2] The evidence filed by the Applicant in support of this motion sets out facts which justify why the Amended Settlement Agreement and the subject matter and substance of the motion should remain confidential at this time. I note that the Monitor supports the Applicant's request for an order approving the Amended Settlement Agreement and sealing the relevant material.

[3] I hereby approve the Applicant's request for sealing, having found that the Applicant has satisfied the burden for sealing the materials under the test set forth in *Sierra Club*, including the subject matter of the motion, the Approval Order dated September 17, 2018, this endorsement and the redacted portions of the Monitor's Twenty-Seventh Report.

[4] I also hereby approve the Amended Settlement Agreement on the basis that the provisions and terms of the Amended Settlement Agreement are proper, fair and reasonable and are in the best interests of the Applicant and its stakeholders based on the material before me.

[5] Counsel for Computershare Trust Company of Canada in its capacity as Trustee for the holders of Senior Notes and an ad hoc committee of holders of the Senior Notes (the “Noteholder Committee and Trustee”) as well as an ad hoc committee of shareholders (the “Shareholder Committee”) requested an adjournment of this motion to permit it to obtain and consider further information concerning the Amended Settlement Agreement. In particular, Counsel for the Noteholder Committee and Trustee requested an order for disclosure of the unredacted Monitor’s

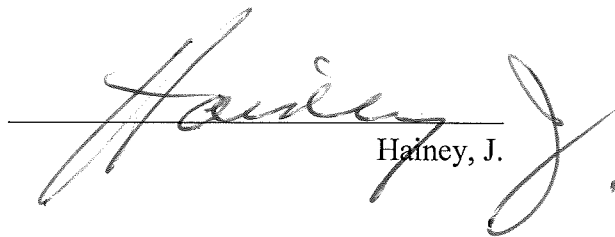
Report to stakeholders (most notably paragraphs 5, 10, 11 and 26) arguing that the confidentiality provision in the Amended Settlement Agreement permits disclosure as ordered by the Court, that CCAA proceedings are to be fair transparent and open to all stakeholders, that similar settlements involving Venezuela had been publically disclosed, and that the Applicant's request for sealing did not meet the test set forth in Sierra Club.

[6] I declined to grant the relief requested by the Noteholder Committee and the Trustee and the Shareholder Committee in view of the terms of the Amended Settlement Agreement, the urgency of this motion and the approval required. I also found that the Applicant had satisfied the Sierra Club test for sealing of the materials. Counsel to the Noteholder Committee and the Trustee as well as counsel to the Shareholder Committee have each signed a confidentiality agreement and have reviewed all of the unredacted materials pertaining to this motion. In the circumstances before me, it is reasonable that if stakeholders are not prepared to sign a confidentiality agreement (unless it is subject to a condition that all confidential information received will be made public by a date certain or the happening of specified events), they cannot receive confidential information about the Amended Settlement Agreement.

[7] Counsel for the Noteholder Committee and Trustee further requested that the matter be heard in open court. For the same reasons I declined to grant this request and ordered that the hearing be held in chambers.

[8] At the request of counsel for the Shareholder Committee, the Monitor will provide the Court and the parties to this proceeding with its views concerning the acceptability of the Acceptable Collateral (as defined in the Amended Settlement Agreement) from time to time.

[9] Without suggesting any existing non-compliance, all parties who have signed or will sign confidentiality agreements are reminded that the Court expects strict observance of the requirements of those agreements.


Hainey, J.

Date: January 15, 2019