



No. S-194929
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

0116064 B.C. LTD.

PLAINTIFF

AND:

ALIO GOLD INC.; MARK BACKENS; JOSE ALBERTO
VIZQUERRA BENAVIDES; GEORGE BRACK; BRYAN
COATES; STEPHEN LANG; GREGORY MCCUNN; PAULA
CHIZUKO ROGERS; LYNETTE GOULD; AND COLETTE
RUSTAD

DEFENDANTS

RESPONSE TO CIVIL CLAIM

FORM 2 (RULE 3-3(1))

FILED BY: Alio Gold Inc.; Mark Backens; Jose Alberto Vizquerra Benavides; George Brack;
Bryan Coates; Stephen Lang; Gregory McCunn; Paula Chizuko Rogers; Lynette
Gould; and Colette Rustad (the "defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The defendants deny each and every allegation of fact in the notice of civil claim except where hereinafter specifically admitted.
2. The facts alleged in paragraphs 4, 13-14, 26, 28, 30, 33, 37-38, 43, of Part 1 of the notice of civil claim are admitted.
3. The facts alleged in paragraphs 1-3, 5-11, 15 – 25, 27, 29, 31 – 32, 34-36, 39 – 42, 44-46 of Part 1 of the notice of civil claim are denied.
4. The facts alleged in paragraphs 12 of Part 1 of the notice of civil claim are outside the knowledge of the defendants.
5. The entire notice of civil claim, or in the alternative those portions of the notice of civil claim that rely on section 140.3 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "*Act*"), is a nullity. The plaintiff was required to obtain leave from the Court upon motion prior to commencing any action under section 140.3 of the *Act* pursuant to section 140.8 of the *Act*, and Rule 2-1 of the *Supreme Court Civil Rules* requires that any motion for leave to appeal be brought by way of petition and not notice of civil claim.

6. The plaintiff has not sought or obtained leave from the Court to commence this action.
7. Despite notice of the foregoing from the defendants, the plaintiff has refused to discontinue this action and has required that the defendants file a Response to Civil Claim. In these circumstances, the defendants seek special costs on a full indemnity basis pursuant to section 37(2) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

Division 2 – Defendants’ Version of Facts

Background

1. Alio Gold Inc. (“Alio”) is a gold mining company duly incorporated under the laws of British Columbia, and is a reporting issuer listed on the Toronto Stock Exchange and the NYSE American exchange.
2. Mark Backens (“Backens”) was a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio as defined by the *Act* because he was not a control person, did not act as a promoter, or an investment fund manager.
3. Jose Alberto Vizquerra (“Vizquerra”) was a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because he was not a control person, did not act as a promoter, or an investment fund manager.
4. George Brack (“Brack”) was a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because he was not a control person, did not act as a promoter, or an investment fund manager.
5. Bryan Coates (“Coates”) was a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because he was not a control person, did not act as a promoter, or an investment fund manager.
6. Stephen A. Lang (“Lang”) was a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because he was not a control person, did not act as a promoter, or an investment fund manager.
7. Greg McCunn (“McCunn”) was the Chief Executive Officer and a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because he was not a control person, did not act as a promoter, or an investment fund manager.
8. Paula Chizuko Rogers (“Rogers”) was a director of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because she was not a control person, did not act as a promoter, or an investment fund manager.
9. Lynette Gould (“Gould”) acted as Vice President, Investor Relations for Alio during the relevant period. Gould was not a director or registered officer of Alio during the relevant time period, nor was she an influential person of Alio because she was not a control person, did not act as a promoter, or an investment fund manager.

10. Colette Rustad (“Rustad”) acted as the Chief Financial Officer of Alio during the relevant time period, but during the relevant time period was not an influential person of Alio because she was not a control person, did not act as a promoter, or an investment fund manager. Rustad’s first name is misspelled in the notice of civil claim as Collette instead of Colette.

The Plan of Arrangement and Gold Production Estimates

11. By way of a news release dated March 19, 2018, Alio announced that it had entered into an agreement by which it would acquire, through a plan of arrangement, all the outstanding shares of Rye Patch Gold Corp. (“Rye Patch”). Rye Patch was a gold mining company incorporated in British Columbia, and a reporting issuer listed on the TSX Venture Exchange.
12. On or about May 25, 2018, Rye Patch was amalgamated into Alio Gold (US) Inc., a fully owned subsidiary of Alio.
13. In the March 19, 2018 news release, Alio made reference to certain forward-looking information, as that term is defined in the *Act*, including that it:
 - (a) anticipated that in 2018 Alio and Rye Patch would produce a combined 165,000 ounces of gold; and
 - (b) that the cash flow generated from the two producing mines owned by Alio and Rye Patch would be sufficient to support the development of the feasibility stage of the Ana Paula project owned by Alio, which once in production was anticipated to produce approximately 115,000 ounces of gold per year.
14. On April 11, 2018, Alio issued a news release to report on the production at its San Francisco mine in Sonora, Mexico in the company’s first quarter ended March 31, 2018. In the news release, Alio made reference to certain forward-looking information, including that it was maintaining its guidance of between 90,000 and 100,000 ounces of gold production in 2018 from the San Francisco mine.
15. On April 25, 2018, Alio issued an Information Circular (the “Information Circular”) which, *inter alia*, described the terms of the proposed plan of arrangement.
16. The gold production estimates and other forward-looking information described in the March 19, 2018 and April 11, 2018 news release and Information Circular were based on NI 43-101 technical reports by independent qualified persons previously disclosed by Alio and Rye Patch, and resource models and mine plans developed by independent qualified experts. The defendants reasonably relied on the work of these experts.
17. The March 19, 2018 and April 11, 2018 news releases and Information Circular contained reasonable cautionary language identifying the forward-looking information in the news releases and Information Circular, and identified the material factors that could cause actual results to differ materially from the anticipated gold production estimates in the news releases and Information Circular. The material factors and assumptions on which the gold production estimates were based were also identified.

18. None of the information in the March 19, 2018 and April 11, 2018 news releases and Information Circular contained an untrue statement of a material fact or an omission of a material fact that was required to be stated or necessary to prevent a statement made from being false or misleading in the circumstances in which it was made.
19. On August 10, 2018, Alio issued a news release to report on its second quarter ended June 30, 2018 financial and operational results. In the news release, Alio updated its 2018 guidance for anticipated gold production from the San Francisco mine and advised that it would temporarily suspend development work of the Ana Paula project. The guidance was revised because of, *inter alia*, higher than expected dilution of the gold grade in the ore mined from the San Francisco mine in the second quarter of 2018 and the company's consequential decision to revise its mine plan. The Ana Paula project was temporarily suspended as a result of, *inter alia*, the reduction in anticipated revenue from the San Francisco mine and the fall in gold prices.
20. Any depreciation of the share price of Alio after the release of the August 10, 2018 news release did not result from the information contained in the August 10, 2018 news release, or, in the alternative, the information contained in the August 10, 2018 news release was only one of many factors that contributed to the depreciation of the share price of Alio.

Division 3 - Additional Facts

1. Gould and Rustad did not sign the March 19 and April 11, 2018 news releases or the Information Circular.
2. Gould and Rustad did not authorize, permit, or acquiesce in the release of the March and April 11, 2018 news releases or the Information Circular.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The defendants consent to the granting of none of the relief sought in Part 2 of the notice of civil claim.
2. The defendants oppose the granting of all the relief sought in Part 2 of the notice of civil claim.
3. The defendants take no position on the granting of none of the relief sought in Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

Claims made under section 140.3 of the *Securities Act*

1. Section 140.8 of the *Act* required that the plaintiff obtain leave to appeal from the Court upon motion prior to commencing this proceeding, and Rule 2-1 requires that the motion be brought by way of petition. Section 140.8 and Rule 2-1 require that the plaintiff support its petition for leave to appeal with affidavit evidence.

2. The plaintiff has not sought or obtained leave from the Court to commence this action, and accordingly this action, or at least the claim made under section 140.3 of the *Act*, is a nullity. The defendants have been unreasonably put to the expense of drafting and filing this response to civil claim by the plaintiff.
3. In these circumstances, the defendants seek special costs on a full indemnity basis pursuant to section 37(2) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
4. Gould and Rustad did not authorize, permit or acquiesce in the release of the March 19 and April 11, 2018 news releases or the Information Circular, and therefore the plaintiff has no claim against Gould and Rustad under section 140.3 of the *Act*.

Claims made under section 131, 132, and 132.1 of the *Securities Act*

5. The plaintiff has alleged misrepresentations in the March 19 and April 11, 2018 news releases and Information Circular (the "Impugned Documents"). None of these documents constitute a prospectus, take over bid circular, issuer bid circular, notice of change, notice of variation, or an offering memorandum and therefore the plaintiff has no claim under sections 131, 132, and 132.1.
6. The Impugned Documents were not required to be sent under the *Act* or its regulations to the plaintiff or any other members of the proposed class based on their shareholdings in Rye Patch, and therefore the plaintiff has no claim under sections 132 and 132.1.
7. Gould and Rustad were not directors of Alio during the relevant time period, their consent to the release of the Impugned Documents was not prescribed or filed, and they did not sign any of the Impugned Documents. Therefore, the plaintiff has no claim against Gould and Rustad under sections 132 and 132.1.
8. In further answer to the claims made under sections 131, 132, and 132.1 of the *Act*, these claims are barred by the effluxion of time pursuant to section 140 of the *Act*.

Claims made under the *Act*

9. In further response to all the claims made by the plaintiff under the *Act* and the notice of civil claim as a whole, the defendants plead as follows:
 - (a) none of the information in the Impugned Documents contained an untrue statement of a material fact or an omission of a material fact that was required to be stated or necessary to prevent a statement made from being false or misleading in the circumstances in which it was made;
 - (b) in the alternative, none of the defendants were aware that the Impugned Documents contained any misrepresentations;
 - (c) the gold production estimates and other forward-looking information in the Impugned Documents were made on the authority of experts and represented those experts' statements and opinions and the defendants had no reasonable

grounds to believe and did not believe that there had been a misrepresentation in those statements and opinions;

- (d) the forward-looking information in the Impugned Documents had a reasonable basis;
- (e) the Impugned Documents contained reasonable cautionary language identifying the forward-looking information in the Impugned Documents, identified the material factors that could cause actual results to differ materially from the anticipated gold production estimates in the Impugned Documents, and the material factors and assumptions on which the gold production estimates were based were also identified; and
- (f) the defendants conducted a reasonable investigation prior to the release of the Impugned Documents and had no reasonable grounds to believe that the Impugned Documents contained a misrepresentation.

10. All of the claims made under the *Act* are frivolous, vexatious and an abuse of process.

Alleged fraudulent misrepresentation

- 11. The notice of civil claim fails to plead full particulars of the alleged fraudulent misrepresentation and is in breach of Rule 3-7(18). The plaintiff has failed to identify the statements in the Impugned Documents it alleges are misrepresentations.
- 12. None of the Impugned Documents contained untrue, inaccurate, or misleading information, or omitted to state a material fact that was required to be stated or necessary to prevent a statement made from being false or misleading in the circumstances in which it was made.
- 13. In the alternative, none of the defendants knew or believed that the Impugned Documents contained misrepresentations, information that was false, or were reckless as to the truth of the information contained in the Impugned Documents.

Alleged common law negligent misrepresentation

- 14. The defendants did not owe a duty of care to shareholders of Rye Patch.
- 15. In the alternative, the defendants did breach any duty of care owed to the plaintiff.
- 16. At all material times, Alio and the individual defendants exercised the care, diligence, business judgment and skill that a reasonably prudent person would exercise in comparable circumstances during their tenures as directors and officers of Alio, as the case may be.

Alleged damages

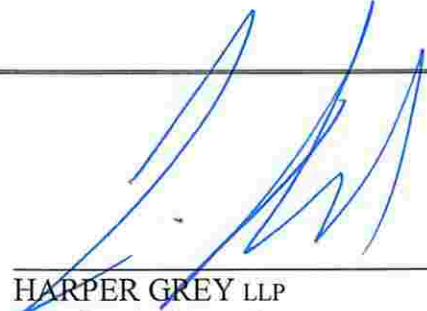
- 17. Alternatively, and in further response to the whole of the notice of civil claim, the plaintiff did not suffer any injury, loss, damage or expense, as alleged or otherwise.

18. In the further alternative, and in further response to the whole of the notice of civil claim, if the plaintiff has suffered loss and damages, which is not admitted, then:
- (a) such loss or damage was not reasonably foreseeable or was too remote; and
 - (b) the plaintiff has failed to take reasonable steps to mitigate any such loss or damage, or in the further alternative have fully mitigated such damage.
19. With respect to the claim made under section 140.3 of the *Act*, the defendants plead and rely on the liability limits under section 140.7 of the *Act*.

(1) The defendants' address for service is:

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3200 - 650 West Georgia Street
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Attn: OZA/144103

Dated: 9 August 2019



HARPER GREY LLP
(Per Owais Ahmed)
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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.