

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON**

In re:)	Chapter 11
)	
CAMBRIAN HOLDING COMPANY, INC. et al.,)	Case No. 19-51200 (GRS)
)	
Debtors.)	Jointly Administered Honorable Gregory R. Schaaf

**MOTION OF TRAMLINE, INC. TO COMPEL CONTINENTAL
HERITAGE INSURANCE COMPANY
TO COMPLY WITH ORDERS OF THIS COURT**

Tramline, Inc. (“Tramline”), by and through its undersigned counsel, moves for an order of the Court compelling Continental Heritage Insurance Company (“Continental”) and its affiliates to fulfill its obligations under this Court’s *Agreed Order Granting Motion of Continental Heritage Insurance Company To Compel Pristine Clean Mining, LLC and Virgie Clean Mining, LLC to Comply with Permit Operating Agreement* [Doc.#1228] (the “Agreed Order”). Specifically, Tramline seeks an order of the Court compelling Continental to sign and deliver to Tramline a bill of sale to a highwall miner, identified herein, pursuant to Continental’s agreement and the Agreed Order.

BACKGROUND

A. TRAMLINE’S CHAIN OF TITLE TO THE HIGHWALL MINER

1. The debtors in this case filed voluntary petitions for relief under title 11 of chapter 11 of the United States Code (the “Bankruptcy Code”) on June 16, 2019.
2. On September 25, 2019, this Court entered its *Order (I) Approving the Sale of Substantially All of the Debtors’ Assets Related Thereto Free and Clear of All Non-Assumed*

Liens, Claims, Encumbrances and interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) Granting Related Relief [Doc.# 534] (the “Sale Order”).

3. Upon information and belief, Continental was involved in the negotiations leading to the Sale Order because Continental had bonded some or all of the Debtors’ reclamation liabilities underlying the Debtors’ permits that the Debtor assigned in the sales.

4. On information and belief, the sales described in the Sale Order closed on September 27, 2019. Pristine Clean Energy, LLC (“Pristine”) acquired assets generally known as the Debtors’ Premier Elkhorn operations, which included Pristine’s assumption of the Debtors’ reclamation responsibilities associated with the Premier Elkhorn mining complex.

5. Attached to the *Sale Order* is the Amended and Restated General Assignment and Assumption Agreement and Bill of Sale between several of the Debtors, as Sellers, and Pristine, as Buyer (the “Pristine Bill of Sale”). *See Sale Order, Doc.#534, p. 105.* The specific assets assigned to Pristine are described in Exhibit A to the Pristine Bill of Sale, *See Id., p. 114.* Among the assets assigned to Pristine were “two Superior Highwall Miners owned by C.W. Augering, Inc.”.

6. On information and belief, Debtors delivered to Pristine possession of two Superior Highwall Miners at closing, including Superior Highwall Miner, serial no. 24 (the “Highwall Miner”).

7. On October 22, 2019, Pristine sold the Highwall Miner to Tramline for \$1,600,000. *See, Exhibit A, Equipment Bill of Sale.* The seller in the bill of sale is identified as Pallas Plant A, which is a Florida limited liability company, and, on information and belief, Pallas Plant A, LLC and Pristine share common ownership and management. Tramline immediately transported the Highwall Miner to Tramline’s place of business, where the

Highwall Miner remains presently.

B. CONTINENTAL'S COMPETING CLAIM TO TITLE TO THE HIGHWALL MINER.

8. On November 21, 2019, Mayo Resources, Inc. ("Mayo"), through its legal counsel, sent a letter to Tramline contending that Mayo in fact owned the Highwall Miner, that while Pristine acquired from the Debtors' the assets where the Highwall Miner was located, the Debtors leased the Highwall Miner from Mayo. *See, Exhibit B, Letter from attorney Brian Wells to Eddie Asbury.* Tramline is not aware of a written lease between Mayo and the Debtors.

9. On information and belief, Mayo is an affiliate of the Debtors, but Mayo did not file for bankruptcy protection.

10. On information and belief, Continental and its affiliates held numerous, substantial prepetition claims against Mayo and Mayo's affiliated companies, including the Debtors.

11. On information and belief, Continental and its affiliates held security interests against Mayo's assets, including any interest Mayo may have held in the Highwall Miner.

12. On June 1, 2020, as part of a workout situation the details of which are unknown to Tramline, Mayo assigned the Highwall Miner to OK Iron, LLC ("OK Iron") pursuant to a bill of sale (the "OK Iron Bill of Sale"). *See, Exhibit C, Bill of Sale (at page 11 of pdf).*

13. Upon information and belief, OK Iron is an affiliate of and under the control of Continental. OK Iron was incorporated on May 14, 2020. On information and belief, Continental or its affiliates established OK Iron to take ownership of assets described in the OK Iron Bill of Sale.

C. **CONTINENTAL'S BREACHES OF ITS AGREEMENT AND COURT-ORDERED DUTY TO ASSIGN ITS INTEREST IN THE HIGHWALL MINER.**

(a) **Continental's Conditional Agreement to Assign the Highwall Miner to Pristine.**

14. Tramline notified Pristine about the conflicting claims of ownership of the Highwall Miner.

15. To straighten out the title to the Highwall Miner, Pristine negotiated a deal with Continental, which is incorporated in this Court's May 5, 2020 *Agreed Order* [Doc.#1228] at paragraph C.2., which reads:

2. **Proceeds From Highwall Miner Sale.** *To the extent that Continental procures all necessary consents and/or releases from applicable lienholders and/or owners, Pristine and Virgie shall take all reasonable steps required to consummate a sale of the Superior SHM 200E Highwall Miner (the "Highwall Miner") by May 31, 2020 or 15 days after they receive the Bill of Sale for the Highwall Miner, whichever occurs later. At the closing of the sale of the Highwall Miner, Continental shall receive the first \$250,000.00 in proceeds therefrom and the next \$100,000 in proceeds therefrom shall be used to pay the Assumed Claims as set forth below*

16. This paragraph establishes certain conditions by which Continental would consummate the sale of the Highwall Miner to Pristine, which are:

- a. Continental procures necessary consents and/or releases from lienholders and owners of the Highwall Miner;
- b. Pristine receives a bill of sale for the Highwall Miner;
- c. Pristine pays Continental \$250,000 from the sale proceeds; and
- d. Pristine pays \$100,000 in proceeds to Assumed Claims.

(b) **Continental's Breach of its Duty to Assign the Highwall Miner to Pristine.**

17. All of the conditions have been satisfied except b., because Continental has refused to deliver the bill of sale to the Highwall Miner to Pristine. To be clear, all liens against the Highwall Miner had been released, Pristine paid Continental the \$250,000, and Pristine paid

\$100,000 to the Assumed Claims.

18. On August 26, 2020, OK Iron, LLC executed a bill of sale transferring the Highwall Miner to Pristine. *See, Exhibit D.* The bill of sale recites that Continental had procured the lien releases and consents necessary to convey title of the Highwall Miner to Pristine. However, OK Iron never delivered the bill of sale to Pristine, and the signature of OK Iron's manager has been blotted out on the bill of sale.

19. On information and belief, the only reason Continental/OK Iron refused to deliver the bill of sale to Pristine is that Pristine had failed to timely perform duties it owed to Continental that were not a condition of paragraph C.2. of the Agreed Order.

20. In other words, Continental held back title to the Highwall Miner as ransom, to pressure Pristine to perform obligations that were not pre-conditions to Continental's Court-ordered duty and agreement to deliver the bill of sale to Pristine.

(c) **Continental's Subsequent Breach of its Duty to Deliver a Bill of Sale to the Highwall Miner to Tramline.**

21. Subsequently, in April, 2021, Continental notified Tramline (through their respective legal counsel) that Pristine had become current on all of its obligations owed to Continental, and that Continental was ready to deliver the bill of sale to the Highwall Miner.

22. Tramline, Continental and Pristine agreed that Continental would assign the Highwall Miner directly to Tramline, in satisfaction of Continental's duty to assign it to Pristine and in satisfaction of Pristine's duty to assign it to Tramline.

23. Tramline's counsel circulated an agreement and a bill of sale to counsel for Pristine and Continental in April, 2021. On May 26, 2021, Continental's legal counsel, Brian Meldrum, made revisions to the documents. The agreement (the "Three Party Agreement"), attached as **Exhibit E**, and the bill of sale (the "Tramline Bill of Sale"), showing Brian

Meldrum's revisions, attached hereto as **Exhibit F**. Pristine and Tramline agreed to Mr. Meldrum's revisions.

24. Continental never signed or delivered the Three Party Agreement or the Tramline Bill of Sale. Instead, Continental stalled for several months and then became entirely unresponsive until late October 2021, when finally Continental informed Tramline that Pristine had again fallen behind on its duties owed to Continental, and therefore Continental would not execute and deliver the agreement and the bill of sale.

25. Based on the docket in this case, it appears that Pristine defaulted on a \$372,546.92 payment that was due Continental on June 30, 2021. *See, Continental's 'Motion to Find Pristine Clean Energy, LLC and Virgie Clean Mining, LLC in Contempt of Court for Violation of this Court's Orders and for Issuance of Sanctions as a Result of Noncompliance', [Doc.#1854], paragraph 8.*

ARGUMENT

26. Tramline brings this Motion to enforce the terms of the Agreed Order, and compel Continental and OK Iron to execute and deliver clean copies of the Three Party Agreement and the Tramline Bill of Sale to Tramline.

27. All conditions in the Agreed Order to Continental's duty to deliver the Tramline Bill of Sale are satisfied.

28. Because the Agreed Order is clear and unambiguous, the Court must enforce it. *In re Dow Corning Corp.*, 456 F.3d 668, 676 (6th Cir. 2006); *In re ASPC Corp.*, 601 B.R. 755, 804 (Bankr. S.D. Ohio 2019), *quoting Travelers Indem. Co. v. Bailey*, 577 U.S. 137, 150 (2009).

29. Continental has refused to deliver the Tramline Bill of Sale unless and until Pristine has performed all of its duties and obligations owed to Continental. This, however, is contrary to the clear language in the Court's Agreed Order at paragraph C.2., which provides that

the Highwall Miner would be transferred upon certain, specific events, all of which have come to pass.

Wherefore, Movants respectfully request the Court enforce the Agreed Order, compel Continental Heritage Insurance Company to execute clean drafts of the Tramline Bill of Sale and the Three Party Agreement, and for any and all other relief the Court deems just and appropriate. Tramline reserves all rights in this Court and elsewhere to seek damages against Continental Heritage Insurance Company for failure to comply with this Court's Order, for breach of contract, for interference with Movants' contractual rights, and any and all other theories that may serve as the basis for an award of damages or sanctions.

Tramline, Inc.
By Counsel

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CERTIFICATE OF SERVICE

This document has been electronically filed and served via the Court's ECF system on December 3, 2021.

/s/ I. Matthew Mains
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