**CITATION:** Kingsdale Partners LP v. Sprott Asset Management LP, 2025 ONSC 2812
**COURT FILE NO.:** CV-18-00602433-0000
**DATE:** 20250508

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **BETWEEN:** | ) | |
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| KINGSDALE PARTNERS LP | ) | *James Renihan* and *Jacob Medvedev*, for the Plaintiff |
| Plaintiff | ) | |
| | ) | |
| **– and –** | ) | |
| | ) | |
| | ) | |
| SPROTT ASSET MANAGEMENT LP | ) | *David Chernos* and *Brendan Brammall*, for the Defendant |
| Defendant | ) | |
| | ) | |
| | ) | |
| | ) | **HEARD at Toronto:** March 24, 25, 26, 27, 31, April 1 and 7, 2025 |

## REASONS FOR DECISION

**J.K. PENMAN J.**

### Overview

[1] Kingsdale Partners LP ("Kingsdale") entered into an engagement agreement with Sprott Asset Management LP ("Sprott") to provide strategic advice with respect to Sprott's plan to gain control of Central Fund of Canada Ltd. ("CFCL").

[2] Kingsdale now claims a success fee from Sprott pursuant to the engagement agreement. Sprott's position is that no success fee is owing to Kingsdale and that the claim should be dismissed.

[3] Kingsdale is a strategic shareholder advisory firm. Sprott is a subsidiary of Sprott Inc. and is an asset manager in the area of precious metals.

[4] CFCL was a commodities business. Central Gold Trust (CGT) was a trust that invested in gold. Silver Bullion Trust (SBT) invested in silver bullion. CFCL was administered by the Central Group Alberta Ltd. (“CGAL”), which was 100% owned by the Spicer family based out of Alberta. CGT and SBT were also both managed by the Spicer family.

[5] In June of 2015, Sprott hired Kingsdale to provide strategic advice in connection with their plan to gain control of CFCL. This began with a meeting requisition strategy. As part of that agreement, Sprott agreed to pay Kingsdale a success fee if Sprott became the manager of CFCL’s assets.

[6] The meeting requisition approach failed. In 2017, Sprott embarked on a different strategy, a Plan of Arrangement that eventually led to Sprott entering into a consensual arrangement with CFCL whereby Sprott obtained management of CFCL’s assets by purchasing CFCL’s assets and placing them in a New Sprott Trust.

[7] Sprott refused to pay the success fee because Kingsdale was not actively involved in carrying out the Plan of Arrangement strategy that led to the consensual purchase of control.

[8] Kingsdale argues that the agreement covered Sprott’s efforts as a whole to obtain control of CFCL, and was not limited to the meeting requisition strategy. They argue that the agreement was never terminated, regardless of whether Kingsdale was actively involved, and that Sprott is liable for the success fee.

[9] Sprott argues that the success fee contemplated in the June 2015 agreement was premised on Sprott being successful in acquiring management of CFCL’s assets through a hostile action in which Sprott would “defeat” CFCL’s existing management. Specifically, a success fee could only be justified in connection with a transaction in which Sprott gained control over the management of CFCL’s assets without having to pay for those assets. Sprott did not agree to pay a success fee in which Sprott paid for what it received.

[10] Sprott also argues that if a success fee is owed, it would be *de minimis* because CFCL no longer has any meaningful assets as they were transferred to the New Sprott Trust. The terms of the agreement defined the success fee as owing where Sprott became the manager of CFCL, not New Sprott Trust.

**Issues**

[11] The issue to be decided in this case is whether Kingsdale is entitled to be paid the success fee under the agreement. This is a matter of contractual interpretation.

[12] To answer that question, consideration must be given to the following questions:

i) Was Kingsdale's agreement limited to the meeting requisition strategy?

ii) Was the CFCL Agreement terminated by December of 2015?

iii) Was the success fee triggered?

iv) If a success fee is owed, what is the calculation of that fee?

**Decision**

[13] For the reasons that follow, I conclude that Kingsdale is owed the success fee of US $4,623,400.64, plus the strategic advisory and Proxy Solicitation Management Fee of CAD $75,000.

**Security for Costs**

[14] At the start of the trial, Sprott brought a motion for security for costs in the amount of $244,000 based on predicted costs from January 31, 2025 through to the end of trial. Sprott argued that there was good reason to believe that Kingsdale did not have sufficient eligible assets in Ontario, based on Kingsdale's January 31, 2024 purchase of a commercial property for $7.7 million, which was immediately followed by a Scotiabank

debenture charged to the property in the amount of $40 million with an assignment of rents. This was the sole basis for Sprott's application.

[15] Kingsdale argued that Sprott has not met its onus to show that Kingsdale does not have sufficient assets to respond to a costs order. They also argue that the relief is not justified given the delay by Sprott in bringing the application.

[16] I provided "bottom line" reasons on March 24, 2025, dismissing the application. These are my reasons.

[17] On a security for costs motion, the court has a broad discretion in deciding whether ordering security for costs is "just" in the circumstances. This requires consideration of the interests of justice, including the merits of the plaintiff's case, and any unexplained delay: *Chill Media v. Brewers Retail Inc*., 2021 ONSC 1296, 2021 CarswellOnt 2063, at paras. 15-18.

[18] In my view, Sprott has not established beyond speculation that there is "good reason to believe" that Kingsdale has insufficient assets to respond to a costs order. I am satisfied that Kingsdale appears to be an active, recognized, and established strategic advisory business in Ontario, that most importantly owns retail property in Toronto worth $7.7 million. Without more, I am not persuaded in these circumstances that the debenture, although very high, is evidence of "insolvency" or "financial instability" so as to justify a costs order: *Yuanda Canada Enterprises Ltd. v. Pier 27 Toronto Inc*., 2017 ONSC 1892, 2017 CarswellOnt 3791, at paras. 15-16.

[19] Courts must also be vigilant in ensuring that a costs order which is designed to be protective in nature is not being used as a litigation tactic to prevent a case from being heard on its merits. Delay in bringing a security for costs motion is a significant factor in determining the justness of the order sought, and in some cases has been found to be fatal. One of the reasons for the rule against delay is that the plaintiff should not be placed in a position of having to post security for costs when it has already borne the expense of bringing the matter to trial: *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827, 138 O.R.

(3d) 1, at para. 23; *Mountainwide Auto Parts Ltd., et al v. UAP Inc*., 2022 ONSC 5462, 2022 CarswellOnt 13672, at paras. 12-13.

[20] This action began in 2018 with discoveries occurring in 2020. The property purchase and debenture at issue in this motion took place on January 31, 2024. There is no explanation from Sprott as to why there was no motion brought prior to January of 2024, given they did not appear to know of any other Kingsdale assets, nor as to why they waited from January of 2024 until March of 2025 to bring the motion.

[21] It is no explanation to suggest that now Sprott appreciates that the matter is heading to trial. This rationale would open the floodgates to late security for costs motions. Nor am I convinced that the proposed prospective costs order neutralizes the delay in Sprott bringing this motion.

[22] In my view, it would be unjust to require Kingsdale, at this late date, to have to provide security for costs.

**Background Facts and Timeline of Events**

[23] In 2013, Chris Bean from Royal Bank of Canada ("RBC") wanted to "pitch" Sprott for the purpose of earning an investment fee by bringing a deal to Sprott regarding CFCL, CGT and SBT. An attempt to contact the Spicer family was made and rebuffed.

[24] In February of 2015, Polar Securities announced in a press release that it was taking steps with relation to both CGT and SBT, including that it wanted to change the board of trustees for SBT and amend the redemption features of the units for both trusts.

[25] Sprott was already aware of CGT, SBT and CFCL as they were direct competitors to Sprott's existing funds.

[26] Kingsdale and Sprott independently became aware of the Polar press release. Mr. Hall, the CEO and founder of Kingsdale, contacted James Fox, Sprott's President, to

suggest that a pursuit of CGT, SBT and CFCL would make sense for Sprott given the gold and silver trusts, and that Kingsdale could assist in any campaign to that effect.

[27] On March 2, 2015, Kingsdale and Sprott signed an engagement agreement for actions against CGT and SBT, which entitled Kingsdale to a success fee if Sprott became the manager of either CGT or SBT ("CGT/SBT Agreement"). At the time of the signing of the agreement, no particular strategy had been decided upon.

[28] On March 5, 2015, Kingsdale sent a memo to Stikeman Elliott ("SE") outlining campaign proposals. Stikeman Elliott had previously acted for Sprott. The memo highlighted that CFCL was comprised of two classes of shares: Class A non-voting shares and common shares. The Spicer family owned 49.47% of the common shares, and along with other family and friends owned approximately 61% of the outstanding common shares, making it very difficult to win a contested campaign. The memo outlined a shareholder proposal strategy and a meeting requisition strategy.

[29] On March 17, 2015, at a meeting with Sprott and Kingsdale, Stikeman Elliott presented Sprott with their proposed strategies for Sprott to acquire management of CGT, SBT and CFCL (the "Slide deck"). CFCL was a much more valuable target than the two CGT/SBT trusts, with a significantly larger quantum of assets under management. Kingsdale and Sprott named the efforts to acquire these targets Project Triple Crown.

[30] The Slide deck outlined the following strategies:

- CGT/SBT – a takeover bid from Sprott, offering to acquire all units of the trusts in exchange for units of Sprott's gold and silver trusts, which would require unitholder support of 66 2/3%.

- CFCL – a plan of arrangement under Alberta's *Business Corporations Act*, through which Sprott would acquire CFCL's assets in exchange for units of Sprott's gold and silver trusts, which would require both court approval and shareholder approval of 66 2/3%.

[31] A meeting requisition strategy was outlined in the Slide deck and discussed as a "potential alternative" to the plan of arrangement strategy. However, the meeting requisition strategy was not recommended because it required the support of 5% of the voting shareholders, CFCL could control the timing of the meeting, and it would likely require a court order that the Class A non-voting shareholders and common shareholders be allowed to vote as one class. Stikeman Elliott was working with Sprott on these legal structures which were complex, and Kingsdale's role was to get the votes.

[32] The "Next Steps" section of the Slide deck included: "Sprott/Kingsdale/SE to discuss and further refine ideal strategic approach".

[33] On March 19, 2015, Kingsdale provided Sprott with a draft engagement agreement for actions against CFCL ("CFCL agreement").

[34] On March 27, 2015, Mr. Wilson, Sprott's CEO at the time, emailed Ms. Freedman at Kingsdale requesting a meeting with the Kingsdale team to "discuss both the Kingsdale plan and success/risk probabilities surrounding achieving the required unit holder approvals for both the targets and our own trusts".

[35] On April 23, 2015, Sprott issued a press release announcing the commencement of their pursuit of CGT and SBT. Sprott also wrote to the CFCL Board of Directors indicating an interest in negotiating a friendly transaction with CFCL. There was no response.

[36] On June 15, 2015, Kingsdale and Sprott signed the CFCL agreement that had been provided on March 19, 2015. No revisions were suggested or made to the agreement.

[37] Sprott decided to proceed with the meeting requisition approach, and not the plan of arrangement strategy. On June 16, 2015, Sprott issued a press release announcing that it had requisitioned a special meeting of CFCL's Class A shareholders. The Meeting Requisition, if successful, would have allowed for the replacement of the existing CGAL

agreement and for the appointment of Sprott as the new administrator or manager of CFCL in place of CGAL. The proposed fees that Sprott would have earned as manager were set out and calculated on the same basis as the fees that CGAL had been earning as manager of CFCL.

[38] On August 13, 2015, the Alberta Court of Queen's Bench held that Sprott's meeting requisition was invalid.

[39] On November 5, 2015, the Alberta Court of Appeal dismissed the appeal.

[40] On January 15, 2016, Sprott announced that the CGT strategy succeeded. Sprott acquired all units of CGT and became the manager of its assets. Sprott paid a revised, negotiated success fee to Kingsdale.

[41] Throughout 2016, Sprott was focussed on the work involved as a result of the acquisition of CGT. Sprott was also considering divesting itself from the Mutual Fund Business, a move led by Mr. Wilson and Mr. Fox, who eventually bought out the group in August of 2017.

[42] Throughout 2016, Kingsdale was in repeated communication with Sprott about next steps on the CFCL campaign. Sprott never told Kingsdale that the CFCL campaign was over nor that their services were not required.

[43] In January of 2017, Sprott approached CFCL's manager, CGAL, and proposed purchasing CGAL. This was ignored.

[44] On March 8, 2017, Sprott filed a court application in support of a plan of arrangement, advising in the press release that it was "substantially similar to the successful CGT transaction". Kingsdale was not involved in the decision to pursue a plan of arrangement strategy. The arrangement proposed that all or substantially all of CFCL's assets and liabilities would be transferred to a New Sprott Trust, which had not yet been established, and the CFCL Class A shareholders would receive units of the New Sprott Trust. The New Sprott Trust would be managed by Sprott.

[45] Pursuant to this plan of arrangement, Sprott would earn management fees roughly two times higher than Sprott would have earned if it had become the manager of CFCL under the same terms as were in place with CGAL.

[46] In late July of 2017, Mr. Ciampaglia, Sprott's current CEO, reached out to CFCL and expressed his willingness to cease all hostilities and enter into a friendly transaction. Shortly afterwards, Mr. Ciampaglia spoke with Stefan Spicer and apologized for "all the grief" that Sprott had caused him and his family over the years.

[47] In August of 2017, Sprott and the Spicer family began negotiating a friendly transaction and ultimately reached an agreement on a modified plan of arrangement for a price of $125 million. For tax reasons, the New Sprott Trust was created to purchase all of CFCL's gold and silver assets. Sprott would be the manager of the New Sprott Trust.

[48] On January 16, 2018, Sprott announced the transaction had been successfully completed. Sprott acquired all of CFCL's assets.

**Principles of Contractual Interpretation**

[49] This is a case of contractual interpretation. The governing principles are set out in *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, 2017 CarswellOnt 20156, at para. 65, rev'd on other grounds. A judge interpreting a contract should:

i) determine the intention of the parties in accordance with the language they have used in the written document, based upon the "cardinal presumption" that they have intended what they have said;

ii) read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;

iii) read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and

iv) read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[50] The factual matrix of the contract involves the background circumstances surrounding the formation of the contract. The "goal" of this consideration is to allow a greater understanding of the parties' objective intentions at the time, as expressed in the words of the contract: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 56-58.

[51] The Supreme Court has made clear, however, that it is the words of the contract that govern. The surrounding circumstances must "never be allowed to overwhelm the words of that agreement": *Sattva*, at para. 57.

[52] Conduct which takes place after the execution of the contract, is not part of the factual matrix. Subsequent conduct only becomes admissible if, after considering the text and factual matrix, the contract remains ambiguous: *Shewchuk v. Blackmont Capital Inc*., 2016 ONCA 912, 404 D.L.R. (4th) 512, at paras. 41 and 46.

[53] Subsequent conduct can be probative where it supports an inference or "sheds light" on the meaning the parties gave to the words in the contract. It poses risks, however, as parties' conduct can change over time, the evidence itself may be ambiguous, and the

parties may conduct themselves in a manner consistent with their preferred interpretation of the contract: *Shewchuk*, at paras. 43-45.

[54] If subsequent conduct evidence is admitted, trial judges should carefully consider the weight to be attached to it.

**Issue 1: Was the CFCL Agreement Limited to the Meeting Requisition Strategy?**

[55] Kingsdale argues that the CFCL agreement was not restricted to the meeting requisition strategy, but rather refers to the broader goal of Sprott securing management of CFCL's assets. They rely on the plain language of the CFCL agreement and the surrounding circumstances.

[56] Sprott disagrees and argues that on a reading of the whole of the CFCL agreement, and considering the temporal circumstances, the CFCL agreement was limited to the meeting requisition strategy employed in June of 2015.

[57] For the following reasons, I am not persuaded that the CFCL agreement was limited to the meeting requisition strategy.

**i) Text of the CFCL Agreement**

[58] I begin with the text of the CFCL agreement.

[59] The first substantive page titled "Statement of Strategic Advisory Work" uses the language, "For Action Against – Central Fund of Canada Ltd". The definition of "Action Against" is "to gain control of the management of CFC". In my view, this is broad language that is not limited to a particular strategy. The fact that "Action" is in the singular does not in my view mean the action was restricted to a single strategy. This language refers to an overall goal, as opposed to a single strategy being utilized to achieve that goal.

[60] If the CFCL agreement were restricted to a singular strategy, the definition of "Action Against" would have read, "to gain control of the management of CFC through a meeting requisition strategy". This is not the language the parties used in the agreement.

I find that the parties chose language which clearly indicates the goal-focused nature of the agreement, as opposed to a singular strategy.

[61] The agreement outlines the type of work that Kingsdale was required to provide as “strategic planning assistance”, “strategic advisory work”, and “expert counsel”. This language is broad and encompasses activities that would be required in either a plan of arrangement or a meeting requisition approach.

[62] In a section titled “Strategic Advisory Services”, there is reference to “proxy contest”, “contested shareholder meetings”, “strategic choices” and “controlling the campaign process”. This section also refers to reviewing the “meeting requisition” and providing counselling “regarding tactics for the shareholder meeting”.

[63] Certain of these terms are in the singular, for example “the meeting” or “the campaign”. These, however, must be looked at in conjunction with other language in the agreement that does not imply a singular strategy, for example references to “strategic choices”, “settlement overtures”, “stages of the campaign”, and “press releases”. Other language includes reference to the campaign unfolding in “many stages” and could require “various strategies”. While I agree there is some language that could refer to a single strategy, when reading the agreement as a whole I find that the agreement contemplates Kingsdale’s involvement in a broader campaign with the goal of Sprott becoming manager of CFCL.

[64] Sprott argues that reference to proxy contests, the meeting requisition and contested shareholders meetings is evidence that Kingsdale’s engagement was restricted to the meeting requisition strategy. I am not persuaded by this submission. Whether the strategy was a meeting requisition or plan of arrangement, shareholder support was required, a vote would be required, and both were contested approaches that would see Sprott and CFCL management fighting to secure those votes.

[65] Sprott also argues the “militaristic” language refers to the transaction being a hostile transaction that would involve Sprott “winning” the campaign. Sprott contends this affirms that the agreement was limited to the meeting requisition strategy.

[66] While the CFCL agreement does refer to a meeting requisition strategy, in my view, this indicates that Kingsdale’s services could have been used as part of a meeting requisition strategy, not that its services were restricted to that particular strategy.

[67] There is no language in the CFCL agreement that explicitly states it was limited to one strategy and one strategy only. Meeting requisitions or hostile approaches can lead to changes in strategy. A meeting requisition or plan of arrangement would require Sprott to solicit and obtain shareholder support, would require a vote, and would involve a contested meeting at which Sprott and existing CFCL management would have been fighting to secure shareholder votes.

[68] As part of the factual matrix, the parties both understood at the time they signed the agreement that acquiring CFCL was going to be complicated and that Sprott might have to pivot. This was contemplated as the basis of the agreement. Kingsdale was expected to use their expertise and assist in securing shareholder support for a contested transaction.

[69] The success fee is defined as follows:

> Success is defined as SPROTT becoming the Manager of CFC. The Success Fee shall be equal to 20% of the Management Fee of CFC for a period of 24 months post takeover.

[70] The payment terms provide that, “The Success fee if earned, plus applicable tax, will be payable over a two-year period on a quarterly basis.”

[71] In my view, the definition of success fee is clear and nothing about its wording suggests the agreement was limited to the meeting requisition strategy.

### ii) Surrounding Circumstances

[72] I am satisfied that, when looking at the surrounding circumstances leading to the signing of the CFCL agreement, it was not limited to the June 15 meeting requisition strategy. As will be outlined below, Kingsdale's involvement in the development of a strategy began months before the June 15 decision. In addition, the CFCL agreement mirrors both the CGT agreement and a draft of the CFCL agreement, both of which were circulated before any meeting requisition strategy had been adopted.

- **Kingsdale's Involvement from February to June 2015**

[73] Sprott argues that the CFCL agreement was not signed until June 15, 2015, because it was limited to the meeting requisition strategy. Sprott argues that looking at the timing of the signing of the CFCL agreement, the militaristic language of the agreement, and the surrounding circumstances, it is evident that it was restricted to the meeting requisition strategy.

[74] This argument ignores everything that took place in the months leading up to the signing of the CFCL agreement. In February of 2015, discussions began between Kingsdale and Sprott regarding potential campaigns involving CGT/SBT and CFCL. No strategy was decided on, and everything was "on the table" at that point. These discussions included potential terms of Kingsdale's retainer. Mr. Fox was enthusiastic about Kingsdale's involvement and pushed to retain Kingsdale to avoid conflicts, again, at a time when no strategy had been decided upon.

[75] Although Sprott had used Stikeman Elliott in the past, it was Mr. Hall who went to Stikeman Elliott to get a second opinion about securing management of CGT/SBT. Meetings took place between Kingsdale and Stikeman Elliott where Kingsdale prepared a memo outlining several different campaign strategies. This took place prior to Sprott retaining Stikeman Elliott for the CFCL campaign.

[76] On March 19, 2015, Kingsdale sent a proposed CFCL agreement to Sprott. Mr. Wilson agreed that, at the time the draft CFCL agreement was circulated, the goal was to convince shareholders to take Sprott on as the manager, but the particular strategy that was going to be used was unknown. This, in my view, demonstrates that Kingsdale's role was to assist in getting shareholder support, using whatever strategy or strategies made sense given all of the changing circumstances.

[77] Both Sprott and Kingsdale were aware of CFCL's complicated shareholder structure and the difficulties this would pose in any kind of contested campaign. This is evident in the Kingsdale memo and the Slide deck that was presented to Sprott on March 5, 2015, that outlined the different strategies and concerns.

[78] While there is dispute in the evidence as to whether Mr. Hall participated in the creation of the March 17, 2015 Slide deck, there is no question that as early as March of 2015, Kingsdale was a "significant" part of the "team" involved in the pursuit of CGT/SBT and CFCL. As Mr. Grosskopf, former CEO of Sprott, explained, Kingsdale played a "significant role".

[79] In my view, everyone knew that this was not going to be a straightforward campaign. There were complications that could require flexibility and changes in approach. To use Mr. Hall's words, what was being contemplated was a "strategy-agnostic" approach, meaning that whatever it took to get control of CFCL would be employed.

[80] I am also satisfied that Kingsdale's services would be required regardless of the approach utilized because investors would still need to be contacted and convinced of the merits of the plan.

[81] On all accounts, there was regular communication between Sprott and Kingsdale about the CFCL campaign in the months leading up to June 15, 2015. Sprott asked for Kingsdale's "insight and strategic thoughts", and Kingsdale was involved in all aspects of the events and decision making leading up to June of 2015. While it was Sprott's decision

what approach to use, Kingsdale was a significant part of the CFCL campaign “team”, and the team was working towards the broader goal of taking over management of CFCL.

[82] While Sprott might have ultimately landed on the meeting requisition strategy, this was not the basis for Kingsdale’s involvement. Kingsdale’s involvement began in February of 2015, months before the meeting requisition strategy was finalized.

- **Draft CFCL Agreement Mirrors Final Agreement**

[83] I am unable to accept the submission that the CFCL agreement was written to reflect only a meeting requisition strategy when its content is identical to the draft sent on March 19, 2015, when no strategy had been decided on.

[84] The CFCL agreement signed on June 15, 2015, mirrored the draft CFCL agreement sent on March 17, 2015. While the meeting requisition approach had been decided upon by the time the CFCL agreement was signed, this was not the case in March of 2015. In March of 2015, there was no decision by Sprott as to what their approach was going to be.

[85] On March 20, 2015, Stikeman Elliott, Kingsdale and Sprott were still discussing a plan of arrangement strategy. The meeting requisition approach was not finalized until June of 2015, and at no time did Sprott suggest any changes to the language of the agreement to reflect it was only in respect of a meeting requisition strategy.

[86] Mr. Wilson confirmed that as of March 27, 2015, a specific strategy had not been decided upon. The goal was to convince shareholders to replace the current management, but how that was going to be accomplished had not been decided.

[87] Mr. Einav, General Counsel for Sprott, and Mr. Wilson both testified as to their belief that the CFCL agreement was tied to the meeting requisition strategy. This, however, does not assist the court as it is the subjective belief of Sprott members at the time and was never conveyed to Kingsdale.

[88] At no time after the Alberta Court of Appeal's decision did Sprott tell or in any way convey to Kingsdale that its services were no longer required because the strategy failed. In fact, the opposite occurred. On January 9, 2016, Amy Freedman of Kingsdale emailed Mr. Einav and asked if going after CFCL "was dead". Mr. Einav responded, "Nope. Still considering next steps."

- **The CFCL Agreement is Identical to the CGT Agreement**

[89] Finally, the CFCL agreement effectively mirrored the CGT agreement but for the names, and unitholder versus shareholder titles being substituted. The description of Kingsdale's services is identical in both agreements. This fact was highlighted for Sprott at the time the CFCL draft agreement was sent to Sprott in the following terms: "the proposal mirrors the earlier proposal we did for you for the Central Gold Trust and Silver Bullion Trust".

[90] As with the CFCL agreement, the CGT Agreement was signed on March 3, 2015, before Sprott had retained counsel and importantly before they had selected a strategy in their campaign for CGT.

[91] It was only on March 17, 2015 that the takeover bid strategy was first proposed. Although the success fee was later renegotiated, the other terms of the agreement were not, and could not be said to have been confined to a meeting requisition strategy because that is not what happened. In the end, the CGT campaign was a takeover bid strategy and consent solicitation strategy, and not a meeting requisition strategy.

[92] Sprott argues that a meeting requisition strategy was never on the table for CGT so the identical language in both agreements does not assist Kingsdale. I do not accept this submission. When Polar issued its press release with respect to CGT, it submitted a unitholder proposal, not a meeting requisition strategy.

[93] When the CFCL plan of arrangement was announced in March of 2017, the press release itself described it as “substantially similar” to the CGT transaction. Mr. Ciampaglia agreed on cross-examination that the two approaches were “substantially similar”.

[94] I am satisfied that the CFCL agreement was not intended to be restricted to a meeting requisition approach. The language of the agreement speaks to a broader campaign focused on a goal as opposed to a single strategy. The CFCL agreement effectively mirrors the CGT agreement and is identical to the draft sent before a meeting requisition strategy was adopted.

**Issue 2: Was the CFCL Agreement Terminated by December of 2015?**

[95] Sprott argues that the success fee would only be payable if earned for services rendered by Kingsdale. Once the Alberta Court of Appeal dismissed Sprott’s appeal, Kingsdale had no role whatsoever in the 2017 campaign or consensual purchase transaction and that is dispositive of the issue. Sprott’s argument is premised on the CFCL agreement being confined to the meeting requisition strategy. The meeting requisition strategy failed, but Sprott’s efforts continued.

[96] Kingsdale argues that the CFCL agreement did not have a fixed term and could only be terminated in one of the three ways captured in the agreement: (1) by mutual consent in writing and signed by all parties; (2) upon breach of the agreement by Kingsdale; or (3) once the “services agreed upon in the agreement are complete”. This last clause is the one at issue in this analysis.

[97] Sprott argues that Kingsdale was hired to provide shareholder communication and proxy solicitation services in the context of a hostile action, the hostile action that was launched in June of 2015 against CFCL. This contract then came to an end in November of 2015 when the Alberta Court of Appeal upheld the lower court’s decision that the meeting requisition was invalid.

[98] I am unable to accept Sprott's submission. First, there is no evidence that this was ever conveyed to Kingsdale. Whether that was in fact their intention, Sprott signed the very agreement that had been drafted and circulated prior to the meeting requisition strategy being decided upon.

[99] In addition, while I accept it was only in June of 2015 that Sprott had the requisite 5% Class A shareholder support to launch the meeting, Kingsdale had been involved for months as part of the team determining what strategy was ultimately going to be employed. There is nothing in the evidence which says that Kingsdale's role from the outset was limited to proxy solicitation.

[100] Sprott relies heavily on *RBC Dominion Securities Inc. v. Crew Gold Corporation*, 2016 ONSC 5529, 2016 CarswellOnt 14607, aff'd 2017 ONCA 648, 2017 CarswellOnt 12188. In that case, RBC claimed payment of a success fee from Crew Gold pursuant to an engagement letter for the provision of investment banking services. RBC was to provide "strategic alternatives" and services fees for specific work performed by RBC, and the success fee was payable on completion of a "transaction". During the timeframe of the agreement, Crew Gold was subject to a takeover that had not been anticipated by either party. RBC had no role whatsoever in the final transaction but claimed the success fee.

[101] The Court of Appeal upheld the trial judge's finding that the success fee was not payable because there was no nexus between the outcome and any services provided by RBC. The court found that RBC's approach to interpreting the agreement was too narrow and failed to focus on the nature and substance of the agreement as a whole.

[102] It is important to note that the Court of Appeal upheld the trial judge's interpretation of the agreement and success fee provisions based on the facts of that case. The court emphasizes at para. 44 that, "[E]ach contract must be interpreted according to its own terms and factual context."

[103] In addition, *Crew Gold* is distinguishable on its facts. Both RBC and Crew Gold anticipated that RBC would be involved in the selling of the assets or shares. The unanticipated takeover was in effect an intervening event out of the control of either RBC or Crew Gold. Ultimately, it was third parties privately buying and selling shares.

[104] There is no intervening event in this case. What happened between December of 2015 and early 2017 is inaction on the part of Sprott. It does not matter why, but Sprott focused its attention elsewhere and never communicated to Kingsdale that the CFCL campaign was either on the shelf or at an end.

[105] In *Crew Gold*, the takeover by the third party shareholders, without involvement of RBC or Crew Gold, severed any link or nexus between RBC services and the ultimate transaction. The trial judge found, when interpreting the agreement, that a success fee was not owed unless there was a link between RBC activities and the completed transaction.

[106] The trial judge reiterated that while a link was required, “RBC’s involvement was not required to be a material cause”: *Crew Gold*, at para. 60. A robust link is not required.

[107] I do not find that because Sprott chose not to engage Kingsdale in the 2017 plan of arrangement strategy, this somehow nullifies its obligations under the CFCL agreement. This was a choice on Sprott’s part, and one not ever communicated to Kingsdale. It is also worth remembering that nothing in the CFCL agreement speaks to the amount of work required for Kingsdale to receive the success fee.

[108] This very argument was rejected in *Scotia Capital Inc. v. Aphria Inc*., 2021 ONSC 1469, 2021 CarswellOnt 2927. *Scotia* involved the interpretation of an Engagement Letter providing for services by Scotia in defending a hostile takeover bid. The terms of the agreement included an “Independence Fee”, that Aphria disputed was owed because there was no “nexus” between Scotia’s services and Aphria’s independence.

[109] Justice Gilmore held that the fee was payable to Scotia because Aphria "got exactly what it bargained for: a successful defence of the Hostile Take-over bid and its independence going forward": *Scotia*, at para. 3. That reasoning is apposite here. Sprott got what it bargained for—management of CFCL's assets.

[110] *OMJ Mortgage Capital Inc. v. King Square Limited*, 2020 ONSC 1188, 2020 CarswellOnt 2489, aff'd 2021 ONCA 690, 2021 CarswellOnt 13986 is also instructive. In that case, OMJ served as a mortgage broker to King Square and, under the terms of its agreement, argued it was entitled to commissions based on loans advanced to King Square by a third party. King Square objected, saying that OMJ performed little or no work in securing the advances. Justice Nishikawa found that this was irrelevant because the agreement was "silent as to the degree of work or involvement required on OMJ's part": at para. 61.

[111] In my view, there is a link between Kingsdale's services and the ultimate transaction that took place between Sprott and CFCL. Kingsdale was involved at the outset and was part of determining campaign strategy. The fact that Sprott chose to shut Kingsdale out does not sever the link between Kingsdale's services and the ultimate transaction.

[112] I also do not accept that the CFCL campaign was at an end once the Alberta Court of Appeal rendered its decision. When Kingsdale asked Sprott on January 8, 2016 if the CFCL campaign was "dead", Sprott responded, "Nope. Still considering next steps". This is strong evidence that the campaign and thus the agreement were still on the table. At no time did Sprott say otherwise.

[113] Mr. Wilson confirmed that in early 2016, he spoke to the Sprott board about approaching the Spicer family with a "low-ball bid". This did not happen, but it speaks to Sprott still exploring CFCL campaign options.

[114] Communications took place between Kingsdale and various members of Sprott in 2016. On January 16, 2016, Mr. Hall emailed Sprott, "Now on to CFCL". In February of

2016, Sprott and Mr. Hall had a meeting where Sprott asked Mr. Hall to talk to Stikeman Elliott about capping their fees. Mr. Grosskopf denied this but had no memory of what the meeting was otherwise about. In an email after the meeting, Mr. Hall messaged Stikeman Elliott asking for a meeting, which is some support for Mr. Hall's evidence.

[115] Between March and June of 2016, Mr. Hall communicated with members of Sprott about "next steps" in the CFCL campaign. At no time did any member of Sprott tell Mr. Hall that the campaign was at an end, or that Kingsdale's services were no longer required.

[116] While I accept that during 2016 and into 2017, Sprott was also focused on the potential management buyout of the Sprott mutual fund business being led by Mr. Wilson and Mr. Fox, this does not change that nothing was ever said to Kingsdale terminating the CFCL agreement.

[117] Whether Sprott was intentionally shutting Kingsdale out, or whether it had decided to stop pursuing CFCL, none of this was ever communicated to Kingsdale. Considering all the evidence, I am persuaded that Sprott was still interested in a CFCL campaign and was considering their next steps.

[118] I see nothing in the agreement that would permit Sprott to unilaterally terminate the agreement without ever communicating that decision to Kingsdale. If that were the case, the agreement could be over without Kingsdale even realizing it. Sprott shutting Kingsdale out is not the same as Kingsdale's services being "complete".

[119] Pursuant to the terms of the agreement, Kingsdale's services were only complete once Sprott had succeeded in acquiring CFCL or if the agreement was terminated in a manner permitted by the contract.

[120] The CFCL agreement was not terminated by December of 2015.

**Issue 3: Is the Success Fee Triggered?**

[121] Sprott argues that even if the CFCL agreement continued and applied to more than the meeting requisition strategy, the success fee is not payable because the result was a consensual transaction and thus the success fee does not apply.

[122] The success fee term indicates that it is payable so long as Sprott becomes manager of CFCL. There are no limiting conditions to this definition of success. The agreement does not specify how Sprott was to become manager of CFCL before the success fee would become payable.

[123] The CFCL agreement itself refers to the possibility of settlement when it is “the appropriate time to entertain settlement overtures”. Mr. Hall explained, and I accept that, settlements are commonplace regardless of whether the campaign starts out hostile. In my view, the CFCL agreement contemplated the possibility of settlement, and a settlement is what happened.

[124] A hostile arrangement or plan of strategy can always end in settlement. Negotiations can take place, and the threat of a contested meeting can lead to settlement discussions. This is not unusual, but rather what often occurs.

[125] While it took place over several years, Sprott’s ultimate acquisition of CFCL evolved from 2013, when it started as an overture, to the initially proposed consensual transaction in 2015. This was then followed by the meeting requisition strategy in 2015, which failed.

[126] In 2016, Sprott’s team, including Mr. Wilson and Mr. Grosskopf, were considering reaching out to CFCL, relying on the success of the CGT, but decided against it.

[127] In January of 2017, Sprott approached CFCL again to no avail. In March of 2017, a plan of arrangement strategy was launched, leading in August of 2017 to negotiations and the final transaction within which Sprott became the manager of CFCL’s assets.

[128] This timeline in and of itself demonstrates the evolution that can take place within a broader takeover plan. It reveals that Sprott had been trying to “make a deal” with CFCL for years, but it was only after several hostile efforts that Sprott was able to engage in negotiations and settlement discussions with CFCL.

[129] The Sprott March 2017 press release announcing the proposed plan of arrangement publicly referenced the 2015 meeting requisition strategy. Mr. Ciampaglia acknowledged that the difficulties with Spicer management were the same in 2017 as they were in 2015, and Sprott was simply reviving the 2015 campaign “within a new strategy”.

[130] In August of 2017, Mr. Ciampaglia recommended that Sprott pivot and take a more conciliatory approach because, in his view, the hostile actions were not working. Mr. Ciampaglia contacted Sean Spicer, and indicated Sprott would cease all hostile activities and suggested they enter into a friendly transaction. That is what took place.

[131] I am also not persuaded by the argument that the success fee is not owed because it would be “commercially absurd” given that Sprott ended up buying the CFCL assets, as opposed to “winning” them through a contested transaction. Sprott again relies on *Crew Gold*.

[132] In *Crew Gold,* the Court of Appeal found that payment of the success fee would result in a commercial absurdity because there was no relationship between RBC’s financial services and the transactions that occurred: at para. 56. This does not assist Sprott given my finding that there was a link between Kingsdale’s services and the ultimate CFCL transaction.

[133] The CFCL agreement was premised on the goal that Sprott would become manager of CFCL. Sprott and Kingsdale both chose to enter into an agreement that provided for payment at the back end. This was a risky proposition for Kingsdale, but the eventual mechanism for achieving success was entirely within the hands of Sprott. It was

Sprott's decision as to what strategy would be used. This was never in Kingsdale's control.

[134] In these circumstances, it would be manifestly unfair for Sprott to be able to unilaterally terminate the agreement and claim no success fee is owed, without ever having communicated that to Kingsdale. Full notice should have been given, rather than just leaving Kingsdale hanging waiting for direction from Sprott as to next steps.

[135] The CFCL agreement cannot now be interpreted so as to allow Sprott to redefine success and limit the intention of the agreement. As with all contracts, both sides assumed some form of risk. Kingsdale worked entirely on credit, never to be paid unless success was achieved. This was of substantial advantage to Sprott who would never have to pay unless their objective was obtained.

[136] "Success" in this context must be objectively and immutably defined; or else the party who owed the bonus could just redefine "success" and not pay the other party. Similarly, Kingsdale had no control over how Sprott chose to obtain control of CFCL. Sprott's change in tactics cannot absolve it of its contractual agreement with Kingsdale. Sprott could have written the contract so that it was limited to success with a given tactic. Or, it could have written the contract such that it would pay Kingsdale a retainer and an hourly rate. This was not done.

[137] While there was a separation in time, I am also satisfied that Sprott built off the work done by Kingsdale in 2015 when Kingsdale was part of the CFCL campaign "team".

[138] The CFCL agreement was clear, never terminated, and provided for a success fee in the event Sprott acquired management of the CFCL assets. This is what occurred, and the success fee is owed.

**Issue 4: Quantum of Damages**

[139] Given my findings above, the final issue is the quantum of damages. Sprott argues that because Sprott is managing the CFCL assets in the New Sprott Trust, the success

fee should be a *de minimis* amount. I do not agree. Sprott cannot avoid the terms of the CFCL agreement because it chose to restructure the trusts for tax reasons, which allowed them to renegotiate the terms of the management fees.

[140] It goes without saying that damages in contract should put the plaintiff in the same position as if the contract had been performed. There is no basis on the facts of this case to depart from this well-established principle: *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 S.C.R. 3, at para. 27.

[141] *GATX Corp. v. Hawker Siddeley Canada Inc*., 1996 CanLII 8286 (ON SC) is instructive. That case concerned a Right of First Refusal where the court found that the defendant had received a third-party offer and tried to restructure the offer in such a way as to not attract the Right of First Refusal. Justice Blair referred to the good faith doctrine of contractual performance as part of the law of Ontario. A grantor of the right of first refusal must act in "good faith in relation to that right and must not act in a fashion designed to eviscerate the very right which has been given": at paras. 45 and 71.

[142] Sprott cannot now get away from the success fee that is owed simply because they chose to change the management fee structure. Sprott acquired the assets of CFCL, and it is putting form over substance to say that the full success fee is not owed because the assets are now under the control of a newly created Sprott trust. But for the difference in name, the New Sprott Trust and CFCL are one and the same.

[143] I am satisfied that the "pith and substance" of the CFCL agreement was that Sprott become the manager of CFCL's assets. Through the purchase of the CFCL assets, Sprott did become the manager of the assets, but was able to create a new management fee structure by putting the assets in their own newly-created trust: *Energy Fundamentals Group Inc. v. Veresen Inc*., 2015 ONSC 692, 2015 CarswellOnt 2906, at paras. 26-27 and 53-54. This different transaction meant that instead of Sprott earning an estimated $12 million in the first 24 months, they earned approximately $23.1 million.

[144] The CFCL agreement was a results-oriented agreement. It did not define expectations as to work product, time spent, or length of time required to achieve the result. I am satisfied that the success fee was owed if, and when, Sprott acquired management of CFCL's assets. That is what happened, and the success fee is owed. It is of no moment that the assets are now in a different trust of Sprott's own creation.

**Strategic Advisory and Proxy Management Fee**

[145] Kingsdale also argues that it is owed the remainder of the Strategic Advisory and Proxy Management fee of $75,000. This is based on the agreement which states $50,000 is owed upon the mailing of the circular, or a settlement, whichever was earlier, and an additional $25,000 owed ten days before the shareholder meeting or upon a settlement, whichever was earlier.

[146] These events occurred—Sprott reached a settlement with CFCL, sent a circular to shareholders and a shareholder meeting was held. The additional $75,000 is owed.

**Disposition**

[147] Sprott is ordered to pay Kingsdale the success fee in the amount of US $4,623,400.64.

[148] Sprott is also ordered to pay Kingsdale the remainder of the Strategic Advisory and Proxy Solicitation management fee in the amount of CAD $75,000.

**Costs**

[149] I would encourage the parties to try to settle costs of the security for costs motion and trial. If they cannot, the plaintiffs may serve and file written cost submissions within 20 days of the release of these Reasons for Decision, followed by the defendant's written cost submissions within a further 15 days. The costs submissions shall not exceed three pages in length, excluding the Bill of Costs.

J.K. PENMAN J.

**Released: May 8, 2025**

**CITATION:** Kingsdale Partners LP v. Sprott Asset Management LP, 2025 ONSC 2812
**COURT FILE NO.:** CV-18-00602433-0000
**DATE:** 20250508



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

KINGSDALE PARTNERS LP

Plaintiff

**– and –**

SPROTT ASSET MANAGEMENT LP

Defendant

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**REASONS FOR DECISION**

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J.K. PENMAN J.

**Released: May 8, 2025**