



Chameleon Mining NL

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ASX ANNOUNCEMENT

20 October 2010

Chameleon Wins Murchison Litigation – Awaits Account of Profit

Chameleon Mining NL [ASX Code: **CHM**] today announced that it had been successful in its litigation against Murchison Metals Limited (**Murchison**) and Mr Phillip Grimaldi (**Grimaldi**).

The Federal Court today delivered the reasons for its decision in respect of Chameleon's action against Murchison and Grimaldi. The Trial Judge (Justice Jacobson's) summary of his reasons is attached to this announcement.

Chameleon is pleased with the outcome and draws attention to the fact that the Trial Judge:

- has ordered Murchison to account for the income it derived from what the Court found to be breaches of fiduciary duty;
- held [at paragraph 959 of the Reasons for Judgment] that the value of funds obtained from Chameleon by breach of fiduciary duty (ie. \$277,840) applied for the benefit of Murchison comprised 24% of the cash consideration of the "Iron Jack Project" (ie. \$1,160,000), being Murchison's flagship asset; and
- in respect of the other respondents, in which Chameleon's claims were for breach of fiduciary duty, the Court also held that Grimaldi was liable to account for profits obtained by him *and* for 10 million shares in Murchison. The Court [at paragraph 1111] found that the value of the 10 million shares would be assessed at either the value of Murchison shares at today's date (circa \$1.52) or the value of the shares when actually sold.

It is anticipated that the Court's Reasons will be available on the internet at <http://www.fedcourt.gov.au> within the next 24 to 48 hours.

Chameleon proposes to immediately engage a forensic accountancy team to assess the quantum of the account of profits it is entitled to from Murchison and Grimaldi.

Chameleon will make further announcements when orders are settled by the Trial Judge, which Chameleon anticipates will be in the next 14 days.

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FEDERAL COURT OF AUSTRALIA

**Chameleon Mining NL v
Murchison Metals Limited [2010] FCA 1129**

SUMMARY

**JACOBSON J
20 OCTOBER 2010
SYDNEY**

SUMMARY

1 In accordance with the practice of the Federal Court in some cases of public interest, importance or complexity, the following summary has been prepared to accompany the orders made today. This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment which will be available on the internet at <http://www.fedcourt.gov.au/> together with this summary.

2 Chameleon claims serious breaches of fiduciary duty by former directors or officers in carrying out five extraordinary transactions. Chameleon also claims that Murchison, through one of its former directors, Mr Grimaldi, was an accessory to the breaches.

3 The substance of Chameleon's claims and a summary of the transactions are contained in the introductory chapter to the judgment.

4 Mr Grimaldi was not appointed as a director of Chameleon but the Court concluded that he was a *de facto* director and that, in any event, he owed fiduciary duties to Chameleon in carrying out the transactions from which he and Murchison derived benefits.

5 The Court found that two of the five claims were established. They were the Cadetta Transaction and the misapplication of two cheques totalling \$152,750.

6 In the Cadetta Transaction Mr Grimaldi was found to have obtained a commission of 5 million Chameleon shares which he diverted in favour of Murchison. The shares were sold and proceeds of \$125,090 were applied by Murchison toward its obligations under an agreement between Murchison and the fourth respondent, Winterfall.

7 Under that agreement Murchison undertook to pay \$350,000 to Winterfall as working capital. That sum was urgently needed by Winterfall to meet an instalment due by it under a separate agreement it had entered into for the acquisition of mining tenements in Western Australia known as the Iron Jack Project.

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8 Notwithstanding the commitment by Murchison to pay the sum of \$350,000, and
assurances given by Mr Grimaldi to the principal of Winterfall that he (or Murchison) had the
money, neither of them then had the necessary funds.

9 The funds for Murchison's eventual payment of the sum of \$350,000 (and other
penalties for late payment) came in part from the proceeds of the Cadetta Transaction.

10 The funds also came in part from the two cheques for \$56,250 and \$96,500.
Murchison contended that the cheques were loans from Chameleon to Murchison. However,
the Court concluded that the cheques were not lent, but were unauthorised diversions of funds
from Chameleon to Murchison. The cheques were drawn by Mr Barnes who was a director
of Chameleon, and procured by Mr Grimaldi.

11 Mr Grimaldi and Mr Barnes had an interest in the use of Chameleon's funds derived
from the Cadetta Transaction and the misapplication of the cheques because they had
negotiated an "introduction fee" payable to them upon the successful completion of the
agreement between Murchison and Winterfall.

12 The Murchison/Winterfall agreement provided for Murchison to take over Winterfall
so as to be able to carry on the Iron Jack Project which required funding on a very large scale.

13 The takeover was completed and Winterfall became a subsidiary of Murchison. Mr
Grimaldi and Mr Barnes received 10 million shares in Winterfall as their "introduction fee".
Those shares were then exchanged for 10 million shares in Murchison. The shares were
issued to Mr Barnes' company, Pinnacle, which was used as a vehicle for the issue of the 10
million shares.

14 Murchison completed the acquisition of the Iron Jack Project from the parties who
had agreed to sell it to Winterfall. Murchison did so using funds raised from various
investors.

15 The total purchase price paid to the Iron Jack Vendors was \$1,160,000. Chameleon
claimed a constructive trust over the whole of the Iron Jack Project or an account of profits.
Alternatively, Murchison claimed a constructive trust or an account of profits referable to the

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proportion of the funds which it claimed to have contributed toward the purchase price paid to the Iron Jack Vendors.

16 The Court rejected the claim for a constructive trust over the whole, or a proportion, of Murchison's interest in the Iron Jack Project. It did so because it found that Murchison's interest in the Project was not the profit or the benefit which Murchison received by reason of the breaches of fiduciary duties.

17 The relevant profit or benefit which Murchison was found to have received was its ability to invest the sum of \$350,000 in the working capital of Winterfall in accordance with the agreement between Murchison and Winterfall.

18 Whilst that agreement provided for Murchison to take over Winterfall, and thereby to acquire its interest in the Iron Jack Project, the Court concluded that this was not sufficiently proximate, in a causal sense, to constitute the relevant benefit.

19 The consideration for the takeover of Winterfall did not consist merely of the payment of the \$1,160,000 to the Iron Jack Vendors. Rather, the takeover contemplated the contribution by or on behalf of Murchison of very substantial funding (of many hundreds of millions of dollars) to reap the benefits of the Project. That funding was to be provided by the contribution of debt or equity to the Project.

20 The relevant benefit obtained by Murchison from the use of Chameleon's funds was therefore its ability to derive an income stream from the exploitation of the Iron Jack Project.

21 The Court concluded that Murchison is bound to account for the income it received from the Project by the use of Chameleon's funds which totalled only \$277,840 of the total working capital. Alternatively, if there were to be an account of profits upon the basis sought by Chameleon, the Court would order an allowance to reflect in particular the increase in value attributable to Murchison's funding of the Project.

22 Alternatively, at Chameleon's election it will be entitled to equitable compensation for the loss suffered by it by reason of the breaches of fiduciary duty. The effect of this will

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be that Chameleon will be entitled to \$152,750 plus compound interest at commercial rates compounded on monthly rests.

23 The Court also found that Mr Grimaldi is liable to account for the 10 million shares which constituted the introduction fee.

24 Chameleon claimed that Murchison was also liable to account for the 10 million shares comprising the introduction fee but the Court rejected that claim on the ground that Murchison did not obtain the benefit of the fee.

25 Chameleon discontinued its claims against Mr Barnes shortly before closing addresses in February 2010 but Murchison cross-claimed for contribution against Mr Barnes and Mr Grimaldi. The Court found that both are liable to make contribution, though on different terms, as explained in the judgment.