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**SUPERIOR COURT OF THE STATE OF ARIZONA**  
**COUNTY OF MARICOPA**

**FIERCE INVESTMENTS, LTD.,**

Plaintiff,

v.

**AZTEC COPPER INC., an Arizona  
corporation;**

Defendant.

Case No.: CV2019-005943

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO APPLICATION FOR  
RECEIVER**

(Assigned to the Honorable Christopher  
Whitten)

Defendant Aztec Copper, Inc. hereby responds in opposition to Plaintiff's Complaint for Appointment of a Receiver.

The reason for Plaintiff is seeking appointment of a receiver appears in Paragraph 9 of the Complaint:

Fierce seeks appointment of a receiver for the purpose of ensuring that the two Judgments are complied with—namely, that an annual shareholder meeting is held after Aztec produces its books and records for inspection and permits depositions of its director and officer.

Likewise, Plaintiff's expectation regarding the length of time for service by the receiver appears in Paragraph 10 of the Complaint:

Fierce anticipates that a receivership would no longer be necessary following a duly held shareholder meeting at which, among other things, directors and officers would be selected by Aztec's shareholders.

## STATEMENT OF FACTS

It appears that Plaintiff has chosen to file a new complaint every time it has a new theory of recovery. The first complaint (CV2018-003675) requested that Aztec produce its books and records and raised claims of breach of fiduciary duty against Ron Arnold and Christine Reeves. The second complaint (CV2018-006866) sought an Order requiring Aztec to hold an annual meeting in Maricopa County within 30 days. Finally, the instant complaint (CV2019-005943) seeks appointment of a receiver.

### **Annual Meeting**

Plaintiff succeeded in obtaining Default Judgments pursuant to the first and second complaint. This Court was assigned the second complaint and this Court entered a default Judgment thereon. The principal part of that Judgment called for Aztec Copper to conduct an annual meeting in Maricopa County. Due to the health of Mr. Ron Arnold, the Chairman of the Board of Aztec, the annual meeting could not be held in Maricopa County. Rather than ignore the Court's direction to call the annual meeting, Mr. Arnold gave appropriate notice and went forward with the meeting in Edmonton on February 23, 2019 but failed to acquire a quorum of shareholders in attendance. Memorandum in Opposition to Motion for Contempt, attached as **Exhibit B**, pages 3 and 4.

### **Ownership of Shares**

Plaintiff claims a receiver is necessary to protect its property—a claimed group of shares of Aztec Copper. Complaint ¶¶ 1 and 2. This claim, however, is false, because Fierce Investments, Ltd abandoned and cancelled its ownership interest in Aztec Copper in 2011.

The underlying issue that the Court has never addressed is whether Fierce Investments is a shareholder of Aztec Copper. The default judgment recites that "Plaintiff has a right to participate in annual shareholder meeting of Aztec Copper Inc. pursuant to A.R.S. § 10-703 and the Bylaws of the Company." Judgment ¶ A, attached to Plaintiff's Application as Exhibit B. A.R.S. § 10-703 provides that the Court may enter orders regarding the holding, notice and participation in an annual general meeting or in a special meeting.

The Judgment's recitation regarding the right to participate in an annual shareholder's meeting came from the Complaint. It was never challenged because a default was entered. It is well established that the Courts prefer a decision on the merits to a default. In this case, that is particularly important because of the demonstrable evidence that Fierce's stock ownership was canceled at its own request in 2011 as part of a settlement with Aztec's remaining shareholders who had paid actual money for their ownership interests. See Declaration of Stephen C. Rich, attached as **Exhibit A**.

In **Attachment 1**, Mr. Hermiston set forth the history of the relationship between Fierce and Aztec Copper. In particular, he states that Aztec was formed in November 2001 to maintain and fund the development of a portfolio of highly prospective mineral properties owned by Fierce. Aztec sold shares to friends and family. Fierce optioned its properties to Aztec and in return was issued 40,000,000 shares at a deemed value of \$1.00 per share.

A key component of the option agreement was the covenant made by Aztec to pay all property taxes. Aztec failed to meet this covenant and the option agreement was terminated. At the point of termination, Aztec had no money and no interest in any properties; Fierce retained 40,000,000 shares of stock.

Since the Aztec shareholders, other than Fierce, had paid actual money for their interests, a trust agreement was established in which a 5% share of the proceeds of the properties covered in the Aztec option were "entrenched" in the trust. This allowed the Aztec shareholders to keep their undivided interest intact and carried forward. The Aztec Shareholders ratified and approved the trust at a general meeting in the Fall of 2009,

In a similar act of good faith, Fierce voluntarily canceled its 40,000,000 shares of Aztec and no longer had an equity position or management influence in Aztec.

As **Attachment 2** demonstrates, the Glen Harder, an attorney hired by Aztec to verify the shareholder list, communicated with Fierce and determined that the shares were voluntarily canceled. **Attachment 4** demonstrates that the Board of Directors relied upon Fierce's cancellation and removed the shares from the Shareholder Registry. **Attachment 3** is a photocopy of the canceled Fierce stock certificate.

**Attachment 5** is news release from Oroco Resource Company announcing that its affiliate Altamura Copper Corp. has acquired an option to purchase the 40,000,000 shares of Aztec Copper stock previously owned by Fierce. **Attachment 6** is a news release from Aztec detailing the cancelation of shares by Fierce and the removal of the shares from the shareholder registry.

The last two attachments demonstrate that even if Fierce has not canceled its shares, a position with which Aztec does not agree, Fierce has already disposed of its interest and no longer has a protectible equity interest in Aztec.

### CONCLUSION

Since the appointment of a receiver, as requested by Plaintiff, is an equitable remedy, it is imperative that the Court enforce equity in making that determination. Here, the equity of whether Fierce actually owns an equity interest in Aztec is at the heart of the Court's consideration. If Fierce surrendered its interest in 2011, it cannot in equity deny that action and proceed as though it didn't happen. This Court must address the issue even if it has been accepted by default.

Aztec requests the Court not to appoint a receiver until the ownership issue can be addressed. The Court has the authority to restrain Aztec from removing, secreting or otherwise disposing of any property pending hearing on the application. A.R.S. § 12-1242.

DATED this 18<sup>th</sup> day of April 2019.

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By /s/ Stephen C. Rich  
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ORIGINAL OF THE FOREGOING  
FILED AND COPY MAILED  
This 18<sup>th</sup> day of April 2019 to:

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BY \_\_\_\_\_