

SUPERIOR COURT
(Commercial division)
The Companies' Creditors Arrangement Act

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-038474-108

DATE: 15 October 2010

UNDER THE PRESIDENCY OF: THE HONOURABLE ROBERT MONGEON, J.S.C.

IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF:

WHITE BIRCH PAPER HOLDING COMPANY

-and-

WHITE BIRCH PAPER COMPANY

-and-

STADACONA GENERAL PARTNER INC.

-and-

BLACK SPRUCE PAPER INC.

-and-

F.F. SOUCY GENERAL PARTNER INC.

-and-

3120772 NOVA SCOTI COMPANNY

-and-

ARRIMAGE DE GROS CACOUNA INC.

-and-

PAPIER MASSON LTÉE

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

STADACONA LIMITED PARTNERSHIP

-and-

F.F. SOUCY LIMITED PARTNERSHIP

-and-

F.F. SOUCY INC. & PARTNERS, LIMITED PARTNERSHIP

Mises-en-cause

-and-

SERVICE D'IMPARTITION INDUSTRIEL INC.

-and-

KSH SOLUTIONS INC.

-and-

BD WHITE BIRCH INVESTMENT LLC

Intervenant

-and-

SIXTH AVENUE INVESTMENT CO. LLC

DUNE CAPITAL LLC

DUNE CAPITAL INTERNATIONAL LTD

Opposing parties

**REASONS FOR JUDGMENT GIVEN ORALLY ON
SEPTEMBER 24, 2010**

BACKGROUND

[1] On 24 February 2010, I issued an Initial Order under the CCAA protecting the assets of the Debtors and Mis-en-cause (the WB Group). Ernst & Young was appointed Monitor.

[2] On the same date, Bear Island Paper Company LLC (Bear Island) filed for protection of Chapter 11 of the US Bankruptcy code before the US Bankruptcy Court for the Eastern District of Virginia.

[3] On April 28, 2010, the US Bankruptcy Court issued an order approving a Sale and Investor Solicitation Process ("SISP") for the sale of substantially all of the WB Group's assets. I issued a similar order on April 29, 2010. No one objected to the issuance of the April 29, 2010 order. No appeal was lodged in either jurisdiction.

[4] The SISP caused several third parties to show some interest in the assets of the WG Group and led to the execution of an Asset Sale Agreement (ASA) between the WB Group and BD White Birch Investment LLC ("BDWB"). The ASA is dated August 10, 2010. Under the ASA, BDWB would acquire all of the assets of the Group and would:

- a) assume from the Sellers and become obligated to pay the Assumed Liabilities (as defined in the ASA);
- b) pay US\$90 million in cash;

- c) pay the Reserve Payment Amount (as defined);
- d) pay all fees and disbursements necessary or incidental for the closing of the transaction; and
- e) deliver the Wind Down Amount (as defined).

the whole for a consideration estimated between \$150 and \$178 million dollars.

[5] BDWB was to acquire the Assets through a Stalking Horse Bid process. Accordingly, Motions were brought before the US Bankruptcy Court and before this Court for orders approving:

- a) the ASA
- b) BDWB as the stalking horse bidder
- c) The Bidding Procedures

[6] On September 1, 2010, the US Bankruptcy Court issued an order approving the foregoing without modifications.

[7] On September 10, 2010, I issued an order approving the foregoing with some modifications (mainly reducing the Break-Up Fee and Expense Reimbursement clauses from an aggregate total sought of US\$5 million, down to an aggregate total not to exceed US\$3 million).

[8] My order also modified the various key dates of implementation of the above. The date of September 17 was set as the limit to submit a qualified bid under stalking horse bidding procedures, approved by both Courts and the date of September 21st was set as the auction date. Finally, the approval of the outcome of the process was set for September 24, 2010¹.

[9] No appeal was lodged with respect to my decision of September 10, 2010.

[10] On September 17, 2010, Sixth Avenue Investment Co. LLC ("Sixth Avenue") submitted a qualified bid.

[11] On September 21, 2010, the WB Group and the Monitor commenced the auction for the sale of the assets of the group. The winning bid was the bid of BDWB at US\$236,052,825.00.

[12] BDWB's bid consists of:

- i) US\$90 million in cash allocated to the current assets of the WB Group;

¹ See my Order of September 10, 2010.

- ii) \$4.5 million of cash allocated to the fixed assets;
- iii) \$78 million in the form of a credit bid under the First Lien Credit Agreement allocated to the WB Group's Canadian fixed assets which are collateral to the First Lien Debt affecting the WB Group;
- iv) miscellaneous additional charges to be assumed by the purchaser.

[13] Sixth Avenue's bid was equivalent to the BDWB winning bid less US\$500,000.00, that is to say US\$235,552,825.00. The major difference between the two bids being that BDWB used credit bidding to the extent of \$78 million whilst Sixth Avenue offered an additional \$78 million in cash. For a full description of the components of each bid, see the Monitor's Report of September 23, 2010.

[14] The Sixth Avenue bidder and the BDWB bidder are both former lenders of the WB Group regrouped in new entities.

[15] On April 8, 2005, the WB Group entered into a First Lien Credit Agreement with Credit Suisse AG Cayman Islands and Credit Suisse AG Toronto acting as agents for a number of lenders.

[16] As of February 24, 2010, the WB Group was indebted towards the First Lien Lenders under the First Lien Credit Agreement in the approximate amount of \$438 million (including interest). This amount was secured by all of the Sellers' fixed assets. The contemplated sale following the auction includes the WB Group's fixed assets and unencumbered assets.

[17] BDWB is comprised of a group of lenders under the First Lien Credit Agreement and hold, in aggregate approximately 65% of the First Lien Debt. They are also "Majority Lenders" under the First Lien Credit Agreement and, as such, are entitled to make certain decisions with respect to the First Lien Debt including the right to use the security under the First Lien Credit Agreement as tool for credit bidding.

[18] Sixth Avenue is comprised of a group of First Lien Lenders holding a minority position in the First Lien Debt (approximately 10%). They are not "Majority Lenders" and accordingly, they do not benefit from the same advantages as the BDWB group of First Lien Lenders, with respect to the use of the security on the fixed assets of the WB Group, in a credit bidding process².

² For a more comprehensive analysis of the relationship of BDWB members and Sixth Avenue members as lenders under the original First Lien Credit Agreement of April 8, 2005, see paragraphs 15 to 19 of BDWB's Intervention.

[19] The bidding process took place in New York on September 21, 2010. Only two bidders were involved: the winning bidder (BDWB) and the losing bidder³ (Sixth Avenue).

[20] In its Intervention, BDWB has analysed all of the rather complex mechanics allowing it to use the system of credit bidding as well as developing reasons why Sixth Avenue could not benefit from the same privilege. In addition to certain arguments developed in the reasons which follow, I also accept as my own BDWB's submissions developed in section (e), paragraphs [40] to [53] of its Intervention as well as the arguments brought forward in paragraphs [54] to [60] validating BDWB's specific right to credit bid in the present circumstances.

[21] Essentially, BDWB establishes its right to credit bid by referring not only to the September 10 Court Order but also by referring to the debt and security documents themselves, namely the First Lien Credit Agreement, the US First Lien Credit Agreement and under the Canadian Security Agreements whereby the "Majority Lender" may direct the "Agents" to support such credit bid in favour of such "Majority Lenders". Conversely, this position is not available to the "Minority Lenders". This reasoning has not been seriously challenged before me.

[22] The Debtors and Mis-en-cause are now asking me to approve the sale of all and/or substantially all the assets of the WB Group to BDWB. The disgruntled bidder asks me to not only dismiss this application but also to declare it the winning bidder or, alternatively, to order a new auction.

[23] On September 24, 2010, I delivered oral reasons in support of the Debtors' Motion to approve the sale. Here is a transcript of these reasons.

REASONS (delivered orally on September 24, 2010)

[24] I am asked by the Petitioners to approve the sale of substantially all the WB Group's assets following a bid process in the form of a "Stalking Horse" bid process which was not only announced in the originating proceedings in this file, I believe back in early 2010, but more specifically as from May/June 2010 when I was asked to authorise the Sale and Investors Solicitation Process (SISP). The SISP order led to the canvassing of proposed bidders, qualified bidders and the eventual submission of a "Stalking Horse" bidder. In this context, a Motion to approve the "Stalking Horse" Bid process to approve the assets sale agreement and to approve a bidding procedure for the sale of substantially all of the assets of the WB Group was submitted and sanctioned by my decision of September 10, 2010.

[25] I note that throughout the implementation of this sale process, all of its various preliminary steps were put in place and approved without any contestation whatsoever

³ Sometimes referred to as the "bitter bidder" or "disgruntled bidder" See Re: *Abitibi Bowater* [2010] QCCS 1742 (Gascon J.)

by any of the interested stakeholders except for the two construction lien holders KSH⁴ and SIII⁵ who, for very specific reasons, took a strong position towards the process itself (not that much with the bidding process but with the consequences of this process upon their respective claims.

[26] The various arguments of KSH and SIII against the entire Stalking Horse bid process have now become moot, considering that both BDWB and Sixth Avenue have agreed to honour the construction liens and to assume the value of same (to be later determined).

[27] Today, the Motion of the Debtors is principally contested by a group which was identified as the "Sixth Avenue" bidders and more particularly, identified in paragraph 20 of the Motion now before me. The "Stalking Horse" bidder, of course, is the Black Diamond group identified as "BD White Birch Investment LLC". The Dune Group of companies who are also secured creditors of the WB Group are joining in, supporting the position of Sixth Avenue. Their contestation rests on the argument that the best and highest bid at the auction, which took place in New York on September 21, should not have been identified as the Black Diamond bid. To the contrary, the winning bid should have been, according to the contestants, the "Sixth Avenue" bid which was for a lesser dollar amount (\$500,000.00), for a larger cash amount (approximately \$78,000,000.00 more cash) and for a different allocation of the purchase price.

[28] Notwithstanding the foregoing, the Monitor, in its report of August 23, supports the "Black Diamond" winning bid and the Monitor recommends to the Court that the sale of the assets of the WB Group be made on that basis.

[29] The main argument of "Sixth Avenue" as averred, sometimes referred to as the "bitter bidder", comes from the fact that the winning bid relied upon the tool of credit bidding to the extent of \$78,000,000.00 in arriving at its total offer of \$236,052,825.00.

[30] If I take the comments of "Sixth Avenue", the use of credit bidding was not only a surprise, but a rather bad surprise, in that they did not really expect that this would be the way the "Black Diamond" bid would be ultimately constructed. However, the possibility of reverting to credit bidding was something which was always part of the process. I quote from paragraph 7 of the Motion to Approve the Sale of the Assets, which itself quotes paragraph 24 of the SISP Order, stating that:

"24. Notwithstanding anything herein to the contrary, including without limitation, the bidding requirements herein, the agent under the White Birch DIP Facility (the "DIP Agent") and the agent to the WB Group's first lien term loan lenders (the First Lien Term Agent"), on behalf of the lenders under White Birch DIP Facility and the WB Group's first lien term loan lenders, respectively, shall be deemed Qualified Bidders and any bid

⁴ KSH Solutions Inc.

⁵ Service d'Impartition Industriel Inc.

submitted by such agent on behalf of the respective lenders in respect of all or a portion of the Assets shall be deemed both Phase 1 Qualified Bids and Phase 2 Qualified Bids. The DIP Agent and First Lien Term Agent, on behalf of the lenders under the White Birch DIP Facility and the WB Group's first lien term loan lenders, respectively, shall be permitted in their sole discretion, to credit bid up to the full amount of any allowed secure claims under the White Birch DIP Facility and the first lien term loan agreement, respectively, to the extent permitted under Section 363(k) of the Bankruptcy Code and other applicable law."

[31] The words "and other applicable law" could, in my view, tolerate the inclusion of similar rules of procedure in the province of Quebec.⁶

[32] The possibility of reverting to credit bidding was also mentioned in the bidding procedure sanctioned by my decision of September 10, 2010 as follows and I now quote from paragraph 13 of the Debtors' Motion:

13. "Notwithstanding anything herein to the contrary, the applicable agent under the DIP Credit Agreement and the application agent under the

⁶ The concept of credit bidding is not foreign to Quebec civil law and procedure. See for example articles 689 and 730 of the Quebec code of Civil Procedure which read as follows:

689. The purchase price must be paid within five days, at the expiry of which time interest begins to run. Nevertheless, when the immovable is adjudged to the seizing creditor or any hypothecary creditor who has filed an opposition or whose claim is mentioned in the statement certified by the registrar, he may retain the purchase-money to the extent of the claim until the judgment of distribution is served upon him.

730. A purchaser who has not paid the purchase price must, within ten days after the judgment of homologation is transmitted to him, pay the sheriff the amounts necessary to satisfy the claims which have priority over his own; if he fails to do so, any interested party may demand the resale of the immovable upon him for false bidding. When the purchaser has fulfilled his obligation, the sheriff must give him a certificate that the purchase price has been paid in full.

See also Denis Ferland and Benoit Emery, 4^{ème} edition, volume 2 (Éditions Yvon Blais (2003)):

"La loi prévoit donc que, lorsque l'immeuble est adjugé au saisissant ou à un créancier hypothécaire qui a fait opposition, ou dont la créance est portée à l'état certifié par l'officier de la publicité des droits, l'adjudicataire peut retenir le prix, y compris le prix minimum annoncé dans l'avis de vente (art. 670, al. 1, e), 688.1 C.p.c.), jusqu'à concurrence de sa créance et tant que ne lui a pas été signifié le jugement de distribution prévu à l'article 730 C.p.c. (art. 689, al. 2 C.p.c.). Il n'aura alors à payer, dans les cinq jours suivant la signification de ce jugement, que la différence entre le prix d'adjudication et le montant de sa créance pour satisfaire aux créances préférées à la sienne (art. 730, al. 1 C.p.c.). La Cour d'appel a déclaré, à ce sujet, que puisque le deuxième alinéa de l'article 689 C.p.c. est une exception à la règle du paiement lors de la vente par l'adjudicataire du prix minimal d'adjudication (art. 688.1, al. 1 C.p.c.) et à celle du paiement du solde du prix d'adjudication dans les cinq jours suivants (art. 689, al. 1 C.p.c.), il doit être interprété de façon restrictive. Le sens du mot «créance», contenu dans cet article, ne permet alors à l'adjudicataire de retenir que la partie de sa créance qui est colloquée ou susceptible de l'être, tout en tenant compte des priorités établies par la loi."

See, finally, *Montreal Trust vs Jori Investment Inc.* (J.E. 80-220 (C.S.)), *Eugène Marcoux Inc. v. Côté* (1990) R.J.Q. 1221 (C.A.)

First Lien Credit Agreement shall each be entitled to credit bid pursuant to Section 363(k) of the Bankruptcy Code and other applicable law.

[33] I draw from these excerpts that when the "Stalking Horse" bid process was put in place, those bidders able to benefit from a credit bidding situation could very well revert to the use of this lever or tool in order to arrive at a better bid⁷.

[34] Furthermore, many comments were made today with respect to the dollar value of a credit bid versus the dollar value of a cash bid. I think that it is appropriate to conclude that if credit bidding is to take place, it goes without saying that the amount of the credit bid should not exceed, but should be allowed to go as high as the face value amount of the credit instrument upon which the credit bidder is allowed to rely. The credit bid should not be limited to the fair market value of the corresponding encumbered assets. It would then be just impossible to function otherwise because it would require an evaluation of such encumbered assets, a difficult, complex and costly exercise.

[35] Our Courts have always accepted the dollar value appearing on the face of the instrument as the basis for credit bidding. Rightly or wrongly, this is the situation which prevails.

[36] Many arguments were brought forward, for and against the respective position of the two opposing bidders. At the end of the day, it is my considered opinion that the "Black Diamond" winning bid should prevail and the "Sixth Avenue" bid, the bitter bidder, should fail.

[37] I have dealt briefly with the process. I don't wish to go through every single step of the process but I reiterate that this process was put in place without any opposition whatsoever. It is not enough to appear before a Court and say: "Well, we've got nothing to say now. We may have something to say later" and then, use this argument to reopen the entire process once the result is known and the result turns out to be not as satisfactory as it may have been expected. In other words, silence sometimes may be equivalent to acquiescence. All stakeholders knew what to expect before walking into the auction room.

[38] Once the process is put in place, once the various stakeholders accept the rules, and once the accepted rules call for the possibility of credit bidding, I do not think that,

⁷ The SISP, the bidding procedure and corresponding orders recognize the principle of credit bidding at the auction and these orders were not the subject of any appeal procedure.

See paragraphs 24, 25 and 26 of BDWB's Intervention.

As for the right to credit bid in a sale by auction under the CCAA, see Re: *Maax Corporation* (QSC. no. 500-11-033561-081, July 10, 2008, , Buffoni J.)

See also Re: *Brainhunter* (OSC Commercial List, no.09-8482-00CL, January 22, 2010)

at the end of the day, the fact that credit bidding was used as a tool, may be raised as an argument to set aside a valid bidding and auction process.

[39] Today, the process is completed and to allow "Sixth Avenue" to come before the Court and say: "My bid is essentially better than the other bid and Court ratify my bid as the highest and best bid as opposed to the winning bid" is the equivalent to a complete eradication of all proceedings and judgments rendered to this date with respect to the Sale of Assets authorized in this file since May/June 2010 and I am not prepared to accept this as a valid argument. Sixth Avenue should have expected that BDWB would want to revert to credit bidding and should have sought a modification of the bidding procedure in due time.

[40] The parties have agreed to go through the bidding process. Once the bidding process is started, then there is no coming back. Or if there is coming back, it is because the process is vitiated by an illegality or non-compliance of proper procedures and not because a bidder has decided to credit bid in accordance with the bidding procedures previously adopted by the Court.

[41] The Court cannot take position today which would have the effect of annihilating the auction which took place last week. The Court has to take the result of this auction and then apply the necessary test to approve or not to approve that result. But this is not what the contestants before me ask me to do. They are asking me to make them win a bid which they have lost.

[42] It should be remembered that "Sixth Avenue" agreed to continue to bid even after the credit bidding tool was used in the bidding process during the auction. If that process was improper, then "Sixth Avenue" should have withdrawn or should have addressed the Court for directions but nothing of the sort was done. The process was allowed to continue and it appears evident that it is only because of the end result which is not satisfactory that we now have a contestation of the results.

[43] The arguments which were put before me with a view to setting aside the winning bid (leaving aside those under Section 36 of the CCAA to which I will come to a minute) have not convinced me to set it aside. The winning bid certainly satisfies a great number of interested parties in this file, including the winning bidders, including the Monitor and several other creditors.

[44] I have adverse representations from two specific groups of creditors who are secured creditors of the White Birch Group prior to the issue of the Initial Order which have, from the beginning, taken strong exceptions to the whole process but nevertheless, they constitute a limited group of stakeholders. I cannot say that they speak for more interests than those of their own. I do not think that these creditors speak necessarily for the mass of unsecured creditors which they allege to be speaking for. I see no benefit to the mass of creditors in accepting their submissions, other than

the fact that the Monitor will dispose of US\$500,000.00 less than it will if the winning bid is allowed to stand.

[45] I now wish to address the question of Section 36 CCAA.

[46] In order to approve the sale, the Court must take into account the provisions of Section 36 CCAA and in my respectful view, these conditions are respected.

[47] Section 36 CCAA reads as follows:

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

2005, c. 47, s. 131; 2007, c. 36, s. 78.

(added underlining)

[48] The elements which can be found in Section 36 CCAA are, first of all, not limitative and secondly they need not to be all fulfilled in order to grant or not grant an order under this section.

[49] The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA.

[50] Nevertheless, I was given two authorities as to what should guide the Court in similar circumstances, I refer firstly to the comments of Madame Justice Sarah Peppall in *Canwest* [2002], CarswellOnt 3509, and she writes at paragraph 13:

"The proposed disposition of assets meets the Section 36 CCAA criteria and those set forth in the *Royal Bank v. Soundair Corp.* decision. Indeed, to a large degree, the criteria overlap. The process was reasonable as the Monitor was content with it (and this is the case here). Sufficient efforts were made to attract the best possible bid (this was done here through the process, I don't have to review this in detail); the SISP was widely publicized (I am given

to understand that, in this present instance, the SISP was publicized enough to generate the interest of many interested bidders and then a smaller group of Qualified Bidders which ended up in the choice of one "Stalking Horse" bidder; **ample time was given to prepare offers; and there was integrity and no unfairness in the process.** The Monitor was intimately involved in supervising the SISP and also made the Superior Cash Offer recommendation. The Monitor had previously advised the Court that in its opinion, the Support Transaction was preferable to a bankruptcy (this was all done in the present case.) **The logical extension of that conclusion is that the AHC Transaction is as well** (and, of course, understand that the words "preferable to a bankruptcy" must be added to this last sentence). **The effect of the proposed sale on other interested parties is very positive.** (It doesn't mean by saying that, that it is positive upon all the creditors and that no creditor will not suffer from the process but given the representations made before me, I have to conclude that the proposed sale is the better solution for the creditors taken as a whole and not taken specifically one by one) **Amongst other things, it provides for a going concern outcome and significant recoveries for both the secured and unsecured creditors.**

[51] Here, we may have an argument that the sale will not provide significant recoveries for unsecured creditors but the question which needs to be asked is the following: "Is it absolutely necessary to provide interest for all classes of creditors in order to approve or to set aside a "Stalking Horse bid process"?"

[52] In my respectful view, it is not necessary. It is, of course, always better to expect that it will happen but unfortunately, in any restructuring venture, some creditors do better than others and sometimes, some creditors do very badly. That is quite unfortunate but it is also true in the bankruptcy alternative. In any event, in similar circumstances, the Court must rely upon the final recommendation of the Monitor which, in the present instance, supports the position of the winning bidder.

[53] In *Nortel Networks*, Mister Justice Morawetz, in the context of a Motion for the Approval of an Assets Sale Agreement, Vesting Order of approval of an intellectual Property Licence Agreement, etc. basically took a similar position (2009, CarswellOnt 4838, at paragraph 35):

"The duties of the Court in reviewing a proposed sale of assets are as follows:

- 1) It should consider whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;**
- 2) It should consider the interests of all parties;**
- 3) It should consider the efficacy and integrity of the process by which offers have been obtained;**

4) and it should consider whether there has been unfairness in the working out of the process."

[54] I agree with this statement and it is my belief that the process applied to the present case meets these criteria.

[55] I will make no comment as to the standing of the "bitter bidder". Sixth Avenue may have standing as a stakeholder while it may not have any, as a disgruntled bidder.

[56] I am, however, impressed by the comments of my colleague Clément Gascon, J.S.C. in *Abitibi Bowater*, in his decision of May 3rd, 2010 where, in no unclear terms he did not think that as such, a bitter bidder should be allowed a second strike at the proverbial can.

[57] There may be other arguments that could need to be addressed in order to give satisfaction to all the arguments provided to me by counsel. Again, this has been a long day, this has been a very important and very interesting debate but at the end of the whole process, I am satisfied that the integrity of the "Stalking Horse" bid process in this file, as it was put forth and as it was conducted, meets the criteria of the case law and the CCAA. I do not think that it would be in the interest of any of the parties before me today to conclude otherwise. If I were to conclude otherwise, I would certainly not be able to grant the suggestion of "Sixth Avenue", to qualify its bid as the winning bid; I would have to eradicate the entire process and cause a new auction to be held. I am not prepared to do that.

[58] I believe that the price which will be paid by the winning bidder is satisfactory given the whole circumstances of this file. The terms and conditions of the winning bid are also acceptable so as a result, I am prepared to grant the Motion. I do not know whether the Order which you would like me to sign is available and I know that some wording was to be reviewed by some of the parties and attorneys in this room. I don't know if this has been done. Has it been done? Are KSH and SIII satisfied or content with the wording?

Attorney:

I believe, Mister Justice, that KSH and SIII have.....their satisfaction with the wording. I believe also that Dow Jones, who's present,their satisfaction. However, AT&T has communicated that they wish to have some minor adjustments.

The Court:

Are you prepared to deal with this now or do you wish to deal with it during the week-end and submit an Order for signature once you will have ironed out the difficulties, unless there is a major difficulty that will require further hearing?

Attorney:

I think that the second option you suggested is probably the better one. So, we'd be happy to reach an agreement and then submit it to you and we'll recirculate everyone the wording.

The Court:

Very well.

The Motion to Approve the Sale of substantially all of the WB Group assets (no. 87) is **granted**, in accordance with the terms of an Order which will be completed and circulated and which will be submitted to me for signature as of Monday, next at the convenience of the parties;

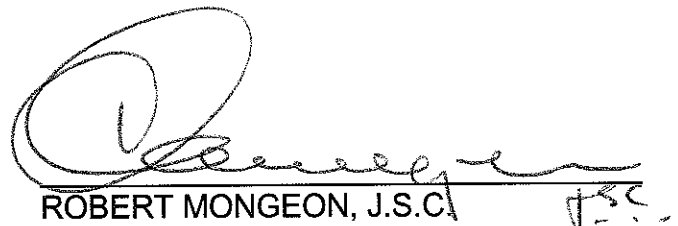
The Motion of Dow Jones Company Inc. (no. 79) will be continued sine die;

The Amended Contestation of the Motion to Approve the Sale (no. 84) on behalf of "Sixth Avenue" is **dismissed** without costs (I believe that the debate was worth the effort and it will serve no purpose to impose any cost upon the contestant);

Also for the position taken by Dunes, there is no formal Motion before me but Mr. Ferland's position was important to the whole debate but I don't think that costs should be imposed upon his client as well;

The Motion to Stay the Assignment of a Contract from AT&T (no. 86) will be continued sine die;

The Intervention and Memorandum of arguments of BD White Birch Investment LLC is **granted**, without costs.



ROBERT MONGEON, J.S.C.

Counsel and parties present: see attendance list annexed to the Procès-Verbal

Date of hearing: 24 September 2010