C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-038474-108

SUPERIOR COURT
(Commercial Division)
The *Companies' Creditors Arrangement Act*

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 SCOTIA COMPANY

-and-

ARRIMAGE DE GROS CACOUNA INC.

-and-

PAPIER MASSON LTÉE

Debtors

-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-

BLUEMOUNTAIN LONG/SHORT CREDIT MASTER FUND L.P.

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BLUEMOUNTAIN CREDIT ALTERNATIVES MASTER FUND L.P.

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BLUEMOUNTAIN TIMBERLINE LTD.

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LOMBARD GENERAL INSURANCE COMPANY OF CANADA

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MACQUARIE AMERICAS CORP.

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MFP PARTNERS, L.P.

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STEELHEAD NAVIGATOR MASTER, L.P.

-and-

SIXTH AVE. INVESTMENT CO., LLC.

Intervening Parties

CONTESTATION OF THE DEBTORS' *MOTION TO APPROVE THE SALE OF SUBSTANTIALLY ALL OF THE WB GROUP'S ASSETS* AND CROSS-DEMAND BY THE INTERVENING PARTIES

IN SUPPORT OF ITS CONTESTATION AND CROSS-DEMAND, THE INTERVENING PARTY SIXTH AVE. INVESTMENT CO., LLC. ALLEGES THE FOLLOWING:

1. Bluemountain Long/Short Credit Master Fund L.P., Bluemountain Credit Alternatives Master Fund L.P., Bluemountain Timberline Ltd., Bluemountain Distressed Master Fund LP., Lombard General Insurance Company of Canada, Macquarie Americas Corp., MFP Partners, L.P. and Steelhead Navigator Master, L.P. (hereinafter jointly the "**Minority**

First Lien Lenders") hold in aggregate approximately 15% of the first lien term loans (the "**First Lien Loans**") owed by the Debtors and Bear Island Paper, L.L.C. (hereinafter jointly "**White Birch**") under the First Lien Credit Agreement referred to in the Amended Bidding Procedures (the "**Bidding Procedures**") approved by Order of this Court dated September 10, 2010 (the "**Sale Process Order**");

2. The Minority First Lien Lenders are Phase 1 Qualified Bidders as defined in the Bidding Procedures;

3. With a view to participating in the bidding process and auction contemplated by the Bidding Procedures, the Minority First Lien Lenders incorporated Sixth Ave. Investment Co, LLC, ("**Sixth Ave.**") of which they are the sole members;

4. In accordance with the Sale Process Order and the Bidding Procedures, the Minority First Lien Lenders caused Sixth Ave. to enter a "Qualified Bid" for all of the assets of White Birch before the "Bid Deadline", as those terms are defined in the Bidding Procedures, a true copy of which is being filed in support hereof as Exhibit **IS-1** (the "**Sixth Ave. Bid**");

5. White Birch and the Monitor acknowledged the Sixth Ave. Bid as a Qualified Bid and allowed Sixth Ave. to participate in the Auction, as defined in the Bidding Procedures;

6. The Auction was held at the offices of Kirkland & Ellis in New York City on Tuesday, September 21, 2010, started at 10:52 a.m. and ended at 11:30 p.m.;

7. Only two groups of bidders participated in the Auction, being:

   (a) BD-White Birch Investment Ltd., the proposed purchaser under the Stalking Horse Asset Sale Agreement approved by the Sale Process Order, an entity under the control of Black Diamond Commercial Finance LLC, Credit Suisse Loan Funding LLC, Caspian Capital Advisors, LLC and their respective affiliates (jointly "**Black Diamond**"), the holder (through its affiliates) of the majority of the First Lien Loans, jointly with Credit Suisse AG, Cayman Islands Branch and Credit Suisse AG, Toronto Branch (collectively the "**Collateral Agent**"), the applicable agent under the First Lien Credit Agreement for the purpose of the Bidding Procedures (jointly "**BD/CA**"), and

   (b) the Minority First Lien Lenders through Sixth Ave.;

8. At the close of the Auction, Sixth Ave. had increased the cash consideration payable under the Sixth Ave. Bid to one hundred and seventy-five million dollars ($175M) attributable to the carrying value of the current assets (assumed to be roughly $140M) with any balance (on the same assumption, roughly $35M) to the fixed assets (the "**Final Sixth Ave. Bid**");

9. At the close of the Auction, BD/CA increased their bid to a notional $172.5M comprising $90M in cash attributable to current assets plus $4.5M in cash attributable to fixed assets, plus a $78M bid by the Collateral Agent applicable in reduction of the Senior Secured Loan (the "**Credit Bid**") for the purchase of the White Birch's Canadian fixed assets (that is, the fixed assets of the Canadian Debtors) (the "**Final BD/CA Bid**");

10. The sale of the assets of the Debtors outside the ordinary course of business in accordance with the Final BD/CA Bid requires the approval of the Court under section 36 of the CCAA and such approval should be withheld for the reasons hereinafter alleged;

11. Section 36 of the CCAA states that a debtor may not sell or dispose of assets outside the ordinary course of business without the approval of the Court. The Court's decision whether to approve a proposed sale or disposition is discretionary, but section 36 requires the Court to consider, among other things:

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

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

12. Whether or not White Birch considers the BD Bid to be the "best and highest bid" is not determinative. The fact that the Bidding Procedures contemplate White Birch bringing to the Court the bid that White Birch claims to be the highest and best is not determinative. It is for the Court to decide whether to approve any proposed sale or disposition;

13. The Final BD/CA Bid does not take into consideration the interests of the creditors of all classes of White Birch and would benefit Black Diamond unfairly to the prejudice of the unsecured creditors and the Minority First Lien Lenders;

14. The current assets and fixed assets of White Birch are subject to separate and distinct security: the First Lien Lenders are secured only by the fixed assets;

15. As appears from a breakdown of the respective components of the Final Sixth Ave. Bid and the Final BD/CA Bid, the Final Sixth Ave. Bid generates a surplus in cash of approximately $44.5M for the unsecured creditors, and a *de minimus* surplus at best if the assets of White Birch are sold to Black Diamond and the Collateral Agent;

16. It is unfair for Black Diamond to use its position as the majority First Lien Lender to cause the Collateral Agent to credit bid on the Canadian fixed assets in a fashion that deprives the other classes of creditors of the full realization value of the current assets on which the First Lien Lenders hold no security;

17. The only possible benefit to be derived by the unsecured creditors of White Birch from a credit bid on the fixed assets would be to reduce the unsecured deficiency claim of the First Lien Lenders that is entitled to share in proceeds available to the unsecured creditors. That is illusory here, because the BD/CA bid proposes to pay only the $90M liquidation value of the current assets, not their going concern value, thereby generating at best *de minimus* proceeds for the unsecured creditors to share;

18. It is also unfair to the Minority First Lien Lenders for Black Diamond to use its dominant position under the First Lien Credit Agreement to cause the Collateral Agent to credit bid $78M of the First Lien Loans on the Canadian fixed assets only on behalf of all the First Lien Lenders, thus allowing Black Diamond to keep for itself the U.S. mill for an amount equal to the value of the construction hypothecs on the Canadian mills but not exceeding $4.5M;

19. By keeping the U.S. fixed assets for themselves at the expense of the other First Lien Lenders, Black Diamond clearly placed themselves in a conflict of interest and breached their fiduciary duties as agents for the Collateral Agent and, through the Collateral Agent, as agents for the other First Lien Lenders;

20. The Final Sixth Ave. Bid is more advantageous to the generality of creditors of White Birch than the Final BD/CA Bid and should have been chosen by White Birch as the "highest and best" bid;

21. The Final Sixth Ave. Bid is obviously more advantageous for the unsecured creditors of White Birch as they can expect a dividend of approximately $0.05 instead of a *de minimus* dividend at best in the case of the Final BD/CA Bid;

22. The Sixth Ave. Bid is more advantageous and fair for the First Lien Lenders other than Black Diamond in that:

    (a) they will share equally in the realization value of all the fixed assets instead of the Canadian fixed assets only;

    (b) they will share in the dividend payable to the unsecured creditors on account of their unsecured deficiency claim; and

    (c) they will receive cash instead of an imprecise participation in the direct or indirect ownership of Canadian fixed assets with no or highly restricted liquidity;

23. The Final Sixth Ave. Bid conforms with the views expressed by the Monitor in paragraph 45 of its Report dated August 10, 2010 as to the proper allocation of the sale proceeds between the current assets and the fixed assets;

24. In paragraph 6 of its Supplementary Report to the Court dated August 20, 2010, the Monitor noted that the allocation of consideration between the current assets and the fixed assets might prove to be academic unless the Bidding Procedures produce a bid containing a higher amount of cash. The Final Sixth Avenue Bid offers much more cash. The allocation of the consideration in the Final BD/CA Bid therefore is very relevant to the effect that it would have on the creditors of White Birch and to the question of whether the consideration offered is reasonable and fair, including in light of the market value of the current assets on a going concern basis;

25. The allocation in the Final BD/CA Bid is unreasonable and unfair. Black Diamond seeks to acquire the going concern value of the current assets for their liquidation value, purportedly in exchange for $78M of the First Lien Loans being credit bid against the Canadian fixed assets. That would have the result of all of the going concern value accruing to Black Diamond, who has no security over the current assets, at the expense of the unsecured creditors generally, who properly should share in that going concern value;

26. The allocation in the Final BD/CA Bid also seeks to unfairly transfer fixed assets to BD at the expense of the Minority First Lien Lenders. By directing the Collateral Agent to make a credit bid solely for the Canadian fixed assets rather than all of the fixed assets, Black Diamond seeks to take for itself all of the other fixed assets for a maximum of $4.5M;

27. When comparing the merits of the Final Sixth Ave. Bid and the Final BD/CA Bid for creditors of all classes, including the Minority First Lien Lenders, one dollar of credit bid cannot be said to be the equivalent of one dollar of cash;

28. The Bidding Procedures were approved both by the Canadian Court and the U.S. Court to apply to a single sale process for all of White Birch's assets located on both sides of the border. In that regard:

(a) credit bidding pursuant to Section 363(k) of the U.S. *Bankruptcy Code* can only be done for the purchase of White Birch's assets located in the United States where the U.S. *Bankruptcy Code* is applicable, and not for assets situated in Canada as the Collateral Agent under the First Lien Credit Agreement purported to do;

(b) it is trite that foreign statutes do not operate in Canada and the reference to Section 363(k) of the U.S. *Bankruptcy Code* in the Bidding Procedures cannot, and should not, be read as incorporating in the Bidding Procedures for the Canadian assets the statutory law governing credit bidding in the U.S.A., nor can the Court's approval of the Bidding Procedures be read as intended to approve such incorporation;

(c) there is no equivalent to Section 363(k) of the U.S. *Bankruptcy Code* in the statutes of Quebec or the federal statutes of Canada. Under the laws of Quebec (which govern the security over the Canadian fixed assets of White Birch) a secured creditor can sue on the covenant, sell the collateral or take all of the collateral in payment of all of the debt secured - none of which is happening here;

(d) moreover, Section 36 of the CCAA is a matter of public order and cannot be set aside by a Court order that would instead apply foreign rules and principles of law;

(e) in all events, irrespective of the reference of credit bidding in the Bidding Procedures, a dollar of credit bid cannot, and should not, be considered to be the equivalent to a dollar of cash in determining which offer for assets situated in Canada should be approved; and

(f) the U.S. First Lien Security Agreement does not give the First Lien Lenders the right to Credit Bid under the CCAA or the U.S. *Bankruptcy Code*. The US First Lien Security Agreement merely provides the Collateral Agent with the right to credit bid in a "sale in accordance with the UCC". Specifically, the U.S. First Lien Security Agreement states that the Collateral Agent shall be entitled, for the purposes of bidding and making settlement or payment of the purchase price for all or any portion of the collateral sold at_any such sale made in accordance with the UCC, to use and apply any of the secured obligations as a credit on account of the purchase price for any collateral at such sale. See Section 7.1(b) of the U.S. First Lien Security Agreement. Unlike a proposed sale under the CCAA or the U.S. *Bankruptcy Code*, in a credit bid in connection with a sale under the UCC, the Collateral Agent would simply be taking ownership of the fixed assets, not combining the bid with a cash bid in connection with the sale of the company as a going concern.

WHEREFOR THE INTERVENING PARTY PRAYS THAT THIS HONOURABLE COURT:

[1] **GRANT** the contestation and cross-demand of the Intervening Party, Sixth Ave. Investment Co., LLC;

[2] **DISMISS** the Debtors' Motion to Approve the Sale of Substantially All of the WB Group's Assets;

[3] **ORDER** that the capitalized terms used herein and not otherwise defined shall have the meaning given to them in the draft Sale Agreement attached to the Qualified Bid of Sixth Ave. Investment Co., LLC filed in support of the Intervention and Cross-Demand of the Intervening Parties as Exhibit **IS-1** (the "**Sale Agreement**");

[4] **ORDER** that substantially all of the assets of the Debtors jointly with substantially all of the assets of Bear Island Paper Company, L.L.C., be sold to Sixth Ave. Investment Co., LLC or assignees for the price and according to the terms and conditions of the Qualified Bid of Sixth Ave. Investment Co., LLC filed in the Court record as Exhibit **IS-1**, as amended in the course of the Auction held at the offices of Kirkland & Ellis in New York City on Tuesday September 21, 2010 (hereinafter the "**Transaction**");

[5] **ISSUE** such further Orders and Declarations as contemplated in the draft Order attached hereto as Exhibit **IS-2;**

[6] **THE WHOLE** with costs in favour of the Intervening Parties solidarily.

Montréal, this September 23, 2010

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Attorneys for the Intervening Parties

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Intervening Parties

LIST OF EXHIBITS

EXHIBIT IS-1: Qualified Bid of Sixth Ave. Investment Co, LLC.

EXHIBIT IS-2: Further Orders and Declarations being sought.

Montréal, this September 23, 2010

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Attorneys for the Intervening Parties

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Intervening Party

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AND
CROSS-DEMAND BY THE INTERVENING PARTIES.

ORIGINAL

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