Court File No. CV-11-9367-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

INTERNATIONAL FOREST PRODUCTS LLC (formerly known as INTERNATIONAL FOREST PRODUCTS CORPORATION)

Applicant

- and -

ST. MARYS PAPER CORP.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

AGREED STATEMENT OF FACTS

The Parties

1. The Respondent, St. Marys Paper Corp. ("SMP"), is a corporation registered under the laws of the Province of Ontario with its head offices in Sault Ste. Marie, Ontario. Prior to March 2011, SMP operated a groundwood pulp and super calendar specialty paper mill (the "Mill") producing paper grades used mainly by magazine publishers and retailing companies for high quality advertising inserts, flyers and catalogues.

2. The Applicant, International Forest Products LLC ("IFP"), is a corporation registered pursuant to the laws of the State of Delaware with its head office located in the Town of Foxborough, Massachusetts. IFP is in the business of sourcing and selling forest products. IFP is the first priority of secured creditors of SMP.

3. Certain of the directors of SMP are opposing IFP's Application for a Bankruptcy Order: Gordon Acton, Orlando Rosa, Tony Porco, Jeffrey Avery and Vance Henson (the "Directors"), all of whom are non-independent directors who assumed management functions of SMP prior to the receivership, and equity holders of SMP.

SMP's Receivership

4. In March 2011, SMP was forced to shut down the Mill, which resulted in a liquidity crisis for SMP. At the time, SMP employed approximately 200 employees. The Mill has not operated since March 2011.

5. By June 30, 2011 SMP laid off the entirety of its unionized workforce.

6. IFP retained the services of Ernst & Young Inc. ("EY") as a financial advisor in July 2011. On August 18, 2011, SMP consented to appoint EY as financial advisor, including granting EY access to SMP's books and records..

7. Pursuant to an Order (the "Appointment Order") of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice dated December 29, 2011, EY was appointed as the receiver and receiver and manager (the "Receiver") of all of the assets, undertakings, and properties of SMP acquired for, or used in relation to SMP's business

(the "Property"). The Order was effective December 30, 2011. No parties opposed the granting of the Appointment Order.

8. All Orders in these proceedings have been granted on notice to SMP, Acton, Wisharts Law Firm (at which Acton and Rosa are partners), the CEP, and the CRA.

9. The Appointment Order provides, *inter alia*:

> 13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.
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> 16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

10. Since at least the time of the Appointment Order, neither SMP nor any of its directors have obtained "Directors and Officers Liability Insurance" in respect of any of SMP's directors or officers. No such policy is in place as at the date of this hearing.

11. By Order of the Honourable Mr. Justice Campbell dated January 18, 2012, the Court approved a sales process protocol for the Property which contemplated the closing of a sale transaction within 6 weeks.

12. Pursuant to an Order of the Honourable Mr. Justice Campbell dated March 26, 2012 (the "Sale Approval and Vesting Order"), the Court approved a sale of substantially all of the Property, which transaction closed effective April 4, 2012. As a condition in the purchase agreement, the purchaser required all employees of SMP, to the extent not already terminated, to be deemed terminated on April 3, 2012.

13. The Sale Approval and Vesting Order provides, *inter alia*:

> 9. THIS COURT ORDERS that the Receiver be and is hereby authorized and directed to, on the Debtor's behalf, terminate the employment of all individuals employed by the Debtor as of and following the date of the Appointment Order (other than any employee that was terminated in writing by the Receiver on the Debtor's behalf following the date of the Appointment Order) including, without limitation, all such employees on lay-off or leave of absence of any kind (the "Employees"), effective at 11:59 p.m. on the day immediately preceding the Closing Date (as defined in the Sale Agreement), by sending to each Employee on the Debtor's behalf written notice of termination by registered mail to the last known address of such Employee based on the books and records of the Debtor.
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> 10. THIS COURT ORDERS AND DECLARES that the employment of each Employee be and is hereby deemed to be terminated effective at 11:59 p.m. on the day immediately preceding the Closing Date, whether or not such employee receives written notice of termination before the Closing Date or at all.

> 11. THIS COURT ORDERS AND DECLARES that the Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act.*

SMP's Indebtedness to IFP

14. SMP is indebted to IFP pursuant to certain loan agreements, pulp supply contracts and sales and marketing agreements with IFP. On December 8, 2010, SMP and IFP entered into an agreement pursuant to which SMP granted a security interest to IFP over all of its presently owned or held and after acquired or held personal property, assets and undertaking, of whatever nature or kind and wherever situate, and all proceeds derived directly or indirectly thereof and therefrom (the "General Security Agreement").

15. The Receiver has received a legal opinion from its independent counsel, Cassels Brock & Blackwell LLP, that the security granted by SMP to IFP creates valid and perfected security interests in the real and personal property of SMP, subject to certain usual qualifications and assumptions in opinions of this nature.

16. As at April 30, 2012, SMP is indebted to IFP in an amount that exceeds the sum total value of SMP's assets by at least $1,000.

SMP's Vacation Pay Obligations

17. At the time of the Receiver's appointment on December 30, 2011, SMP owed its employees approximately $576,404 in unpaid vacation pay. The existence and amount of

unpaid vacation pay was reflected in SMP's pre-receivership financial statements and books and records. Further, the Affidavit of Daniel J. Moore sworn August 31, 2011, which was served and filed in support of IFP's receivership application, states that "as at June 30, 2011, St. Marys owes approximately $587,000 in vacation pay arrears to management, Mill workers and staff".

18. Pursuant to the Sale Approval and Vesting Order, all Employees (as defined in the Sale Approval and Vesting Order) were deemed terminated effective April 3, 2012.

The Bankruptcy Application

19. IFP brought a bankruptcy application (the "Bankruptcy Application") returnable May 8, 2012. Notice of the Bankruptcy Application was served on all known interested parties, including the CEP and the CRA.

20. The Directors attended the original return of the Bankruptcy Application. Upon the request of the Directors, the Bankruptcy Application was adjourned to May 18, 2012. Neither the CEP nor the CRA responded to or attended at the original return of the Bankruptcy Application.

Dated May 17, 2012 at Toronto, Ontario.

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PROCEEDING COMMENCED AT TORONTO

AGREED STATEMENT OF FACTS

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