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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

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

FACTUM OF ST MARYS PAPER CORP.

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TO: THE SERVICE LIST

PART I - NATURE OF THE MOTION

1. This is a motion by International Forest Products Corporation ("**IFP**") for an interim receiver over St. Marys Paper Corp. ("**St. Marys**") pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* ("**BIA**").

2. IFP seeks the appointment on an interim basis, pending the determination of its motion for the appointment of a receiver over St. Mary's pursuant to section 243(1) of the BIA, which motion will be heard in just over a week (October 17, 2011).

PART II - FACTS

3. Counsel for the parties attended before Brown J. a week ago to schedule IFP's motion for the appointment of a permanent receiver.

4. No mention was made by counsel for IFP of any need for interim relief.

5. The timetable set by Brown J. did not contemplate any motion for interim relief.

6. Nothing has changed in the week since that appearance: the debt owed by St. Marys to IFP has not increased; and the value of IFP's collateral securing that indebtedness has not decreased.

7. St. Mary's retained Toronto counsel earlier this week.

8. Before that retainer had even been finalized IFP delivered (less than 24 hours ago) its motion materials for the within motion. IFP now suddenly claims that there is an emergency situation justifying the appointment of a receiver on an interim basis.

9. IFP is over secured. The debt owed by St. Marys to IFP is about $5.65 million. IFP claims that it is owed approximately $7.6 million. But two amounts need to be deducted from this figure: first, approximately $850,000 that IFP owes St. Marys under their Sales and Remarketing Agreement; and second approximately $1.1 million that IFP currently holds in paper produced by St Marys supplied to IFP.

10. IFP is the first-ranking secured creditor of St. Marys. The debt is secured against all of St. Mary's real and personal property. That property is valued in excess of $19,000,000 – *more than three times the value of the debt owing to IFP*.

11. St. Mary's key asset is its right to participate in a co-generation facility to be built and operated in conjunction with the paper mill, which will produce power for the mill and excess power that will be sold to the provincial power grid. The co-generation facility has yet to be built, but the critical component, a power purchase agreement with the Province of Ontario, has been signed.

12. The appointment of a receiver over St. Marys would constitute a breach of the power purchase agreement, and the funding arrangements agreed to by the Province to fund construction of the co-generational facility.

PART III - ARGUMENT

13. The appointment of any type of receiver is extraordinary relief. In order to obtain an interim receiver under section 47(1) of the BIA the moving party must demonstrate that an interim receiver is necessary to protect (1) the debtor's estate; or (2) the interests of the moving party. In making this determination the court must examine all of the circumstances.

14. Neither of these preconditions can be satisfied in this instance.

15. There is no risk to IFP if a receiver is not granted to oversee St. Marys affairs over the next week. IFP is over secured: there are over $19 million in assets to cover an approximate $5.65 million debt.

16. The interim period is only a week. IFP's request for a permanent receiver will be heard on its merits on October 17, 2011.

17. In comparison to IFP, which stands to suffer no prejudice if the motion is denied, St. Marys will suffer overwhelming and irreparable harm if an interim receiver is granted. Any such order would kill the co-generational project, which is St. Marys most significant asset.

PART IV - ORDER SOUGHT

18. St. Marys requests an order dismissing IFP's motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: October 7, 2011

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Paul D. Guy

INTERNATIONAL FOREST PRODUCTS CORPORATION - and - **ST. MARYS PAPER CORP.**
Applicant Respondent

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ONTARIO
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Proceeding commenced at TORONTO

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