COURT FILE NUMBER	1501-00396	CLERK OF THE COURT FILED Clerk's Stamp FEB 12 2019 JUDICIAL CENTRE OF CALGARY
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED AND IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9 AND IN THE MATTER OF GASFRAC ENERGY SERVICES INC., GASFRAC SERVICES GP INC., GASFRAC ENERGY SERVICES (US) INC., GASFRAC US HOLDINGS INC. and GASFRAC INC.	
DOCUMENT	TENTH REPORT OF THE MONITOR FEBRUARY 12, 2019	
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INTRODUCTION

1. On January 15, 2015, GASFRAC Energy Services Inc. ("GESI"), GASFRAC Services GP Inc. ("GSGP"), GASFRAC Energy Services Limited Partnership ("GES LP"), GASFRAC Energy Services (US) Inc. ("GESI US"), GASFRAC US Holdings Inc. ("Holdings"), and GASFRAC Inc. ("GI") (collectively the "Company" or "GASFRAC") sought and obtained protection pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, C-36*, as amended (the "CCAA") pursuant to an Order of this Honourable Court (the "Initial Order").

2. Ernst & Young Inc. was appointed as Monitor (the "Monitor") of the Company pursuant to the terms of the Initial Order.

3. On March 26, 2015, this Honourable Court approved a restructuring transaction with Calfrac Well Services, Ltd. which is described further in the sixth report of the Monitor dated and on June 24, 2015, this Honourable Court sanctioned and approved a restructuring plan.

4. The purpose of this tenth report of the Monitor (the "Tenth Report") is to provide this Honourable Court with the Monitor's comments on the:

    a) request to affirm the Monitor's power to prosecute a matter being heard by way of petitions to the Supreme Court of British Columbia ("BC Supreme Court") concerning the British Columbia Minister of Finance's (the "BC Minister") entitlement to tax proceeds in respect of motor fuel tax and Provincial Sales Tax ("PST");

    b) request to revive GSGP; and

    c) Monitor's recommendation.

BACKGROUND

5. Background information on GASFRAC and these CCAA proceedings is available on the Monitor's website at www.ey.com/ca/gasfracenergy.

TERMS OF REFERENCE

6. In preparing this Tenth Report, the Monitor has been provided with, and has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with the Company's management.

7. Capitalized terms not defined herein are as defined in the Initial Order or the Plan.

TAX LITIGATION

8. As discussed in the Ninth Report of the Monitor dated March 8, 2017, the remaining Canadian claim relates to the BC Minister's entitlement to tax proceeds in respect of motor fuel tax and Provincial sales tax arising in connection with GASFRAC's business in British Columbia ("BC").

9. The BC Minister assessed GASFRAC on the basis that GASFRAC was required to self-assess and pay motor fuel tax and PST on the fracturing gel that GASFRAC brought into the province of BC in the course of its business.

10. It is GASFRAC's position that it was exempt from paying motor fuel tax and PST on the fracturing gel as GASFRAC brought the liquefied petroleum gas, propane, gellant, nitrogen, and sand/proppant into BC that was then processed, fabricated, manufactured into the fracturing gel that was then sold at a "retail sale" (as that term is defined under the *Provincial Sales Tax Act* SBC 2012, c 35) to its customers in BC.

11. The dispute between the BC Minister and GASFRAC concerns whether GASFRAC is liable to the BC Minister for motor fuel tax and PST, with interest thereon (the "Tax Litigation"). The Tax Litigation is being heard by way of petitions to the BC Supreme Court. Approximately one year after filing its response, counsel for the BC Minister ("BC Counsel") identified a potential defect to the proceedings, namely that the petitioner's general partner, GSGP, was dissolved prior to the filing of the petitions.

12. BC Counsel in the Tax Litigation identified, in their words, a "defect" to GASFRAC's petitions: GASFRAC's general partner, GSGP was dissolved on December 31, 2016, before the Tax Litigation commenced on August 1, 2017. A redacted copy of BC Counsel's letter to counsel for GASFRAC is attached hereto as Appendix 'A'.

13. Should GASFRAC be ultimately successful in the Tax Litigation, the motor fuel tax and PST assessments will be reduced accordingly and GASFRAC will be entitled to a refund (with interest thereon) of the motor fuel tax and PST that GASFRAC has paid to the BC Minister, and the Cash Pool will be increased accordingly, net of fees, applicable taxes and expenses of tax counsel for the Monitor in pursuing the Tax Litigation.

14. The Monitor will then distribute the remaining funds in the Cash Pool pursuant to the terms of the Plan upon resolution of the Tax Litigation.

RELIEF SOUGHT

15. The Monitor is seeking to rectify the "defect" pursuant to an Order requested to:

  a) affirm, with binding effect on the Province of BC, the Monitor's power to prosecute the Tax Litigation notwithstanding the dissolution of GSGP, noting that any proceeds of the Tax Litigation are for distribution by the Monitor in accordance with the Plan; and, as necessary,

  b) revive GSGP pursuant to section 210 of the *Business Corporations Act* (Alberta), R.S.A. 2000, c B-9, retroactively to the date of filing of the petition

(the "Revival Order").

16. BC Counsel has expressly identified this issue as a "defect".

17. The Monitor is recommending the Revival Order be granted, as a positive decision on the Tax Litigation will result in excess funds in the Cash Pool to be distributed as per the terms of the Plan. In addition, the Revival Order does not prejudice BC Counsel in the Tax Litigation, as a response has already been filed on the facts as pleaded, and the revival will not impact same.

RECOMMENDATIONS

18. The Monitor respectfully recommends that this Honourable Court grant the Revival Order.

Dated at Calgary, this 12th day of February, 2019.

ERNST & YOUNG INC.
in its capacity as Court-Appointed
Monitor of GASFRAC and not in
its personal or corporate capacity

Peter Chisholm, CPA, CA, CIRP, LIT
Vice-President

Duncan MacRae, CPA, CA, CIRP, LIT
Manager

Appendix 'A'

BRITISH
COLUMBIA

October 5, 2018

David Douglas Robertson and Jonathan Ip
EY Law LLP
Pacific Centre
Suite 1600, 700 West Georgia Street
Vancouver BC V7Y 1C7

By e-mail to david.d.robertson@ca.ey.com and jonathan.ip@ca.ey.com

Dear Mr Robertson and Mr Ip:

Re: *GASFRAC Energy Services Limited Partnership v HMQBC*,
BCSC Files S-177222 and S-177226, Vancouver Registry

Thank you for your letter of August 2, 2018. [redacted]

[redacted]

In our view, these proceedings aren't yet ready to be set down for hearing. How soon they will be ready will depend on whether the issues set out below can be resolved by consent and, if not, when we can have them decided by the court. The issues that need to be addressed before the matter is set down for hearing are:

- the petitioner's capacity to bring these proceedings;
- [redacted]

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The petitioner's capacity to bring these proceedings

The petitioner named in these proceedings is GASFRAC Energy Services Limited Partnership ("Gasfrac LP"). It has come to our attention that Gasfrac LP's general partner, Gasfrac Services GP Inc. ("Gasfrac GP Inc."),[1] was dissolved on December 31, 2016, before these proceedings were commenced.

Gasfrac GP Inc. was an Alberta company. Under section 227 of the Alberta *Business Corporations Act*, a legal proceeding commenced before a company's dissolution may be continued as if the company had not been dissolved, but dissolved companies are not given the authority to commence new legal proceedings.

In *1455257 Ontario Inc. v. Canada*, 2016 FCA 100, an appeal from a tax assessment was held to be a new legal proceeding, which a dissolved company did not have the capacity to commence. We are of the view that the same reasoning applies in this case.

Please advise us if steps will be or have been taken to rectify this defect.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[1] The initial order in the CCAA proceeding (Exhibit "A" to each of Neil Narfason's affidavits in these proceedings) refers to Gasfrac GP Inc. as the general partner of Gasfrac LP.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Conclusion

For the reasons set out above, it is our view that the petitions are not ready to be set down for hearing.

Once we know your position on the issues set out above, we will be in a better position to propose timelines for moving this matter forward, including scheduling the hearing of any applications necessary to resolve these pre-hearing issues.

Thank you for your assistance with this matter. We look forward to your response.

Yours truly,

Shannon Davis
Barrister and Solicitor

[redacted]