COA file # M41787

COURT OF APPEAL FOR ONTARIO

BEFORE LASKIN, LAFORME & HOY.

In the Matter of Hollinger Inc., et al

DATE JAN. 14th, 2013

DISPOSITION OF MOTION

Conrad Black and Conrad Black Capital Corporation (together, "Black") and F. David Radler and F.D. Radler Ltd. (together, "Radler") each seek leave to appeal the September 12, 2012 order of Campbell J. (the "Order") approving "Pierringer" settlements of claims in Ontario by Hollinger Inc., 4322525 Canada Inc., and Sugra Limited (collectively, "Hollinger") against KPMG and Torys, their former auditors and lawyers, to this court pursuant to sections 13 and 14 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA").

Hollinger sued multiple parties. It has not settled its claims against the defendants Black and Radler. They, in turn, assert claims of contribution and indemnity against KPMG and Torys.

The settlements bar Black and Radler from claiming contribution and indemnity from KPMG and Torys in the litigation in Ontario; KPMG and Torys cease to be parties to the Ontario litigation but are not exempt from giving evidence or serving as witnesses. KPMG and Torys acknowledge the continuing rights of Black and Radler pursuant to Rules 30.10, 31.10 and 53.04 of the Rules of Civil Procedure.

The settlements are proportionate liability settlements, also known as "Pierringer agreements". They limit Hollinger's recovery against Black and Radler to their proportionate share of liability, thereby avoiding the need for them to claim over against KPMG and Torys.In that respect, they are "economically neutral" from Black's and Radler's perspective.

This court grants leave to appeal in CCAA proceedings sparingly and in our view this is not a case in which leave should be granted.

The Order from which leave to appeal is sought is discretionary in nature and the factors that influenced the supervising judge in the exercise of his discretion are specific to this matter. Accordingly, the appeal is not of significance to the practice generally. Moreover, in exercising his discretion, the supervising judge carefully considered and balanced the interests of all stakeholders, including the substantive rights and procedural interests of Black and Radler. The supervising judge has considerable expertise in managing disclosure in complex multi-party litigation. He was satisfied that the judges of the Commercial List can manage the discovery process in the litigation remaining as a result of the settlement in a manner that ensures proportional protection of Black's and Radler's procedural interests.

Leave to appeal is accordingly denied. KPMG, Torys' and Hollinger shall each be entitled to costs in the amount of $2500 from each of Black and Radler.

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