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COURT COURT OF QUEEN'S BENCH OF ALBERTA

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF 667402 ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD. and 1919209 ALBERTA LTD.

DOCUMENT **BENCH BRIEF OF THE MONITOR, ERNST & YOUNG INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS	Darren R. Bieganek, QC/Ryan F.T. Quinlan Barrister & Solicitor Phone: 780.441.4386/780.441.4336 Fax: 780.969.6381 Email: dbieganek@dcllp.com/rquinlan@dcllp.com	File #204-196164 **DUNCAN CRAIG LLP** LAWYERS MEDIATORS 2800 Scotia Place 10060 Jasper Avenue Edmonton, Alberta Canada T5J 3V9

A. INTRODUCTION

1. On July 5, 2017, the Honourable Justice K.G. Nielsen granted an Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") in favour of Canada North Group Inc. ("**CNG**"), Canada North Camps Inc. ("**CNC**"), Campcorp Structures Ltd. ("**Campcorp**"), D.J. Catering Ltd. ("**DJ**"), 816956 Alberta Ltd. ("**816956**"), 1371047 Alberta Ltd. ("**1371047**"), (CNG, CNC, Campcorp, DJ, 816956 and 1371047, collectively, the "**Applicants**"), as well as a stay of proceedings (the "**Stay**") against the Applicants for 30 days up to and including August 3, 2017, and the appointment of Ernst & Young Inc. as monitor of the Applicants (the "**Monitor**").

2. On July 27, 2017, an Order extending the Stay and adding 1919209 Alberta Ltd. ("**191**") as an applicant to the CCAA proceedings was granted by this Honourable Court.

3. On April 20, 2018, an Order was granted extending the Stay up to and including July 31, 2018, and, among other things, directed that upon the subsequent filing of the Camp Monitor's Certificate:

    a. Campcorp and DJ were removed as Applicants;

    b. CNG changed its name to 667402 Alberta Ltd. ("**667**") and CNC changed its name to 18512398 Alberta Ltd. ("**185**"); and

    c. The Monitor was granted the expanded powers set out in that Order

    (the "**Expanded Powers Order**").

4. The Monitor now seeks an Order providing for:

    a. An extension of the stay of proceedings granted in the Initial Order to and including December 31, 2018;

    b. Adding Canada North Group LP Holdings Ltd. ("**Holdings**") as an Applicant to these CCAA proceedings and having the terms of the Initial Order apply to it as if it was included in the definition of "Applicant" as defined in the Initial Order, from and after the date it is added;

    c. Amending the title of these CCAA proceedings to include Holdings as an Applicant;

    d. Granting a vesting order in favour of the purchaser of the Aurora Dorms (as defined below); and

    e. Providing the Monitor with advice and direction in relation to the legal fee cost reserve requested by BDC.

5. The Monitor respectfully submits that the requested relief will allow for the orderly and efficient realization of the balance of the remaining Applicants' assets, resolve and determine the allocation of the costs of the CCAA proceedings, distribute funds to creditors and ultimately bring most of the substantive matters in these CCAA proceedings to an end.

B. EXTENSION OF STAY OF PROCEEDINGS

6. The Monitor respectfully submits that the extension of the Stay should be granted. The Applicants, and since the expansion of its powers, the Monitor on behalf of the Applicants, have acted in good faith and with due diligence. Further, the circumstances make an extension order appropriate.

7. Sections 11.02(2) and (3) of the CCAA state:

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, s.11.02(2)(3) **[TAB 1]**

<u>Order is Appropriate</u>

8. By virtue of the Expanded Powers Order, and the proceedings leading up to the expansion of the Monitor's powers, these CCAA proceedings have become liquidating proceedings.

9. The use of the CCAA as a liquidating statute is now firmly entrenched in Canadian insolvency jurisprudence.

Anvil Range Mining Corp., Re, 2001 CarswellOnt 1325 at para. 11 [S.C.J. – Commercial List] **[TAB 2]**; *Associated Investors of Canada Ltd., Re* (1987), 1987 CarswellAlta 330 (Q.B.); reversed on other grounds (1988), 1988 CarswellAlta 310 (C.A.) **[TAB 3]**

10. There are a number of outstanding tasks facing the Monitor, pursuant to its enhanced powers, before these CCAA proceedings can be brought to an orderly conclusion, including without limitation completing the adjustments on the Camp Transaction, dealing with the various camps operated by one of the Remaining Applicants, completing the appeal brought by Canada Revenue Agency in respect of the priority Administration Charge and Interim Lender's Charge set out in the Initial Order, realizing on the balance of the Remaining Applicants' assets, resolving and determining the allocation of the costs of the CCAA proceedings, and distributing funds to creditors. Further, the Monitor expects further new

matters to arise before the conclusion of these CCAA proceedings that will have to be resolved or completed.

11. The Monitor has determined that the current stay period expiring on July 31, 2018 will not be sufficient to complete the outstanding tasks to conclude these proceedings. It is the opinion of the Monitor that it will take until at least December 31, 2018 before most of the substantive matters in these CCAA proceedings can be resolved, and these proceedings brought to an end.

12. In an effort to minimize costs and focus on addressing the necessary matters to bring these CCAA proceedings to an end, the Monitor respectfully submits that an extension of the Stay to December 31, 2018 is appropriate and just in these circumstances.

13. Granting the extension of the stay is appropriate in these circumstances as it will permit the necessary time needed by the Monitor under its enhanced powers to complete most of the substantive matters in these CCAA proceedings.

Good Faith

14. The concept of good faith in CCAA proceedings was articulated *San Francisco Gifts Ltd., Re*:

> The term "good faith" is not defined in the CCAA and there is a paucity of judicial consideration about its meaning in the context of stay extension applications. The opposing landlords on this application rely on the following definition of "good faith" found in Black's Law Dictionary to support the proposition that good faith encompasses general commercial fairness and honesty:
>
> > A state of mind consisting of: (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealings in a given trade or business, or (4) absence of intent to defraud or seek unconscionable advantage.
>
> "Good faith" is defined as "honesty of intention" in the Concise Oxford Dictionary.
>
> Regardless of which definition is used, honesty is at the core.

San Francisco Gifts Ltd., Re, 2005 ABQB 91 at paras 14 – 16 **[TAB 4]**

15. The Monitor, on behalf of the Remaining Applicants pursuant to its enhanced powers, has acted, and continues to act, with honesty and within reasonable commercial standards of fair dealings throughout these CCAA proceedings, and as such, meets the requirement of acting with good faith. There is no evidence to suggest otherwise.

16. Further, it is the Monitor's view that the conduct of the Remaining Applicants has been and continues to be in good faith, especially in working with the Monitor under its enhanced powers.

Due Diligence

17. After the Monitor assisted with the closings of the Camp Transaction and sale of the Winterburn Yard, its powers were expanded effective May 3, 2018. Since that time, the Monitor has been working constantly for the benefit of the Remaining Applicants and the stakeholders in this matter, including:

a. measures to freeze all withdrawals or close the Remaining Applicants' accounts as applicable, and accounting for all deposits received in all existing bank accounts and sweeping funds for deposit into the trust account opened by the Monitor;

b. working with the Remaining Applicants, and the respective banks, to ensure that appropriate payments required for continued operations, payroll, insurance, post-CCAA trade creditors and otherwise are properly authorized and recorded, prior to any payments occurring;

c. working with management of the Remaining Applicants in respect of documents, cheques and other mail directed at or to the former head office of the Remaining Applicants;

d. advising the Remaining Applicants' insurer of its appointment and expanded powers, as well as reviewing the existing policies and making adjustments to such policies where necessary or deemed appropriate;

e. arranging for adequate security at all of the remaining camps previously operated by the Applicants, as well as for security at both the Winterburn Yard and the Farm as required by the Applicants' insurer;

f. moving the Remaining Applicants' residual rolling stock, dorms and other assets (excluding formerly operating camps in remote areas) ("**Residual Assets**") from the Winterburn Yard or other site to the Farm;

g. taking inventory of and photographing the Residual Assets;

h. attending 6 of the 7 camps previously operated by the Applicants;

i. shuttering the camps known in these proceedings as HML and Wabasca in consultation with management of the Remaining Applicants;

j. engaging Mirterra Industrial Appraisers & Auctioneers ("**Mirterra**") to provide an updated appraisal of the remaining camps and the assets thereon;

k. sending an updated request for proposals ("**RFP**") to all of the liquidators who were included in the original RFP request conducted in March 2018;

l. filing GST returns, and preparing records of employment and T4s;

m. issuing accounts receivable and work in progress invoices and collection letters, and continuing to pursue collection of these funds;

n. collecting the sale proceeds from the sale transactions involving the Restructuring Investor and the Winterburn Yard;

o. reviewing invoices and supporting documents and issuing payments to several of the professionals who were owed fees from these CCAA proceedings;

p. continuing to review accounts payable of the Remaining Applicants, and making payments to trade creditors who provided goods and/or services to the Applicants post-CCAA;

q. continuing to work as required to evaluate and address a number of issues in relation to the Remaining Applicants' assets and affairs, creditor enquiries and matters, priority issues and other related items;

r. issuing payments to CRA totalling $685,542.93 on account of the outstanding deemed trust claims issued against CNC and Campcorp;

s. issuing payment to BDC in the amount of $3,606,582.29 to repay the interim financing and related interest and legal costs as calculated to May 29, 2018; and

t. working with Aurora Lodging Inc. to complete the purchase of certain Dorms (as defined below) on the Bonnyville campsite and to secure the proceeds of the sale depending determination of entitlement and priority.

18. The efforts of the Monitor, with the assistance of the Remaining Applicants, have met and continue to meet the requirement of due diligence.

C. ADDING CANADA NORTH GROUP LP HOLDINGS LTD. AS AN APPLICANT

19. The Monitor seeks to have Holdings added as an applicant to these CCAA proceedings.

20. The CCAA applies in respect of affiliated debtor companies where the total claims against the affiliated companies exceed $5,000,000.00. The goals of the CCAA apply not only to individual companies but to interdependent corporate groups operating as a broader enterprise, particularly when the treatment of the corporate group as an integrated system will result in greater value.

CCAA, s. 3 **[TAB 1]**; *murfit-Stone Container Canada Inc., Re* (2009), 2009 CarswellOnt 6554 at para. 24 **[TAB 5]**

21. Holdings is incorporated pursuant to the laws of the province of Alberta and is an affiliate of one or more of the Remaining Applicants. Holdings is wholly owned by 667 (formerly CNG), and this Honourable Court has jurisdiction to add it as an Applicant to these proceedings.

22. The Monitor understands that both Paul and Shayne McCracken have recently resigned as directors of Holdings.

23. To the best of the Monitor's knowledge, the only operating camp that Holdings had an interest in over the course of the CCAA proceedings was that operated HML LP (as defined below), as none of the other camps subject to the partnership agreements operated during the CCAA proceedings.

24. Based on the registrations in the Alberta Personal Property Registry ("PPR"), BDC and CWB both have security registrations against Holdings' all present and after acquired personal property, and CWB also has a registered land charge and assignment of debt owing to 185 registered.

25. In *Guestlogix Inc. (Re)*, the Court added a corporate guarantor of the main debtor that was subject to a CCAA proceeding. Justice Morawetz noted the guarantor was insolvent, the guarantor was highly integrated with the main debtor company, by including the guarantor the debtor company would be able to include all the assets of the guarantor in a potential transaction, and maximization of value for the stakeholders could not be achieved within the proceedings without the guarantor being included as an applicant. As a result, Justice Morawetz found it appropriate to add the guarantor as an applicant under those CCAA proceedings.

Guestlogix Inc. (Re), 2016 ONSC 1348 at paras 7 – 9 **[TAB 6]**

26. Previously in these proceedings, the Honourable Justice S.D. Hillier ordered that 191 be added as an applicant to the CCAA proceedings. In making that determination, Justice Hillier found that operations of 191 were inextricably linked to those of the affiliate group, as it leased important equipment and provided it to another Remaining Applicant.

Re Canada North Group Inc., 2017 ABQB 508 at para 73 **[TAB 7]**

27. The Monitor submits that Holdings' operations are inextricably linked to those of the Remaining Applicants, and adding Holdings with likely result in the maximization of value for stakeholders.

28. Holdings is a limited partner in all the limited partnerships which established many of the various camps, which were primarily operated under various contracts by 185, formerly CNC.

29. Currently, there are six camps still in place, which were operated under the limited partnerships. These camps, and the respective partnership interests of Holdings, are as follows:

    a. Kilometer 147 LP ("147") - (33%);

    b. Peace River Lodge LP ("Peace") - (49.5%);

    c. Bonnyville Lodge LP ("Bonnyville") - (49.5%);

    d. Wandering River Lodge LP ("Wandering") - (24.75%);

    e. HML Lodge Limited Partnership ("HML LP") - (49.5%); and

    f. Cimarron Lodge Limited Partnership ("Cimarron") - (49.5%).

30. Holdings made contributions to each of the limited partnerships. Such contributions generally included a proportionate share of initial working capital, staffing the camps, groceries, equipment, and in some cases, providing or causing a related party to provide the land on which the camp was situated, as well as assets to be used in operating the camps.

31. 185 has registrations in the Alberta Personal Property Registry ("PPR") in respect of 147, Peace, Bonnyville, Wandering, and HML LP against all of their respective present and after acquired personal property, as well as land charges.

32. Holdings is effectively the entity within the Canada North family of companies that is the actual party to the limited partnership agreements that legally operated the various camps. Further, Holdings is the entity within the limited partnerships that has caused 185 and other Remaining Applicants to enter into equipment leases with the limited partnership and/or to otherwise place dorms and other assets on the lands where the camps are located.

33. Upon adding Holdings as an applicant in the CCAA proceedings, the Monitor will assume de facto control of Holdings pursuant to its enhanced powers. Thereafter, it is the Monitor's intention to attempt to negotiate releases and/or sales of the Remaining Applicants' assets located on the camps, as well as favourable wind-down scenarios with the partnerships. If necessary, the Monitor may issue notices

of dissolution under and pursuant to the limited partnership agreements. It is expected that this in turn will generally cause the following in respect of each of the limited partnerships:

(a) the partnership will return any assets leased or contributed by Holdings, 185, and 137, as applicable;

(b) any operating or services agreements entered into by 185 with the partnership will cease; and

(c) the general partner, or other appointed Receiver, will wind up the affairs of the partnership and distribute the net proceeds in accordance with the provisions of each agreement.

34. Reaching mutually suitable wind down arrangements with the limited partnerships (and their applicable general and other limited partners), or otherwise causing the dissolution of the limited partnerships, is necessary or beneficial for a number of reasons, including;

    a. providing for an orderly, transparent and efficient process to deal with the various camp and partnerships' affairs and remaining assets;

    b. at least potentially generating value for Holdings' and/or 667's creditors from the realization of the partnership assets, or the recovered property from the partnerships that was leased or contributed by Holdings or 667; and

    c. allowing the Monitor to complete its mandate as it proceeds to finalize matters and bring these CCAA proceedings to an end.

35. The Monitor being able to affect its powers over Holdings is the only way it can seek to ensure the orderly winddown of the above-mentioned camps, ensure it has the right to remove items from the camp lands, and effect the liquidation of assets thereon.

36. As a result, the Monitor respectfully submits that it is appropriate to add Holdings as an Applicant to these proceedings in order to continue to provide an effective restructuring liquidation process.

D. Vesting Order for the Sale of the Aurora Dorms

37. On April 30, 2018, the Monitor was contacted by a representative from a prospective purchaser, Komplete Modular Solutions Ltd. ("the **Purchaser**"), and was advised that it was finalizing a transaction to acquire three 30-bed dormitories manufactured by Alta-Fab Structures Ltd. (the "**Dorms**") from Aurora Lodging Inc. ("**Aurora**") that are located at the Bonnyville camp site.

38. The Sales Agreement dated April 13, 2018 ("**Sales Agreement**") between Aurora and the Purchaser indicates that the Dorms are being sold (on an "as is, where is" basis) for $1,141,875.00 (including GST).

39. Aurora has claimed to be the owner of the Dorms, and has further indicated that the Dorms in question (along with two additional 38 bed dorms) were leased to 185, formerly CNC, in late July 2013 for a lease term of 12 months, after which time, 185 continued to lease the Dorms on a month to month basis until 185 terminated the lease in February, 2015. Sometime shortly thereafter, Aurora has advised that 185 gave verbal permission to Aurora to store the Dorms at the Bonnyville camp site while Aurora attempted to sell or re-lease the Dorms elsewhere. Management of 185 have generally confirmed this version of events.

40. At present, the Dorms remain tied into the Bonnyville camp's water, sewer/lift stations, and other utilities. The Dorms have never been de-mobilized, and in order to remove the units, de-mobilization will be required.

41. The Monitor has advised Aurora that there are a number of potential claimants against the Bonnyville camp and the related assets, and as such, there may be other claims against the Dorms.

42. Nonetheless, the Monitor has worked with Aurora and the Purchaser to complete the sale and release the Dorms, pursuant to an agreement between the Monitor and Aurora (the "**Proceeds Agreement**"), the basic terms of which are:

    a. all of the sale proceeds will be held in trust with counsel for the Monitor pending either an agreement among any potential claimants and the Monitor, or further Order of the Court;

    b. the purchase price shall stand in the place and stead of any and all claims against the Dorms;

    c. all arrangements for removal will be made and coordinated with the Monitor and its representatives;

    d. the Purchaser will be responsible for the cost of the removal of the Dorms; and

    e. Aurora and the Purchaser agree to hold the Monitor and Bonnyville harmless in respect of any and all damage and repair work to remove the Dorms from the Bonnyville camp, including capping off any utilities or otherwise.

43. The Purchaser is requesting that this Honourable Court grant a Vesting Order in respect of the Dorms.

44. This Honourable Court has the power to grant a Vesting Order in respect of the Dorms. Section 36 of the CCAA states:

> **36(1)** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.
>
> **(2)** A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.
>
> **(3)** In deciding whether to grant the authorization, the court is to consider, among other things,
>
> > (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
> >
> > (b) whether the monitor approved the process leading to the proposed sale or disposition;
> >
> > (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
> >
> > (d) the extent to which the creditors were consulted;
> >
> > (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

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

...

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

CCAA, s. 36 **[TAB 1]**;

45. The entirety of section 36 of the CCAA is not a pure application to this scenario, since it is not one of the Remaining Applicants selling an asset, but rather, a third party selling assets in which there may be competing interests that arise through one or more of the Remaining Assets. Nonetheless, section 36(6) clearly permits this Honourable Court to issue a Vesting Order in respect of the Dorms in favour of the Purchaser.

46. The Monitor has given notice of this sale and Application for a Vesting Order to interested creditors.

47. The Purchaser appears to be an arm's length party to the Remaining Applicants and to Aurora.

48. While the Monitor and other creditors were not involved in process resulting in the Sale Agreement, the Monitor does not have any concerns with the process that lead to the complete of the Sale Agreement, as Monitor understands it to have occurred.

49. Further, due to the fact that it is a third party selling the Dorms, and not the Applicants, the Monitor respectfully submits that the fact that it and other creditors were not involved in the process that led to the Sale Agreement ought not prevent this Honourable Court from granting the Vesting Order.

50. The Monitor submits that the process that lead to the Proceeds Agreement being signed was reasonable and the Monitor approves of it.

51. The Monitor has filed a Report with this Honourable Court advising that it has discussed the Sale Agreement with CWB and Miterra, and that based on those discussions, it is of the opinion that purchase price for the Dorms is reasonable, and that the de-mobilization and removal of the Dorms will not be onerous or jeopardize the sale of any other assets on the Bonnyville camp.

52. It is submitted that if it is determined that any other potential claimants have an interest and priority right in the sale proceeds of the Dorms, this sale will be beneficial to such stakeholders.

53. The Monitor is not aware of any opposition to the sale of the Dorms as proposed, nor the Proceeds Agreement.

54. As such, the Monitor recommends that this Honourable Court approve the Proceeds Agreement and grant a Vesting Order in respect of the Dorms in favour of the Purchaser.

E. DISCHARGE OF PPR REGISTRATIONS

55. TEC Investment Properties Inc. ("**TEC**"), the purchaser of the "Camp Property" (as defined in the March 20, 2018 Order granted in these proceedings), is applying for an Order authorizing the Monitor to promptly discharge or amend, as necessary, certain serial number registrations applicable to the Camp Property of specific creditors in the PPR.

56. Other than with respect to certain serial number registrations in favour of 191, the Monitor currently does not have the power to register discharges of any serial number PPR registrations in favour of third party creditors.

57. Monitor has advised TEC that it will voluntarily discharge the applicable PPR serial number registrations in favour of 191 in respect of the Camp Property.

58. The Monitor understands that several of the secured creditors referenced in TEC's Application materials have agreed to voluntarily discharge the applicable serial number registrations, but as at the filing of this Brief, it is unsure if any such registrations have been affected.

59. If this Honourable Court authorizes and directs the Monitor to register serial number discharges on behalf of third party creditors in respect of the Camp Property, the Monitor will comply with such direction, recognizing that the modest fees and disbursements related to such direction will be subject to the Administration Charge.

F. LEGAL FEE RESERVE

60. BDC has requested that the Monitor set aside a "Reserve for Future Legal Fees" in the amount of $225,000.00 from funds on deposit in the Monitor's trust accounts (the "**Reserve**").

61. The Monitor understands that the purpose of the Reserve is for the continued response to CRA's appeal, and any potential further appeal to the Supreme Court of Canada, in relation to the priority of its claim for unremitted source deductions over the Administration Charge and the Interim Lender's Charge granted in the Initial Order.

62. As is indicated in its Fifteenth Report, the Monitor is taking no position on whether or not it is appropriate for this Honourable Court to direct that the Monitor to set aside the Reserve, as requested.

63. For the purposes of this Brief, the Monitor simply sets out the following potentially relevant facts surrounding the requested Reserve being sought by BDC:

    a. the Monitor has paid CRA in full for the Applicants' outstanding deemed trust obligations;

    b. the Monitor has paid the balance of the amount sought by BDC in relation to the payout of the DIP advances, plus all applicable interest and legal fees (in the amount of $215,761.71), excluding potentially the Reserve;

    c. in granting CRA leave to appeal, the Honourable Mr. Justice Slatter was aware that in the circumstances of these proceedings the issue of priority was likely moot given that there appeared to be sufficient funds to repay the Administration Charge, Interim Lender's Charge and CRA's deemed trust claims;

    d. in granting CRA leave to appeal, the Honourable Mr. Justice Slatter named the Applicants as the lead respondent in CRA's appeal, with any other interested party, including the Monitor, having leave to file a further 8 page factum after the Applicants' main factum;

e. thereafter, pursuant to a discussion between the Applicants and BDC, the Monitor understands that BDC requested that it be the lead respondent in CRA's appeal and that the Applicants agreed to such request;

f. CWB and 506221 Alberta Ltd. ("**506**") (the first mortgagee in respect of the Winterburn Yard) have indicated to the Monitor that they oppose the requested Reserve by BDC;

g. 506 has indicated to the Monitor that it anticipates bringing an Application requesting that this Honourable Court direct a distribution of the sale proceeds, being held by the Monitor in trust, from the sale of the Winterburn Yard to it; and

h. the Monitor anticipates that there will be sufficient funds held in the estate trust accounts to cover the Reserve amount at a later date should the Court approve such a payment at a future application.

G. CONCLUSION

64. The Monitor respectfully requests that this Honourable Court grant an Order:

a. extending the stay of proceedings provided in the Initial Order up to and including December 31, 2018;

b. adding Holdings as an Applicant in the CCAA proceedings;

c. providing a Vesting Order in favour of the Purchaser in respect of the Dorms; and

d. providing the Monitor with advice and direction in respect of the Reserve requested by BDC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF JUNE, 2018

DUNCAN CRAIG LLP

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COUNSEL FOR THE MONITOR OF 667402 ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD. AND 1919209 ALBERTA LTD.

LIST OF AUTHORITIES

TAB

1. *Companies' Creditors Arrangement Act.*
2. *Anvil Range Mining Corp., Re*, 2001 CarswellOnt 1325 (S.C.J. – Commercial List).
3. *Associated Investors of Canada Ltd., Re*, 1987 CarswellAlta 330 (Q.B.); reversed on other grounds, 1988 CarswellAlta 310 (C.A.).
4. *San Francisco Gifts Ltd., Re*, 2005 ABQB 91.
5. *murfit-Stone Container Canada Inc., Re*, 2009 CarswellOnt 6554
6. *Guestlogix Inc. (Re)*, 2016 ONSC 1348.
7. *Re Canada North Group Inc.*, 2017 ABQB 508.

TAB 1

Canada Federal Statutes
Companies' Creditors Arrangement Act
Interpretation

Most Recently Cited in:8640025 Canada Inc. (Re) , 2017 BCCA 303, 2017 CarswellBC 2250, 282 A.C.W.S. (3d) 13, 51 C.B.R. (6th) 171, 100 B.C.L.R. (5th) 256, [2017] B.C.W.L.D. 5264, [2018] 2 W.W.R. 683, 415 D.L.R. (4th) 758 | (B.C. C.A., Aug 17, 2017)

R.S.C. 1985, c. C-36, s. 3

s 3.

Currency

3.

3(1)Application

This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

3(2)Affiliated companies

For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

3(3)Company controlled

For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

3(4)Subsidiary

For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one ore more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

Amendment History

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Canada Federal Statutes
Companies' Creditors Arrangement Act
Part II — Jurisdiction of Courts (ss. 9-18.6)

R.S.C. 1985, c. C-36, s. 11.02

S 11.02

Currency

11.02

11.02(1)Stays, etc. — initial application

A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(2)Stays, etc. — other than initial application

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(3)Burden of proof on application

The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

11.02(4)Restriction

Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Amendment History

2005, c. 47, s. 128

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Canada Federal Statutes
Companies' Creditors Arrangement Act
Part III — General (ss. 19-43) [Heading added 2005, c. 47, s. 131.]
Obligations and Prohibitions [Heading added 2005, c. 47, s. 131.]

Most Recently Cited in: Industrial Properties Regina Limited v. Copper Sands Land Corp., 2018 SKCA 36, 2018 CarswellSask 252 | (Sask. C.A., May 23, 2018)

R.S.C. 1985, c. C-36, s. 36

s 36.

Currency

36.

36(1)Restriction on disposition of business assets

A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

36(2)Notice to creditors

A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

36(3)Factors to be considered

In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

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

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

36(4)Additional factors — related persons

If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

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36(5)Related persons
For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

36(6)Assets may be disposed of free and clear
The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

36(7)Restriction — employers
The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Amendment History
2005, c. 47, s. 131; 2007, c. 36, s. 78; 2017, c. 26, s. 14

Currency
Federal English Statutes reflect amendments current to May 16, 2018
Federal English Regulations are current to Gazette Vol. 152:10 (May 16, 2018)

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TAB 2

2001 CarswellOnt 1325
Ontario Superior Court of Justice [Commercial List]

Anvil Range Mining Corp., Re

2001 CarswellOnt 1325, [2001] O.J. No. 1453, 104 A.C.W.S. (3d) 812, 25 C.B.R. (4th) 1

In the Matter of Anvil Range Mining Corporation

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as Amended

In the Matter of the Courts of Justice Act, R.S.O. 1990 c. C-43, as Amended

In the Matter of the Bankruptcy and Insolvency Act, R.S.C. 1985, C.B-3, as Amended

In the Matter of a Plan of Compromise or Arrangement of Anvil Range Mining Corporation, Applicants

Farley J.

Heard: March 22, 2001
Judgment: March 29, 2001
Docket: Doc. 98-BK-001208

Counsel: *Kenneth Kraft* and *George Karayannides*, for Deloitte & Touche Inc. in its capacity as Interim Receiver of Anvil Range Mining Corporation and Anvil Mining Properties Inc.
Tony Reyes, for Golden Hills Ventures Ltd., MacMillan Mining Contractors Ltd., and Vortex Mining Inc.
John Porter, for Her Majesty the Queen in Right of Canada as represented by the Department of Indian Affairs and Northern Development
Kevin R. Aalto and *David Estrin*, for Cumberland Asset Management, Berner Company Inc., Global Securities Corporation, Peel Brooke Inc., Robert N. Granger, Adrian M.S. White, and Hyundai Corporation
Derek T. Ground, for Ross River Dena Council and Ross River Development Corporation
Richard B. Jones, for Rose Creek Vangorda Mines and Pelly River Mines Limited (NPL)
David Hager, for Cominco Ltd.
Geoffrey B. Morawetz, for Yukon Energy Corporation and as agent for James Grout representing "Leitch Lien Claimants"
Frederick L. Myers, for Government of Yukon

Subject: Insolvency; Corporate and Commercial

Related Abridgment Classifications

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.i "Fair and reasonable"

Business associations
V Legal proceedings involving business associations
V.3 Practice and procedure in proceedings involving corporations
V.3.q Costs
V.3.q.ii Scale and quantum of costs

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Headnote

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"
Interim receiver brought motion for sanctioning of plan of arrangement pursuant to Companies' Creditors Arrangement Act — Motion granted — Plan of arrangement was fair and reasonable — Plan had to be evaluated based upon what was known at time and what was realistic in future — Approval of plan of arrangement would allow secured and unsecured creditors and shareholders of company to move on with activities while mining properties would be under proper stewardship — Mere fact that opponents of plan were advocating alternative did not mean interim receiver had lost its neutrality — Plan was compromise of claims of those creditors who had true stake in company — Secured claims were far in excess of value of assets — Valuation of assets on speculative basis, such as possibility of spike in mining prices, was not appropriate — Plan proposed solely to secured creditors is not unfair where insolvent's assets are of insufficient value to yield any recovery to unsecured creditors — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

Table of Authorities

Cases considered by *Farley J.*:

J.S. McMillan Fisheries Ltd., Re (1998), 1 C.B.R. (4th) 226, 50 B.C.L.R. (3d) 167 (B.C. S.C.) — considered

Kostiuk, Re, 2000 BCSC 1115, 2000 CarswellBC 1523, 19 C.B.R. (4th) 109 (B.C. S.C.) — referred to

Lehndorff General Partner Ltd., Re (1993), 17 C.B.R. (3d) 24, 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]) — considered

New Quebec Raglan Mines Ltd. v. Blok-Andersen (1993), 9 B.L.R. (2d) 93 (Ont. Gen. Div. [Commercial List]) — considered

Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada, 34 B.C.L.R. (2d) 122, 73 C.B.R. (N.S.) 195, [1989] 3 W.W.R. 363 (B.C. C.A.) — considered

Olympia & York Developments Ltd., Re (1995), 34 C.B.R. (3d) 93 (Ont. Gen. Div. [Commercial List]) — considered

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 17 C.B.R. (3d) 1, (sub nom. *Olympia & York Developments Ltd., Re)* 12 O.R. (3d) 500 (Ont. Gen. Div.) — considered

Ontario (Registrar of Mortgage Brokers) v. Matrix Financial Corp., 106 D.L.R. (4th) 132, 67 O.A.C. 49 (Ont. C.A.) — considered

Philip Services Corp., Re, 13 C.B.R. (4th) 159, 1999 CarswellOnt 4673 (Ont. S.C.J. [Commercial List]) — considered

Royal Bank v. Fracmaster Ltd., 1999 CarswellAlta 539, (sub nom. *UTI Energy Corp. v. Fracmaster Ltd.)* 244 A.R. 93, (sub nom. *UTI Energy Corp. v. Fracmaster Ltd.)* 209 W.A.C. 93, 11 C.B.R. (4th) 230, [1999] A.J. No. 675 (Alta. C.A.) — considered

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — considered

Miners Lien Act, R.S.Y. 1986, c. 116

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Generally — referred to

MOTION by interim receiver for sanctioning of plan of arrangement pursuant to *Companies' Creditors Arrangement Act.*

Endorsement. ***Farley J.*:**

1 This hearing involved the return of the motion of the Interim Receiver ("IR") which I adjourned on February 21, 2001 as a result of the Cumberland Group's complaint that the IR had not provided a "valuation" pursuant to Cameron J.'s Order of January 16, 2001 [properly December 19, 2000] required the IR's "report to include and updated valuation of the assets". The IR's motion was for the sanctioning of a plan of arrangement (the "Plan") of Anvil Range Mining Corporation and Anvil Mining Properties Inc. (collectively, "Anvil") as approved by certain classes of creditors of Anvil pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") or in the alternative, the approval of a sale of the assets of Anvil on terms substantially similar to those provided in the Plan. The IR's further motion record served on March 14th, contained a March 12, 2001 Anvil Range Mining Corporation Valuation Assessment of Strathcona Mineral Services Limited prepared by Graham Farquharson, together with a March 13, 2001 valuation of the assets of Anvil Range Mining Corporation of Deloitte & Touche Corporate Finance Canada Inc. prepared by Jim Horvath and Mark Keuleman. The Strathcona and Deloitte & Touche reports were advanced by the IR in satisfaction of its obligations to provide the updated valuation of assets.

2 The IR also sought approval of its budgets and authorization for expenditures for the operating period April 1, 2001 - March 31, 2002 and authorization for the funding of special environmental projects for the period January 1 - March 31, 2001. This aspect was not opposed. This request appears reasonable in the circumstances and is therefore approved.

3 As I expressed in my February 21st reasons:

> Certainly, the cited paragraphs in Farquharson's letter would point it to being unlikely that there was any significant value for the assets in question. Certainly Mr. Farquharson's letter is a <u>gloomy one</u> as to the prospect for the mining operations. (emphasis in original)

It should not come as a surprise to anyone then that the updated valuation of Strathcona and Deloitte & Touche do not present a rosy picture. Farquharson concludes:

> Consequently, for Anvil Range the Plimsoll Line as a continuing mining operation is well below the current water level. It is most unlikely that any mining company would purchase the property on the basis of obtaining value from the resumption of mining operations and without considering the assumption of any portion of the environmental liabilities. Anvil Range, therefore, has no value to the beneficiaries of the estate under this scenario.
>
> . . . . .
>
> The total amount realized from the sale or disposition of the foregoing assets on a salvage basis would appear to be in the order of $10 - $15 million without making any contribution towards the ongoing care and maintenance costs for the property or the reclamation requirements which we understand have become the responsibility of DIAND. There may also be some value ascribed to tax pools that remain from operating losses, capital expenditures and exploration expenditures by Anvil Range. However, presumably most of the value, if any, of those tax pools would only be applicable upon the resumption of mining operations on the property, and the Interim Receiver would be best positioned to comment on this item.

The Deloitte & Touche report concluded:

> Based on the scope of our review, assumptions and analysis, the estimated fair market value of all the assets of Anvil Range is in the range of $11.1 million - $19.9 million (Schedule 1), as at January 31, 2001. If asked to be more specific, we would suggest the mid-point of the foregoing range being $15.5 million. Based on the above, there is no value

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remaining for the unsecured creditors as the amount owed to secured creditors of over $90.0 million exceeds the value of the assets of Anvil Range.

4 This was not good news for the Cumberland Group as unsecured creditors nor for Hyundai Corporation as a holder of more than 20% of the shares of Anvil. Certainly it cannot have been unexpected news although one can readily appreciate that human nature may often lead those who have suffered great losses (as the unsecured creditors and shareholders of Anvil certainly have) to hope for a miracle to happen or to present hope as fact and speculation as a firm foundation and to ignore probability in opting for (remote) possibility.

5 The Plan was unanimously approved by the three classes of secured creditors of Anvil on February 2, 2001. Given the Strathcona and Deloitte & Touche valuations, it was concluded that there was no material change to the circumstances under which these three classes voted and therefore it would be redundant to hold a fresh vote. The unsecured creditors were not part of the Plan and were not eligible pursuant to the Plan to vote.

6 The Cumberland Group and Hyundai urged that the Plan should not be approved by this Court for a variety of reasons. Chief among these was the proposition that the secured debt really ahead of the unsecured may not be great as $90 million and that under certain scenarios there may be more value in the Anvil assets than the range of $10 - $19.9 million. *However, what must be appreciated is that one has to look at the situation based upon what is currently known as to existing facts and what is realistic in the foreseeable future.*

7 On December 7, 1999, Blair J. granted leave to the IR or the secured creditors to file a plan of arrangement. The decision amongst them eventually was made amongst all the secured creditors was that the IR should prepare such a plan, with the costs being shared among the secured creditors including DIAND.

8 The three general criteria which must be met for the Court to sanction a plan of arrangement under the CCAA are:

1. Has there been compliance with all statutory requirements and with all Court orders?

2. To determine, based on all materials filed and procedures carried out, if anything has been done or purported to be done that is not authorized by the CCAA; and

3. Is the Plan fair and reasonable?

See *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.) at p. 506; *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada* (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.) at p. 201.

9 Dealing with the first two elements, it appears that the meetings called for voting on the Plan were held pursuant to an order of the Court with the classification of creditors being as approved by this Court. The voting was as contemplated and the Plan was unanimously approved. However, an objection was raised by Messrs. Jones and Aalto that the CCAA did not allow a plan of arrangement to be advanced by an interim receiver and further according to Mr. Aalto that this role being assumed by the IR destroyed the neutrality of the IR. However I would note that similarly there is no provision specifically in the *Bankruptcy and Insolvency Act* for an interim receiver to file a proposal under that legislation. Notwithstanding that in *Re J.S. McMillan Fisheries Ltd.* (1998), 1 C.B.R. (4th) 226 (B.C. S.C.), Tysoe J. stated at p. 231:

> As the Company had no management, the Order appointing Ernst & Young Inc. as Interim Receiver authorized it to negotiate and file a Proposal in relation to the Company.

Further, Blair J. authorized the filing of a Plan by either the IR or the secured creditors and there was no appeal of his order. See the Court of Appeal decision in *Ontario (Registrar of Mortgage Brokers) v. Matrix Financial Corp.*, [1993] O.J. No. 2102 (Ont. C.A.). I would further point out that while the secured creditors had the opportunity of filing a Plan, they did not do so but rather they agreed amongst themselves that the authorized alternate, the IR, do so. The IR is an officer of the Court and pursuant to this court appointment, it owes a duty to be objective and neutral as amongst all of the affected parties in this insolvency, including the unsecured creditors and the shareholders. Given where the Plimsoll Line is in this situation, it is

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extremely inappropriate for the objectors to assert, without any evidence of substance, that the IR has adopted an adversarial role. Given my reasons of February 21, I would not have expected that barrage to have been repeated. That is not to say that, merely because the IR files a Plan, it should be taken by this Court as being fair and reasonable and further that objections not be received on this point. However, merely because the objectors (Cumberland Group) were advocating an alternative plan (a plan which in my view is unrealistic in the circumstances in light of the unsecureds being so far under water, the unworkability of this alternate, the concerns for remediation and the retention of $600,000 as working capital out of the purse of those who have a look at the Plimsoll Line) does not mean that the IR has lost its neutrality. Rather, this demonstrates in my view that the IR has exercised its judgment in a reasoned, practical and functional way, as it should.

10 The Plan as presented is a compromise of the creditor claims of those creditors who have now (on a foreseeable future and realistic basis) a true or "actual" stake in Anvil — as opposed to those claims of the unsecured creditors and shareholders who unfortunately have only a chimera. Therefore although in *Northland* McEachern C.J.B.C. at p. 205, was not dealing with a situation where a class of creditors, as here, the unsecured, were not participating, when he observed:

> First, the authorities warn us against second-guessing businessmen (see *Re Alabama, supra* at p.244). In this case, the companies and their advisors, the bank and its advisors, and all the creditors except the two appellants, all voted for the Plan. As the authorities say, we should not be astute in finding technical arguments to overcome the decision of such a majority.

it would seem to me that his observation would hold true in these circumstances.

11 While it is recognized that the main thrust of the CCAA is geared at a reorganization of the insolvent company — or enterprise, even if the company does not survive, the CCAA may be utilized to effect a sale, winding up or a liquidation of a company and its assets in appropriate circumstances. See *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]) at p. 32; *Re Olympia & York Developments Ltd.* (1995), 34 C.B.R. (3d) 93 (Ont. Gen. Div. [Commercial List]) at p. 104. Integral to those circumstances would be where a Plan under the CCAA would maximize the value of the stakeholders' pie.

12 The CCAA permits a debtor to propose a compromise or arrangement with its secured creditors. A Plan proposed solely to secured creditors is not unfair where the insolvent's assets are of insufficient value to yield any recovery to unsecured creditors. It is not unreasonable for a court in such circumstances to sanction a plan which is directly solely at secured creditors. See *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), *supra* at pp. 513-8; *Re Philip Services Corp.*, [1999] O.J. No. 4232 (Ont. S.C.J. [Commercial List]) at paras. 20-1. That the plan does not include any agreement with a class a creditors does not, by virtue solely of that omission, make it unfair where that class is not being legally affected. Nothing is being imposed upon the unsecureds; none of their rights are being confiscated. See *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), *supra* at pp. 508, 517-8.

13 I have concluded that the secured claims are far in excess of the value of the assets. That value has to be determine on a current basis. See *Re Kostiuk*, 2000 CarswellBC 1523, 2000 BCSC 1115 (B.C. S.C.) at paras. 38-41. It is inappropriate to value the assets on a speculative or (remote) possibility basis. The Strathcona report used reasonable assumptions as to future metal prices. This should be contrasted to the Cumberland Group's assertions that it is possible that prices may spike at some future time. What must be appreciated is that the Anvil ore body as developed presently has a very short life but that the prices must be viewed as sustainable over that period. See my views about spike prices in *New Quebec Raglan Mines Ltd. v. Blok-Andersen* (1993), 9 B.L.R. (2d) 93 (Ont. Gen. Div. [Commercial List]).

14 The Watts, Griffis & McOuat letter of March 21, 2001 has been hastily prepared in an attempt to throw doubt on some of the Strathcona observations and conclusions — but not to discredit them. In fact in numerous instances letter concurs with the Strathcona report. Rather the author of the letter has some questions. It must be appreciated that Strathcona/Farquharson has had significant involvement with the Anvil mining facilities over the past several years, whereas Watts, Griffis & McOuat has only had this rather peripheral engagement. I do not find it unusual that two experienced consultants in this mining field may have different views or approaches, nor that one may feel the need for more information than it was able to glean from reviewing the listed documents before reaching a conclusion. In the result, I think it reasonable to accept the views of Farquharson, an established and recognized expert in this field, who has had, as indicated, considerable experience with this matter over the past several years. Further, I think it inappropriate and unnecessary to further delay and incur

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additional costs to engage upon a further study.

15 It appears that Mr. Aalto's clients have accepted the Cominco secured claim of $24 million. The *Miners Lien Act* ("MLA") claims of $18 million appear also to be undisputed. There was argument as to the DIAND claims since part of DIAND's claim is and always has been acknowledged as contingent since it relates to reclamation costs in the future. However, it has approximately $6 million of claims as to monies already expended. As a side note, I would observe there appears to be every likelihood to a certainty that every dollar in the budget for the year ending March 31, 2002 earmarked for reclamation will be spent. If one were to ignore any future remediation costs, the secured creditors in all three classes would have claims in excess of $50 million. This is 2 1/2 times the highest value of the assets. The Cumberland Group in another tack then asserts that DIAND and any other governmental authorities should not look to settle the remediation costs onto these assets at the present time based upon the recognized philosophy of "polluter pays" present in the environmental legislation. Ralph Sultan, a former director of Anvil, swore a March 21, 2001 affidavit (i.e. the day before this hearing) that:

> 11. Prior to Anvil Range, which operated the Faro Mine for approximately 3 years, there had been a number of operators of the Faro Mine. Prior operators created the basic mine plan for the development and operation of the site which is subject to reclamation. Among those prior operators are Curragh, Cypress Anvil Mining Corporation, and Dome Petroleum. I believe that Cypress Anvil Mining Corporation is a subsidiary of Cyprus Amax Minerals Company which is now owned by Phelps Dodge Corporation a huge international mine conglomerate based in the United States. I believe that Cypress Amex held insurance for environmental reclamation costs which may include the Faro Mine. Others of the predecessors or their successors may also have some form of insurance for this type of claim. So far as I am aware, DIAND has taken no steps to pursue prior operators or insurance which may be available to satisfy any reclamation costs relative to the Faro Mine. Nor am I aware of any efforts made by the Interim Receiver to require DIAND to pursue other avenues of recovery apart from ascertaining a reclamation claim in these proceedings. Attached hereto is Exhibit "F" is a copy of a reference to insurance held by Cypress Amex in a report on Mining prepared by KPMG.

It is always, of course, important to test the theoretical against the real world. It is not disputed by anyone that each of the predecessors would have contributed in part to the overall environmental condition of the Anvil property as such condition now exists. Each successor has "inherited" not only the benefit of the assets but the obligations inherent or attached to those assets — for our purposes, the environmental liability existing as of acquisition. Should DIAND go after the predecessors, *to the exclusion* of looking to the present assets. The answer must reasonably be "no". The most it could do on a reliance solely of "polluter pays" would be to go after each predecessor for what it contributed. It is recognizable that Anvil contributed for 3 years. Curragh and Dome Petroleum have evaporated. Sultan only alludes to insurance which a parent of Cypress Anvil Mining Corporation may hold which might extend to their subsidiary whose continued existence has not been indicated, together with insurance other predecessors may have had. He has no direct knowledge of this insurance being in existence or being able to be called on in accordance with its terms and conditions at this date. It does not appear that the board and management of Anvil, of which Sultan was a member, concerned themselves with establishing what insurance of others it might call upon if Anvil were required during its regime to do reclamation work including these contributions of past polluters. For the purposes of this exercise then it seems to me that the objections as to the environmental concerns is a diversionary tactic. In any event, in or out, the environmental claims merely meant that the objectors are drowned either in 50 feet of water or at a depth of 100 feet after falling overboard from the heavily listing Anvil ship which was taking on water.

16 The other secured creditors-always recognized, as did DIAND, that the significant value of DIAND's claim was contingent in the sense it related to future obligations. To suggest that the vote of the secureds would be any different if they had the "advantage" of my observations above before voting is to my view underestimating their intelligence.

17 With respect to the tax pools, they only have value if there are profits from the mine. There does not appear to be any reasonable likelihood of this in the foreseeable future. The Memorandum of Understanding, dated August 10, 1999, among Cominco Ltd., Government of Yukon and DIAND in reciting its purpose should not be taken as establishing as a fact something which is not so established when it indicates:

> This MOU is to facilitate the protection of the environment and the preservation and protection of assets referred to in this MOU so that the mining operation may recommence in a cost effective and economic manner.

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That is not any foundation for concluding that the mining operation will ever be economic so that it may recommence. Further this MOU statement and the MOU itself does not contradict that there is no present value to the mine. It does not appear that anyone will restart the mine under foreseeable circumstances. But it is conceivable that unforeseen circumstances may occur especially the longer one goes out on the horizon.

18 In my view, the approval of this Plan will allow the creditors (both secured and unsecured) and the shareholders of Anvil to move on with their lives and activities while the mining properties including the mine will be under proper stewardship.

19 The objectors assert that no value was attributed to Anvil's interest in the Kassandra Mines in Greece. Aside from the fact that on December 30, 1999 I decided that Anvil had no such interest, which decision was affirmed by the Court of Appeal on November 1, 2000, in a short six paragraph decision which indicated that I had correctly decided the matters in issue, all that the Cumberland Group has to point to is that its leave to appeal to the Supreme Court of Canada has not been heard yet.

20 Mr. Aalto referred to *Royal Bank v. Fracmaster Ltd.*, [1999] A.J. No. 675 (Alta. C.A.) at para. 16 with respect to the CCAA not being used to provide for a liquidation in a guise of a CCAA reorganization. But see my views above. In any event, the IR has sought alternative relief allowing it to sell the assets, which sale would be on a commercially equivalent basis as the Plan under the CCAA contemplates. Given that the Plan would operate more efficiently in that respect, I see no reason to provide that this proceed as a sale by the IR.

21 In the end result, I am of the view that the Plan is fair and reasonable for the foregoing reasons and therefore the three part test has been met. The Plan is sanctioned and approved.

22 I may be spoken to as to costs if necessary by booking an appointment through the Commercial List Office.

Motion granted.

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TAB 3

Most Negative Treatment: Reversed
Most Recent Reversed: Associated Investors of Canada Ltd., Re | 1988 CarswellAlta 310, [1988] A.W.L.D. 1308, 60 Alta. L.R. (2d) 242, 89 A.R. 344, 71 C.B.R. (N.S.) 71 | (Alta. C.A., Jul 11, 1988)

1987 CarswellAlta 330
Alberta Court of Queen's Bench

Associated Investors of Canada Ltd., Re

1987 CarswellAlta 330, [1988] 2 W.W.R. 211, [1988] A.W.L.D. 151, [1988] C.L.D. 181, 38 B.L.R. 148, 46 D.L.R. (4th) 669, 56 Alta. L.R. (2d) 259, 67 C.B.R. (N.S.) 237, 9 A.C.W.S. (3d) 358

Re ASSOCIATED INVESTORS OF CANADA LTD.; Re FIRST INVESTORS CORPORATION LTD.

Berger J.

Judgment: December 16, 1987
Docket: Edmonton Nos. 8703 16333; 8703 16334

Counsel: *J. McNiven*, for investment contract holders.
R.B. Isbister, for certain investors.
K.F. Bailey and *M.B. Bielby*, for liquidators of Principal Savings & Trust Ltd.
D. Tkachuk, for Coopers & Lybrand.
B.A.R. Smith, for trustee of Principal Group Ltd.

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.iv Miscellaneous

Headnote

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act

Corporations — Arrangements and compromises — Companies' Creditors Arrangement Act available as means of liquidating company if judicial control maintained over liquidation process and effective means of investigating company's affairs provided — Procedure under Act must also provide benefits not available through bankruptcy or winding-up proceedings — Application to approve plans of arrangement requiring court to exercise discretion — Application premature where court-appointed inspector's investigation ongoing and all evidence not before court.

An order was made declaring the debtor companies to be corporations to which the Companies' Creditors Arrangement Act applied. As contemplated by the order, plans of arrangement were approved by bond holders, investment contract holders and subordinate creditors of the debtor companies. The effect of the plans of arrangement would be to liquidate the debtor companies, and an application was made for court approval of the plans of arrangement.

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Held:

Application adjourned sine die.

The Companies' Creditors Arrangement Act is not restricted in its application to companies which are to be kept in business, and the Act may be invoked as a means of liquidating a company and winding up its affairs. However, a company's assets should not be sold and distributed for the benefit of creditors except under judicial supervision and the court must concurrently provide directions that ensure judicial control over the liquidation process as well as an effective means to investigate the affairs of the company. Moreover, the plan should not be approved unless it is demonstrated that: benefits will likely flow to creditors which would not otherwise be available if liquidation were effected pursuant to the Bankruptcy Act or Winding-up Act; the court has the evidence necessary to exercise its discretion according to standards of fairness and reasonableness; and it has been shown that there has been no illegality. Here, as the investigation of an inspector appointed under the Business Corporations Act was ongoing, approval of the plans of arrangement would be premature.

Table of Authorities

Cases considered:

Alabama, New Orleans, Texas & Pacific Junction Ry. Co., Re, [1891] 1 Ch. 231 (C.A.) — *considered*

Audax Gas & Oil Ltd., Re (1985), 42 Alta. L.R. (2d) 353, 63 A.R. 334 (Q.B.) — *referred to*

Avery Const. Co., Re, 24 C.B.R. 17, [1942] 4 D.L.R. 558 (Ont. S.C.) — *not followed*

Can. Cottons Ltd., Re, [1952] Que. S.C. 276, 33 C.B.R. 38 — *considered*

Dorman Long & Co., Re; South Durham Steel & Iron Co., Re, [1934] Ch. 635 — *considered*

Flint (Arthur) Co., Re, [1944] O.W.N. 325, 25 C.B.R. 156, [1944] 3 D.L.R. 13 (S.C.). — *not followed*

McIntosh (D.W.) Ltd., Re, 20 C.B.R. 234, [1939] 4 D.L.R. 723n (Ont. S.C.) — *not followed*

Paris Fur Co. v. Nu-West Fur Corp. of Can. Ltd. (1950), 30 C.B.R. 193 (C.S. Que.) [leave to appeal to K.B. refused 30 C.B.R. 197] — *considered*

Prov. Apts. Ltd., Re, [1936] 3 W.W.R. 327 (Sask. K.B.) — *referred to*

Que. Steel Prod. (Indust.) Ltd. v. James United Steel Ltd., [1969] 2 O.R. 349, 5 D.L.R. (3d) 374 (S.C.) — *considered*

Statutes considered:

Bankruptcy Act, R.S.C. 1970, c. B-3

ss. 132-137 [s. 134 am. 1976-77, c. 28, s. 49 (Item 1)]

ss. 139-152 [s. 147 am. 1985, c. 26, s. 81; s. 148 am. 1986, c. 4, s. 28]

Companies Act, 1929 (19 & 20 Geo. 5, c. 23)

s. 153

Companies' Creditors Arrangement Act, R.S.C. 1970, c. C-25

s. 6

Winding-up Act, R.S.C. 1970, c. W-10

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> When sec. 5 of the Act disposes that the compromise arranged "may be sanctioned by the Court", it cannot be construed as implying that the Court has discretion to refuse its sanction for other reasons than those pertaining to fulfilment of the requirements related to conditions of validity and obligatory strength of the transaction effected between debtor and its ordinary creditors. Our laws are not based on caprice, nor does their general inspiration exhibit any trend that the Court substitute for the interested parties on terms of their accord, except whenever violation of a legal disposition or principle is traced. No such exception would appear to exist in our case.

34 While the expression "obligatory strength of the transaction" is somewhat obscure, I cannot take it as referring to anything but the standards of fairness and reasonableness. Judicial intervention is contemplated in the face of violation of a "legal disposition or principle". The court ought not to sanction a plan that is illegal, improper or unfair.

35 The statement of Collins J. in *Re Can. Cottons Ltd.*, [1952] Que. S.C. 276, 33 C.B.R. 38, accords with this view (at p. 39):

> As already stated in its judgment of June 11, 1951, the Court is not entitled to substitute its judgment for the judgment of the preferred and the common shareholders if a scheme is not otherwise illegal, improper or unfair in any way. The Court can see no illegality in the scheme as such and none has been brought to its attention.

36 The realities of the modern marketplace dictate that courts of law respond to commercial problems in innovative ways without sacrificing legal principle. In my opinion, the Companies' Creditors Arrangement Act is not restricted in its application to companies which are to be kept in business. Moreover, the court is not without the ability to address within its jurisdiction the concerns expressed in the Ontario cases. The Act may be invoked as a means of liquidating a company and winding up its affairs but only if certain conditions precedent are met:

37 1. It must be demonstrated that benefits would likely flow to creditors that would not otherwise be available if liquidation were effected pursuant to the Bankruptcy Act or the Winding-up Act.

38 2. The court must concurrently provide directions pursuant to compatible legislation that ensures judicial control over the liquidation process and an effective means whereby the affairs of the company may be investigated and the results of that investigation made available to the court.

39 3. A plan of arrangement should not receive judicial sanction until the court has in its possession all of the evidence necessary to allow the court to properly exercise its discretion according to standards of fairness and reasonableness, absent any findings of illegality.

40 In the case at bar, conditions 1 and 2 have been met; however, the inspector has yet to report to the court. The investigation is ongoing. Approval of the plans of arrangement at this time would be premature in fact and in law. For the reasons given, the jurisdiction of the court with respect to the debtor companies pursuant to the Companies' Creditors Arrangement Act is premised, in part, upon a viable and effective mechanism of investigation of the affairs of the companies. To sever that investigation from the exercise of the court's discretion pursuant to s. 6 in the face of a liquidation plan would result in jurisdictional error.

41 Moreover, if the court is to properly exercise its discretion pursuant to s. 6 of the Companies' Creditors Arrangement Act and to apply the standards of fairness and reasonableness, the court must have all the facts. If evidence of fraud, negligence, wrongdoing or illegality emerges, the court may be called upon by interested parties to draw certain conclusions in fact and in law that bear directly upon the plans of arrangement.

42 The application, accordingly, is adjourned sine die, pending receipt of the inspector's report.

Application adjourned sine die.

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TAB 4

2005 ABQB 91
Alberta Court of Queen's Bench

San Francisco Gifts Ltd., Re

2005 CarswellAlta 174, 2005 ABQB 91, [2005] A.W.L.D. 1426, [2005] A.J. No. 131, 10 C.B.R. (5th) 275, 137 A.C.W.S. (3d) 242, 378 A.R. 361, 42 Alta. L.R. (4th) 377

In the Matter of the Companies' Creditors Arrangement Act, R.S.A. 1985, c. C-36, As Amended

And In the Matter of a Plan of Compromise or Arrangement of San Francisco Gifts Ltd., San Francisco Retail Gifts Incorporated (Previously Called San Francisco Gifts Incorporated), San Francisco Gift Stores Limited, San Francisco Gifts (Atlantic) Limited, San Francisco Stores Ltd., San Francisco Gifts & Novelties Inc., San Francisco Gifts & Novelty Merchandising Corporation (Previously Called San Francisco Gifts and Novelty Corporation), San Francisco (The Rock) Ltd. (Previously Called San Francisco Newfoundland Ltd.) And San Francisco Retail Gifts & Novelties Limited (Previously Called San Francisco Gifts & Novelties Limited)

Topolniski J.

Heard: January 17, 2005
Judgment: February 9, 2005
Docket: Edmonton 0403-00170

Counsel: Richard T.G. Reeson, Q.C., John Bridgadear, Howard J. Sniderman for Companies
Michael McCabe, Q.C. for Monitor, Browning Crocker Inc.
Jeremy H. Hockin for Oxford Properties Group Inc., Ivanhoe Cambridge 1 Inc.; 20 Vic Management Ltd.; Morguard Investments Ltd.; Morguard Real Estate Investments Trust; Millwoods Town Centre, Edmonton; Park Place, Lethbridge; Metro Town, Burnaby, B.C.; Northgate Mall, Edmonton; Brandon Shopping Mall, MB; Herongate Mall, Ottawa; Westmount Shopping Centre, London; Village Mall, St. John's NFLD; Kingsway Garden Mall; Westbrook Mall; Bonnie Doon Shopping Centre; Red Deer Centre; Marlborough Mall; Circile Park Mall; Kildonan Place Mall; Cambridge Centre; Oshawa Centre; Tecumseh Mall; Downtown Chatham Centre; Simcoe Town Centre; Niagara Square; Halifax Shopping Centre; RioCan Property Services; 1113443 Ontario Inc.; Shoppers World, Brampton, ON; Tillicum Mall, Victoria, BC; Confederation Mall, Saskatoon, SK; Parkland Mall, Yorkton, SK; Cambrian Mall, Sault Ste. Marie, ON; Northumberland Mall, Cobourg, ON; Orangeville Mall, Orangeville, ON; Renfrew Mall, Renfrew, ON; Orillia Square Mall, Orillia, ON; Elgin Mall, St. Thomas, ON; Lawrence Square, North York, ON; Trinity Conception Square, Carbonear, NFLD; Charlottetown Mall, Charlottetown PEI; Timiskaming Square
Kent Rowan for Locher Evers International, Neuvo Rags, Quality Press
Tim Shelley (Agent Employee) for Lauer Transportation Services

Subject: Insolvency; Civil Practice and Procedure

Headnote

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings

Debtor operated national chain of novelty goods stores with some 400 employees — Debtor obtained Companies' Creditors Arrangement Act (CCAA) protection on January 7, 2000 — Stay of proceedings under CCAA was extended three times with expectation that entire CCAA process would be completed by February 7th, 2005 — On December 30, 2004, debtor pleaded guilty to nine counts of wilful copyright infringement and paid $150,000 fine — Debtor had sold lamps with counterfeit safety certification labels and was found to have other counterfeit goods in its possession — Debtor brought application for further extension of time — Application granted — Stay was extended to July 19, 2005 —

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This was not case where debtor's business practices were so offensive as to warrant refusal of extension on public policy grounds — Debtor's conduct was illegal and offensive, but debtor had already been condemned for its illegal conduct in appropriate forum — Denying extension would be additional form of punishment — Of greater concern was effect on unsecured creditors who would be denied right to vote on plan and any chance for small financial recovery — Debtor met prerequisites of acting with due diligence and in good faith in working towards presenting plan of arrangement to its creditors — Delay was primarily attributable to time required for debtor to seek leave to appeal from prior classification decision — Monitor was satisfied that debtor was financially viable despite payment of fine — Potential adverse effect of debtor's misconduct on business relationships was sheer speculation at this point.

APPLICATION by debtor for further extension of stay of proceedings under *Companies' Creditors Arrangement Act.*

***Topolniski J.*:**

Introduction

1 The San Francisco group of companies (San Francisco) obtained *Companies' Creditors Arrangement Act* [1] (*CCAA*) protection on January 7, 2000 (Initial Order). Key to that protection was the requisite stay of proceedings that gives a debtor company breathing room to formulate a plan of arrangement. The stay was extended three times thereafter with the expectation that the entire *CCAA* process would be completed by February 7th, 2005. That date was not met. Accordingly, San Francisco now applies to have the stay extended to June 30, 2005.

2 A small group of landlords opposes the motion on the basis of San Francisco's recent guilty plea to *Copyright Act* offenses and the sentencing judge's description of San Francisco's conduct as: "...a despicable fraud on the public. Not only not insignificant but bordering on a massive scale..." The landlords suggest that this precludes any possibility of the company having acted in "good faith" and therefore having met the statutory prerequisite to an extension. Further, they contend that extending the stay would bring the administration of justice into disrepute.

3 San Francisco acknowledges that its conduct was stupid, offensive and dangerous. That said, it contends that it already has been sanctioned and that it has "paid its debt to society." It argues that subjecting it to another consequence in this proceeding would be akin to double jeopardy. Apart from the obvious consequential harm to the company itself, San Francisco expresses concern that its creditors might be disadvantaged if it is forced into bankruptcy.

4 While there has been some delay in moving this matter forward towards the creditor vote, this delay is primarily attributable to the time it took San Francisco to deal with leave to appeal my classification decision of September 28, 2004. Despite the opposing landlords' mild protestations to the contrary, it is evident that the company has acted with due diligence. The real focus of this application is on the meaning and scope of the term "good faith" as that term is used in s. 11(6) of the *CCAA*, and on whether San Francisco's conduct renders it unworthy of the protective umbrella of the Act in its restructuring efforts. It also raises questions about the role of a supervising court in *CCAA* proceedings.

Background

5 San Francisco operates a national chain of novelty goods stores from its head office in Edmonton, Alberta. It currently has 62 locations and approximately 400 employees.

6 The group of companies is comprised of the operating company, San Francisco Gifts Ltd., and a number of hollow nominee companies. The operating company holds all of the group's assets. It is 100 percent owned by Laurier Investments Corp., which in turn is 100 percent owned by Barry Slawsky (Slawsky), the driving force behind the companies.

7 Apart from typical priority challenges in insolvency matters, this proceeding has been punctuated by a series of challenges to the process and its continuation, led primarily by a group of landlords that includes the opposing landlords.

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8 On December 30, 2004, San Francisco pleaded guilty to nine charges under s. 42 of the *Copyright Act*, [2] which creates offences for a variety of conduct constituting wilful copyright infringement. The evidence in that proceeding established that:

(a) An investigation by the St. John's, Newfoundland, Fire Marshall, arising from a complaint about a faulty lamp sold by San Francisco, led to the discovery that the lamp bore a counterfeit safety certification label commonly called a "UL" label. [3] The R.C.M.P. conducted searches of San Francisco stores across the country, its head office, and a warehouse, which turned up other counterfeit electrical UL labels as well as counterfeit products bearing the symbols of trademark holders of Playboy, Marvel Comics and others.

(b) Counterfeit UL labels were found in the offices of Slawsky and San Francisco's Head of Sales. There was also a fax from "a Chinese location" found in Slawsky's office that threatened that a report to Canadian authorities about the counterfeit safety labels would be made if payment was not forthcoming.

(c) *Copyright Act* charges against Slawsky were withdrawn when San Francisco entered a plea of guilty to the charges;

(d) The sentencing judge accepted counsels' joint submission that a $150,000.00 fine would be appropriate. In passing sentence, he condemned the company's conduct, particularly as it related to the counterfeit labels, expressing grave concern for the safety of unknowing consumers. [4]

(e) San Francisco was co-operative during the R.C.M.P. investigation and the Crown's prosecution of the case.

(f) San Francisco had been convicted of similar offences in 1998.

9 Judge Stevens-Guille's condemnation of San Francisco's conduct was the subject of local and national newspaper coverage.

10 The company paid the $150,000.00 fine from last year's profits.

Analysis

Fundamentals

11 The well established remedial purpose of the *CCAA* is to facilitate the making of a compromise or arrangement by an insolvent company with its creditors to the end that the company is able to stay in business. The premise is that this will result in a benefit to the company, its creditors and employees. [5] The Act is to be given a large and liberal interpretation. [6]

12 The court's jurisdiction under s. 11(6) to extend a stay of proceedings (beyond the initial 30 days of a *CCAA* order) is preconditioned on the applicant satisfying it that:

(a) circumstances exist that make such an order appropriate; and

(b) the applicant has acted, and is acting, in good faith and with due diligence.

13 Whether it is "appropriate" to make the order is not dependant on finding "due diligence" and "good faith." Indeed, refusal on that basis can be the result of an independent or interconnected finding. Stays of proceedings have been refused where the company is hopelessly insolvent; has acted in bad faith; [7] or where the plan of arrangement is unworkable, impractical or essentially doomed to failure. [8]

Meaning of "Good Faith"

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14 The term "good faith" is not defined in the *CCAA* and there is a paucity of judicial consideration about its meaning in the context of stay extension applications. The opposing landlords on this application rely on the following definition of "good faith" found in *Black's Law Dictionary* to support the proposition that good faith encompasses general commercial fairness and honesty:

> A state of mind consisting of: (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealings in a given trade or business, or (4) absence of intent to defraud or seek unconscionable advantage. [9] [Emphasis added]

15 "Good faith" is defined as "honesty of intention" in the *Concise Oxford Dictionary*. [10]

16 Regardless of which definition is used, honesty is at the core. Honesty is what the opposing landlords urge is desperately wanting now and, as evidenced by San Francisco's earlier conviction for *Copyright Act* offences, was wanting in the past.

17 Accepting that the duty of "good faith" requires honesty, the question is whether that duty is owed to the court and the stakeholders directly affected by the process, including investors, creditors and employees, or does the *CCAA* cast a broader net by requiring good faith in terms of the company's dealings with the public at large? As will be seen from the following review of the jurisprudence, it usually means the former.

18 *Rio Nevada Energy Inc., Re* [11] and *Skeena Cellulose Inc., Re* [12] both involved opposed stay extension applications. In *Skeena Cellulose Inc.*, one of the company's two major secured creditors argued that the company's failure to carry out certain layoffs in the time recommended by the monitor showed a lack of good faith and due diligence. Brenner C.J.S.C. found that the delay in carrying out the layoffs was not a matter of bad faith. Given the severe consequences of terminating the stay, he granted the extension.

19 Romaine J. rejected a suggestion of lack of good faith arising from a creditor dispute and allegations of debtor dishonesty in *Rio Nevada Energy Inc.*, finding that: "Rio Nevada has acted and is acting in good faith *with respect to these proceedings*." [13] [Emphasis added]

20 *Sairex GmbH v. Prudential Steel Ltd.* [14] involved an application by a creditor to proceed against a company under *CCAA* protection. Farley J. declined the application despite his sympathy for the creditor's position and his view that the creditor could make out a fairly strong case. He said: "... I would think that public policy also dictates that a company under *CCAA* protection or about to apply for it should not be allowed to engage in very offensive business practices against another and thumb its nose at the world from the safety of the *CCAA*." [15] In the end, he concluded that the dominant purpose behind the company's actions was not to harm the creditor.

21 Inventory suppliers in *Agro Pacific Industries Ltd., Re* [16] sought to set aside a *CCAA* stay on the ground that the company had not been acting in good faith in entering into contracts. The suppliers' contention that the company knew it was in shaky financial circumstances when it ordered goods and that it did so to pay down the secured creditors was rejected by Thackeray J. He was not satisfied that there was any lack of good faith or collusion between the company and its secured creditors to disadvantage the unsecured creditors.

22 *Juniper Lumber Co., Re* [17] addressed a creditor's allegations of bad faith in the context of an application to set aside the *ex parte* Initial Order. Turnbull J. held that, while fraud may not always preclude *CCAA* relief, it was of such a magnitude in that case as to warrant setting aside the order. He commented that: "basic honesty has to be present" in the course of conduct between a bank and its customer. [18] However, his decision was overturned by the Court of Appeal because the necessary evidentiary foundation was wanting. [19]

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TAB 5

2009 CarswellOnt 6554
Ontario Superior Court of Justice [Commercial List]

Smurfit-Stone Container Canada Inc., Re

2009 CarswellOnt 6554, 181 A.C.W.S. (3d) 854, 61 C.B.R. (5th) 92

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

In the Matter of a Plan of Compromise or Arrangement of Smurfit-Stone Container Canada Inc. and other Applicants listed on Schedule "A"

Pepall J.

Judgment: October 20, 2009
Docket: CV-09-7966-00CL

Counsel: Kevin McElcheran, Heather Meredith for Moving Parties
Sean F. Dunphy, Alexander Rose for Respondents / Applicants
Robert J. Chadwick, Christopher G. Armstrong for Monitor
Kevin Zych for Official Committee of Unsecured Creditors
R. Thornton, S. Aggarwal for Manufacturers and Traders Trust Company as Indenture Trustee

Subject: Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency
II Assignments in bankruptcy
II.1 Commencement of proceeding

Bankruptcy and insolvency
XX Miscellaneous

Headnote

Bankruptcy and insolvency --- Assignments in bankruptcy — Commencement of proceeding
Related businesses including SC, American parent company and Nova Scotia company applied for protection from creditors in America and Canada — Nova Scotia company carried on no trade but issued unsecured notes guaranteed by parent company, in amount of $200 million — Funds from notes were lent to SC by way of unsecured company loan, with interest paid by shares of SC to Nova Scotia company — Creditors of Nova Scotia company were parent company, noteholders and possibly government for tax owing — Nova Scotia company and SC had overlapping directors and officers, and were represented by same counsel — Fund managers of debt notes brought motion for declaration that interests of Nova Scotia company and creditors were adverse to interests of SC Inc., and forcing Nova Scotia company into bankruptcy — Motion dismissed — Relief was requested prematurely — Unclear if claim was debt or equity and if Nova Scotia company could vote on plan — Not unusual for restructuring to address intercompany claims — Nothing to indicate plan was not being prepared in good faith while protection was in place — Lifting stay could harm debtor in possession financing.

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Bankruptcy and insolvency --- Miscellaneous
Related businesses including SC, American parent company and Nova Scotia company applied for protection from creditors in America and Canada — Nova Scotia company carried on no trade but issued unsecured notes guaranteed by parent company, in amount of $200 million — Funds from notes were lent to SC by way of unsecured company loan, with interest paid by shares of SC to Nova Scotia company — Creditors of Nova Scotia company were parent company, noteholders and possibly government for tax owing — Nova Scotia company and SC had overlapping directors and officers, and were represented by same counsel — Fund managers of debt notes brought motion for declaration that interests of Nova Scotia company and creditors were adverse to interests of SC Inc., and forcing Nova Scotia company into bankruptcy — Motion dismissed — Relief was requested prematurely — Unclear if claim was debt or equity and if Nova Scotia company could vote on plan — Not unusual for restructuring to address intercompany claims — Nothing to indicate plan was not being prepared in good faith while protection was in place — Lifting stay could harm debtor in possession financing.

Table of Authorities

Cases considered by *Pepall J.*:

Calpine Canada Energy Ltd., Re (2006), 19 C.B.R. (5th) 187, 2006 ABQB 153, 2006 CarswellAlta 446 (Alta. Q.B.) — referred to

Canadian Airlines Corp., Re (2000), 19 C.B.R. (4th) 1, 2000 CarswellAlta 622 (Alta. Q.B.) — referred to

Hongkong Bank of Canada v. Chef Ready Foods Ltd. (1990), 51 B.C.L.R. (2d) 84, 1990 CarswellBC 394, 4 C.B.R. (3d) 311, (sub nom. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada)* [1991] 2 W.W.R. 136 (B.C. C.A.) — considered

SemCanada Crude Co., Re (2009), 2009 CarswellAlta 167, 2009 ABQB 90, 52 C.B.R. (5th) 131 (Alta. Q.B.) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982
Chapter 11 — referred to

Companies Act, R.S.N.S. 1989, c. 81
Generally — referred to

s. 135 — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 3(1) — referred to

MOTION by fund managers for assignment in bankruptcy and for order of conflict of interest between related businesses in bankruptcy protection.

***Pepall J.*:**

Relief Requested

1 Aurelius Capital Management, LP and Columbus Hill Capital Management, L.P. are Fund Managers for notes issued by Stone Container Finance Company of Canada II ("Finance II") in the amount of US$200 million. Amongst other things, they request an order declaring that the interests of Finance II and its creditors are adverse to those of Smurfit-Stone Container

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17 The respondents are opposed to the motion. They take the position that there is no conflict of interest and the nature of Finance II's claim has not been determined. Furthermore, one should not presume that the plan is doomed to fail. They submit that appointment of a trustee in bankruptcy is premature and significantly there would be real prejudice to the applicants in that a bankruptcy of Finance II would constitute an event of default under the DIP facility. In contrast, the prejudice to the noteholders is speculative. Furthermore, Finance II's claims are preserved and those having an economic interest will have input either before or after the plan is tabled. In addition, the indenture trustee is an ex officio member of the UCC and the noteholders are represented by those entities.

18 The Official Committee of Unsecured Creditors is also opposed to the motion.

19 The Monitor supports the position of the respondents.

Discussion

20 It is not unusual for restructurings to involve consolidated plans that address intercompany claims. Indeed, section 3(1) of the CCAA contemplates group filings. By their nature, these often involve intercompany claims. In its seventh report, the Monitor notes: "It is common in large, integrated, cross-border reorganizations for CCAA and Chapter 11 proceedings to be dealt with on a consolidated basis with a single CCAA Monitor appointed by the Court to oversee all aspects of the reorganization of an integrated group for the benefit of all stakeholders of the Canadian debtors. These restructurings will invariably include certain intercompany claims and interests which are addressed in a consolidated plan or plans."

21 The moving parties acknowledge in their factum that intercompany debts are often found in CCAA proceedings. Consistent with that fact, in the various pieces of correspondence that predated this motion, the moving parties never asked counsel for the applicants to remove themselves from the record nor did they make such a suggestion to the Monitor. Conflicts are frequently found in CCAA proceedings particularly those involving corporate groups. If one were to insist on independent counsel and an independent court officer for every instance of perceived conflict of interest, restructuring proceedings of corporate groups would become completely unwieldy and unproductive. On the other hand, there may be instances of conflicts of interest that should be addressed. The court should adopt a case by case analysis to ascertain whether there is a conflict of interest that merits the granting of relief.

22 In this case before me, there is a real issue as to whether Finance II's claims constitute debt or equity and it is unclear that Finance II has a claim entitling it to vote on any plan. This issue could be addressed in the plan itself or beforehand by way of a motion. No determination of the nature of Finance II's claims has been made yet. As such, the declaratory relief requested is premature. In the meantime, Finance II's assets consist of its intercompany claims and its ability to assert those claims has been preserved. There is no evidence that the applicants are not working on a plan in good faith for the benefit of all stakeholders including Finance II and the noteholders or that the interests of Finance II and the noteholders are not being taken into account. Indeed, there is no evidence of any breach of any duty by any of the impugned parties.

23 Even if I am wrong in this regard, I would not lift the stay of proceedings imposed in the Initial Order so that Finance II may be assigned into bankruptcy. In exercising discretion to lift the stay, the court should balance the interests of the creditors and debtors and consider the prejudice that may be suffered by each: *Canadian Airlines Corp., Re*[1] The court should also be mindful of the purposes underlying the CCAA and their application to the facts of the case. The former are described by Gibbs J.A. in *Hongkong Bank of Canada v. Chef Ready Foods Ltd.*[2]:

> The purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to remain in business...When a company has recourse to the CCAA the court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure. Obviously, time is critical. Equally obviously, if the attempt at compromise or arrangement is to have any prospect of success there must be a means of holding the creditors at bay, hence the powers vested in the court under s.11.

24 The goals of the CCAA apply not only to individual companies but to interdependent corporate groups operating as a

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single enterprise, particularly when the treatment of the corporate group as an integrated system will result in greater value. The court may consider the implications of the corporate group's reorganization efforts as a whole: *SemCanada Crude Co., Re*3 and *Calpine Canada Energy Ltd., Re*4

25 In my view and keeping these principles in mind, the stay should not be lifted at this time. There is real prejudice to the applicants in that a bankruptcy of Finance II would constitute an event of default under the DIP facility and could upset the applicants' ability to emerge successfully from CCAA protection. An event of default allows for termination of the commitments under the DIP facility and a declaration that outstanding amounts are due and payable. The applicants rely on the DIP facility and forecast draws of $29.4 million during the next three months.

26 Counsel for the moving parties advance seven reasons in support of their position that a bankruptcy is unlikely to cause any prejudice and they are outlined in their factum. They complain that Finance II should never have been a guarantor of the DIP loan; there is no reason to assume the DIP lenders will accelerate the loan or enforce the security; the guarantee of Finance II adds no incremental value; supervision of the restructuring should not be delegated to the DIP lenders; the applicants should seek a default waiver from the DIP lenders or refinance or repay the DIP loan. In argument counsel for the moving parties also noted the absence of counsel for the DIP lender and asked that I infer from such absence that the default under the DIP facility would be of no consequence.

27 While one may argue that Finance II should not have been a party to the DIP loan agreement, it is and certain remedies flow in the event of a default. There is no certainty that the DIP lenders would enforce the agreement but there is some risk and the absence of their counsel at the motion does not serve to eliminate that risk. While I agree that a DIP loan agreement should not be the only driver in CCAA proceedings, it is a factor to consider. Even if one were to disregard its significance, as stated by the Monitor, assigning Finance II into bankruptcy would disrupt the consolidated, cross-border restructuring efforts being undertaken. I agree with the Monitor that such a disruption is not warranted at this stage of the proceedings. In addition, the bankruptcy could upset the applicants' tax structure. There would also be the administrative burden and expense associated with the appointment of a trustee in bankruptcy and likely delay.

28 In my view the potential prejudice to the applicants outweighs that to the moving parties. Accordingly, I am dismissing the request to have Finance II assigned into bankruptcy.

29 I have no doubt that the Monitor will attend not just to the interests of the group of stakeholders but to the needs of individual creditors as well. That said, even though I am dismissing the remedy requested by the moving parties, I do accept that there is some basis to their complaint of a need for "a seat at the table". During argument, counsel for the applicants and the indenture trustee raised different means of addressing this problem. Both the applicants and the moving parties indicated that the characterization of Finance II's claims is a threshold issue. Stakeholders should with some dispatch turn their minds to an appropriate process to address that issue. If counsel require any assistance or further direction from the court in this regard, they may arrange for a 9:30 appointment before me.

Motion dismissed.

Footnotes

1 (2000), 19 C.B.R. (4th) 1 (Alta. Q.B.).

2 (1990), 4 C.B.R. (3d) 311 (B.C. C.A.) at para. 10.

3 [2009] A.J. No. 129 (Alta. Q.B.) at para. 29.

4 [2006] A.J. No. 412 (Alta. Q.B.) at para.32.

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TAB 6

2016 ONSC 1348
Ontario Superior Court of Justice

GuestLogix Inc., Re

2016 CarswellOnt 3323, 2016 ONSC 1348, [2016] O.J. No. 1129, 264 A.C.W.S. (3d) 568

Guestlogix Inc.

G.B. Morawetz R.S.J.

Heard: February 12, 2016
Judgment: February 12, 2016
Docket: CV-16-11281-00CL

Counsel: Rebecca Kennedy, for Applicant
Robert Kennedy, for Vistara Capital Partners Fund I Limited Partnership, by its General Partner, Vistara Fund I GP Inc.
Caitlin Fell, for Comerica Bank
Virginie Gauthier, for Monitor, PricewaterhouseCoopers Inc.
Sonja Pavic, for Board of Directors

Subject: Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Miscellaneous

Adding party — Applicant sought order adding GLI Ltd. as applicant in proceedings under Companies' Creditors Arrangement Act (CCAA) — GLI Ltd. had bank account in Canada — GLI Ltd. was guarantor of Comerica facility and second secured term loan — Comerica provided notice that applicant's default was continuing and that all outstanding amounts were due — Applicant asserted that applicant and GLI Inc. were integrated entities and ash management system is operated and managed by employees in Canada and all cash was ultimately consolidated to applicant — Applicant brought motion to add applicant — Motion granted — It was appropriate to grant GLI Inc. protection under CCAA and to add GLI Inc. as applicant in CCAA proceedings — It was appropriate to grant priority to administration charge and directors' charge — Interim financing facility was approved and interim lender's charge was granted — Applicants anticipated continuing in ordinary course under CCAA and using interim financing to fund cash flow requirements — Applicants were to manage their own affairs during CCAA proceedings — Applicants' secured lenders supported CCAA proceeding — Interim facility would provide stability to process and allow sale and investor solicitation process to be completed — No creditor would be materially prejudiced and they would have benefit from enhanced value to enterprise through continued operations.

MOTION to add corporation as applicant in Companies' Creditors Arrangement Act Proceeding.

G.B. Morawetz R.S.J.:

1 On February 12, 2016, the Record was endorsed: "The motion was not opposed. Motion granted and Orders signed in the form presented. Brief reasons will follow".

2 These are the reasons.

3 The Applicant seeks an order adding GuestLogix Ireland Limited ("GuestLogix Ireland") as an Applicant in these *CCAA* proceedings.

4 The Applicant also seeks an Interim Lender's Charge.

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5 Counsel for the Applicant submits that GuestLogix Ireland is a debtor company to which the *CCAA* applies. GuestLogix Ireland has a bank account in Canada and counsel submits, GuestLogix Ireland is a company as defined in the *CCAA*.

6 Further, counsel submits that GuestLogix Ireland is insolvent as it is a guarantor of both the Comerica Facility and the Second Secured Term Loan. On February 8, 2016, Comerica Bank provided notice to the Applicant and its guarantors that the Applicant's default was continuing and that all outstanding amounts are under the Comerica Facility were due.

7 Counsel further submits that the Applicant and the GuestLogix Ireland are highly integrated entities, and the cash management system is operated and managed by employees in Canada and all cash is ultimately consolidated to the Applicant. Accordingly, counsel submits that due to the structure of the cash management system, GuestLogix Ireland is unable to satisfy its obligations under the guarantees they granted in relation to the Comerica Facility and the Second Secured Term Loan.

8 Counsel further submits that by including GuestLogix Ireland as an Applicant in these *CCAA* proceedings will allow the Applicant to include all of the assets of GuestLogix Ireland in a potential transaction. Based on the informal sale and investor solicitation process commenced by Canaccord, parties expressed in interest in purchasing the assets of both the Applicant and OpenJaw Technologies Limited ("OpenJaw"). GuestLogix Ireland owns 100% of the outstanding shares of OpenJaw, and the Applicant submits that maximization of the value for the Applicant stakeholders cannot be achieved within these *CCAA* proceedings unless GuestLogix Ireland is included as an Applicant.

9 I am satisfied that circumstances exist in this case that make it appropriate to grant GuestLogix Ireland protection under the *CCAA* and add GuestLogix Ireland as an Applicant in these *CCAA* proceedings.

10 The Applicant also requests that the Administration Charge (as defined in the February 9, 2016 endorsement) rank in priority to all security interest of secured creditors, statutory or otherwise, to secure the payment of fees and expenses incurred in connection with this *CCAA* proceedings in the amount of $250,000.

11 The authority to provide such a charge is set out in section 11.52 of the *CCAA* and the non-exhaustive factors that the court may consider when granting an Administration Charge are set out in *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 (Ont. S.C.J. [Commercial List]).

12 In Canwest, Pepall J. (as she then was) set out following non-exhaustive list of factors of the court may consider when granting an Administration Charge:

(a) The size and complexity of the business being restructured;

(b) The proposed role of the beneficiaries of the charge;

(c) Whether there is an unwarranted duplication of roles;

(d) Whether the quantum of the proposed charge appears to be fair and reasonable;

(e) The position of the secured creditors likely to be affected by the charge;

(f) The position of the Monitor.

13 In this case, the Monitor is of the view that the amount of the Administration Charge is reasonable and the circumstances and notice has been provided to secured creditors.

14 I am satisfied that it is appropriate to grant priority to the Administration Charge.

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TAB 7

2017 ABQB 508
Alberta Court of Queen's Bench

Re Canada North Group Inc

2017 CarswellAlta 1609, 2017 ABQB 508, [2017] A.W.L.D. 5084,
2017 D.T.C. 5110, 283 A.C.W.S. (3d) 255, 51 C.B.R. (6th) 282

In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended

And In the Matter of a Plan of Arrangement of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D.J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

S.D. Hillier J.

Heard: July 27, 2017
Judgment: August 17, 2017
Docket: Edmonton 1703-12327

Counsel: S.A. Wanke, S. Norris, for Applicants / Cross-Respondents
C.P. Russell, Q.C., for Respondent / Cross-Applicant
D.R. Bieganek, Q.C., for Monitor, Ernst &Young LLP
J. Oliver, for Business Development Bank of Canada
T.M. Warner, for ECN Capital Corp.
M.J. McCabe, Q.C., for PricewaterhouseCoopers
R.J. Wasylyshyn, for Weslease Income Growth Fund LP
H.M.B. Ferris, for First Island Financial Services Ltd.
G.F. Body, for Canada Revenue Agency

Subject: Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Grant of stay — Extension of order

Debtors were group of companies involved in work camps in natural resource sector, modular construction manufacturing, camp land rentals, and real estate holdings including golf course — Debtors had used services of secured creditor for significant period of time — Debtors' operations and profitability were significantly impacted by downturn in economy — Debtors issued notices of intention to make proposals under Bankruptcy and Insolvency Act and obtained initial stay of proceedings under s. 11.02(1) of Companies' Creditors Arrangement Act (CCAA) — Debtors brought application for extension of stay under s. 11.02(2) of CCAA, and for ancillary relief — Creditor brought cross-application for order lifting stay and appointing either full or interim receiver — Application granted; cross-application dismissed — Stay was extended with date for review being set; debtor-in-possession (DIP) financing was increased; affiliated company was added as debtor; monitor's first report was approved; and stay was expanded to included third parties involved in debtors' projects — Chief restructuring officer had begun consultations with unsolicited parties who had expressed interest, and structure for plan of arrangement was now important priority — It was not shown that debtors had failed to act in good faith to extent of disentitling extension sought, and extension of stay was in best interest subject to further vigorous review within reasonable period of time — Increase in DIP financing was required to address anticipated cash flow shortage resulting from welcome work during what was typically slower season for debtors — Operations of affiliated company were inextricably linked to those of debtors.

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67 Overall, I find that extension of the Stay is in the best interest. However, a further vigorous review must take place within a reasonable period of time.

68 The November 3, 2017 date targeted by the Group is not reasonable in the circumstances.

69 As such, the next hearing is set for September 26, 2017. The Court will require a Report from the Monitor at least 7 business days prior to that date.

Increase in DIP Financing

70 Ms. McCracken suggests in her affidavit that they only need a small increase in the DIP loan to cover operations in light of healthy cash flows and significant assets.

71 While the creditors may rightly take issue with the characterization of the increase as "small", I approve the request to increase the DIP financing from $1M to $2.5M in the form of order proposed by counsel for the Group to address the anticipated cash flow shortage resulting from welcome work during what is typically a slower season for the Group. Counsel for CWB took no issue with the form of order.

72 At the close of submissions, counsel for CRA alerted the Court, as well as BDC in particular, that it took issue with the increase in DIP financing and that it would be applying for priority with respect to $1.14M owing to the Minister by the Group for unremitted source deductions and GST. It was seeking an order to vary so as to put the administrative charge, director's charge and interim lender charges in second place behind the CRA. In light of that information, BDC counsel indicated that the CRA's position would not impair BDC's ability to advance the DIP financing, noting that the matter would be argued at a later date.

1919

73 The application to add 1919 was not opposed. As was the case in *Guestlogix*, the operations of 1919 are inextricably linked to those of the Group, as it leases important equipment and provides it Canada North.

74 I order that 1919 be added as a party included in the Group. Counsel for the Group agreed to include in the order a clause restating the allocation provision in the initial Stay Order to recognize that Welease has made this concern known at this point. Counsel for CWB did not take issue with such a provision in the order.

Approval of Monitor's First Report

75 And at the request of the Monitor, I approve:

• his First Report and activities;

• suspend the limitation periods on claims;

• confer power to examine parties on questioned transactions regarding lot sales prior to *CCAA*.

76 The further Report of the Monitor is required at least 7 days before the next hearing.

Expansion of Stay

77 The Stay is expanded to apply to proceedings against Heart Lake and associated parties involved in the Grand Rapids contracts, and proceedings by Max Fuel against Ms. McCracken. Counsel for CWB did not take issue with this. In the result, the applications for appointment of a Receiver, interim or otherwise, are dismissed.

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