Court File No. 03-CL-5145

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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 or Plans of Compromise or Arrangement of Ivaco Inc. and the Applicants listed in Schedule "A"

Applicants

SUPPLEMENTARY NOTICE OF MOTION
(returnable November 7, 2006)

III Canada Acquisition Company, Sivaco Wire Group 2004 L.P., Ifastgroupe 2004 L.P., Ivaco Rolling Mills 2004 L.P., Heico Holding, Inc. and The Heico Companies, L.L.C. (collectively, "Heico") will bring a further motion before the Honourable Mr. Justice Ground of the Commercial List returnable on Tuesday, the 7th day of November, 2006 at 10 a.m. at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

_ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;

_ in writing as an opposed motion under subrule 37.12.1(4)

x orally.

THE MOTION IS FOR

a) An order lifting the stay under the *Companies' Creditors Arrangement* Act and granting leave for Heico to commence an action against Ivaco Inc., 1039028 Ontario Inc., Ifastegroupe and Company, Limited Partnership, Ifastgroupe Realty Inc., IFC (Fasteners) Inc., Ivaco Rolling Mills Limited Partnership, and Ivaco Rolling Mills Inc. seeking $75 million in damages for negligent and/or fraudulent misrepresentation and other consequential relief, pursuant to a draft Statement of Claim at Tab C of the within Motion Record;

b) an order declaring that the issue of whether the Exhibit Bs to three asset purchase agreements dated August 6, 2004 ("APAs") for the purchase of the businesses formerly maintained by Ivaco Rolling Mills Limited Partnership ("IRM LP"), Ifastgroupe and Company Limited Partnership ("Ifastgroupe LP") and Ivaco Inc. (collectively, "Ivaco") must comply with generally accepted accounting principles ("GAAP") and must be adjusted by KPMG LLP acting as expert (the "Expert") has been determined by order of Justice Farley dated August 4, 2005, and, in particular, a declaration that the Expert shall adjust such Exhibit Bs so that they

  a) comply with GAAP,

  b) are based on actual financial data of Ivaco, and

  c) are prepared on a consistent basis relative to the Exhibit Cs to the APAs;

  ii) an order giving such other directions as are necessary to carry out the Order of Justice Farley dated August 4, 2005;

c) in the alternative to the relief sought in paragraphs (b)(i) and (ii),

  i) an order directing a trial of an issue—with full pleadings, documentary production, and oral discoveries—to consider the factual matrix surrounding the APAs and interpret the APAs, including the issue of whether the Exhibit Bs to the APAs are required to be prepared in accordance with GAAP and whether the Expert is required to adjust the Exhibit Bs so that they conform to GAAP;

  ii) upon completion of the trial of an issue, an order giving directions to the Expert for the completion of the working capital adjustment process in accordance with the APAs and remitting such process back to the Expert for completion;

d) such other orders or directions to the parties or the Expert as are required to implement the decisions of this court, including the decision of Justice Farley dated August 4, 2005; and

e) costs of the series of motions on a full indemnity basis.

THE GROUNDS FOR THE MOTION ARE:

a) Ivaco Inc. and the other Applicants were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") in September 2003;

b) Ernst & Young Inc. was appointed as Monitor of Ivaco;

c) Both before and after the CCAA order, Davies Ward Phillips & Vineberg LLP ("Davies Ward") acted as counsel for Ivaco;

d) Stikeman Elliott LLP acted for the Monitor;

e) Ivaco eventually embarked upon a full scale sales process to sell all of its business as a going concern;

f) Heico was invited to submit an offer for the purchase of the Ivaco business ultimately became one of the two final candidates;

g) In July 2004, Heico was selected as the winning bidder to purchase Ivaco's business;

h) On August 6, 2006, Ivaco and Heico signed the APAs, which set out the terms on which Ivaco agreed to sell its assets to Heico;

i) the APAs provided that there would be a post-closing adjustment of the working capital of Ivaco (the "Adjustment"), the amount of which would be agreed between the parties or determined by KPMG LLP ("KPMG") based on a review of documents and interviews of relevant witnesses;

j) since the parties were unable to agree on the amount of the Adjustment, KPMG was appointed to determine the Adjustment;

k) during the process to fix the Adjustment, a number of disputes arose between Heico and Ivaco, including whether Exhibit B to the APAs was required to be prepared in accordance with GAAP, so that it could be properly compared with Exhibit C (which was required to conform to GAAP);

l) on August 4, 2005, on motions brought by Ivaco and Heico, Justice Farley determined, *inter alia,* that

    i) "…it appears reasonable that the Expert must deal with Exhibit B so that the methodology is consistent [with Exhibit C]" and

    ii) "…it would not in my view be a sensible interpretation that the Expert only consider revisions to Exhibit C, leaving revisions to Exhibit B to be worked out mechanically by someone else employing the deeming provision."

m) Ivaco did not appeal the order of Justice Farley and therefore such order is final;

n) the effect of Justice Farley's August 4, 2005, order is to require the Expert to adjust Exhibit B so that it is calculated using the same methodology as Exhibit C, namely GAAP;

o) Ivaco interprets the August 4, 2005 order differently and is now attempting to relitigate the very same issues;

p) as a result of Ivaco's attempt to relitigate Justice Farley's decision, the working capital adjustment process has stalled;

q) in the alternative, if this court determines that the protocol for dealing with Exhibit B to the APAs was not determined by Justice Farley, this court will be required to decide the issue by interpreting the APAs and receiving evidence concerning the factual matrix surrounding the APAs (particularly if the court determines that the provisions of the APA are ambiguous);

r) based on actual financial data of Ivaco that came into the possession of Heico upon closing, it appears that Ivaco based the Exhibit B September 30, 2004 forecast working capital amounts on incorrect and/or outdated financial information, which Ivaco knew or ought to have known was outdated;

s) the effect of the inaccurate forecast was to conceal from Heico the fact that a significant working capital adjustment would later be required and, therefore, unknown to Heico, the purchase price under the APAs would significantly increase;

t) accordingly the inaccurate September 30, 2004 working capital forecast induced Heico to enter into the APAs;

u) if it had full and/or proper information from Ivaco, Heico would not have entered into the APAs or, alternatively, would have entered into the APAs on fundamentally different terms;

v) it is just and equitable in the circumstances that the CCAA stay be lifted in order to permit Heico's action against Ivaco to proceed; and

w) such other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

a) the Affidavit of Stanley H. Meadows, sworn September 29, 2006.

September 29, 2006

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Proceeding commenced at Toronto

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