IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	CHAPTER 15
GRANT FOREST PRODUCTS INC., *et al.*,[1]	
Debtors in Foreign Proceedings.	Case No. 10-11132 Joint Administration Pending

DECLARATION OF PETER LYNCH IN SUPPORT OF (I) MONITOR'S MOTION FOR ENTRY OF AN ORDER GRANTING RECOGNITION AND RELIEF IN AID OF FOREIGN MAIN PROCEEDING PURSUANT TO 11 U.S.C. §§ 1515, 1517 AND 1520; (II) MONITOR'S MOTION FOR JOINT ADMINISTRATION; AND (III) MONITOR'S MOTION FOR *EX PARTE* EMERGENCY RELIEF AND PROVISIONAL RELIEF PURSUANT TO 11 U.S.C. §§ 105(A), 1519, AND 1521

I, **Peter Lynch**, hereby declare as follows:

1. I am the Executive Vice President of Grant Forest Products Inc. ("**Grant Forest**"). I am authorized by Grant Forest, Grant Forest Products Sales Inc., Grant Alberta Inc., Grant U.S. Holdings GP, Southeast Properties LLC, Grant Clarendon LP, Grant Allendale LP, Grant US Sales Inc., Grant Newco LLC, and Grant Excluded GP (collectively, the "**Debtors**") to make this Declaration.

2. I submit this Declaration in support of (I) *Monitor's Motion for Entry of an Order Granting Recognition and Relief in Aid of Foreign Main Proceeding Pursuant to 11 U.S.C. §§ 1515, 1517, and 1520;* (II) *Monitor's Motion for Joint Administration; and* (III) *Monitor's Motion for Ex Parte Emergency Relief and Provisional Relief Pursuant to 11 U.S.C. §§ 105(a), 1519 and 1521* (collectively, "**First Day Pleadings**").

[1] The proposed jointly administered cases are those of the following debtors: Grant Forest Products Inc., Grant Forest Products Sales Inc., Grant Alberta Inc., Grant U.S. Holdings GP, Southeast Properties LLC, Grant Clarendon LP, Grant Allendale LP, Grant US Sales Inc., Grant Newco LLC, and Grant Excluded GP.

3. I am an individual over the age of 18 and, if called upon, would testify to all matters set forth in this Declaration. Except as otherwise indicated, all facts set forth in this Declaration in support of the Debtors' petitions under chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") and the First Day Pleadings are based upon my personal knowledge, information supplied to me by other members of the Debtors' management and professionals, or learned from my review of relevant documents or upon my opinion based upon my experience and knowledge of the Debtors' industry, operations, and financial condition. If called upon to testify, I could and would testify competently to the facts set forth herein.

Debtors' Corporate Structure

4. The applicable Debtors are a leading manufacturer of oriented strand board ("**OSB**"). The applicable Debtors manufacture OSB in panels of varying lengths and thickness, as well as specialty products such as web stock, rim board and oversized panels.

5. The applicable Debtors own four mills used to produce OSB and other wood products, two of which are located in Canada at Englehart, Ontario ("**Englehart Mill**") and Timmins, Ontario ("**Timmins Mill**"), and two of which are located in the United States at Allendale, South Carolina ("**Allendale Mill**") and at Clarendon, South Carolina ("**Clarendon Mill**")[2]. Grant Forest also owns 50% of a fifth OSB mill located at High Level, Alberta, Canada ("**Alberta Mill**"). With a total capacity to produce 3.7 billion square feet of OSB per annum, the applicable Debtors have the capacity to be the third largest OSB producer in North America.

6. Grant Forest is a privately owned corporation, organized under Ontario laws, that serves as the Debtors' main operating company. Grant Forest owns among other things the

[2] The Clarendon Mill is a new mill with construction substantially complete; however, due to current market conditions, Debtors have not brought the Clarendon Mill online.

Englehart Mill, the Timmins Mill, 50% of the Alberta Mill,[3] remanufacturing and coated wood products facilities at Earlton, Ontario, various woodlots and other real estate, and a golf course.

7. Grant Forest additionally holds the following subsidiary equity interests:

(a) a 99.99% partnership interest in Grant U.S. Holdings GP ("**Grant Holdings**"), which is organized under Delaware law;

(b) 100% of the ownership interest in Grant Alberta Inc. ("**Alberta**"), organized under Alberta law that, in turn, holds the remaining .01% partnership interest in Grant Holdings as its only asset; and

(c) 100% of the ownership interest in Grant Forest Product Sales Inc. ("**Grant Sales**"), organized under Ontario law that sells the OSB produced from the Canadian mills.

8. Grant Holdings is a Delaware partnership, controlled and owned by Grant Forest and Alberta. Grant Holdings holds the membership interests of Southeast Properties LLC ("**Southeast**"), a Delaware limited liability company, and preferred limited partnership interests in Grant Allendale LP ("**Allendale LP**") and Grant Clarendon LP ("**Clarendon LP**"), both Delaware limited partnerships.

9. Allendale LP and Clarendon LP own the Allendale Mill and Clarendon Mill, respectively.

10. Southeast holds 100% of the membership interests in Grant Newco LLC ("**Newco**"), a Delaware limited liability company. Southeast additionally holds limited partnership interests in Clarendon LP and Allendale LP. Finally, Southeast holds 100% of the ownership interest in a Delaware corporation, Grant US Sales Inc. ("**US Sales**"). US Sales is responsible for selling the materials produced at the Allendale Mill.

11. Newco holds the general partnership interests in Clarendon LP and Allendale LP. Thus, the ownership of Clarendon LP and Allendale LP is summarized as follows: Grant

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[3] Title to the Alberta Mill is held by Footner Forest Products, LTD, and Grant Forest owns 50% of the shares of Footner Forest Products Ltd.

Holdings holds preferred limited partnership interests; Southeast holds limited partnership interests; and Newco is the general partner of each entity. Allendale LP and Clarendon LP are each general partners of a Delaware partnership, Grant Excluded GP ("**Excluded**", and together with US Sales, Newco, Clarendon LP, Allendale LP, and Southeast, the "**Additional Applicants**", and with Grant Holdings, the "**U.S. Applicants**"). Each Additional Applicant holds a bank account in Ontario, Canada. The only other material assets of Excluded consist of unsecured obligations owing by other Additional Applicants to Excluded.

12. Attached hereto as **Exhibit A** and incorporated by reference is an organizational chart showing the Debtors' corporate structure.

Debtors' Operations and Management

13. The applicable Debtors operate a fully integrated OSB manufacturing and sales business. The OSB produced by the Allendale Mill and sold by US Sales is labeled in the same manner to the materials produced by the operating Canadian mill with a prominent Grant "G" logo and distinctive red edge seal or product coating.

14. Grant Forest, founded in 1980 by Peter Grant Sr., ultimately owns the equity interests in all of the Debtors. Grant Forest's head office is located in Brookfield Place, Toronto ("**Canadian Headquarters**"). Grant Forest additionally maintains administrative offices in Earlton, Ontario, and an IT support office in Mississauga, Ontario. Through a series of holding companies, the ultimate shareholders of Grant Forest – Peter Grant, Sr., and Twin Lakes Trust, a Grant family trust – are Canadian.

15. A number of the members of the boards of directors, boards of management, and officers are common among the Debtors, including myself and Peter Grant Jr., who both reside in Canada. All of the directors of Grant Forest are Canadian. Resolutions by the boards of

directors of the Debtors are historically passed by written resolution. Moreover, formal meetings by the boards of directors for the Additional Applicants have not occurred in the United States for several years.

16. The principal financial records and books are maintained in the Canadian Headquarters. The directing minds of the Debtors also are also located at the Canadian Headquarters. All major budgeting, financial, marketing, sales, and overall strategy decisions for the Debtors are made in or monitored from the Canadian Headquarters. In addition, all treasury, cash management, and banking arrangements for the Debtors are coordinated from the Canadian Headquarters. Finally, all major human resources decisions, including compensation and benefits for all officers and senior management of the Debtors, are made from the Canadian Headquarters.

Debtors' Debt Structure

17. Grant Forest, Grant Sales, Alberta and Grant Holdings are obligated as borrowers or guarantors under two collective levels of primary secured debt ("**First Lien Debt**" and "**Second Lien Debt**"). The First Lien Debt holders ("**First Lien Lenders**") are represented by their agents, The Toronto-Dominion Bank and a related entity, Toronto-Dominion (Texas) LLC ("**First Lien Lenders' Agent**"). The Bank of New York Mellon ("**Second Lien Lenders' Agent**") now serves as the agent for the Second Lien Debt holders ("**Second Lien Lenders**").[4] The majority of the principal amount owing under the First Lien Debt is held by Canadian lenders. Grant Forest and Grant Holdings are the primary borrowers under the First Lien Debt. Grant Holdings is the primary borrower under the Second Lien Debt. Grant Sales, Alberta, and

[4] The Toronto-Dominion Bank and a related entity, Toronto-Dominion (Texas) LLC were originally the agents for the Second Lien Lenders but, before the commencement of the CCAA Proceeding, resigned that position and transferred their interests in respect thereto to The Bank of New York Mellon as the replacement agent for the Second Lien Lenders.

the Additional Applicants (with the exception of Excluded) are guarantors of the First Lien Debt and the Second Lien Debt. Grant Forest is an additional guarantor of the Second Lien Debt.

Events Leading to CCAA Proceeding

18. The demand for OSB has decreased contemporaneous with the general decline in the construction industry and the building materials market. As a result of current conditions, the Debtors are currently operating only the Allendale Mill in the United States and the Englehart Mill in Canada. The Timmins Mill and Alberta Mill are idle. The Clarendon Mill is a new mill with construction substantially complete; however, due to current market conditions, Debtors have not brought the Clarendon Mill online.

19. The recent economic slump and high costs related to the Debtors' acquisition and construction of the Clarendon Mill and Allendale Mill have strained the Debtors' financial health. The Debtors are in default of their obligations under the documents governing the First Lien Debt and the Second Lien Debt. As of May 2009, the First Lien Lenders were owed approximately $398 million in principal, plus interest, and the Second Lien Lenders were owed approximately $150 million in principal, plus interest.

CCAA Proceeding

20. On June 23, 2009, certain of the Debtors served a notice of motion for protection ("**CCAA Proceeding**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**").

21. By order entered on June 25, 2009 ("**Initial Order**"), the CCAA Court appointed Ernst & Young Inc. ("**E&Y**") as monitor (the "**Monitor**") for Grant Forest, Alberta, Grant

Holdings, and Grant Sales. A true and correct copy of the Initial Order is attached to the Morrison Declaration as Exhibit A.

22. In addition, the Initial Order provided that the Debtors would engage an investment offering advisor ("**Investment Offering Advisor**") to commence a marketing process ("**Marketing Process**") to provide interested parties with the opportunity to offer to purchase the business and operations of certain of the Debtors.

23. The Debtors appointed E&Y to serve as the Investment Offering Advisor. Thereafter, E&Y undertook the role of the Investment Offering Adviser to assist and oversee the Marketing Process.

24. On January 15, 2010, the First Lien Lenders' Agent applied to the CCAA Court to add the Additional Applicants as parties to the CCAA Proceeding. On March 31, 2010, the CCAA Court issued an order adding the Additional Applicants to the CCAA Proceeding ("**Supplemental Initial Order**" and collectively with the Initial Order, "**CCAA Orders**"). A true and correct copy of the Supplemental Initial Order is attached to the Morrison Declaration as Exhibit B.

Proposed Sale

25. Pursuant to the Marketing Process, as approved by the CCAA Court, certain of the Debtors engaged the Investment Offering Advisor to market the businesses of the Debtors. After extensive marketing efforts, the applicable Debtors received several proposals to purchase the businesses of the Debtors (and/or parts thereof).

26. As set forth in more detail in the *Monitor's Motion Pursuant to Sections 363, 1501, 1507, 1520, 1521, and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002, and 6004 for an Order (a) Affirming and Enforcing the Order of the CCAA Court Approving the Sale of Certain Assets and Such Other Related Relief and (b) Separately, (i) Authorizing and*

Approving the Sale of Assets and (ii) Granting Other Related and Further Relief, Debtors have accepted an offer by Georgia-Pacific LLC and certain of its subsidiaries (collectively, "**Georgia-Pacific**") to purchase certain of the Debtors' businesses ("**Proposed Sale**").

27. The proposed transaction is memorialized in an agreement dated January 8, 2010. Georgia-Pacific will purchase certain of the assets of Grant Forest, Alberta and Grant Sales,[5] and will engage in a transaction that ultimately results in Georgia-Pacific owning all of the partnership interests in Grant Holdings and, thus, the equity in the Additional Applicants. By acquiring the partnership interests in Grant Holdings, Georgia-Pacific intends for the business of the Additional Applicants to continue as usual, with as little disruption as possible. With the exception of the liens and claims of the First Lien Lenders' Agent, the First Lien Lenders, the Second Lien Lenders' Agent, the Second Lien Lenders, and certain claims owing to affiliates of Grant Forest, the claims of the other creditors of the U.S. Applicants, other than claims owing by Grant Holdings,[6] will not be compromised, reduced or adversely affected simply as a result of the Proposed Sale. On March 30, 2010, the CCAA issued its Reasons for Decisions approving the Proposed Sale ("**Reasons for Decisions**"). A true and correct copy of the Reasons for Decisions is attached hereto as **Exhibit B**.[7] On March 31, 2010, the CCAA Court approved the transaction ("**Canadian Sale Approval Order**"). A true and correct copy of the Canadian Sale Approval Order is attached to the Morrison Declaration as Exhibit C.

28. As explained more fully in the *Monitor's Motion for Entry of an Order Granting Recognition and Relief in aid of Foreign Main Proceeding Pursuant to 11 U.S.C. §§ 1515,*

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[5] Georgia-Pacific will not acquire certain excluded assets, including, without limitation, the Timmins Mill, the shares of Footner Forest Products Ltd., the Non-Core Assets (as defined in the Agreement), cash on closing, income tax refunds, and certain other assets as described more fully in the Agreement.

[6] Pursuant to the Canadian Order, all liens, claims and encumbrances against Grant Holdings' partnership interests, which are being purchased by Georgia-Pacific, were released, discharged and expunged. Upon information and belief, the Monitor and the Debtors believe that the only creditors of Grant Holdings were the First Lien Lenders' Agent, the First Lien Lenders, the Second Lien Lenders' Agent, the Second Lien Lenders, and certain affiliates of Grant Forest.

[7] A certified copy of the Reasons for Decisions will be provided to the Court to supplement this declaration.

1517, and 1520, recognition is important to ensure that the Proposed Sale is consummated, and the provisions contained therein are given effect under domestic laws.

29. As the success of the CCAA Proceeding depends on the Debtors' ability to adopt a unified plan covering the claims of all creditors, the threat of disruption of the reorganization process as well as the legal cost of defending such actions, may have a severe and adverse impact on any change of a successful reorganization in the CCAA Proceeding, causing irreparable harm to the Debtors and other interested parties. More specifically, recognition of the CCAA Proceeding, ensuring the Proposed Sale is consummated, affords the opportunity to effectively reorganize across international borders, thereby maximizing the value of the enterprise for the benefit of stakeholders in multiple jurisdictions.

Chapter 15 Cases

30. To the best of my information and belief, the CCAA Proceeding is a collective judicial proceeding in Canada under Canadian law relating to insolvency or the adjustment of debt in which the assets and affairs of the Debtors are subject to the control and supervision of the CCAA Court for the purpose of reorganization or liquidation. Accordingly, I believe the CCAA Proceeding is a "foreign proceeding" within the meaning of 11 U.S.C. § 101(23).

31. To the best of my information and belief, other than these cases, the CCAA Proceeding is the only insolvency proceeding of any kind pending for the Debtors and this is the only "foreign proceeding" with respect to the Debtors within the meaning of 11 U.S.C. § 101(23).

32. To the best of my information and belief, the CCAA Proceeding is a "foreign main proceeding" within the meaning of 11 U.S.C. §§ 1502(4) and 1517(b)(1) of Bankruptcy Code, because the Debtors collectively have their center of main interest in Canada. All of the

Debtors' principal corporate, management, banking, and strategic functions are undertaken in Canada. Specifically:

(a) Grant Forest, the ultimate equity holder of all of the Debtors, is incorporated under Canadian laws, has its headquarters located in Canada, maintains additional offices in Canada, and itself is owned in whole by persons or entities residing in Canada.

(b) Likewise, Alberta, the other entity with a partnership interest in Grant Holdings, is located in Canada.

(c) A number of the members of the boards of directors, management, and officers are common among the Debtors, including Peter Lynch and Peter Grant, Jr., both of whom reside in Canada.

(d) All of the directors of Grant Forest, the ultimate parent company, are Canadian.

(e) The principal records and books of the Debtors are maintained in Canada.

(f) The directing minds are located in Canada, and all major budgeting, financial, marketing, sales, and overall strategy decisions are made in Canada. Similarly, treasury, cash management, and banking arrangements are coordinated from Canada. Finally, major human resources decisions are made from Canada.

(g) I understand that the majority of the principal amount owing under the First Lien Debt is held by Canadian lenders.

(h) The products made in the United States are labeled with a prominent Grant "G" logo and distinctive red edge seal or product coating, the same branding established by Grant Forest for its Canadian products.

(i) Grant Forest and Grant Holdings are borrowers of the First Lien Debt, Grant Holdings is the borrower of the Second Lien Debt, and all of the other Debtors except Excluded are guarantors of the First Lien Debt and the Second Lien Debt.

(j) I understand that the majority of Debtors' contracts, including the documents for the First Lien Debt and the Second Lien Debt were negotiated in Canada. The First Lien Debt documents provide that Canadian law applies.

33. To the best of my information and belief, E&Y is also a foreign representative within the meaning of 11 U.S.C. §§ 101(24) and 1517. In fact, both the Initial Order and the Supplemental Initial Order expressly authorize E&Y, in its capacity as Monitor, to file these chapter 15 cases on behalf of the Debtors.

34. Accordingly, Debtors filed chapter 15 petitions in this Court, which sits in the jurisdiction where the Additional Debtors are organized. Grant Holdings is a Delaware partnership, which holds the membership interests of Southeast, a Delaware limited liability company, and preferred limited partnership interests in Allendale LP and Clarendon LP, both Delaware limited partnerships. In addition, Southeast holds 100% of the equity interest in US Sales, a Delaware corporation.

35. To forestall possible irreparable harm, the Debtors seek to give effect to the Initial Order, Supplemental Initial Order, and Canadian Sale Approval Order in the United States on both an interim and final basis. Specifically, the Debtors seek recognition of the CCAA Proceeding as a "foreign main proceeding" for the purposes of granting full recognition of the Initial Order, Supplemental Initial Order, and Canadian Sale Approval Order.

36. Recognition of the CCAA Proceeding will best assure an economical, expeditious, and equitable administration of the Debtors' restructuring.

37. To ensure the Debtors' continued operation during its restructuring process, the Debtors also urgently require this Court's recognition or approval of the terms of the Proposed Sale.

38. The relief requested in these Debtors' chapter 15 cases is therefore well justified under the circumstances.

Provisional Relief

39. As explained more fully in *Monitor's Motion for Ex Parte Emergency Relief and Provisional Relief Pursuant to 11 U.S.C. §§ 105(a), 1519, and 1521*, absent preliminary relief under section 1519 of the Bankruptcy Code, pending the Court's determinations with respect to recognition of the CCAA Proceeding as a "foreign main proceeding," creditors may seek a

tactical advantage through unilateral action, including acceleration of efforts to commence litigation, attachment or other legal process in whatever U.S. jurisdiction a creditor may choose.

40. The threat of creditor action is real. Without the court granting a stay of actions against Debtors' assets located in the United States, creditors may attempt enforcement proceedings outside the territorial reach of the Orders of the CCAA Court.

41. The creditors' enforcement actions against the Debtors in the United States would disrupt the Debtors' reorganization and jeopardize the Proposed Sale, which is central to the Debtors' restructuring.

42. Even the threat of commencement or continuation of an enforcement action against the Debtors could negatively impact the Debtors' businesses and the Proposed Sale.

43. Further, key suppliers may take the position that the commencement of the CCAA Proceeding or the chapter 15 cases authorizes them to terminate their agreements, and executory contract counterparties or lessors may attempt to enforce contract or lease provisions of the type described in section 365(e) of the Bankruptcy Code. Such actions could impair the value of the Debtors' U.S. assets, imperil the Debtors' businesses and jeopardize the Proposed Sale.

44. Ultimately, the Debtors require immediate protection in the United States, consistent with the relief provided for in the Initial Order and Supplemental Initial Order, to prevent suppliers, creditors and other stakeholders from taking steps to disrupt the Debtors' operations, potentially depleting their estates to the detriment of all stakeholders, and irreparably jeopardizing the Debtors' ongoing efforts to restructure.

45. Preliminary relief would enable an orderly process in the Debtors' chapter 15 cases between the Petition Date and this Court's determination of whether to recognize the CCAA Proceeding. Without preliminary relief, the Debtors will be irreparably harmed because

the resulting uncertainty would destabilize the Debtors' businesses and endanger the Proposed Sale.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 31, 2010.

Peter Lynch
Executive Vice President
Grant Forest Products Inc.

EXHIBIT A

Organizational Structure of the Applicants and the Subsidiaries

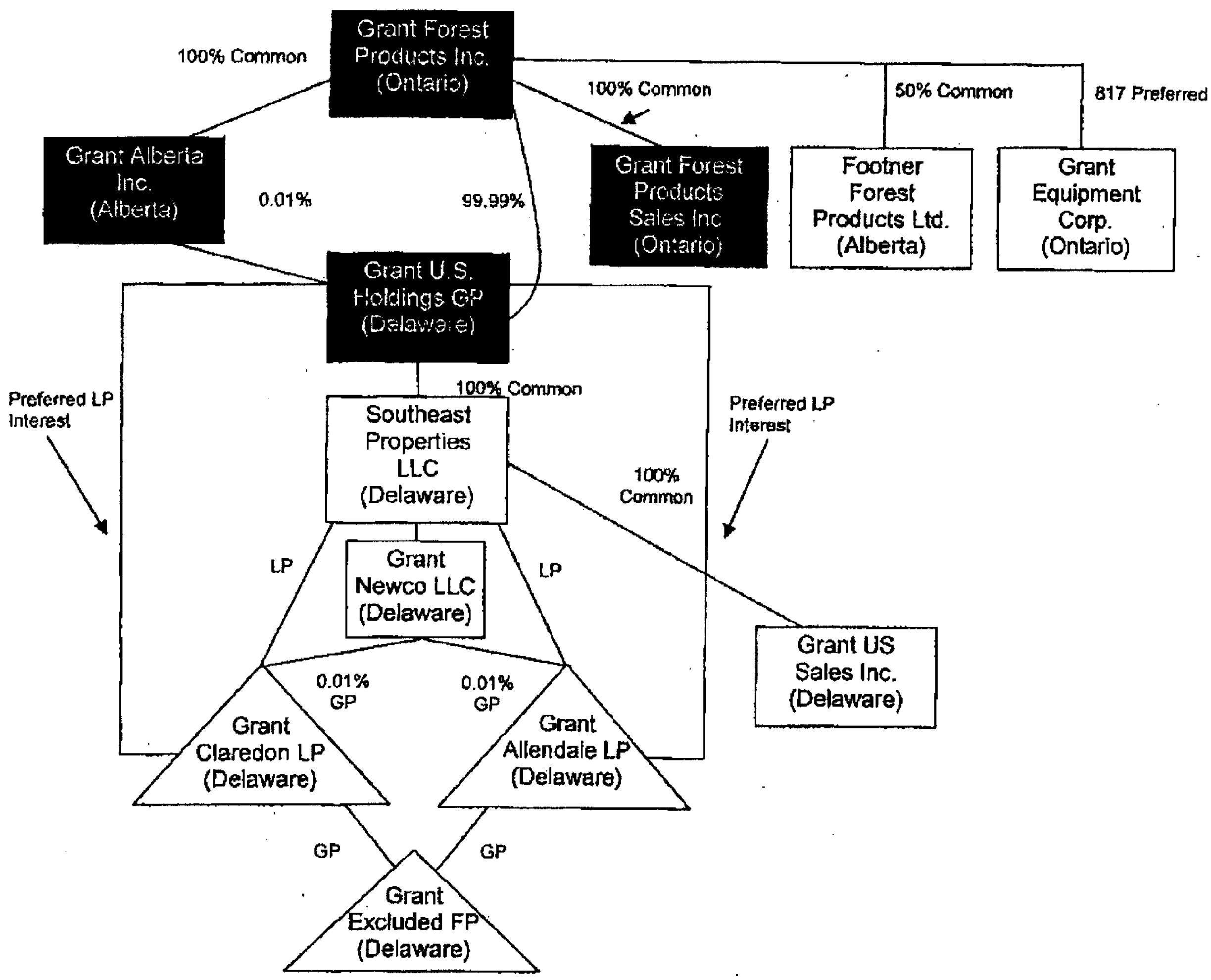

EXHIBIT B

CITATION: Re Grant Forest Products Inc., 2010 ONSC 1846
Court File No. CV-09-8247-00CL
Date: 20100330

ONTARIO
SUPERIOR COURT OF JU.S.TICE
(Commercial List)

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 COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP	*Sean Dunphy, Kathy Mah* for the Monitor *Daniel Dowdall, Jane O. Dietrich* for the Applicants Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., Grant U.S. Holdings GP *Kevin McElcheran* for the Toronto-Dominion Bank, Agent for First Lien Lenders *Fred Myers, Joe Pasquariello* for Bank of New York Mellon, Agent for SLL *Sheryl Seigel* for Georgia-Pacific LLC *Richard Swan for Peter Grant Sr.* *Aubrey Kauffman* for Independent Directors of Grant Forest Products Inc. **Heard:** February 1 and 8, 2010

<u>C. CAMPBELL J.</u>:

REASONS FOR DECISION

[1] This Application seeks approval of the Sale transaction and a Vesting Order to complete the transfer of the control of the business of Grant Forest Products Inc. to the purchaser Georgia-Pacific. The transaction is the culmination of the marketing process under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended ("CCAA"), authorized by an order of this Court dated June 25, 2009.

[2] Approval of the transaction is opposed by the Second Lien Lenders ("SLL")[1] under an Inter-Creditor Agreement (the "ICA") of which Grant Forest is a party, on the basis that this Court does not have jurisdiction to, in effect, convey real property assets located in the United States.

1 The appearing party on this motion is the Agent for the Second Lien Lenders, also referred to in the materials as Second Lien Creditors, hereinafter SLL.

[3] An adjournment of the approval motion sought by the largest shareholder of Grant Forest, seeking time for improvement of expressions of interest by others into bids, was not granted. Consideration of the issues raised on this motion requires analysis of the many similarities and few differences between the restructuring and insolvency processes in Canada and the United States in cross-border transactions.

[4] For reasons that follow, I am satisfied that this Court does have jurisdiction and it is appropriate to approve this complicated transaction. In order to deal with the objections raised, it is necessary to outline the transaction in some detail, the particulars of which are summarized from the Sixth Report of the Monitor.

[5] Grant Forest Products Inc. ("GFP"), an Ontario company, and certain of its subsidiaries are privately owned corporations carrying on an Oriented Strand Board manufacturing business from facilities located in Canada and the United States. The most common uses of the companies' products are sheathing in the walls, floors and roofs in the construction of buildings and residential housing.

[6] Two GFP mills are located in Ontario, one in Alberta (50% with Footner Forest Products) and two in the counties of Allendale and Clarendon in South Carolina.

[7] The U.S. mills are owned indirectly through one of the Applicants, being the Grant Partnership registered in the state of Delaware. At present, due to decreased demand, only one Ontario mill and the Allendale mill in South Carolina are operating.

[8] The Applicants, being the parent GFP, its Canadian subsidiaries Grant Alberta Inc. and Grant Forest Product Sales Inc., together with Grant U.S. holdings GP ("Grant U.S. Partnership") and its related entities, obtained protection under the CCAA on June 25, 2009, when a stay of proceedings was granted and Ernst and Young Inc. ("E&Y") was appointed Monitor. The Order also approved the continuation of the engagement of a chief restructuring advisor.

[9] The Applicants have two levels of primary secured debt. The total debt obligations are comprised of the following facilities:

First Lien Creditor Agreement

[10] As at May 31, 2009, the First Lien Lenders ("FLL")[2] were owed the principal amount of $399 million plus accrued interest of approximately $5.3 million pursuant to a credit agreement dated October 26, 2005 and amended March 21, 2007. An additional $8.7 million was owed to one or more of the FLL pursuant to interest rate swap agreements the liability of which was secured to the FLL Agent.

2 Like the Second Lien Lenders, the First Lien Lenders appeared formally by their Agent, were sometimes referred to as the First Lien Creditors and will be hereinafter referred to as the FLL.

Second Lien Creditor Agreement

[11] The bank of New York Mellon ("BNY") as successor is the Agent for the SLL, to whom as of May 31, 2009 was owed the principal amount of approximately $150 million plus accrued interest of approximately $42 million pursuant to a credit agreement dated as of March 21, 2007 as amended as of April 30, 2009. GFP and the Grant U.S. Partnership are the borrowers under the FLL Agreement with all related entities as guarantors of the FLL indebtedness. The Grant U.S. Partnership is the borrower under the SLL Agreement with all related entities as guarantors of the SLL debt.

[12] GFP and the Grant U.S. Partnership are in default under the FLL Agreement and the Grant U.S. Partnership is in default under the SLL Agreement. Both the FLL and SLL Agents hold various security in Canada over each of their respective property and assets.

Inter-Creditor Agreement

[13] The Applicants together with the entities related to the Grant U.S. Partnership, the FLL and SLL are parties to an Agreement dated March 21, 2007, which among other things deals with the relationship between the FLL security and the SLL security. Both the FLL and the SLL rely on this Agreement in respect of the issue as between them, which affects priority over assets.

The Marketing Process

[14] Prior to the filing that gave rise to the initial order, the Applicants had engaged a financial advisor and an investment banking firm to advise on capital and strategic options to address the Applicants' debt position and liquidity needs and to locate investors or sell the business. While this process did not result in a transaction that could be implemented, the Applicants were of the view that the business could be sold as a going concern or they could sponsor a plan of arrangement to be consummated in CCAA proceedings. The Initial Order, which has not been objected to since being granted on June 25, 2009, contained a 6 page elaborate "Investment Offering Protocol" to provide interested parties with the opportunity to offer to purchase the business and operations in whole or in part as a going concern or to offer to sponsor a plan of arrangement of the Applicants or any of them.

[15] The three phases of the marketing process are described in detail in paragraphs 35 to 47 of the Sixth Report of the Monitor. The process, which commenced in July of 2009, involved contact with 91 potentially interested parties, narrowed to 13 who responded with expressions of interest, with eight parties being invited to phase 2 to conduct further due diligence.

[16] At this phase, the interested parties were provided access to the Applicants' facilities, advised of the bid process and had until August 30, 2009 to submit revised proposals. This was subsequently extended to September 11, 2009 in order to accommodate due diligence requirements, plant tour schedules and management meetings with the eight interested parties who were to submit revised proposals on or before September 11, 2009.

[17] As reported by the Monitor, two of the bids were inferior by their terms or consideration and three were within a similar range. As a result of due diligence items and closing conditions which risked the completion of the transaction, revised bids were extended to October 2, 2009 for the three interested parties.

[18] As of October 16, 2009, 66 2/3% of the FLL debt and the Independent Directors Committee voted in favour of the selection of the bid of Georgia-Pacific, one of the world's leading manufacturers and marketers of tissue, packaging, paper pulp and building products, to proceed to Phase 3.

[19] As reported in the Fifth Report of the Monitor dated November 26, 2009, SLL who were prepared to agree to certain confidentiality provisions were apprised on October 15 of the status of the marketing process.

[20] An exclusivity agreement was reached with Georgia-Pacific on October 20, 2009, which required the Applicants to refrain from seeking bids, responding to or negotiating with any party other than Georgia-Pacific with respect to the items included in the bid of Georgia-Pacific during a period of exclusivity which extended through a series of extensions to January 8, 2010, when the parties finalized a purchase and sale agreement that is in the material filed with the Court.

[21] I accept the conclusion of the Monitor as set out in paragraph 56 of the 6th Report:

> 56. It is the Monitor's view that the Marketing Process included a structured, fair, wide and effective canvassing of the market as demonstrated by the following:
>
> a. contact by the Investment Offering Advisor of 91 interested parties comprising both financial and strategic parties located in North America, South America, Europe and Asia;
>
> b. the execution of 32 NDAs by interested parties who were then granted access to review the Data Room and the subsequent submission of 13 EOIs at the end of *Phase I*;
>
> c. the EOIs of eight interested parties that were invited to participate in *Phase II* provided a value range which was market derived and tested, and as such, supported the conclusion that the consideration included in Georgia Pacific's bid reflected fair value;
>
> d. of the eight interested parties that were invited to *Phase II*, five submitted improved bids in respect of consideration and/or closing conditions at the close of *Phase II* and of the three interested parties that were invited through to *Phase IIb*, each party again improved its bid in terms of consideration and/or closing conditions at the end of *Phase IIb*.
>
> e. the selection of Georgia Pacific to negotiate a PSA was based on a thorough analysis of all of the financial and commercial terms presented in all of the bids, was recommended by the Monitor and the CRA and was approved by the First Lien Lenders Steering Committee and the Independent Directors Committee; and
>
> f. the Second Lien Lenders were consulted, and their views and questions were taken into account in the final selection of Georgia Pacific.

[22] This approval motion was originally returnable on February 1, 2010; it was adjourned to allow the parties to respond to two additional motions. The first, brought on behalf of the FLL,

seeks to add as "Additional Applicants" the U.S. entities directly related to the Grant U.S. Partnership, "Grant NewCo LLC" and various Georgia-Pacific Canadian and U.S. entities.

[23] The second motion, on behalf of the SLL, was to adjourn or dismiss the Approval Vesting motion on the basis that this Court did not have jurisdiction to deal with the assets in the United States that are the subject of the transaction and such assets would have to be dealt with under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

[24] On February 1 and on the adjourned date of February 8, counsel for Peter Grant Senior sought a further adjournment to enable consideration of a recently received "offer." In its Seventh Report the Monitor reported on receipt of a letter which expressed interest in the Applicants' assets by a new "bidder." In its Report, the Monitor advised that in its opinion, the expression of interest could be considered as no more than that and reported that it did not comply with the Investment Offering Protocol.

[25] Counsel for the SLL sought and was granted access to the correspondence but Mr. Grant was not, since pursuant to the terms of the Investment Offering Protocol and his participation in a bid, he was precluded.

[26] On February 5, with knowledge of the position taken by the SLL and the specifics of the Georgia-Pacific agreement, another expression of interest was received by the Monitor and brought to the attention of the Court. This expression of interest from a previous "bidder" whose bid was rejected, sought to amend its previous position to accommodate the concern that the SLL had with respect to the Georgia-Pacific agreement.

[27] The Court ruled in respect of both of these expressions that they were no more than invitations to negotiate. In neither case by their terms were they intended to create binding obligations until definitive agreements were reached.

[28] The Applicants and those parties supporting the Georgia-Pacific agreement urged that the integrity of the process would be compromised if further consideration were given to nothing more than expressions of interest.

[29] It is now well established in insolvency law in Canada that once a process has been put in place by Court Order for the sale of assets of a failing business, that process should be honoured excepting always extraordinary circumstances.

[30] In *Tiger Brand Knitting* (04-CL-5532, 2005 CanLII 9680 (ON S.C.), I noted that integrity of "process is integral to the administration of statutes such as the BIA and CCAA."

[31] The leading case in Ontario, which confirms the importance of integrity of process, is *Royal Bank v. Soundair Corp* (1991), 7 C.B.R. (3d) 1, a decision of the Court of Appeal for Ontario. At issue was the power of the Court to review a decision of a receiver to approve one offer over another for the sale of an airline as a going concern. In reinforcing the

importance of integrity of process, the Court quoted from Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. (2d) 87 at 92 as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
2. It should consider the interests of all parties.
3. It should consider the efficacy and integrity of the process by which offers are obtained.
4. It should consider whether there has been unfairness in the working out of the process.

[32] In this case, numerous parties participated over a number of months in a complex process designed to achieve not only maximum value of the assets of the business, but to ensure its survival as a going concern for the benefit of many of the stakeholders.

[33] I am satisfied that to permit an "invitation" to reopen that process not only would destroy the integrity of the process, but would likely doom the transaction that has been achieved.

Motion to Add Applicants

[34] The motion brought by the FLL Agent to add Additional Applicants was supported by the original Applicants, the purchasers and the Monitor, and opposed by the SLL as part of the objection to jurisdiction of this Court. The purpose of adding Additional Applicants was said to be necessary to make the transaction effective.

[35] The transaction with Georgia-Pacific contemplates the transfer of certain assets that are on terms as set out in the Agreement between GFP and related Canadian entities, and to the Canadian purchaser (a Georgia-Pacific subsidiary) with the claims of any person against such transferred assets attaching to the net proceeds received from the sale of such transferred assets.

[36] Additionally, the transaction contemplates that the partnership interests in Grant U.S. Partnership will be surrendered and cancelled. Grant U.S. Partnership will issue new partnership interests to the Georgia-Pacific U.S. purchaser vehicle and the additional purchaser.

[37] The aggregate consideration being paid by the Canadian purchaser for the transferred assets and the U.S. purchasers for the Grant U.S. Partnership interests is $403 million subject to adjustment.

[38] Through the U.S. purchasers' acquisition of the purchasers' partnership interests, the U.S. purchasers will acquire Grant U.S. Partnership, Southeast, Clarendon, Allendale, U.S. Sales, Newco. It is urged that through this structure the Applicants will maximize the value of their assets.

[39] The agreement and transaction require that the security previously granted by the applicable U.S. applicants (the "Additional Applicants") in favour of the FLL and SLL and the indebtedness and liability of the applicable Additional Applicants to them and the Lenders under

the FLL Agreement and the SLL Agreement be released and discharged upon closing of the transaction.

[40] The position of the FLL, supported by the Applicants and the Monitor, is that the only way in which the transaction can be accomplished with the price that the FLL and the Applicants are prepared to accept is with the proposed structure that would include a transfer of the Grant U.S. Partnership interests as partnership interests, rather than a direct transfer of the assets of Grant U.S. Partnership.

[41] The FLL, the Applicant and the Purchasers urge that without the tax benefit that arises from the proposed structure, the Agreement of Purchase and Sale with Georgia-Pacific would not have been completed.

Position of SLL

[42] The position of the SLL, both in opposing the motion to add Additional Applicants and opposing Approval of the Sale, is that the relief sought is overly broad, inappropriate and would have the effect of mandatory orders against U.S. parties which would extinguish U.S. security over U.S. realty and personalty with the effect of absolving FLL of all forms of liability when it is neither a CCAA debtor nor an officer of this Court.

[43] It is urged that there is no jurisdiction on which the FLL can seek an unlimited judicial release and add the SLL as a party for any purpose that is to seek avoiding prior scrutiny in the U.S. courts of the merits of its actions and of the U.S. affiliates of the Original Applicants and the SLL.[3]

[44] The SLL Agent asserts that the effect of the Application is to ask this Court, in the guise of a motion in a CCAA proceeding concerning Canadian debtors, to allow it on behalf of U.S. FLL to sue U.S. defendants for a final declaration of right and a mandatory injunction under the Inter-Creditor Agreement that is governed by U.S. law and U.S. choice of forum.

[45] This is said to occur without delivering any originating process or meeting tests for the exercise of jurisdiction of this Court over U.S. parties concerning U.S. property and matters of U.S. law and without providing any of the legal and procedural safeguards provided by the Rules of Civil Procedure to any foreign or proposed defendant.

[46] It is further urged that the Inter-Creditor Agreement specifically provides the FLL with rights only upon the sale of assets under section 363 of the U.S. bankruptcy code. Therefore, it is submitted, a motion in a CCAA proceeding by the Original Applicants is not an appropriate forum for the resolution of the interpretation of a contract between the U.S. non-parties that is to be decided under U.S. law in a New York court.

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3 It is to be noted that there is no existing U.S. action of which the Court was made aware by either the SLL or the FLL.

[47] The SLL also complain that engaging the term "center of main interest" with respect to the U.S. affiliates is not a relevant question for this Court and rather is a transparent attempt to pre-empt a U.S. court from making a determination required under the U.S. Bankruptcy Code, which may affect the standard of review afforded by the U.S. court upon any recognition proceedings that the original Applicants may choose to bring before the U.S. court in the future.

[48] Finally it is suggested that what the FLL Agent seeks is contrary to the principles of comity and the common law principle that a court should decide only matters properly before it and necessary to its own decision.

[49] The evidence before the Court is that on completion of the transaction, there will be a shortfall to the FLL on their debt and likely no recovery by the SLL on their debt. The SLL suggest that a separate auction sale of the U.S. mills might achieve a better price for these assets. There is no evidence before the Court to back up this assertion.

Inter-Creditor Agreement

[50] This Agreement (the ICA), which was entered into as of March 21, 2007, binds the GFP group of companies including Grant U.S. Partnership as well as the FLL and the SLL. The FLL and the SLL rely on the Agreement in support of their respective positions.

[51] The stated purpose of the Agreement was to induce the FLL to consent to GFP incurring the second lien obligations and to induce the FLL to extend credit for the benefit of GFP.

[52] By its terms and the definition of "bankruptcy code" in the ICA, the parties recognized that the Canadian statutes, being the CCAA and the BIA, as well as the U.S. Bankruptcy Code, might apply.

[53] Counsel for the SLL relies on clause 9.10 of the ICA definition of "Applicable Law," which provides: "this agreement and the rights and obligations of the parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the laws of the state of New York."

[54] Accordingly, it is argued on behalf of the SLL that this Court should not have regard to any issues as between the FLL and SLL, but rather leave those to be litigated as between those parties in the State of New York.

[55] The position of the FLL is that a Court having jurisdiction over insolvency of a Canadian entity might well be required to have regard to the ICA in dealing with legitimate and appropriate insolvency remedies in Canada. In this regard, counsel notes that clause 9.7 of the ICA identifies New York as a "non-exclusive" venue for disputes involving the Agreement.

[56] The position of the Applicants and those supporting is that this Court is being asked to consider and approve a restructuring transaction in a process that has been overseen by this Court as a result of a comprehensive marketing process overseen by an Ontario Court-appointed officer, which process has all along expressly included the Applicants and their subsidiaries and

the business that the integrated corporate group operated in North America from headquarters situate in Ontario.

[57] The Applicants submit it is appropriate for this Court to deal with issues raised under the ICA between the FLL and SLL, where that is incidental to approval of this Canadian restructuring transaction.

[58] I am satisfied that the issues raised by the SLL are inextricably linked to the restructuring of the Applicants and the completion of the transaction and as such are appropriate for consideration by this Court.

[59] I am satisfied that, by operation of the Credit Agreement and ICA, the FLL are entitled to exercise their remedies, which they propose to do in this motion by adding the Additional Applicants as CCAA Applicants. They may then release their security over the Transferred Assets in connection with the exercise of their remedies and by doing so, the security of the SLL over the Transferred Assets is automatically and simultaneously released.

[60] I am satisfied on the material before the Court that the transaction whereby the assets of a Canadian company are transferred to a Canadian subsidiary of Georgia-Pacific and the assets of the essentially GFP-owned partnership interests in Grant U.S. Partnership to a newly created partnership by Georgia-Pacific would not have been possible without the tax advantages that are available as a result of the form of this transaction.

[61] To suggest, as does the submission of the SLL, that the entire transaction is flawed because the effect is a transfer of some assets in the United States without the sale process envisaged in section 363 of the U.S. Bankruptcy Code, would be a triumph of form over substance.

[62] I accept that the effect of the transaction may indirectly be a transfer of U.S. real property assets and the release of a security over them of the SLL. The effect of the transaction is such that the claims of local trade creditors of the business of the U.S. mills remain unaffected. The Court was not apprised of any ordinary creditor other than the SLL that would be so affected.

<u>Comity and U.S. Chapter 15</u>

[63] Counsel for the SLL Agent objected to the use by the Applicants of the term COMI (being Center Of Main Interest) in respect of this CCAA Application.

[64] I accept that the term COMI has only been formally recognized in amendments to the CCAA, which came into effect in September 2009 after the filing of this Application. The term has gained recognition in the last few years as cross-border insolvencies have increased, particularly with the use of flexibility of the CCAA.

[65] Comity, as expressed by the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye*[4], is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." Comity balances "international duty and convenience" with "the rights of (a nation's) own citizens... who are under the protection of its laws."[5]

[66] Without in any way intending to intrude on the law of another jurisdiction, it is appropriate to have a look at the plain wording of the ICA.

[67] It is to be noted that there is no evidence put forward by the SLL Agent to suggest that the position of the FLL in respect of the ICA is incorrect. The only response from the SLL Agent is that the matter is not for this Court.

[68] The suggestion by the SLL is that the effect of the Order sought is to vest title in U.S. assets. The FLL assert that all that is being done is the enforcement of their secured creditor remedies and release of their security, which under the ICA has the effect of releasing the security of the SLL.

[69] The FLL submit that Section 3.1 of the ICA recognizes the broad remedies available to the FLL to enforce their security, using all the remedies of a secured creditor under the Bankruptcy Laws of the U.S. including the CCAA, without consultation with the SLL. The submission is further that the SLL are bound by any determination made by the FLL to release its security. The SLL is to provide written confirmation on the FLL becomes the agent of the SLL for that purpose.

[70] The relevant sections of the ICA are set out in Appendix A hereto. As noted above, the position of the FLL is that they are exercising contractual remedies under the ICA.

[71] For the SLL, the argument is that this Court should not interfere with the obligation of the FLL to commence proceedings in the appropriate jurisdiction (New York) to enforce its obligations against the SLL.

[72] I am satisfied that this Court does have jurisdiction to provide the relief requested, which is the product of the marketing process that was not only approved by this Court, but not objected to by any party when it was initiated.[6]

[73] I do not accept the submission on behalf of the SLL that "the proposed CCAA proceedings for the U.S. Affiliates are not proper CCAA proceedings at all, but are merely proposed as a mechanism for Canadian vesting of U.S. assets."

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4 [1971] 2 S.C.R. 1077 at 1096

5 Ibid.

6 Draft Supplemental Initial Order, at paragraphs 8 and 24, Motion Record of the First Lien Lenders' Agent, at pages 10 and 18

[74] The relief sought is not merely a device to sell U.S. assets from Canada. This is a unified transaction, each element of which is necessary and integral to its success. It is properly a Canadian process.

[75] There are many instances in which Canadian courts have granted vesting orders in relation to assets situated in the United States. Some of the orders are referred to in the factum of the FLL, including *Re Maax Corporation et al.*,[7] *Re Madill Equipment Canada*,[8] *Re ROL Manufacturing (Canada) Ltd.*,[9] *Re Biltrite Rubber Inc.*[10] and *Re Pope and Talbot, Inc. et. al.*[11]

[76] Decisions on both sides of the border have recognized that the United States and Canada have a special relationship that allows bankruptcy and insolvency matters to proceed with relative ease when assets lie in both territories. As the U.S. Bankruptcy Court for the Southern District of New York acknowledged in ABCP's *Metcalfe & Mansfield Alternative Investments et al*,.[12] both systems are rooted in the common law and share similar principles and procedures. Bankruptcy proceedings in the United States acknowledge international proceedings and work alongside, rather than over, foreign matters. Chapter 15 of the U.S. Bankruptcy Code exemplifies this in its foreign bankruptcy proceedings: "the court should be guided by principles of comity and cooperation with foreign courts."[13]

[77] In the cross-border case of *Re Muscletech Research and Development Inc*,[14] COMI was found to be in Canada despite factors indicating the U.S. would also be a suitable jurisdiction. Particularly, most of the creditors were located in the U.S., as was the revenue stream. Most of the major decisions regarding the company were made in Canada, its directors and officers were located in Ontario, banking was done in Ontario, etc. Justice Farley noted the positive relationship between Canada and the U.S. and credited this relationship to the adherence to comity and common principles. Judge Rakoff, presiding over the Chapter 15 proceedings, agreed with Farley J.'s endorsement, specifically noting that the factors outlined in the

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7 *Re. Maax Corporation*, unreported, Orders of the Superior Court of Quebec, TD Supplementary Brief of Authorities, Tabs 1a-c; Order by the US Bankruptcy Court for the District of Delaware Granting Recognition and Related Relief, TD Supplementary Brief of Authorities, Tab 1d.

8 *Re Madill Equipment Canada*, Case No. 08-41426, Distribution and Vesting Orders of the Supreme Court of British Columbia; Order of the US Bankruptcy Court (Western District of Washington at Tacoma) Granting Motion Authorizing Sale of Assets, TD Supplementary Brief of Authorities, Tab 2.

9 *Re. ROL Manufacturing (Canada) Ltd., et al.*, unreported, Order of the Quebec Superior Court (Commercial Division) Approving the Sale of the PSH Division, TD Supplementary Brief of Authorities, Tab 3a; Order of the US Bankruptcy Court, Southwestern District of Ohio, Authorizing and Approving Sale of PSH Division, TD Supplemental Brief of Authorities, Tab 3c,

10 *Re Biltrite Rubber Inc.*, Case No. 09-31423 (MAW), Sale Approval and Vesting Order and Distribution Order of the Ontario Superior Court of Justice, TD Supplemental Brief of Authorities, Tabs 4a-b; Order of the US Bankruptcy Court for the Northern District of Ohio Western Division Enforcing the Orders of the Ontario Court, TD Supplementary Brief of Authorities, Tab 4c.

11 *Re. Pope and Talbot, Inc. et al.*, Case No. 08-11933 (CSS), Orders of the US Bankruptcy Court for the District of Delaware, TD Supplementary Brief of Authorities, Tab 5.

12 United States Bankruptcy Court (S.D.N.Y.), Case No. 09-16709, January 5, 2010, Martin Glenn J.

13 *Metcalfe* at 18

14 . (2006) 19 C.B.R. (5th) 54 (*Muscletech*), titled *Re RSM Richter Inc. v. Aguilar* 2006 U.S. Dist. LEXIS 57595 (S.D.N.Y.) (*Re RSM Richter*)

Canadian endorsement persuaded him over the factors in favour of U.S. COMI. Farley J. noted at paragraph 4 of his endorsement, and Judge Rankoff implicitly agreed, that "the courts of Canada and the U.S. have long enjoyed a firm and ongoing relationship based on comity and commonalities of principles as to, *inter alia*, bankruptcy and insolvency."

[78] As noted by counsel for the SLL at paragraph 44 of their factum:

> Courts routinely enforce Canadian judgments in banluptcy, respecting our similar common law traditions including our respect for comity and restraint. In enforcing the decision of this Honourable Court in Metcalfe & Mansfield Alternative Investments et al., ("ABCP") the US Bankruptcy Court for the Southern District of New York, wrote:
>
>> The U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportnity to be heard in a manner consistent with standards of U.S. due process. u.s. federal courts have repeatedly granted comity to Canadian proceedings. United Feature Syndicate, Inc. v. Miler Features Syndicate, Inc., 216 F. Supp. 2d 198, 212 (S.D.N.Y. 2002) ("There is no question that bankruptcy proceedings in Canada-a sister common law jurisdiction with procedures akin to our own-are entitled to comity under appropriate circumstances.") (internal quotation marks and citations omitted); Tradewell, Inc. v. American Sensors Elecs., Inc., No. 96 Civ. 2474(DAB), 1997 WL 423075, at *1 n.3 (S.D.N.Y. 1997) ("It is well-settled in actions commenced in New York that judgments of the Canadian courts are to be given effect under principles of comity.") (internal quotation marks and citation omitted); Cornfeldv. Investors Overseas Servs., Ltd., 471 F. Supp. 1255, 1259 (S.D.N.V. 1979) ("The fact that the foreign country involved is Canada is significant. It is wellsettled in New York that the judgments of the Canadian courts are to be given effect under principles of comity. Trustees in bankruptcy appointed by Canadian courts have been recognized in actions commenced in the United States. More importantly, Canada is a sister common law jurisdiction with procedures akin to our own, and thus there need be no concern over the adequacy of the procedural safeguards of Canadian proceedings.") (internal quotation marks and citations omitted)15

[79] *MAAX Corporation* (*MAAX*) provides some assistance on the U.S. treatment to CCAA proceedings in asset sales. The salient elements in *MAAX* included the fact that the sale was conducted prior to entering CCAA protection, only the Canadian entity ultimately sought protection under the Act and no concurrent U.S. proceedings were initiated at first. The MAAX companies operated extensively in the U.S. and internationally, and were eventually brought into the U.S. via Chapter 15. The Canadian court approved the move into the U.S. and granted the sale. While there were some operating companies based almost solely in the U.S. (opening bank accounts to qualify under the CCAA, as was done in the present case), the U.S. Bankruptcy Court looked at the entity as a whole and granted the petition.[16] The American court approved of a flexible approach to the U.S. asset sale, allowing it to go forward without a competitive bidding process, stalking horse or auction.

[80] One of the essential features of the orders sought is the requirement that recognition be sought and obtained in the U.S. Bankruptcy Court, pursuant to Chapter 15 of that Code, of the Orders sought in this Court, including the adding of Additional Applicants.

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15 See footnote 12, *supra*.

16 *In re MAAX Corp., et al.*, No. 08-11443 (Bankr. D. Del. Aug. 6, 2008)

[81] I am satisfied that if there is a valid objection by the SLL, it is appropriately made in the U.S. Bankruptcy Court at a hearing to recognize this Order. I do not accept the proposition that this Court, by making the Order sought, would usurp a determinative review by the U.S. Court should it be found necessary.

[82] Given the purpose and flexibility of the CCAA process, it is consistent with the jurisdiction of this Court to add the Additional Applicants for the appropriate purpose of facilitating and implementing the entire transaction, which is approved.

Conclusion

[83] For the foregoing reasons, I am satisfied:

1. That it is not appropriate to re-open the Marketing Process;

2. That this Court does have jurisdiction to consider a sale transaction that incidentally does affect assets of a Canadian company in the United States;

3. That in all the circumstances it is appropriate to approve the proposed transaction.

C. CAMPBELL J.

Released: March 30, 2010

Appendix A

Applicable Provisions of the Inter-Creditor Agreement

<u>Section 3.1</u>
Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 3.1(a)(1), the First Lien Collateral Agent and the other First Lien Claimholders shall have the right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of the Second Lien Collateral Agent or any other Second Lien Claimholder...

<u>Section 5.1(a)</u>
If in connection with the exercise of the First Lien Collateral Agent's remedies in respect of the Collateral provided for in Section 3.1, the First Lien Collateral Agent, for itself or on behalf of any of the other First Lien Claimholders, releases any of its Liens on any part of the Collateral or releases any Grantor from its obligations under its guaranty of the First Lien Obligations in connection with the sale of the stock, or substantially all the assets, of such Grantor, then the Liens, if any, of the Second Lien Collateral Agent, for itself or for the benefit of the Second Lien Claimholders, on such Collateral, and the obligations of such Grantor under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released...

...The Second Lien Collateral Agent, for itself or on behalf of any such Second Lien Claimholders, promptly shall execute and deliver to the First Lien Collateral Agent or such Grantor such termination statements, releases and other documents as the First Lien Collateral Agent or such Grantor may request to effectively confirm such release.

<u>Section 5.1(c)</u>
Until the Discharge of First Lien Obligations occurs, the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, hereby irrevocably constitutes and appoints the First Lien Collateral Agent and any officer or agent of the First Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Lien Collateral Agent or such holder or in the First Lien Collateral Agent's own name, from time to time in the First Lien Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

CITATION: Re Grant Forest Products Inc., 2010 ONSC 1846
Court File No. CV-09-8247-00CL
Date: 20100330

SUPERIOR COURT OF JU.S.TICE
ONTARIO
(Commercial List)

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 COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

REASONS FOR DECISION

C. CAMPBELL J.

Released: March 30, 2010