

COURT OF APPEAL FOR ONTARIO

**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**

Applicants

**REPLY FACTUM OF THE MOVING PARTY
THE TORONTO-DOMINION BANK**

(motion for leave to appeal the order of Newbould J. dated October 13, 2009)

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Holdings GP

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The October 28, 2009 transfer

1. Mr. Grant argues that because of GFPI's¹ delivery of the transfer of the 2009 refund on October 28, 2009, "the principal substratum of the proposed appeal has now disappeared" (see paragraph 46 of Mr. Grant's factum). This is circular logic and is no basis for denying leave to appeal.

2. The October 28, 2009 transfer document was only delivered pursuant to the order of Newbould J., which states in paragraph 1 that "Mr. Grant is entitled if he wishes to receive a transfer from Grant Forest Products Inc. ('GFPI') under s. 5.02 effective January 2, 2009." The

¹ All capitalized terms which are not otherwise defined have the meanings ascribed to them in TD's factum dated November 3, 2009.

transfer itself states that “[t]his transfer is delivered in accordance with the judgment of the Ontario Superior Court of Justice dated October 13, 2009 and is effective as at January 2, 2009.”

Reference: Order of Newbould J., para. 1; Motion Record, Tab 2

Transfer dated October 28, 2009, found at Exhibit “B” to the Affidavit of Heather Lynn Gieseler; Responding Motion Record, Tab 1A

3. If the order of Newbould J. is overturned on appeal, the October 28, 2009 transfer document will have no legal effect. To borrow Mr. Grant’s own phrase, if Newbould J.’s Order is reversed by this court, the substratum of the October 28, 2009 will have disappeared.

4. Mr. Grant is effectively saying that this court can no longer review the correctness of Newbould J.’s decision simply because GFPI, quite properly, complied with Newbould J.’s order once MacPherson J.A. dismissed the motion to stay that order pending appeal. This is nonsensical. The mere fact of compliance with the order of the court below should not be permitted to take this matter out of the hands of this court.

The positions of GFPI and the Monitor

5. Mr. Grant claims that the fact that GFPI has taken no position either before Newbould J. or this court is “notable” (see paragraph 54 of Mr. Grant’s factum). It is nothing of the sort. Rather it merely reflects the fact that, as Newbould J. noted, GFPI finds itself “between a rock and a hard place”, with its lenders (understandably) opposed to the idea of \$10 million being paid out of a troubled company and to the company’s shareholder, and with its shareholder desiring the payment to be made. In these circumstances, it is difficult to imagine that GFPI could or would do anything other than take no position.

Reference: Endorsement of Newbould J., para. 26; Motion Record of TD Bank, Tab 3

6. Mr. Grant's attack on the Monitor (paragraphs 54 to 56 of Mr. Grant's factum) is unwarranted. The Monitor has the right, indeed the obligation, to ensure that the interests of creditors and stakeholders as a whole are put before the court. This is particularly so where the company is between a rock and a hard place and unable to do anything other than take no position. The Monitor's submissions on this motion are directed to nothing more than ensuring that the interests of stakeholders as a whole are heard by this court. As such, they are entirely appropriate for an officer of the court to make.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18TH DAY OF
NOVEMBER, 2009.**

A handwritten signature in black ink, appearing to read 'Geoff R. Hall', is written over a horizontal line.

McCarthy Tétrault LLP
Counsel to The Toronto-Dominion Bank

SCHEDULE "A" - AUTHORITIES REFERRED TO

None.

SCHEDULE "B" – TEXT OF RELEVANT STATUTES, REGULATIONS AND BY-LAWS

None.

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PRODUCTS INC. et al.

Court File No. M38119

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REPLY FACTUM

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