Court File No. CV-09-824700CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT FOREST PRODUCTS SALES INC., GRANT ALBERTA INC., GRANT U.S. HOLDINGS GP, SOUTHEAST PROPERTIES LLC, GRANT NEWCO LLC, AND GRANT EXCLUDED GP.

Applicants

- and –

TORONTO-DOMINION BANK, in its capacity as agent for secured lenders holding first lien security and THE BANK OF NEW YORK MELLON, in its capacity as agent for secured lenders holding second lien security

Respondents

SUMMARY OF THE POSITION OF PRICEWATERHOUSECOOPERS INC.
(Motion by Applicants re Special Payments, Motion by Certain Lenders for Lifting of the Stay)

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1. This is a summary of the position of PricewaterhouseCoopers Inc. ("PwC") on the two motions pending in this proceeding. PwC's position is set out in greater detail in a Joint Statement of Facts and Law submitted in connection with the original return of GFPI's motion for pension relief, and in Submissions regarding *Indalex*. GFPI and PwC have also recently delivered a supplemental Joint Statement providing updated information regarding the amounts required to be paid into the Plans pursuant to the PBA. Defined terms used herein bear the meaning ascribed to them in PwC's previous submissions.

2. With respect to the Pension Motion, GFPI seeks extraordinary relief from the requirements of the PBA. As the Court of Appeal noted in *Re Stelco Inc.*, the corporate activities of a CCAA debtor are governed by the legislation and legal principles that normally apply to such activities. This Court should therefore start from the premise that GFPI should not be excused from its obligation to make special payments simply at the asking.

***Re Stelco Inc.*, at paragraph 44**

3. The Court does have broad discretion to make orders during a CCAA proceeding. In other cases, Courts have exercised this discretion to relieve CCAA debtors from the obligation to make special payments where such an order is necessary in order to facilitate the restructuring of the debtors. In this case, an order relieving GFPI of its obligation to make special payments is not necessary. None of the circumstances which, in other cases, have justified relieving a debtor of its ordinary obligation to make special payments are present. Accordingly, GFPI should continue to make its special payments as and when they come due during this proceeding.

4. Following a number of adjournments of the Pension Motion, and some two years after this Court issued orders authorizing that steps be taken to wind up the Plans, West Face brought the Bankruptcy Motion. At the original return of the Bankruptcy Motion, West Face cites the decision of Deschamps J. in *Century Services* for the proposition that a bankruptcy is effectively automatic at the end of a CCAA proceeding. Notwithstanding that there is no independent reason to grant a bankruptcy order, nowithstanding West Face's inordinate and unexplained delay and notwithstanding that the final steps in the restructuring can be efficiently and fairly carried out within the existing CCAA proceeding, West Face is essentially saying a bankruptcy order should be issued because it wants one.

5. The position that bankruptcy is inevitable was not supported by *Century Services*, and if there was any doubt about that, Justice Deschamps' decision in *Indalex* makes that clear. See for example paragraph 51 of the decision:

> Although the creditors of a corporation that is attempting to reorganize may bargain in the shadow of their bankruptcy entitlements, those entitlement remain only shadows until bankruptcy occurs. At the outset of the insolvency proceedings, Indalex opted for a process governed by the *CCAA* ... This was not a case in which a failed arrangement forced a company into liquidation under the *BIA*. Indalex achieved the goal it was pursuing. It chose to sell its assets under the *CCAA*, not the *BIA*.
>
> ***Re Indalex* at paragraph 51, per Deschamps J.**

6. A request to lift the stay imposed by the Initial Order should be considered in light of the totality of the circumstances. In all of the circumstances of this case, there is no reason to issue a bankruptcy order other than West Face's desire for one, and ample reason not to. West Face cannot satisfy the heavy onus on them to show that the stay should be lifted and their Bankruptcy Motion should therefore be dismissed.

7. Moreover, even if the Court sees fit to order a bankruptcy, the Court has the discretion to, and should, order that the outstanding amounts owed to the Plans as of the date of the bankruptcy order should be paid into the Plans prior to any bankruptcy.

8. The Court also asked for further submissions regarding the scope of the deemed trust in this case, having regard to the decision in *Indalex*.

9. Based on the decision in *Indalex*, it is clear that the deemed trust applies to an amount representing the entirety of the wind-up deficits in the Plans. West Face argues that the deemed trust is a remedy, and therefore stayed by the Initial Order. That submission should be rejected. West Face also argues that there is a conflict between the deemed trust and the vesting orders in this proceeding. There is no such conflict.

10. For the reasons set out in PwC's further submissions, this Court can properly conclude, and should conclude that all of the funds currently held by GFPI and the Monitor can be traced to the proceeds of accounts and inventory. Accordingly, all such funds have the priority afforded by subsection 30(7) of the *PPSA*.

All of which is respectfully submitted

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IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., ET. AL.
Applicants

and

TORONTO DOMINION BANK, ET. AL.
Respondents

Court File No: CV-09-8247-00CL

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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