SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-036133-094

DATE: **SEPTEMBER 17, 2009**

PRESIDED BY THE HONOURABLE CLÉMENT GASCON, J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT WITH RESPECT TO:

ABITIBIBOWATER INC.
and
ABITIBI-CONSOLIDATED INC.
and
BOWATER CANADIAN HOLDINGS INC.
and
THE OTHER PETITIONERS MENTIONED IN SCHEDULES "A", "B" AND "C"
Debtors
and
ERNST & YOUNG INC.
Monitor
and
SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER (SCEP), SECTION LOCALE 142
Petitioner

TRANSCRIPTION OF THE REASONS FOR THE JUDGEMENT RENDERED FROM THE BENCH ON A MOTION TO BE AUTHORIZED TO CONTINUE PROCEEDINGS (#207)

INTRODUCTION

[1] The Communications, Energy and Paperworkers Union of Canada, Local 142 (the CEP) presented a motion to lift the stay of proceedings under the Initial Order issued on April 17, 2009.

[2] The motion by the CEP is part of the restructuring process initiated by the Debtors under the *CCAA*[1] since that date.

[3] The purpose of the motion is to allow the hearing of the grievances through which the CEP is contesting the suspension and dismissal of André Bouthotte[2] to proceed before Arbitrator François Hamelin. That hearing is set to begin on September 21, 2009 and continue on June 17 and 18, 2010[3].

[4] The grievances involve a unionized employee from the Gatineau plant. He is governed by a collective agreement which is in effect[4]. In his grievances, Mr. Bouthotte is asking to be reinstated in his job. He has close to 30 years of service and has been without work for over one year. He is not currently receiving any employment insurance benefits.

THE PARTIES' POSITIONS

[5] The CEP argues that these grievances should proceed as planned. In its view, the legal situation surrounding Mr. Bouthotte's employment relationship must be decided. As reinstatement is being applied for, it would be in everyone's interest to settle the issue immediately and thus minimize potential losses by all those involved.

[6] According to the CEP, the right of the employee to be reinstated stems from a public order statute, the *Act respecting labour standards*[5], so he cannot be affected by the process undertaken pursuant to the *CCAA*.

[7] The Debtors contest the application and the Monitor supports their position in its Supplemental 15th Report dated September 3, 2009. In their view, in terms of the restructuring undertaken pursuant to the *CCAA*, a stay of proceedings is the rule and the lifting of it the exception.

[8] There is no convincing reason for the Court to exercise its discretionary power as it has been asked to do. The fact that Mr. Bouthotte has been without a job for one year is insufficient in this respect. His situation cannot be worse than that of many other creditors.

[9] In addition, the Debtors state that a total of approximately 800 grievances have been stayed since the Initial Order. To allow the motion could lead to a flood of similar applications and a state of chaos, which would be difficult to manage in the current context, would ensue.

[1] *Companies' Creditors Arrangement Act (CCAA)*, R.S.C. 1985, c. C-36.
[2] Exhibit S-2.
[3] Exhibit S-4.
[4] Exhibit S-1.
[5] R.S.Q., c. N-1.1, s. 124.

[10] Also according to the Debtors, the process of dealing with these grievances as part of the restructuring should be encouraged, like the other claims which must be dealt with. Furthermore, such a process for dealing with grievances is about to be set up by the Monitor for the very purpose of examining the application by Mr. Bouthotte and those by several other employees.

ANALYSIS AND DISCUSSION

[11] First of all, the Court notes that, notwithstanding the argument raised in this regard by the Debtors, the CEP is not insisting on the particular or urgent situation of Mr. Bouthotte to support its application.

[12] If that were the case, the response of the Court would be the same here as that previously given in paragraphs 25 to 30 of its judgement dated May 26, 2009 rendered in the situation involving the same CEP and certain former employees of the Grand Falls plant:

> [25] Of course, preservation of a *status quo* does not necessarily mean inflexible rigidity. For instance, in some situations, if undue hardship caused by the stay itself is showed and strong necessity for immediate payment is established, a Court may consider it appropriate to lift the stay.
>
> [26] However, in this Court's opinion, the situations where only these two criteria of undue hardship and immediate necessity for payment would justify the lifting of the stay will be rare.
>
> [27] Seldom, if ever, will a restructuring process not cause definite hardship on most stakeholders. As well, rarely will stakeholders not be able to establish some level of necessity for the payment of what is owed to them.
>
> [28] If the sole criteria of undue hardship and necessity for payment would suffice to lift the stay of proceedings in a *CCAA* restructuring, Courts, debtors and monitors would likely end up devoting indefinite time and energy trying to assess the levels of prejudice caused to one or the other, instead of focusing upon the end result, that is, to develop and submit a plan and gather consensus around a fair and reasonable compromise for all.
>
> [29] This would undoubtedly have an adverse impact upon many restructuring efforts.
>
> [30] From that perspective, trying to please everyone on the basis of undue hardship or utmost necessity may end up resulting in displeasing all. This is why this should be approached with caution and, in this Court's view, with great reservation.

[13] From this point of view, Mr. Bouthotte's situation is unfortunately neither exceptional nor unique. It is not sufficient in and of itself to warrant the lifting of the stay as requested.

[14] Instead, the Court understands that the CEP is essentially arguing that in this case the situation has one particularity that distinguishes it from all others.

[15] As the CEP argues, this is an application for reinstatement in a job, i.e. the exercise of a right protected by a public order statute, recognized as such in the collective agreement[6], which forms an integral part thereof, according to the teachings of the Supreme Court in *Parry Sound*[7].

[16] Also, we cannot prevent the employee from exercising this right. In the opinion of the CEP, this reinstatement cannot be resolved as part of the restructuring process which has been undertaken.

[17] In this respect, the CEP seems to distinguish between purely monetary claims arising out a grievance and an application for reinstatement as in this case. If the first ones could possibly be dealt with as part of the restructuring, the same cannot be said for the second one.

[18] With respect, the Court believes that this distinction cannot justify approaching the problem differently, at least as things currently stand.

[19] At this stage, the Court believes that it is wrong to state that the right invoked by Mr. Bouthotte is ignored or set aside as part of the restructuring. Its treatment is stayed, certainly, but no one is denying his right to claim it.

[20] On the contrary, both the Monitor in its Supplemental 15th Report and the Debtors in their arguments explicitly acknowledge that the upcoming procedure for processing claims will include a specific procedure for dealing with grievances, including those involving reinstatement.

[6] Exhibit S-1.
[7] *Parry Sound (District) Social Services Administration Board* vs. *O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157.

[21] Furthermore, this situation is not unheard of. Other major restructurings have proceeded in this manner in the past to analyze claims stemming from grievances and to deal with this type of claim. One need only mention the example of the Air Canada restructuring.

[22] In other words, at this time, one cannot say, and the Court cannot convince itself, that the right claimed by Mr. Bouthotte is abused, ignored or set aside. This is clearly not the case.

[23] It is no surprise, in a restructuring of the size of which we are speaking, that the unions and the workers remain, like many other stakeholders, parties essential to the success of the process. Clearly, the Debtors and the Monitor are aware of this. They are not trying to hide it. The grievances which are stayed, regardless of their nature, are claims they intend to deal with, even through a particular and specialized mechanism.

[24] As part of a process which is normally rapid and conducted under the supervision of a judge as is the case with the *CCAA*, they believe that this solution will ultimately be quicker, more efficient and less costly than any other.

[25] Thus, at this time, nothing allows us to conclude that the CEP and the relevant unions will not be able to agree with the Debtors on an acceptable mechanism for dealing with claims stemming from grievances, regardless of their nature.

[26] In this regard, the fact that the grievances from which the claims stem are monetary or are for specific performance should not influence the choice of the procedure to be followed. If it is conceivable for one type of claim, it may be for the other.

[27] According to the understanding of the Court, the CEP is not claiming that, under the *CCAA*, the Monitor or the person in charge of the claim process does not have jurisdiction to decide on the well-foundedness or value of claims arising out of grievances. Instead, it is arguing the uniqueness of the application for reinstatement, without questioning the stay of proceedings for several other pending grievances or the advisability of applying to them the claim procedure which the Monitor intends to set up.

[28] For the moment, the Debtors are contemplating a solution to deal with these issues. It would be premature to set it aside on the ground that it could not lead to a useful solution in a particular case.

[29] In the opinion of the Court, we must avoid as much as possible setting up parallel procedures for dealing with claims, one of which would fall under the *CCAA* and the other not. There would be no winners with such a fragmenting of the procedure.

[30] We must remember that the Court of Appeal has held[8] that unionized employees whose claims stem from a collective agreement do not, as such, have a privileged or different status under the *CCAA*.

[8] *Syndicat des employées et employés de CFAP-TV (TQS-Québec), section locale 3946 du Syndicat canadien de la fonction publique* vs. *TQS inc.*, J.E. 2008-1578, 2008 QCCA 1429.

[31] In this context, the Court considers it advisable to maintain a steady course and a uniform treatment for all.

[32] Mr. Bouthotte is not more harmed than the other creditors of the Debtors, who must also be patient. As serious as it may be, the right he is claiming is not affected by it, nor are the consequences which an eventual reinstatement could have on the payment of moneys of which he has been deprived in the interim. Where applicable, this issue remains to be debated.

[33] Under the *CCAA*, the purpose of the stay of proceedings under the Initial Order is, on the one hand, to maintain a certain status quo and a shaky balance between all the creditors and, on the other hand, to allow the Debtors to focus their energy and resources on coming to a fruitful arrangement plan, thereby ensuring their continuity and survival.

[34] To lift the stay here would be to disregard these two objectives to a certain extent. Neither the balance of convenience nor the concept of serious or irreparable harm which would be in Mr. Bouthotte's favour warrants doing so. His rights and claims are not being ignored, whereas the procedure which has been instituted is progressing diligently and in good faith, taking the concerns of all into account.

[35] If, for any reason, time were to show that this is not or is no longer the case, the CEP will still have the opportunity to apply to the Court to protect or put forward the rights of its members, where applicable.

[36] In closing, we must distinguish the judgements rendered in *Groupe Blanchette*[9] and *Coopérative forestière Laterrière*[10]. In these two (2) cases, the procedure for processing the claims of the creditors of the debtors was complete and the restructuring practically finished. Most of the creditors had received their payments, in accordance with the arrangement plan which had been submitted. In this case, all that is at its very beginning.

[37] With respect to the decision by Justice Rayle in *Société de gestion Hyber*[11] rendered with respect to the *BIA*, leave to continue was required to liquidate the claim. This is not the situation before us here.

[9] *Groupe Blanchette inc. (Arrangement relatif à)*, J.E. 2005-1553, paragr. 4 and 37 (S.C.).
[10] *Coopérative forestière Laterrière (Arrangement relatif à)*, (S.C., 2005-09-30), SOQUIJ AZ 50335871, paragr. 21 and 26.
[11] *Société de gestion Hyber ltée (Syndic de)*, J.E. 98-155 (S.C.).

FOR THESE REASONS GIVEN VERBALLY AND RECORDED, THE COURT:

[38] **DISMISSES** the motion;

[39] **WITHOUT COSTS**.

(signed)
CLÉMENT GASCON, J.S.C.

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Hearing dates September 4 and 17, 2009
Reasons transcribed and reviewed on September 23, 2009

SCHEDULE "A"

ABITIBI PETITIONERS

1. **ABITIBI-CONSOLIDATED INC.**
2. **ABITIBI-CONSOLIDATED COMPANY OF CANADA**
3. **3224112 NOVA SCOTIA LIMITED**
4. **MARKETING DONOHUE INC.**
5. **ABITIBI-CONSOLIDATED CANADIAN OFFICE PRODUCTS HOLDINGS INC.**
6. **3834328 CANADA INC.**
7. **6169678 CANADA INC.**
8. **4042140 CANADA INC.**
9. **DONOHUE RECYCLING INC.**
10. **1508756 ONTARIO INC.**
11. **3217925 NOVA SCOTIA COMPANY**
12. **LA TUQUE FOREST PRODUCTS INC.**
13. **ABITIBI-CONSOLIDATED NOVA SCOTIA INCORPORATED**
14. **SAGUENAY FOREST PRODUCTS INC.**
15. **TERRA NOVA EXPLORATIONS LTD.**
16. **THE JONQUIERE PULP COMPANY**
17. **THE INTERNATIONAL BRIDGE AND TERMINAL COMPANY**
18. **SCRAMBLE MINING LTD.**
19. **9150-3383 QUÉBEC INC.**

SCHEDULE "B"

BOWATER PETITIONERS

1. BOWATER CANADIAN HOLDINGS INC.
2. BOWATER CANADA FINANCE CORPORATION
3. BOWATER CANADIAN LIMITED
4. 3231378 NOVA SCOTIA COMPANY
5. ABITIBIBOWATER CANADA INC.
6. BOWATER CANADA TREASURY CORPORATION
7. BOWATER CANADIAN FOREST PRODUCTS INC.
8. BOWATER SHELBURNE CORPORATION
9. BOWATER LAHAVE CORPORATION
10. ST-MAURICE RIVER DRIVE COMPANY LIMITED
11. BOWATER TREATED WOOD INC.
12. CANEXEL HARDBOARD INC.
13. 9068-9050 QUÉBEC INC.
14. ALLIANCE FOREST PRODUCTS (2001) INC.
15. BOWATER BELLEDUNE SAWMILL INC.
16. BOWATER MARITIMES INC.
17. BOWATER MITIS INC.
18. BOWATER GUÉRETTE INC.
19. BOWATER COUTURIER INC.

SCHEDULE "C"
18.6 CCAA PETITIONERS

1. **ABITIBIBOWATER INC.**
2. **ABITIBIBOWATER US HOLDING 1 CORP.**
3. **BOWATER VENTURES INC.**
4. **BOWATER INCORPORATED**
5. **BOWATER NUWAY INC.**
6. **BOWATER NUWAY MID-STATES INC.**
7. **CATAWBA PROPERTY HOLDINGS LLC**
8. **BOWATER FINANCE COMPANY INC.**
9. **BOWATER SOUTH AMERICAN HOLDINGS INCORPORATED**
10. **BOWATER AMERICA INC.**
11. **LAKE SUPERIOR FOREST PRODUCTS INC.**
12. **BOWATER NEWSPRINT SOUTH LLC**
13. **BOWATER NEWSPRINT SOUTH OPERATIONS LLC**
14. **BOWATER FINANCE II, LLC**
15. **BOWATER ALABAMA LLC**
16. **COOSA PINES GOLF CLUB HOLDINGS LLC**