SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-036133-094

DATE: **SEPTEMBER 10, 2010**

PRESENT: THE HONOURABLE MR. JUSTICE CLÉMENT GASCON, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.
And
ABITIBI-CONSOLIDATED INC.
And
BOWATER CANADIAN HOLDINGS INC.
And
The other Petitioners listed on Schedules "A", "B" and "C"
Debtors

And
ERNST & YOUNG INC.
Monitor

TRANSCRIPT OF REASONS FOR JUDGMENT GIVEN ORALLY ON VESTING ORDER PERTAINING TO THE KENORA MARGACH ASSETS (# 678 and # 686)

---

[1] After review and consideration of the arguments of Counsel for Abitibi, the Monitor and the Ad Hoc Committee of Unsecured Noteholders, on the one hand, as well as those of Counsel for the Provinces of Ontario, New Brunswick and British Columbia, on the other hand, I consider that it is proper to issue, at this stage, the Vesting Orders sought at Exhibits R-5, R-9, R-10, R-11 and R-12 of the Motion, together with the

JG1793

Amendments requested by each Province at paragraphs 6.1 thereof (as corrected this morning) as they are written, even though some parts of their wording may appear redundant or even useless.

[2] As the *CCAA* judge presiding over this restructuring, I am of the view that these Vesting Orders must be issued forthwith, without delay. Hence, my decision to proceed in the current fashion, with brief oral reasons, mostly for the future guidance of everyone involved.

[3] The restructuring of Abitibi's imposing debt[1] is a cross-border undertaking that affects tens of thousands of stakeholders, be they employees, pensioners, creditors or governments authorities. It has been going on since April 2009. In May 2010, Abitibi filed its Plan of Reorganization and Compromise in conjunction with a similar Plan filed by its affiliates in proceedings in the United States under Chapter 11 of the U.S. Bankruptcy Code, all with a view to conforming to a timetable for a rapid exit from the *CCAA* Proceedings and Chapter 11 Proceedings by the end of October 2010. The meeting of the Creditors on the Plan is scheduled on September 14, 2010. A hearing for the sanction of the Plan is scheduled on September 20, 2010.

[4] Time is of the essence, perhaps more than ever.

[5] The Motion at issue filed by Abitibi is entitled "*Amended Second Motion for the Issuance of Various Orders Authorizing the Sale of Non-Core Properties and the Issuance of a Re-Amended Receivership Order in Respect of 4513541 Canada Inc.*".

[6] The Re-Amended Receivership Order sought in the Motion has been issued ten days ago. In addition, the conclusions with regard to the Vesting Orders pertaining to all the properties targeted that are located in Quebec have already been granted in view of the absence of contestation by the Province of Quebec.

[7] The current debate is limited to the following properties owned by Abitibi, namely:

a) The Margach, Mud Lake and Dryden Mercury Landfills located in Ontario;

b) The Highway 28 Property located in British Columbia; and

c) The Baker Brook Property located in New Brunswick.

[8] In short, the Motion seeks Vesting Orders from the Court authorizing the transfer of these Properties to one of Abitibi's subsidiaries, 4513541 Canada Inc., and vesting their titles in that Purchaser free and clear of all liens, securities and other charges, as is commonly ordered in proceedings under the *CCAA*.

[9] As worded, the Vesting Orders will not, however, exempt the Purchaser from environmental obligations in respect of the Properties. Indeed, Abitibi has agreed to provide funding to the Receiver of the Purchaser, specifically to permit prudent care,

1 See Monitor's 57th Report of September 7, 2010.

custody and management of the Properties. On September 1, 2010, the Court in fact issued a Re-Amended Receivership Order, increasing the funds available to the Receiver from $600,000 to $1.7 million.

[10] As well, with the amendment requested by each of the Provinces at paragraph 6.1 thereof, it is clear that these Vesting Orders will neither exempt, in and of themselves, the Vendors of the Properties from their potential environmental liabilities towards the Provinces as former owner, occupier or operator of the Properties.

[11] Contrary to what some of the Provinces have argued, the Vesting Orders, as they will be issued, will not extinguish the Provinces existing remedies, if any, under their statutes against a former owner or occupier resulting from past environmental obligations or liabilities.

[12] In that regard, when properly analyzed, the central issue raised by the Contestations and Cross-Motions filed by the Provinces of Ontario, New Brunswick and British Columbia is not whether Abitibi can transfer the Properties to the Purchaser, but rather, whether, in so doing, Abitibi is correct in alleging that this will effectively crystallized, and afterward compromised, its potential environmental liabilities towards the Provinces as former owner or occupier of the Properties.

[13] In the Court's opinion, the Vesting Orders, as sought and as granted, do not, in and of themselves, compromise such potential environmental liabilities of Abitibi towards the Provinces.

[14] At best, this may happen under the terms of the Plan to be voted upon by Abitibi's Creditors on September 14, 2010 and, therefore, at the sanction order stage scheduled to be heard on September 20, 2010.

[15] On that point, and again very briefly put, Abitibi considers, for its part, that through the terms of the Plan and the sanction order it will seek, its potential former owner/occupier environmental liabilities associated with the Properties will be compromised, as such liabilities constitute compromised claims under the current *CCAA* restructuring process.

[16] Conversely, the Provinces argue that these environmental obligations of Abitibi under their respective provincial statutes are neither compromised nor subject to the Plan of Arrangement or sanction order to be issued in relation thereto since they do not constitute compromised claims under this CCAA restructuring process.

[17] This disagreement upon the potential consequences that may, following a plan approval and the issuance of a sanction order, eventually result from the Vesting Orders is not a good enough reason to bar their issuance.

[18] If the Provinces are correct in their assertions, and the environmental obligations of Abitibi under the Provinces' statutes cannot be compromised under the Plan, the

sanction order or this *CCAA* restructuring process, the issuance of the Vesting Orders causes no prejudice to them.

[19] If, on the other hand, Abitibi is right in saying, based on the relevant facts and the applicable law, that its potential former owner/occupier environmental liabilities are indeed compromised claims under the current CCAA restructuring, this consequence, assuming for the sake of discussion that it is a valid and lawful one, is not a sufficient reason to deny the Vesting Orders sought.

[20] The Properties at issue are not required by Abitibi for future operations. Yet, they are subject to potential environmental liabilities exposure. According to Abitibi, this potential environmental liabilities exposure consists of historic liabilities arising from the ownership or occupation of the properties and the impact of events that occurred prior, if not well prior, to the filing of the CCAA proceedings.

[21] Apparently, the Properties consist of vacant lots and/or former or current wood residue and landfills sites that have not been involved in Abitibi's active operations in a material way for many years.

[22] As such, the transfer of the Properties will be beneficial to the restructuration in that, at the very least, Abitibi will not continue to own or occupy the Properties upon CCAA emergence.

[23] From that standpoint, the proposed sales contemplated by the Vesting Orders are prudent and reasonable measures to potentially enhance the business of Abitibi for emergence from CCAA. Similar to the discharging of unprofitable contracts, or the closing of under performing divisions, selling unprofitable properties is a recognized, prudent and reasonable step in restructuring an insolvent business.

[24] Many similar sales have been approved so far by the Court in this context of this restructuring.

[25] Save for their argument on the consequences of the end result of the CCAA whole process upon Abitibi's environmental obligations under their provincial statutes should its status change to that of a former owner/occupier, which argument is, again, yet to be ruled upon by the Court one way or the other, and certainly not decided by the mere issuance of the Vesting Orders, the Provinces do not present any convincing argument to oppose the contemplated sales.

[26] Their concerns about what they allege are the immediate effect of the Vesting Orders per se are unfounded.

[27] As a matter of fact, the addition of paragraph 6.1 to the Vesting Orders, as proposed by the Provinces, amply protects their right to raise that argument in due course.

[28] That said, the other conclusions sought by the Provinces in their Cross-Motions are either unnecessary or unjustified.

[29] First, for the time being, the Court does not decide whether or not there are claims or compromised claims under the CCAA by reason of the environmental obligations of Abitibi with respect to the Properties at stake.

[30] Provided it is necessary to rule upon it then, that issue will be addressed, at best, at the stage of the sanction order, and if not, at a later stage.

[31] As restructuring Judge, the Court is mindful of the CCAA remedial purpose and ultimate goal, that is, to facilitate a compromise and arrangement, and hopefully, a successful restructuring. The best way to do so in a context like this one is to decide only what needs to be decided, at the time it is truly necessary to do so.

[32] A lot can happen between now and the sanction order. The position of each one may evolve as a result of the Vesting Orders issued today. The parties can find a solution to address their potential disputes without affecting or maybe delaying Abititi's potential emergence after a sanction order. To borrow from the Monitor's Counsel remarks, it is better to tackle the problem one bite at the time.

[33] In that regard, and as stated during the hearing, the Court notes that no matter how interesting might be the issue of the "compromisable" or "not compromisable" character of Abitibi's environmental obligations as former owner/occupier under the Provinces' statutes in a CCAA restructuring process, it remains that none of the Provinces involved have, so far, issued any order of any sort against Abitibi with respect to the Properties.

[34] The Provinces, in fact, seem to indicate that they are allegedly not fixed yet upon their position towards Abitibi with regard to these environmental obligations. They do not know, so they say, whether this will ever lead to a dispute of any sort with Abitibi in the future. It thus appears that, at the moment, no genuine, immediate and practical problem or pending issue to resolve perhaps exists, save for the obvious disagreement between the parties on the potential impact of the up coming sanction order should future circumstances trigger a concrete dispute.

[35] Second and lastly, as for the general and surprising declaration sought by the Provinces concerning the impact of the Vesting Orders, or for that matter any order of this Court, upon the question of statutory or constitutional jurisdiction that may be raised by them with regard to the environmental obligations at issue, it is, with respect, unjustified and uncalled for.

[36] It is certainly not for this Court to issue declarations aimed at interpreting the meaning or impact of its own judgments.

[37] At the risk of sounding a bit harsh, if the Provinces or their Counsel feel the need to be reassured to that end, an additional reading of the current reasons and of the reasons for judgment issued on March 31, 2010 in the Newfoundland situation (in particular, at paragraphs 127 to 139 thereof) should suffice.

* * *

CONSIDERING Petitioners' Amended Second Motion for the Issuance of Various Orders Authorizing the Sale of Non-Core Properties and for the Issuance of a Re-Amended Receivership Order in respect of 4513541 Canada Inc. (the "**Motion**") and the Contestation filed in response thereto by Her Majesty The Queen in Right of the Province of New Brunswick;

CONSIDERING the representations of the parties;

GIVEN the provisions of the Companies' Creditors Arrangement Act ("**CCAA**");

FOR THE REASONS GIVEN ORALLY AND REGISTERED, THE COURT:

[1] **AUTHORIZES AND APPROVES** the transfer of the real property and the real property interests indentified in Schedule "D" hereto, together with all buildings and other structures, facilities and improvements located thereon (collectively the "**Real Property**");

[2] **AUTHORIZES AND APPROVES** the execution of the indenture, a draft copy of which was filed as Exhibit R-25 to the Motion (the "**Indenture**"), by and between Abitibi-Consolidated Inc. ("**ACI**"), as vendor, and 4513541 Canada Inc. (the "**Purchaser**"), as purchaser, acting through Samson Belair/Deloitte & Touche Inc. ("**Deloitte**") solely in its capacity as court-appointed receiver for and on behalf of the Purchaser and not on its own behalf, and the completion of all the transactions contemplated therein (the "**Proposed Transactions**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor as well as the execution of any other document, deed or agreement that may be required to give effect to the Proposed Transactions;

[3] **AUTHORIZES AND APPROVES** the execution by ACI and Deloitte in its capacity as court-appointed receiver for and on behalf of Purchaser of the General Security Agreement, a draft copy of which was filed as Exhibit R-25 to the Motion (the "**GSA**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor;

[4] **AUTHORIZES AND APPROVES** the execution by ACI and Deloitte in its capacity as court-appointed receiver for and on behalf of Purchaser of the Mortgage, a draft copy of which was filed as Exhibit R-25 to the Motion (the "**Mortgage**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor;

[5] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required to proceed with the Proposed Transactions and that no shareholder or regulatory

approval shall be required in connection therewith save and except for those contemplated in the Indenture;

[6] **ORDERS AND DECLARES** that upon issuance of this Order and a Re-Amended Receivership Order dated September 1st, 2010 with respect to the Purchaser, and the payment by the Purchaser of the Purchase Price (as defined in the Indenture), all registered and beneficial right, title and interest in and to the assets described in the Indenture (the "**Purchased Assets**"), shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities, obligations, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), pledges, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory or otherwise), restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise, other than encumbrances referred to in the Indenture (collectively, the "**Purchased Assets Encumbrances**"), including without limiting the generality of the foregoing: (i) any Purchased Assets Encumbrances created by the Order issued on April 17, 2009 by Justice Clément Gascon, J.S.C., as amended, and/or any other CCAA order; and (ii) all Purchased Assets Encumbrances evidenced by registration, publication or filing pursuant to the *Bank Act* or any other applicable legislation providing for a security interest in personal, movable or immovable property with respect to the Purchased Assets, and, for greater certainty, **ORDERS** that all of the Purchased Assets Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date set out in the Indenture;

[6.1] **ORDERS AND DECLARES** that subject to any other or further order of this Court, nothing in this Order reduces or makes inapplicable (i) any obligation under any enactment of the Province of Ontario that ACI or the Purchaser or any other person may have by virtue of having been or becoming the owner or operator of the Purchased Assets or any of them, or (ii) any consent by, approval of, notice to or other similar requirement involving the provincial government or a regional or municipal government under any enactment of the Province of Ontario relating to the transfer of the Purchased Assets or any of them. Nothing in this paragraph shall change in any way the provisions of paragraph 14 of this Court's Re-Amended Receivership Order in respect of 4513541 Canada Inc. dated September 1, 2010.

[7] **ORDERS** that upon registration at the Land Registry Office for the Land Titles Division of Kenora (No. 23) of a certified copy of this Order, the Land Registrar of the afore-mentioned registry office is hereby directed to enter the Purchaser as the owner of the Real Property, in fee simple in respect of the Real Property, and is hereby directed to discharge, release, delete and expunge from title to the Real Property all of the Purchased Assets Encumbrances and the charges set out in Schedule "D" hereto;

[8] **ORDERS** that the Purchaser Note (as defined in the Indenture) shall be remitted directly to Ernst & Young Inc., in its capacity as Monitor of the Petitioners, and **ORDERS** that any amounts owing under the Purchaser Note shall be paid directly to Ernst & Young Inc., in its capacity as Monitor of the Petitioners until the issuance of directions by this Court with respect to the allocation of said payments;

[9] **ORDERS** that for the purposes of determining the nature and priority of Purchased Assets Encumbrances, any and all rights of ACI under the Purchaser Note shall stand in the place and stead of the Purchased Assets, and all Purchased Assets Encumbrances shall attach to such rights with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;

[10] **ORDERS** that notwithstanding:

i) the proceedings under the CCAA;

ii) any petitions for a receiving order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act ("**BIA**") and any order issued pursuant to any such petition; or

iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets, contemplated in this Order, as well as the execution of the Indenture, the GSA and the Mortgage pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it give rise to an oppression or any other remedy; and

[11] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

[12] **THE WHOLE WITHOUT COSTS.**

CLEMENT GASCON, J.S.C. J.S.C.

Me Sean Dunphy, Me Joseph Reynaud and Me Guillaume Boudreau-Simard
STIKEMAN, ELLIOTT
Attorneys for Petitioners

Dates of hearing: September 7 and 8, 2010
Reasons transcribed and revised on September 14, 2010

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.
20. ABITIBI-CONSOLIDATED (U.K.) 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**

SCHEDULE "D"

LEGAL DESCRIPTION OF THE REAL PROPERTY AND CHARGES

Legal Description

Freehold Lands:

FIRSTLY: PCL 5496 SEC DKF; SE 1/4 OF S 1/2 LT 13 CON 6 JAFFRAY; KENORA, being all of PIN: 42177-0156 (LT)

SECONDLY: PCL 5683 SEC DKF E 1/2 OF NE 1/4 OF S 1/2; LT 13 CON 6 JAFFRAY EXCEPT PT 1 23R3731; KENORA, being all of PIN: 42177-0157 (LT)

THIRDLY: PCL 5497 SEC DKF W 1/2 OF NW 1/4 OF S 1/2; LT 14 CON 6 JAFFRAY EXCEPT PT 2 23R3731; KENORA, being all of PIN: 42177-0159 (LT)

FOURTHLY: PCL 8013 SEC DKF; SW 1/4 OF S 1/2 LT 14 CON 6 JAFFRAY; KENORA, being all of PIN: 42177-0366 (LT)

Charges to be Discharged

Instrument No. LE 3050 registered March 8, 1973 being a Crown Lease dated November 24, 1972 granted by the Province of Ontario to and in favour of the Ontario Minnesota Pulp and Paper Company Limited (a predecessor corporation to Abitibi-Consolidated Inc.) in respect of the lands and premises more particularly described as follows:

FIRSTLY: PCL 2561 SEC DKL; LOCATION KM286 JAFFRAY; PT LT 19 CON 5 JAFFRAY PT 2 23R2766; KENORA, being all of PIN: 42177-0406 (LT)

SECONDLY: PCL 2561 SEC DKL; LOCATION KM286 JAFFRAY; PT LT 19 CON 5 JAFFRAY PT 1 23R2766; KENORA, being all of PIN: 42177-0392 (LT)

The above-mentioned PIN's are leasehold PINS.