

CITATION: Allied Systems Holdings, Inc. (Re), 2012 ONSC 4343
COURT FILE NO.: 12-CV-9757-00CL
DATE: 20120725

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

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

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER
SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED.**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC.,
ALLIED SYSTEMS (CANADA) COMPANY, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "A" HERETO, Applicant**

BEFORE: MORAWETZ J.

COUNSEL: J. Stam and V. Djuric, for the Applicant

S. Golick and A. Cobb, for Yucaipa

L. J. Latham, for Black Diamond

**T. Reyes and E. Cobb, for Duff & Phelps, Canada Restructuring Inc.,
Proposed Information Officer**

**HEARD &
RELEASED: JUNE 12, 2012**

ENDORSEMENT

[1] An Order has been granted by the United States Bankruptcy Court in Delaware, recognizing Allied Systems Holdings, Inc. as "Foreign Representative".

[2] I am satisfied that Allied Systems Holdings, Inc. qualifies as "foreign representative" for the purposes of Part IV of the CCAA.

[3] The Applicant takes the position that the COMI for each of the Chapter 11 Debtors is in the U.S. and that the Foreign Proceeding should be recognized as a "foreign main proceeding" as defined in Section 45 of the CCAA.

[4] Section 45(2) of the CCAA provides that for the purposes of Part IV, in the absence of proof to the contrary, a debtor's registered office is deemed to be the centre of its main interests. For the purposes of this application, the COMI analysis is relevant only to the two (2) Canadian companies, Allied Systems Canada and Axis Canada. The registered head office of these Canadian companies is in Halifax, Nova Scotia.

[5] The principal place of business for Allied Systems Canada is Hamilton, Ontario. However, the evidence establishes that, with respect to Allied Systems, only minimal administrative functions are carried out in Canada. The evidence also establishes that the principal place of business of Axis Canada is Atlanta, Georgia.

[6] I am satisfied that for all intents and purposes, the Canadian companies are managed out of the U.S.

[7] In considering whether the registered head office presumption has been rebutted, I consider the following principal factors to be informative for determining COMI:

- (i) the location is readily ascertainable by creditors;
- (ii) the location is one in which the debtor's principal assets and operations are found, and;
- (iii) the location is where the management of the debtor takes place.

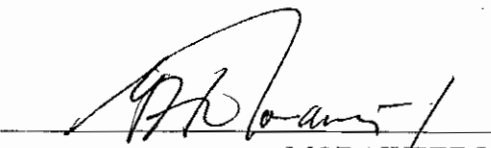
[8] In this case, a review of the factors points to the COMI of the Canadian Companies to be in the U.S. notwithstanding the location of the registered head office.

[9] Accordingly, I am satisfied that the Foreign Proceeding should be and is hereby recognized as a "foreign main proceeding" as defined in Section 45 of the CCAA.

[10] The balance of the requested relief is granted including:

- (i) a stay of proceedings; and
- (ii) restriction on sale of property.

[11] The Order has been signed in the form presented effective 12:31 p.m. Eastern Standard Time today, June 12, 2012.


MORAWETZ J.

Date: July 25, 2012