



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP**

COURT FILE NO.: CV-22-00684542-00CL DATE: September 29, 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: **MPX INTERNATIONAL CORP**

BEFORE JUSTICE: **CONWAY**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
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**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
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Name of Person Appearing	Name of Party	Contact Info
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## **ENDORSEMENT OF JUSTICE CONWAY:**

**All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of Ninth Square dated September 26, 2022.**

Ninth Square is the plaintiff in a claim against various parties including MPX, MPXI, Boyes, Budd and Arnkvorn (the Directors). The claim relates to a share purchase agreement under which MPX acquired Ninth Square's shares in Spartan in exchange for shares and warrants of MPX. Ninth Square alleges that pursuant to the Arrangement that occurred after the SPA was signed, MPX's non-US assets were spun out to MPXI and that this would have significantly altered the consideration payable to Ninth Square under the SPA.

Ninth Square alleges that the conduct of the defendants with respect to the Arrangement and the SPA was oppressive. Ninth Square is pursuing a consolidated claim against the companies and the Directors. The Directors were directors of MPX at the time the SPA was signed and became directors of MPXI after the Arrangement was implemented.

MPXI is in CCAA proceedings now. The Amended and Restated Order contains a broad stay of proceedings against MPXI, related companies, and their directors "that relates to any obligations of an MPXI Entity whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations" (paragraph 19). As noted above, the Directors are directors of MPXI, in addition to having been directors of MPX before the spin-off.

Ninth Square seeks a declaration that the Stay does not apply to the claim against the Directors. It argues that the claim against them relates to their conduct as directors of MPX (which is not in CCAA). It further submits that the claim against the Directors is based on their personal conduct rather than on a corporate obligation for which they are legally liable and that the claim against them is therefore not caught by the Stay (relying on the case of *Re Rising Phoenix International Inc.*, 2022 QCCS 1675 (CanLII)).

Ninth Square has discoveries scheduled for the Directors in November and December and does not want to jeopardize those dates. The Directors have taken the position that they will not be attending the discoveries because they are protected by the Stay.

No opposing materials were filed on the motion, apparently due to lack of funding. However, at the hearing, counsel for the Monitor and the Applicants pointed out numerous frailties with Ninth Square's arguments. They note that the Stay in the CCAA order is broadly worded and extends to the Directors. They submit that the language of the consolidated claim blurs the roles of the various companies and the individuals and seeks relief against all of them. In particular, they submit that MPXI is a defendant in the claim and that the Directors are alleged to have "directed MPXI's participation in this unfair conduct" (para 46). They submit that this court cannot determine at this stage that the claim relates only to the Directors' personal conduct and that such a finding at the pleadings stage would prejudice the Directors' defence that they were not acting in their personal capacity. They submit that the claim does not restrict the allegations against the Directors to their conduct with respect to MPX and that the allegations are made against the Directors with respect to MPXI.

At the conclusion of the hearing, I dismissed Ninth Square's motion. I am not persuaded, given the state of the pleadings, that the Stay in paragraph 16 does not apply to the Directors. I agree with counsel for the Monitor and the Applicants that the alleged wrongful conduct of the companies (including MPXI) and the Directors in the consolidated pleading is inextricably intertwined.

Further, Ninth Square urges on me a characterization of the claim against the Directors at this stage, based solely on the pleadings, and solely for the purpose of determining whether or not the Stay applies. In my view, it is premature to engage in the exercise of characterizing the nature of the claim against the Directors at this point and could be prejudicial to the Directors' defence in the action.

At the hearing, I suggested to Ninth Square's counsel that if the pleadings were clarified, that might resolve the issue of whether or not the Stay applies. I also was concerned that this motion was brought for declaratory relief rather than as a lift-stay motion and that the latter would be more appropriate given the broad language of the Stay in the order. Mr. Anisman was concerned that either of those might jeopardize the scheduled discovery dates. The court would be prepared to schedule a return hearing on an expedited basis under the circumstances.

I am dismissing the motion without prejudice to Ninth Square returning to court if it amends the claim or wishes to schedule a lift stay motion for the claim against the Directors.

No costs are sought or awarded.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.