Court File No. CV-22-00685631-00CL

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

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

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

Applicant

BOOK OF AUTHORITIES OF THE AD HOC FIRST LIEN GROUP
(Motion for Appointment of Representative Plaintiff Returnable December 4, 2023)

November 27, 2023

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1. *Re NMX Residual Assets Inc. et al.,* 500-11-057716-199 (02-14-2022), Judgment of the Honourable David R. Collier, J.S.C

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SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-11-057716-199

DATE : FEBRUARY 14, 2022

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT OF:

NMX RESIDUAL ASSETS INC. ET ALS
Debtors

and
PRICEWATERHOUSECOOPERS INC.
Monitor

and

VICTOR CANTORE
Plaintiff

and

NEMASKA LITHIUM INC.
Defendant

and

MICHEL BARIL ET AL
Voluntary Interveners

and

JC0B37

THE LAND REGISTRAR OF THE LAND REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF LAC-SAINT-JEAN-OUEST ET AL
Impleaded parties

and
THE REGISTRAR OF THE PUBLIC REGISTER OF REAL AND IMMOVEABLE MINING RIGHTS
Impleaded parties

JUDGMENT
(Defendant's motion to partially dismiss the plaintiff's Real Rights Application)

I. OVERVIEW

[1] The question before the Court is to determine what issue before the Court in September 2020, in the context of a proposed transaction under the *Companies' Creditors Arrangement Act* ("CCAA"),[1] was deferred by the Court for adjudication at a later date. The defendant Nemaska Lithium Inc. ("Nemaska") takes a narrow view of the question, and seeks by the present motion to strike certain allegations recently added by the plaintiff Victor Cantore to his application for declaratory relief, arguing these allegations are extraneous to the issue deferred by the Court. Mr Cantore takes a broader view, and asserts that he should be allowed to amend his application in order to raise all grounds in support of the deferred issue.

II. CONTEXT

[2] The legal context underlying Nemaska's motion in partial dismissal is complex. In December 2019, five Nemaska companies, unrelated to the defendant, sought to protect and restructure their businesses under the CCAA. As is common in such cases, the Court ordered a stay of legal proceedings against the debtor companies and appointed a monitor to implement a creditor claims process and solicit offers for the purchase of the debtors' assets.

[3] Mr Cantore has been an active participant in the CCAA proceedings. He has filed five proofs of claim against the debtor companies and their officers and directors. He also claims to own, through acquisitive prescription, a *sui generis* real right in the debtors' mining properties (the "NSR Royalty"), or alternatively to have a right to obtain the conveyance of the NSR Royalty from the debtor companies on account of his agreements with them.

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[1] R.S.C. 1985, c. C-36.

[4] Given Mr Cantore's claims, in September 2020, the CCAA Court authorized him to file a declaratory motion in order to seek a judicial recognition of his alleged *sui generis* right. Mr Cantore's Real Rights Application (RRA) is dated September 3, 2020.

[5] The Court also authorized Mr Cantore to examine the debtor companies, although, as we shall see later, the scope of his discovery was circumscribed by the Court.

[6] In September and October 2020 the CCAA Court heard an application by third party investors to acquire certain assets belonging to the debtor companies. The applicants sought a "reverse vesting order" (RVO) from the Court, the effect of which would authorize Nemaska to acquire the shares of the debtor companies, and continue their operations, after they had been divested of certain undesirable assets and liabilities. The Court heard the RVO application and Mr Cantore's RRA concurrently. The Court directed that, as a preliminary question, it would determine whether the proposed RVO extinguished Mr Cantore's alleged *sui generis* right, assuming it was a real right attaching to the debtors' immovable property.

[7] The RVO application and RRA were heard over nine days. At the start of closing arguments, after proof was closed, the RVO applicants announced to the Court that they were modifying their proposed transaction and would agree to acquire the assets of the debtor companies under the RVO, while postponing to a later date the question of whether the RVO extinguished Mr Cantore's alleged real rights.

[8] The Court agreed to this modification and accepted that Mr Cantore's alleged rights under the RRA would be "carved-out" out of the RVO, and remain unaffected by it, until such time as the Court ruled on the RRA.

[9] The Court approved the RVO application on October 15, 2020. As a result, Nemaska acquired the shares and certain assets of the debtor companies, while being released from their debts and liabilities, which were transferred to newly-incorporated entities. Paragraphs 36 and 37 of the RVO stipulated that Mr Cantore's alleged real right was unaffected by the RVO and would be dealt with later by the Court.

[10] Despite the RRA carve-out, Mr Cantore maintained his contestation of the RVO. He unsuccessfully appealed the RVO decision before the Court of Appeal and was denied leave to appeal to the Supreme Court of Canada.

[11] Mr Cantore's RRA remains pending. Since the RVO decision in October 2020 he has amended the RRA twice, on April 21 and July 8, 2021. The April amendment added new allegations in support of Mr Cantore's contention that he holds a *sui generis* real right in the debtors' mining property. More specifically, Mr Cantore now alleges that his real right arises as a result of the oppressive conduct towards him of the debtor companies and their directors and officers.

[12] Nemaska seeks to strike out these new allegations on several grounds. First, it argues that the RRA carved-out in the RVO did not allege oppression, and that the allegations of oppression raise an entirely new claim from which Nemaska was released under the terms of the RVO. Secondly, Nemaska argues that the grounds in support of Mr Cantore's oppression claim, notably the debtors' bad faith, were dismissed by the Court in the RVO decision, which constitutes *res judicata* or *chose jugée*. Nemaska argues, thirdly, that the allegations of oppression constitute a collateral attack on the RVO decision, in that they seek to obtain a different result for Mr Cantore's royalty claim from that obtained under the RVO. Finally, Nemaska argues that the April 2021 amendments to the RRA constitute an abuse of procedure.

[13] In reply, Mr Cantore argues that the CCAA supervising judge restricted his ability to make a full case in support of the RRA, and that he should be allowed to do that now. Given the "expeditious" nature of the RVO hearing, the plaintiff argues he was not afforded an opportunity to allege oppression, and that the Court therefore made no rulings on the issue which would constitute *res judicata*. Mr Cantore further argues that Nemaska did not receive a release under the RVO for claims of oppression, and that the amendments to the RRA do not constitute a collateral attack on the RVO decision, nor an abuse of procedure.

III. ANALYSIS

[14] The determination of whether the April 2021 amendments to the RRA are permissible turns on the question of what precisely was carved out of the October 2020 hearing and excluded from the RVO. In the Court's opinion, an examination of the record leads to the conclusion that an oppression claim was not part of the carve-out. Consequently, allegations of oppression should not be allowed in the form of amendments to the RRA.

[15] The initial CCAA order rendered in December 2019 suspended all legal proceedings against the debtor companies. Exceptionally, in August 2020, the supervising judge authorized a lift of the stay in favour of Mr Cantore so that he could assert his alleged *sui generis* right.

[16] Mr Cantore defined his right in the RRA dated September 3, 2020. According to the application's title page, Mr Cantore's right is based on articles 2918 and 1712 C.C.Q. These provisions deal respectively with the notion of acquisitive prescription and the creditor's right to obtain title through a court judgment when the debtor refuses to transfer title (*passer titre*).

[17] The RRA filed in September 2020 states its objective at paragraph 1:

> [1] By the present application, Plaintiff seeks to have the court recognize and declare that the Plaintiff has acquired, or, subsidiarily, to compel the Defendants (sometime the

> "Nemaska Parties") to convey to Plaintiff, the NSR Royalty, (as defined below) as a *sui generis* dismemberment of the right of ownership of the Cantore Property (as defined below), or to otherwise have the Court recognize and declare or convey to Plaintiff such dismemberment of ownership of the Cantore Property.

[18] Mr Cantore argues in the RRA that the NSR Royalty was intended by the parties to attach to the Cantore Property notwithstanding a change of ownership in the property, "in accordance with customs and usage in the mining industry at the time" (para 15), and that the NSR Royalty thereby confers "upon Plaintiff a limited and qualified direct real right of enjoyment of the Cantore Property" (para 16).

[19] In addition, Mr Cantore alleges that the debtor companies failed to respect their undertaking to register the NSR Royalty "in the appropriate public registers […] so as to give […] full effect to the NSR Royalty as a right and interest which charged, attached to and followed the Cantore Property" (para 21). This allegation forms the basis for Mr Cantore's claim that the debtor companies are bound to convey the NSR Royalty to him as a real right.

[20] Other than Mr Cantore's general statement in the RRA that the debtor companies "failed to respect the requirements of good faith" in their dealings with him, there is no allusion in the September 2020 RRA to oppressive behaviour.

[21] It was on the basis of Mr Cantore's qualification of his *sui generis* real right that the supervising judge circumscribed the parameters of his right to pre-trial discovery. On September 15, 2020, Justice Gouin issued a case management decision in which he held that Mr Cantore could not require the debtors to turn over their internal documents to him concerning the NSR Royalty, because these records were irrelevant to Mr Cantore's burden to show that he had held the Cantore Property in a "peaceful, continuous, public and unequivocal" fashion for at least ten years.

[22] As a result, if the purpose of Mr Cantore's discovery request at the time was to examine the records of the debtor companies to look for evidence of oppressive conduct, that avenue was clearly closed to him by the September 15 judgment.

[23] It appears that the issues raised by the RRA were clearly understood by all concerned when the RRA was carved-out of the proceedings in October 2020. Clearly, a claim of oppression was not among the issues raised by the RRA.

[24] The scope of the carve-out stated at paragraph 36 of the RVO leave no doubt that it was only the issues raised in the September 3, 2020 RRA that were postponed for subsequent adjudication:

> [36] ORDERS and DECLARES, notwithstanding anything to the contrary contained in this Order, that any *sui generis* real right or royalty right held by Mr Victor Cantore in and to the assets and properties of the Nemaska Entities, as the case may be, as finally

> determined by the adjudication of the Real Rights Application of Mr Cantore dated September 3, 2020 in the present matter (the "Cantore Alleged Rights" and the "Cantore Application"), shall not be affected by the Order […]. [the Court underlines]

[25] Moreover, it is clear that by postponing the adjudication of the "Cantore Alleged Rights" it was not the Court's intention to recommence the RRA litigation "from scratch", with the possibility that Mr Cantore would redefine the source of his *sui generis* right and recommence discovery. The carve-out was proposed on October 6, after the close of six days of evidence, and just prior to final argument. At the October 6 hearing, Justice Gouin explained that the carve-out would shorten the time required for argument, while preserving Mr Cantore's right to argue his case at a later time:

> Or, après avoir entendu les explications du procureur de Nemaska, il appert que les modifications ont pour seul but de reporter à plus tard le débat spécifique relatif au prétendu « Droit réel *sui generis* » du Créancier Cantore, de telle sorte que si jamais le Tribunal accueille la Demande RVO, alors la purge générale demandée par Nemaska ne visera pas ce prétendu « Droit réel *sui generis* » du Créancier Cantore, étant entendu, par ailleurs, que le débat relatif à ce droit aura lieu éventuellement à une date à être fixée.
>
> […]
>
> Le Tribunal considère que le report de ce débat allège la période prévue pour les argumentations des procureurs et permet ainsi de procéder plus rapidement, du moins en principe. [the Court underlines]

[26] The Court's objective in shortening the final argument appears in the reasons for the RVO decision:

> [28] Par contre, après quelques jours d'audition de la Demande pour ODI, laquelle s'étirait beaucoup plus que prévu, il fut décidé de reporter à plus tard, non seulement la question de l'existence ou non du Droit réel *sui generis* Cantore, mais aussi celle relative au pouvoir du Tribunal de le purger, si tant est que le Droit réel *sui generis* Cantore existe, et ce, sans conséquence sur le pouvoir du Tribunal de purger les autres droits réels affectant les actifs des Débitrices.

[27] The suggestion that Mr Cantore's rights, however defined or proven, were carved-out of the RVO is not in keeping with the record of proceedings and ignores the fundamental principle that a party should not be allowed to litigate his rights a second time.

[28] Mr Cantore invokes principles of natural justice in support of his right to amend, arguing that he was not afforded an opportunity to fully present his case in October 2020. This argument ignores the fact that it was Mr Cantore who defined the issues for the Court's determination in the RRA. Moreover, it is not the place of this supervising judge to revisit the case management decisions rendered by Justice Gouin. Mr Cantore

did not appeal those decisions at the appropriate time, and his appeal of the RVO decision was unsuccessful.

[29] The amendments to the RRA encounter other problems. First, much of the alleged oppression relates to events that took place after December 23, 2019, the date at which creditors' rights had to exist under the CCAA claims procedure. Secondly, as appears from paragraph 32 below, much of the oppression alleged by Mr Cantore occurred during the course of the CCAA proceedings. These allegations directly attack the integrity of the CCAA procedure and, as such, constitute a collateral attack on the RVO and the appeal decision upholding it. They are also a collateral attack on Justice Gouin's conclusion in the RVO decision that the debtor companies (and by extension their directors and officers) acted in good faith during the CCAA proceedings:

> [55] […] [L]e Tribunal ne peut que conclure que les Débitrices ont agi de bonne foi et avec la diligence voulue, et que l'ordonnance de dévolution inverse demandée par la Demande pour ODI est indiquée dans les circonstance.

[30] Thirdly, the new allegations in the RRA raise claims that Nemaska is released from under paragraph 35(e) of the RVO. The terms of the release are intended to be broad and the Court cannot accept plaintiff's counsel's "careful reading" of paragraph 35 of the RVO to conclude that Nemaska is not released from claims of oppression.

[31] In light of these considerations, certain amendments made to the RRA in April 2021 should be struck out.

[32] Paragraphs 79 and 80 (as amended) and 81 to 86 (new) claim that the directors and officers of Nemaska caused the company to breach its commitment to Cantore to document the NSR Royalty in February 2020, and that their decision to disclaim the royalty and other decisions made during the CCAA process leading up to the RVO in October 2020 unfairly disregarded the plaintiff's interests, and caused prejudice to him. These allegations are unrelated to the grounds raised in the original RRA in support of Mr Cantore's alleged *sui generis* real right and consequently should be struck.

[33] Paragraphs 95 and 96 of the amended RRA allege that the directors and officers of Nemaska unfairly disregarded the plaintiff's interests, and treated him unfairly, in negotiating with bidders during the solicitation and sale process conducted under the aegis of the CCAA proceedings. For these reasons given above, these allegations are improper and should be struck.

[34] Paragraphs 111 (new), 112 (as amended) and 113 to 122 (new) raise allegations of oppression by Nemaska and its directors and officers towards Mr Cantore. It is alleged that Mr Cantore had a distinct and valuable long-term stake in the mining properties that was not given sufficient recognition by Nemaska's directors and officers during the CCAA process (paras 115 and 116); that Mr Cantore was treated differently during the process from other long-term stakeholders (para 117); and that his legitimate

interests were disregarded (para 118). Paragraph 121 summarizes the plaintiff's allegations concerning oppression:

> [121] As will be demonstrated at trial, including through evidence to be obtained through discovery, the conduct of the Directors and Officers and the Nemaska Parties described in this proceeding in relation to Plaintiff and his NSR Royalty, including, without limitation, the acts, omissions, and decisions of the Directors and Officers then in function in respect of Nemaska's failure to formally document the NSR Royalty in registrable form, its initial attempts to terminate the NSR Royalty and, subsequently, the negotiation, approval, and implementation of the Successful Bid, were oppressive, unfairly prejudicial to and/or unfairly disregarded the interests of Plaintiff in respect of the NSR Royalty.

[35] For the reasons given above, paragraphs 111, 112 as amended, and 113 to 122 of the amended RRA raise improper allegations and should be struck.

[36] Paragraphs 123 to 127 of the amended RRA refer to expert reports obtained by the plaintiff which purport to place a value on the NSR Royalty. These paragraphs replace similar ones in the original RRA (paras 38 to 42). However, on September 24, 2020 the Court prohibited Mr Cantore from filing expert valuation reports, on the ground that the value of his right is irrelevant to the question of whether the NSR Royalty constitutes a real or personal right and can be purged by the Court. Mr Cantore did not appeal this decision. Accordingly, paragraphs 123 to 127 of the amended RRA should be struck.

[37] In the Court's view, the matter carved-out on October 6, 2020, and reserved for the Court to decide, is comprised of two questions: (i) can Mr Cantore's right be purged by the Court in the context of the CCAA proceeding, assuming for the purpose of argument it is a real right, and, if it cannot be purged (ii) does Mr Cantore hold a real or personal right as regards the assets and properties of the debtor companies ("Nemaska Entities"). In the Court's opinion, and as proposed by Justice Gouin, these questions should be heard sequentially and not concurrently.

[38] The Court is of the view that the questions identified above should be considered in light of the evidence made during the course of the September 2020 hearing before Justice Gouin. Nevertheless, in the event the parties have agreed to adduce additional evidence since then, the Court will consider representations as to its admissibility.

FOR THESE REASONS, THE COURT:

[39] **GRANTS** the defendant's motion to partially dismiss the re-Modified Real Rights Application dated April 21, 2021;

[40] **ORDERS** the striking of paragraphs 79 to 86, 95 and 96 and 111 to 127 of the re-Modified Real Rights Application dated April 21, 2021, as they have been added or amended;

[41] **THE WHOLE**, with the costs of justice.

_____
DAVID R. COLLIER, J.S.C.

Mtre Louis-Martin O'Neill
DAVIES WARD PHILLIPS & VINEBERG
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Canwest Global Communications Corp. (Re)

Ontario Judgments

Ontario Superior Court of Justice

Commercial List

S.E. Pepall J.

October 27, 2009.

Docket: CV-09-8396-00CL

[2009] O.J. No. 6437 | 2009 CarswellOnt 9398

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, C-36. As Amended AND IN THE MATTER OF a Proposed Plan of Compromise or Arrangement of ***Canwest Global Communications Corp***. and the Other Applicants listed on Schedule "A" [Schedule "A" was not attached to the copy received by LexisNexis Canada and therefore is not included in the judgment.] Re: ***Canwest Global Communications Corp***.

(23 paras.)

Counsel

Lyndon Barnes, Shawn Irving, for Applicants.

Alan Merskey, for Special Committee of the Board of Directors.

David Byers, Maria Konyukhova, for Monitor, FTI Consulting Canada Inc.

Benjamin Zarnett, for Ad Hoc Committee of Noteholders.

Hilary Clarke, for Bank of Nova Scotia.

Steve Weisz, for CIT Business Credit Canada Inc.

Hugh O'Reilly, Amanda Darrach, for CHCH Retirees.

Douglas Wray, Jesse Kugler, for ***Communications***, Energy and Paperworkers Union of Canada.

Deborah McPhail, for FSCO.

S.E. PEPALL J.

Relief Requested

1 The CMI Entities seek an order appointing David Cremasco, Rose Stricker and Lawrence Schnurr as representatives of certain retirees ("Retirees"). The Retirees are all former employees of the CMI Entities (or their predecessors) or their surviving spouses who receive or are entitled to receive a pension from a pension plan sponsored by a CMI Entity or who, prior to October 6, 2009, were entitled to receive non-pension benefits from a

CMI Entity. The proposed order would encompass former members of the ***Communications***, Energy and Paper-workers Union of Canada ("CEP") who arc entitled to benefits under the ***Global Communications*** Limited Retirement Plan for CH Employees (the "CH Employees Plan") but not otherwise. They are referred to as the CH Employees. Put differently, the proposed representatives do not plan to represent former unionized employees (or their surviving spouses) who were represented by CEP when they were active employees other than those who were entitled to benefits under the CH Employees Plan, namely the CH Employees. The CMI Entities also request an order appointing the law firm of Cavalluzzo Hayes Shilton McIntyre & Cornish LLP as representative counsel for the Retirees. It is proposed that the CMI Entities provide funding for this representation.

2 The CEP seeks an order appointing it and the law firm of CaleyWray to represent current and former members of the CEP who are employed or who were formerly employed by the CMI Entities[1] but not including the aforementioned CH Employees. It also requests funding by the CMI Entities and a charge over their property for this representation. It further requests that the claims bar date established in my order of October 14, 2009 be extended from November 19, 2009.

Brief Outline of Facts

3 Since the date of the Initial Order, the CMI Entities have paid and intend to continue to pay:

(a) salaries, commissions, bonuses and outstanding employee expenses;

(b) current service and special payments with respect to the active defined benefit pension plans; and

(c) post-employment and post-retirement benefit payments to former employees who were represented by a union when they were employed by the CMI Entities.

4 That said, certain former employees are affected by the CMI Entities' discontinuance or proposed discontinuance of employee related obligations and it is intended that they be assisted by the granting of the order requested by the CMI Entities. Approximately 81 former non-unionized employees have been advised that the CMI Entities propose to cease making all post-employment and post-retirement benefit payments in relation to claims incurred after November 13, 2009. There are also 2 out of IS beneficiaries of the ***Canwest Global Communications Corp***. and Related Companies Retirement Compensation Arrangement Plan who will not have received the entire present value of their entitlement under that plan.

5 In addition, the CMI Entities purported to terminate the CH Employees Plan when they sold CHCH TV effective August 31, 2009. 120 former employees or spouses received a pension or were entitled to receive a deferred vested pension under this plan. OSFI has directed CMI to prepare without delay a valuation report for the CH Employees Plan effective as of December 31, 2008 to establish additional amounts to accrue from January 1, 2009 which may need to be funded through special payments. The CMI Entities anticipate that the valuation will identify an unfunded liability. Currently, special payments are not contemplated in the cash flow projections for that unfunded liability and a shortfall is anticipated to exist on the filing of the termination report for the plan.

6 Some former employees of CHCH TV have established a committee representing union and non-unionized former employees. Committee members include the proposed representatives. Rose Stricker is a non-unionized deferred vested member of the CH Plan. David Cremasco is a formerly unionized retiree with entitlement to post-retirement benefits and Lawrence Schnurr is a formerly salaried employee with entitlement to post-retirement benefits. If appointed, they will seek to form a broader committee with a member from each of the major population centres in which the Retirees reside and with at least one additional formerly unionized member.

7 Cavalluzzo LLP acts for about 100 retired participants in the CH Employees Plan, 30 to 40 of whom were not previously represented by a union and 60 to 70 of whom were. Other than those 100, most other Retirees are not represented by counsel in this CCAA proceeding.

8 The CMI Entities request that Cavalluzzo LLP be appointed as representative counsel to assist the Retirees.

9 CEP represents 1000 bargaining unit employees employed by the Applicants. It intends to facilitate and advance the claims of both its current members and its former members (but not including the CH Employees). CEP states that as a result of the current economic crisis, it has had to incur significant costs in representing its current and former members in CCAA proceedings. This is particularly so given the union's strong presence in the forestry and media industries and the degree to which they have been impacted by the state of the economy. CEP states mat the costs have been substantial and have adversely affected its financial position. CEP states that its ability to provide effective representation in these proceedings is dependent on receipt of funding. In the past 6 months, CEP has spent about $250,000 on legal costs in connection with different CCAA proceedings. Furthermore, former members do not pay union dues and their representation, although part of the union's internal mandate, creates costs that are outside CEP's cost structure. In addition, over the past 12 months, CEP has lost approximately 12,000 members due to economic conditions. This obviously has a negative impact on union revenues. Faced with these conditions, CEP seeks funding.

10 CEP requests that CaleyWray be appointed as representative counsel. It also requests a charge or security over the property of the CMI Entities to cover the costs of CEP and its counsel although it did not press this point on learning that no such charge is proposed for the Cavaluzzo representation order.

11 Lastly, CEP requests that the claims bar date be extended to provide it with additional time to identify, value and process claims.

Issues

12 The issues to consider are:

(a) Should the representatives and Cavalluzzo LLP be appointed to represent the interests of the Retirees and should Cavalluzzo LLP be provided with funding for such representation?

(b) Should CEP and Caley Wray be appointed on behalf of CEP's current and former members (not including the CH Employees) and provided with funding and a charge over the property of the CMI Entities for such representation?

(c) Should the claims bar date be extended as requested by CEP?

Discussion

(a) Cavalluzzo LLP

13 No one opposes the motion of the CMI Entities. The Monitor and the Ad Hoc Committee of 8% Noteholders support the request and others are unopposed to the relief requested. CIT has agreed to a variation of the cash flow in this regard as well.

14 Dealing firstly with the representation component of the order, in my view, the order requested should be granted. I have jurisdiction under Rule 10 of the Rules of Civil Procedure and section 11 of the CCAA. The balance of convenience favours the granting of the order and it is in the interests of justice to do so. The Retirees are a particularly vulnerable group and without professional and legal resources, they are likely at risk of being unable to understand and protect their interests in the restructuring. Clearly there is a social benefit associated with them being represented. The appointment of a single representative counsel will facilitate the administration of the proceedings and provide for efficiency. Cavalluzzo LLP is experienced in this area, has a considerable reputation, and is fully qualified to act.

15 As for funding, the CMI Entities propose that, subject to fee arrangements agreed to by the CMI Entities and Cavalluzzo LLP, reasonable legal, actuarial and financial expert and advisory fees and other incidental fees and disbursements be paid by the CMI Entities on a monthly basis. Funding for such representation should be provided by the CMI Entities. I am satisfied that the moving parties have established that such an order is beneficial. I accept

the evidence before me to the effect that most individual Retirees likely do not have the means to obtain actuarial and/or benefit experts and would benefit from the assistance offered by representative counsel and its pension expert. Absent such an order, there would likely be a multiplicity of lawyers acting for various Retirees, stress and inconvenience for those who could ill afford such representation, no representation for some, and the disorganization and inefficiency associated with multiple representation of substantially similar interests. A single counsel diminishes the likelihood of "overlawyering" and funding of such representation is a recognition of that desirable objective. It is fair and just to grant such an order.

(b) CEP and CaleyWray

16 CEP requests a separate representation order for all current and former CEP members other than the CH Employees and an order that CaleyWray be appointed as representative counsel funded by the CMI Entities.

17 Again, there is no issue that CaleyWray is experienced and well equipped to act for these individuals. Similarly, the union may appropriately represent its members and former members.

18 CEP intends to facilitate and advance the interests of both its members and former members. It is of the view mat it has no conflict of interest as all of the aforementioned may ultimately have unsecured claims. It clearly already represents its current members and plans to represent its former members. In that sense, they are not vulnerable. I do not see the need for a representation order particularly with respect to current members. To the extent, if any, that it is necessary to do so, and given that no one opposes the request, it and CaleyWray are authorized to represent CEP's current and former members (but not including the CH Employees).

19 As for funding, as I indicated in the Fraser Papers case, it should only be provided for the benefit of those former employees who otherwise would have no legal representation. Here, CEP intends to represent its current and former members (except for the CH Employees). But for this desire and subject to the agreement of Cavalluzzo LLP to act, there is no principled reason for separate representation. It arises by choice not out of necessity. Furthermore, this is an insolvency. Absent a clear and compelling reason such as the existence of an obvious conflict of interest, the general rule should be that funding by applicant debtors should only be available for one representative counsel. Even if one disagrees with that proposition, in this case, the CMI Entities have paid and intend to continue to pay, amongst other things, salaries, current service and special payments with respect to the defined benefit pension plans and post-employment and post-retirement benefit payments. Based on the materials before me, there are approximately 9 CEP members who were recently terminated and who have been advised that they will no longer receive salary continuance. In essence, the evidentiary support that might merit a funding request is absent. As noted in the factum of the CMI Entities, if they should change their position with respect to employee related obligations, the need for funding could be addressed at that time. I am also not persuaded that funding should be granted to pay for CEP's costs for outstanding grievances. No one else including the Monitor supports the requested order and I do not believe that it should be granted.

20 As mentioned, no charge is being requested or granted with respect to the Cavalluzzo representation order and none should be given here. In addition, the Term Sheet as described in the materials restricts the granting of a charge absent the agreement of others including the Ad Hoc Committee.

(c) Claims Bar Extension

21 The last issue to consider is whether the claims bar date contained in my order of October 14, 2009, should be extended as requested by CEP. Based on the evidence before me, I am not persuaded that such an extension is necessary at this time.

Conclusion

22 In conclusion, the CMI Entities' motion is granted except that the third and last sentences of paragraph 2 are to be subject to any further or other order. The CEP motion is dismissed although authorization to represent current and former members (excluding the CH Employees) is granted.

S.E. PEPALL J.

S.E. PEPALL J.

23 On a last unrelated issue, I would like counsel to give some thought to the following suggestion. For future time sensitive motions brought by the CMI Entities, it would be helpful in situations where interested parties do not have time to file a factum if, before the return date, those opposing filed with the court a 1 to 2 page memo (maximum) outlining their respective positions. Interested parties are not obliged to do so but the court would consider this to be of assistance.

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1 In its materials, CEP uses the term "Applicants" but for consistency, I have used the term "CMI Entities".

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

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

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

Applicant

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceedings commenced at Toronto

BOOK OF AUTHORITIES OF THE AD HOC FIRST LIEN GROUP
(Motion for Appointment of Representative Plaintiff Returnable December 4, 2023)

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