
**Eighth Report to Court of Duff &
Phelps Canada Restructuring Inc.
as CCAA Monitor of Unique
Broadband Systems, Inc. and UBS
Wireless Services Inc.**

June 7, 2012

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Court File No.: CV-11-9283-00CL

**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 A PLAN OF COMPROMISE OR ARRANGEMENT
OF
UNIQUE BROADBAND SYSTEMS, INC.**

**EIGHTH REPORT OF DUFF & PHELPS CANADA RESTRUCTURING INC.
AS CCAA MONITOR OF
UNIQUE BROADBAND SYSTEMS, INC.
AND UBS WIRELESS SERVICES INC.**

June 7, 2012

1.0 Introduction

Pursuant to an order ("Initial Order") of the Ontario Superior Court of Justice (Commercial List) ("Court") made on July 5, 2011, Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("UBS Wireless") (UBS and UBS Wireless are jointly referred to as the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed as the monitor ("Monitor"). Pursuant to a Court order made on December 12, 2011 (the "Substitution Order"), Duff & Phelps Canada Restructuring Inc. ("D&P"), as part of its acquisition of the Toronto restructuring practice of Richter, was substituted in place of Richter as Monitor¹.

Pursuant to an order of the Court made on April 13, 2012, the Company's stay of proceedings expires on July 30, 2012.

¹ The Initial Order appointed Richter as Monitor in these proceedings. On December 9, 2011, the assets used by Richter in Toronto were acquired by D&P. Pursuant to the Substitution Order, D&P was substituted in place of Richter in certain ongoing mandates, including acting as Monitor in these proceedings. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information about the Company and these CCAA proceedings;
- b) Support the Company’s position with respect to motions being brought by Jolian Investments Limited (“Jolian”), DOL Technologies Inc. (“DOL”) and Messrs. Gerald McGoey and Alex Dolgonos, their respective principals, for what the Monitor understands is to be a Court order lifting the stay of proceedings for the purpose of enforcing the Judgment of Justice Marrocco dated June 24, 2011 (“Lift Stay Motion”);
- c) Provide an update on the process to determine the disputed claims of Jolian, DOL and their principals pursuant to the claims determination process (“Claims Determination Process”) approved by a Court order made April 13, 2012 (“Claims Order”); and
- d) Recommend that this Honourable Court make an order dismissing the Lift Stay Motion.

1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company’s representatives, the Company’s books and records and discussions with its representatives. The Monitor has not performed an audit or other verification of such information. An examination of the Company’s financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on the Company’s representative’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor.

2.0 Background

Background information concerning the Company is detailed in the affidavit of Robert Ulicki (the “Ulicki Affidavit”), a director of the Company, sworn July 4, 2011 and filed with the Company’s CCAA application materials. The Ulicki Affidavit details, *inter alia*, the Company’s history, financial position, ownership interest in LOOK Communications Inc. and litigation.

Additional information concerning the Company and these proceedings is provided in the proposed monitor’s report and the Monitor’s reports filed in these proceedings. Copies of these reports can be found on the Monitor’s website at: www.duffandphelps.com/restructuringcases.

3.0 Indemnity Advances

The Monitor’s Seventh Report to Court dated March 27, 2012 (“Seventh Report”) provided information on the requests by Jolian, DOL and their respective principals for advances by the Company. For convenience, the applicable section of the Seventh Report is reproduced below.

“The Company has been involved in litigation with Jolian, DOL and their respective principals since prior to commencement of these proceedings. On April 27, 2011, Justice Marrocco heard a motion brought by Jolian, DOL and certain other former directors and officers of UBS (collectively, “Jolian/DOL”) seeking, among other things, a Court order requiring the Company to advance funds to them on an interim basis pursuant to the Company’s indemnity obligations for legal, accounting and auditing expenses related to the litigation.

On May 30, 2011, Justice Marrocco granted the relief sought by Jolian/DOL. On June 24, 2011, Justice Marrocco issued an order (“Advances Order”) in this regard.

On June 29, 2011, the Company appealed the Advances Order. The Initial Order stayed the Advances Order.

Since the date of the Initial Order, the Court of Appeal for Ontario (“Court of Appeal”) has heard motions related to the Advances Order and the timing of the hearing of the appeal. The Court of Appeal had tentatively set April 26, 2012 as a date for hearing the appeal.

On March 8, 2012, the Court of Appeal heard a motion by the Company to adjourn the appeal of the Advances Order *sine die*. The Court of Appeal issued an endorsement (“March 8th Endorsement”) vacating the April 26, 2012 hearing date and confirming that Jolian/DOL may “proceed with a motion before Wilton-Siegel J. requesting that the stay be lifted and that they be paid the monies ordered to be paid as advances by Marrocco J. This motion shall proceed on the assumption that the order of Marrocco J. is valid. If the respondents [Jolian/DOL] are successful, the appeal of the order of Marrocco J. can proceed forthwith.”

A copy of the March 8th Endorsement is provided as Appendix “A”.

4.0 Lift Stay Motion

On April 13, 2012, counsel representing the Company, the Monitor, Jolian and DOL attended a chambers hearing before Justice Wilton-Siegel (“Hearing”). One of the purposes of the Hearing was to schedule the motion contemplated in the March 8th Endorsement.

4.1 Scope of Relief

During the Hearing, counsel to the Monitor and the Company noted that DOL and Mr. Dolgonos were seeking to lift the stay of proceedings to enforce the Advances Order but that the Notice of Motion served by Jolian and Mr. McGoey was not clear as to the relief that was being sought. As a result, counsel to the Monitor and the Company sought clarification from counsel to Jolian and Mr. McGoey as to the specific relief they would be seeking (as the Jolian and DOL materials in this regard were inconsistent). Counsel representing Jolian confirmed that the relief would be limited to a Court order lifting the stay of proceedings pursuant to the Initial Order to enforce the Advances Order. Counsel representing DOL confirmed that such relief was consistent with the relief it would be seeking. On that basis the Company advised counsel to Jolian and DOL that it would not be filing responding materials as, in its view, responding materials would not be necessary to argue if the test for lifting a stay would be met. A hearing date for the Lift Stay Motion was scheduled for June 13, 2012.

On May 25, 2012, counsel to the parties corresponded with respect to the upcoming cross-examination of Mr. McGoey, Jolian’s principal, and the claims made by the Company against Jolian and Mr. McGoey. Following a response by Jolian’s counsel, on May 26, 2012, the Monitor’s counsel sought confirmation from both Jolian and DOL that the relief being sought on June 13, 2012 would be consistent with their confirmations at the Hearing – meaning, a motion to lift the stay of proceedings. The May 25 and 26, 2012 email correspondence is provided as Appendix “B”.

Notwithstanding the advice given by counsel to DOL and Jolian at the Hearing, they refused to confirm that their clients were only seeking to lift the stay of proceedings.

4.2 Quantification

On June 1, 2012, the Monitor requested that each of Jolian and DOL indicate the quantum of advances they would be seeking in connection with the Lift Stay Motion. Neither Jolian nor DOL provided this information. The Monitor further advised that in its view the quantum is “relevant to the motion and will be an issue relevant to the Court on the motion. As your respective clients are seeking a payment from a Debtor under CCAA Court protection, the quantum of that payment is relevant – the current amount plus projected future amounts”. The June 1, 2012 email correspondence is provided as Appendix “C”.

As the requested financial information was not provided by either Jolian or DOL, the Monitor is unable to assess and comment upon the prejudice to UBS if the Court order ultimately being sought by Jolian and DOL is granted. Based on the Monitor’s observations of the litigation since commencement of the CCAA proceedings, it would anticipate that Jolian’s and DOL’s advancement requests would be substantial.

The Monitor has previously reported that, as the Company does not generate income, these CCAA proceedings and the costs of responding to the various motions by Jolian and DOL, among other things, are being funded from UBS’s assets – which are diminishing materially². The Monitor is therefore concerned that imposing any further obligations on the Company will result in a more rapid erosion of the Company’s resources and potentially jeopardize its ability to complete the process to determine disputed claims – the stated purpose of these proceedings.

4.3 Recommendation

The Monitor recommends that the Lift Stay Motion be dismissed for the following reasons:

- a) Jolian, DOL and their respective principals have not provided any evidence of prejudice if the Company does not make advances to them; and
- b) Given the lack of information provided by Jolian and DOL, the Company and the Monitor are unable to assess and report to the Court on the impact on the Company of the ultimate relief being sought by Jolian and DOL.

² The Company’s cash balance, net of accounts payable and third-party accrued expenses, is \$1.6 million as at the date of this Report.

5.0 Claims Determination Process

The Claims Order established a consolidated proceeding (“Consolidated Proceeding”) and a timeline for pleadings with respect to the disputed claims of Jolian and DOL (defined in the Claims Order as the “Claimants”), and/or Messrs. McGoey and Dolgonos against the Company and for the Company’s response to such claims and counterclaims against the Claimants and/or Messrs. McGoey and Dolgonos. The Monitor understands that the parties have generally complied with the terms of the Claims Order.

The Claims Order further established that if the Claimants or Messrs. McGoey and Dolgonos seek to add any parties to the Consolidated Proceeding by way of third party claim or cross-claim, they are to do so by making a motion (“Third Party Motion”). The Third Party Motion is also scheduled to be heard on June 13, 2012; the Claimants and Messrs. McGoey and Dolgonos have filed materials with respect to the Third Party Motion. Accordingly, the scheduling of further steps in the Claims Determination Process (such as documentary discovery, oral discovery and trial procedures) appears to be stalled pending the outcome of the Third Party Motion.

The Monitor’s concerns with respect to the Third Party Motion are similar to those related to the Lift Stay Motion – expanding the number of parties participating in the Consolidated Proceeding will likely further delay the eventual trial of the disputed claims, increase the Company’s costs significantly and therefore jeopardize the Company’s ability to complete the Claims Determination Process. Such an outcome would not meet the objectives of these proceedings and the Court’s endorsement of April 13, 2012 which set out that: “...the Jolian and DOL claims, and related claims, should be dealt with in the claims process in order to determine the status of UBS, and its prospects for a reorganization if it is insolvent, as quickly and efficiently as possible.”

6.0 Conclusion and Recommendation

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (d) of this Report.

* * *

All of which is respectfully submitted,

Duff + Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING INC.
IN ITS CAPACITY AS COURT APPOINTED CCAA MONITOR OF
UNIQUE BROADBAND SYSTEMS, INC.
AND UBS WIRELESS SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

COURT OF APPEAL FOR ONTARIO

**DATE: 20120312
DOCKET: M40546**

Simmons J.A. (Chambers)

BETWEEN

Dol Technologies Inc.

Plaintiff (Respondent)

and

Unique Broadband Systems, Inc.

Defendant (Appellant)

AND BETWEEN

Unique Broadband Systems, Inc

Plaintiff by Counterclaim (Appellant)

and

**DOL Technologies Inc., Alex Dolgonos, Gerald McGoey, Louis Mitrovich and
Douglas Reeson**

Defendants by Counterclaim (Respondents)

Kelley McKinnon and Joe Thorne, for the appellant USB Wireless Systems Inc.

Joseph Groia, Gavin Smyth for Julian Investments Limited and Gerald McGoey

Peter L. Roy, for DOL Technologies

M.P. Gottlieb, for the Monitor Duff & Phelps

Heard: March 8, 2012

ENDORSEMENT

**[1] The April 26, 2012 appeal hearing date is vacated on the understanding
that the respondents may proceed with a motion before Wilton-Siegel J.**

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requesting that the stay be lifted and that they be paid the monies ordered to be paid as advances by Marrocco J. This motion shall proceed on the assumption that the order of Marrocco J. is valid. If the respondents are successful, the appeal of the order of Marocco J. can proceed forthwith.

[2] The parties should apply to Wilton-Siegel J. for a motion date. Once they have such a date, the appeal hearing date can be scheduled.

[3] Costs reserved to the panel hearing the appeal.

[4] If not successful before Wilton-Seigel J., the appeal of the order of Marrocco J. is adjourned to a date to be fixed by me.

[5] The parties may apply for further directions if required.

signed: "Simmons J.A."

Appendix “B”

Vininsky, Mitch

From: Joe Groia [jgroia@groiaco.com]
Sent: Sunday, May 27, 2012 4:01 PM
To: Gavin Smyth; mgottlieb@counsel-toronto.com; plr@rogers.blackberry.net; Patrick.Shea@gowlings.com; Joe.Thorne@gowlings.com; smg@reolaw.ca; PLR@reolaw.ca
Cc: Alex.MacFarlane@gowlings.com; Kelley.McKinnon@gowlings.com; Kofman, Bobby; Vininsky, Mitch; aharkin@counsel-toronto.com
Subject: Re: Dolgonos

I am now back and have nothing to add to what Gavin and our Notice of Motion have said .

Joseph Groia
Groia & Company Lawyers
A Professional Corporation
Wildeboer Dellelce Place
#1100 365 Bay St
Toronto Canada M5H 2V1
Direct 416 203 4472
Fax 416 203 9231

-----Original Message-----

From: "Gavin Smyth" <GSmyth@groiaco.com>
To: mgottlieb@counsel-toronto.com, plr@rogers.blackberry.net, Patrick.Shea@gowlings.com, "Joseph Groia (E-mail)" <jgroia@groiaco.com>, Joe.Thorne@gowlings.com, smg@reolaw.ca, PLR@reolaw.ca
Cc: Alex.MacFarlane@gowlings.com, Kelley.McKinnon@gowlings.com, bobby.kofman@duffandphelps.com, mitch.vininsky@duffandphelps.com, aharkin@counsel-toronto.com
Date: Sat, 26 May 2012 15:59:58 -0400
Subject: Re: Dolgonos

Thank you for the update on your position. UBS and the Monitor have to make their own decisions.

You have our position in my previous emails today as you have had since March 15.

Try to get out and enjoy the good weather.

-----Original Message-----

From: "Matt Gottlieb" <mgottlieb@counsel-toronto.com>
To: "'gsmyth@groiaco.com'" <gsmyth@groiaco.com>, "'plr@rogers.blackberry.net'" <plr@rogers.blackberry.net>, "'Patrick.Shea@gowlings.com'" <Patrick.Shea@gowlings.com>, "'jgroia@groiaco.com'" <jgroia@groiaco.com>, "'Joe.Thorne@gowlings.com'" <Joe.Thorne@gowlings.com>, "'SMG@reolaw.ca'" <SMG@reolaw.ca>, "'PLR@reolaw.ca'" <PLR@reolaw.ca>
Cc: "'alex.macfarlane@gowlings.com'" <alex.macfarlane@gowlings.com>, "'kelley.mckinnon@gowlings.com'" <kelley.mckinnon@gowlings.com>, "'Bobby.Kofman@duffandphelps.com'" <Bobby.Kofman@duffandphelps.com>, "'Mitch.Vininsky@duffandphelps.com'" <Mitch.Vininsky@duffandphelps.com>, "Anne Marie Harkin" <aharkin@counsel-toronto.com>
Date: 5/26/2012 3:20:25 PM
Subject: Re: Dolgonos

Gavin, the Applicants and Monitor relied on what you told the Judge in chambers - that is, your motion was to lift the stay and nothing else. We intend to hold your client to only that relief being sought.

Matthew P. Gottlieb
Direct: 416 644 5353
Cell: 647 519 5844

From: Gavin Smyth [mailto:GSmyth@groiaco.com]

Sent: Saturday, May 26, 2012 03:15 PM

To: Matt Gottlieb; 'plr@rogers.blackberry.net' <plr@rogers.blackberry.net>; 'Patrick.Shea@gowlings.com' <Patrick.Shea@gowlings.com>; 'jgroia@groiaco.com' <jgroia@groiaco.com>; 'Joe.Thorne@gowlings.com' <Joe.Thorne@gowlings.com>; 'SMG@reolaw.ca' <SMG@reolaw.ca>; 'PLR@reolaw.ca' <PLR@reolaw.ca>

Cc: 'alex.macfarlane@gowlings.com' <alex.macfarlane@gowlings.com>; 'kelley.mckinnon@gowlings.com' <kelley.mckinnon@gowlings.com>; 'Bobby.Kofman@duffandphelps.com' <Bobby.Kofman@duffandphelps.com>; 'Mitch.Vininsky@duffandphelps.com' <Mitch.Vininsky@duffandphelps.com>; Anne Marie Harkin

Subject: Re: Dolgonos

Thank you for your email.

My instructions do not permit me to engage in costly email debates over the legal implications of relief sought in this motion.

I have reviewed the Notice of Motion again -- which was served on March 15, and it seems clear to me.

-----Original Message-----

From: Matt Gottlieb <mgottlieb@counsel-toronto.com>

To: "gsmyth@groiaco.com" <gsmyth@groiaco.com>, "plr@rogers.blackberry.net" <plr@rogers.blackberry.net>, "Patrick.Shea@gowlings.com" <Patrick.Shea@gowlings.com>, "jgroia@groiaco.com" <jgroia@groiaco.com>, "Joe.Thorne@gowlings.com" <Joe.Thorne@gowlings.com>, "SMG@reolaw.ca" <SMG@reolaw.ca>, "PLR@reolaw.ca" <PLR@reolaw.ca>

Cc: "alex.macfarlane@gowlings.com" <alex.macfarlane@gowlings.com>, "kelley.mckinnon@gowlings.com" <kelley.mckinnon@gowlings.com>, "Bobby.Kofman@duffandphelps.com" <Bobby.Kofman@duffandphelps.com>, "Mitch.Vininsky@duffandphelps.com" <Mitch.Vininsky@duffandphelps.com>, Anne Marie Harkin <aharkin@counsel-toronto.com>

Date: Sat, 26 May 2012 14:55:07 +0000

Subject: Re: Dolgonos

Gavin, the Court of Appeal endorsement provided that what was to be brought was a motion to lift the stay. DOL's motion is clearly limited to lifting the stay.

Further, in chambers with Justice Wilton-Siegel you confirmed that your client was only seeking a lifting of the stay when pressed by me and Patrick. You told his honour and us that you were not that familiar with the language in the insolvency context (to explain the language in the Notice of Motion) and that your client was only seeking to lift the stay.

I believe the Applicants determined not to file any responding materials relying on that. Are you now attempting to have your motion deal with relief other than the lifting of the stay?

Matthew P. Gottlieb
Direct: 416 644 5353
Cell: 647 519 5844

From: Gavin Smyth [mailto:GSmyth@groiac.com]

Sent: Saturday, May 26, 2012 10:19 AM

To: plr@rogers.blackberry.net <plr@rogers.blackberry.net>; Patrick Shea <Patrick.Shea@gowlings.com>; Matt Gottlieb; Joseph Peter Paul Groia <jgroia@groiac.com>; Thorne, Joe <Joe.Thorne@gowlings.com>; Sean Grayson <SMG@reolaw.ca>; Peter Roy <plr@reolaw.ca>

Cc: MacFarlane, Alex <Alex.MacFarlane@gowlings.com>; Kelley McKinnon <kelley.mckinnon@gowlings.com>; Bobby.Kofman@duffandphelps.com <Bobby.Kofman@duffandphelps.com>; Mitch.Vininsky@duffandphelps.com <Mitch.Vininsky@duffandphelps.com>; Anne Marie Harkin

Subject: Re: Dolgonos

Joe asked that I pass along our Notice of Motion for the advances motion that is returnable on June 13. I attach a copy.

The Notice of Motion clearly sets out the relief our clients are seeking and the basis for it. Our clients seek an order that UBS pay advances to our clients of their post-filing reasonable legal expenses. In the alternative, and in addition should it be held to be necessary, we seek leave of the court to the extent it may be necessary to require UBS to make these advances. Also in the alternative, and in addition should it be held to be necessary, we seek a variance of the Initial Order to the extent it may be necessary to require UBS to make these advances.

This is what our clients will be seeking on June 13.

-----Original Message-----

From: plr@rogers.blackberry.net

To: "Patrick Shea" <Patrick.Shea@gowlings.com>, "Matthew Gottlieb" <mgottlieb@counsel-toronto.com>, "Joseph Peter Paul Groia" <jgroia@groiac.com>, "Thorne, Joe" <Joe.Thorne@gowlings.com>, "Sean Grayson" <SMG@reolaw.ca>, "Peter Roy" <plr@reolaw.ca>, "Gavin Smyth" <gsmyth@groiac.com>

Cc: "MacFarlane, Alex" <Alex.MacFarlane@gowlings.com>, "Kelley McKinnon" <kelley.mckinnon@gowlings.com>, Bobby.Kofman@duffandphelps.com, Mitch.Vininsky@duffandphelps.com, aharkin@counsel-toronto.com

Date: Sat, 26 May 2012 00:14:12 +0000

Subject: Re: Dolgonos

Not tonight Patrick

Sent from my BlackBerry device on the Rogers Wireless Network

From: "Shea, Patrick" <Patrick.Shea@gowlings.com>

Date: Fri, 25 May 2012 20:10:23 -0400

To: <plr@rogers.blackberry.net>; <mgottlieb@counsel-toronto.com>; <jgroia@groiac.com>; Thorne, Joe<Joe.Thorne@gowlings.com>; <SMG@reolaw.ca>; <plr@reolaw.ca>; <gsmyth@groiac.com>

Cc: MacFarlane, Alex<Alex.MacFarlane@gowlings.com>; McKinnon, Kelley<Kelley.McKinnon@gowlings.com>; <Bobby.Kofman@duffandphelps.com>; <Mitch.Vininsky@duffandphelps.com>; <aharkin@counsel-toronto.com>
Subject: Re: Dolgonos

Thank you, but can you please explain how our client's claim was "shifted"?

From: plr@rogers.blackberry.net [mailto:plr@rogers.blackberry.net]
Sent: Friday, May 25, 2012 08:08 PM
To: Matthew Gottlieb <mgottlieb@counsel-toronto.com>; Shea, Patrick; Joseph Peter Paul Groia <jgroia@groiacom.com>; Thorne, Joe; Sean Grayson <SMG@reolaw.ca>; Peter Roy <plr@reolaw.ca>; Gavin Smyth <gsmyth@groiacom.com>
Cc: MacFarlane, Alex; McKinnon, Kelley; 'Bobby.Kofman@duffandphelps.com' <Bobby.Kofman@duffandphelps.com>; 'Mitch.Vininsky@duffandphelps.com' <Mitch.Vininsky@duffandphelps.com>; Anne Marie Harkin <aharkin@counsel-toronto.com>
Subject: Re: Dolgonos

Having had Patrick shift his claim so extensively, late in the day on Friday, I intend to take the weekend to consider his new position.

Peter

Sent from my BlackBerry device on the Rogers Wireless Network

From: Matt Gottlieb <mgottlieb@counsel-toronto.com>
Date: Sat, 26 May 2012 00:04:33 +0000
To: 'Patrick.Shea@gowlings.com'<Patrick.Shea@gowlings.com>; 'plr@rogers.blackberry.net'<plr@rogers.blackberry.net>; 'jgroia@groiacom.com'<jgroia@groiacom.com>; 'Joe.Thorne@gowlings.com'<Joe.Thorne@gowlings.com>; 'SMG@reolaw.ca'<SMG@reolaw.ca>; 'PLR@reolaw.ca'<PLR@reolaw.ca>; 'gsmyth@groiacom.com'<gsmyth@groiacom.com>
Cc: 'alex.macfarlane@gowlings.com'<alex.macfarlane@gowlings.com>; 'Kelley.McKinnon@gowlings.com'<Kelley.McKinnon@gowlings.com>; 'Bobby.Kofman@duffandphelps.com'<Bobby.Kofman@duffandphelps.com>; 'Mitch.Vininsky@duffandphelps.com'<Mitch.Vininsky@duffandphelps.com>; Anne Marie Harkin<aharkin@counsel-toronto.com>
Subject: Re: Dolgonos

Joe and Peter, can you please explain your emails. You have both brought motions to lift the stay to allow your clients to be paid under Morocco J's Order, correct? That is being proceeded with? What grounds are you now saying will not be proceeded with in connection with that motion?

Matthew P. Gottlieb
Direct: 416 644 5353
Cell: 647 519 5844

From: Shea, Patrick [mailto:Patrick.Shea@gowlings.com]
Sent: Friday, May 25, 2012 06:41 PM
To: plr@rogers.blackberry.net <plr@rogers.blackberry.net>; jgroia@groiaco.com <jgroia@groiaco.com>; Thorne, Joe <Joe.Thorne@gowlings.com>; SMG@reolaw.ca <SMG@reolaw.ca>; plr@reolaw.ca <plr@reolaw.ca>; gsmyth@groiaco.com <gsmyth@groiaco.com>
Cc: MacFarlane, Alex <Alex.MacFarlane@gowlings.com>; McKinnon, Kelley <Kelley.McKinnon@gowlings.com>; Matt Gottlieb
Subject: Re: Dolgonos

Thanks you, but I'm not sure we understand what that position is? Are you proceeding with the motion to lift the stay on 13 June 2012? That is the only motion that is contemplated by the agreed schedule, aside from the motion to bring in third parties.

From: plr@rogers.blackberry.net [mailto:plr@rogers.blackberry.net]
Sent: Friday, May 25, 2012 06:38 PM
To: Joseph Peter Paul Groia <jgroia@groiaco.com>; Thorne, Joe; Sean Grayson <SMG@reolaw.ca>; Peter Roy <plr@reolaw.ca>; Gavin Smyth <gsmyth@groiaco.com>
Cc: MacFarlane, Alex; Shea, Patrick; McKinnon, Kelley; Matthew Gottlieb <mgottlieb@counsel-toronto.com>
Subject: Re: Dolgonos

On behalf of our clients DOL and Dolgonos we take the same position as Mr Groia.

Peter

Sent from my BlackBerry device on the Rogers Wireless Network

From: "Joe Groia" <jgroia@groiaco.com>
Date: Fri, 25 May 2012 18:18:53 -0400
To: Thorne, Joe<Joe.Thorne@gowlings.com>; Sean Grayson<SMG@reolaw.ca>; Peter L. Roy (Blackberry)<plr@rogers.blackberry.net>; Peter Roy<PLR@reolaw.ca>; <gsmyth@groiaco.com>
Cc: MacFarlane, Alex<Alex.MacFarlane@gowlings.com>; Shea, Patrick<Patrick.Shea@gowlings.com>; McKinnon, Kelley<Kelley.McKinnon@gowlings.com>
Subject: RE: Dolgonos

so then contrary to what we had understood from the pleading you are saying that Mr McGoey is to be at risk of writing a cheque to UBS .

As a result we will continue with our requests for indemnity and post filing fee and expense advances . Accordingly there does not appear to be any need to consider our alternative relief for the lifting of the stay at this time.

Does that obviate the need for the crosses ?

Please let me know .

Thanks

Joseph Groia
Groia & Company Lawyers
A Professional Corporation
Wildeboer Dellelce Place
#1100 365 Bay St
Toronto Canada M5H 2V1
Direct 416 203 4472
Fax 416 203 9231

-----Original Message-----

From: "Thorne, Joe" <Joe.Thorne@gowlings.com>
To: "Sean Grayson" <SMG@reolaw.ca>, "Peter L. Roy (Blackberry)"
<plr@rogers.blackberry.net>, "Peter Roy" <PLR@reolaw.ca>, "Joseph Groia"
<jgroia@groiacom.com>, <gsmyth@groiacom.com>
Cc: "MacFarlane, Alex" <Alex.MacFarlane@gowlings.com>, "Shea, Patrick"
<Patrick.Shea@gowlings.com>, "McKinnon, Kelley"
<Kelley.McKinnon@gowlings.com>
Date: Fri, 25 May 2012 17:42:26 -0400
Subject: RE: Dolgonos

Gentlemen,

In response to Sean's email below, and in response to Joe's letter dated May 24, 2012, UBS is seeking as against your respective clients payments in respect of the "improper expenses" and the UBS Ltd. sale transaction. Those amounts will be quantified. To the extent that your clients are held to have acted in bad faith such that the Lawyer Funds must be returned to UBS, we will of course be seeking the return of those funds.

UBS is not asserting its claim for those monetary amounts by way of set off, as I understand you to be using that term.

Joe

Joe Thorne
Associate

416-369-7223
gowlings.com

-----Original Message-----

From: Sean Grayson [mailto:SMG@reolaw.ca]
Sent: Thursday, May 24, 2012 2:38 PM
To: Thorne, Joe
Cc: Peter L. Roy (Blackberry); Peter Roy; McKinnon, Kelley
Subject: RE: Dolgonos

Joe,

Further to Peter's email below, can you please advise us, whether UBS is claiming a monetary amount from Mr. Dolgonos and/or DOL in the CCAA Claims Determination Process, as it is not clear from your pleading we received dated May 7, 2012, or whether the claims raised in the UBS pleading will be limited to true set off claims.

Thank you,

Sean

-----Original Message-----

From: plr@rogers.blackberry.net
[mailto:plr@rogers.blackberry.net]
Sent: May-24-12 2:31 PM
To: Joe.Thorne@gowlings.com; Sean Grayson; Peter Roy
Subject: Dolgonos

Joe

Mr Dolgonos is available to be examined after Mr McGoey.
Where will it
be held?

Peter

Sent from my BlackBerry device on the Rogers Wireless

Appendix “C”

Vininsky, Mitch

From: Matt Gottlieb [mgottlieb@counsel-toronto.com]
Sent: Thursday, June 07, 2012 1:34 PM
To: Vininsky, Mitch
Subject: Fw: UBS

See below.

Matthew P. Gottlieb
Direct: 416 644 5353
Cell: 647 519 5844

From: Matt Gottlieb
Sent: Friday, June 01, 2012 03:33 PM
To: 'Joseph Groia' <jgroia@groiacom.com>; 'Peter Roy (PLR@reolaw.ca)' <PLR@reolaw.ca>; 'Gavin Smyth' <gsmyth@groiacom.com>; 'Sean Grayson' <SMG@reolaw.ca>
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)' <Bobby.Kofman@duffandphelps.com>; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)' <Mitch.Vininsky@duffandphelps.com>; 'Shea, Patrick' <Patrick.Shea@gowlings.com>; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)' <Kelley.McKinnon@gowlings.com>; 'Thorne, Joe (Joe.Thorne@gowlings.com)' <Joe.Thorne@gowlings.com>; Anne Marie Harkin
Subject: RE: UBS

The understanding is that you will not agree to provide the requested information. If my understanding is wrong, please provide the information.

From: Joseph Groia [mailto:jgroia@groiacom.com]
Sent: June-01-12 3:30 PM
To: Matt Gottlieb; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

I do not agree with your "understanding" and cannot see any reasonable basis for it based on what is set out below .

It is most regrettable that this would come from Court appointed officers.

I do agree however that there is no point in furthering this exchange of emails given the Monitor's position.

If we have anything else to add we will do so in a letter or in our Court materials .

Have a good weekend everyone .

From: Matt Gottlieb [mailto:mgottlieb@counsel-toronto.com]
Sent: June 1, 2012 3:16 PM
To: 'Joseph Groia'; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

It will not serve the Monitor or the Court to further discuss this in emails. I understand that you will not provide this information and will advise the Court of that on the return of the motion. Mr Roy, please advise as to whether you are taking the same position. Thanks.

From: Joseph Groia [<mailto:jgroia@groiaco.com>]
Sent: June-01-12 2:30 PM
To: Matt Gottlieb; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

Then why did those issues not get canvassed on Mr McGoey's cross examination ?

From: Matt Gottlieb [<mailto:mgottlieb@counsel-toronto.com>]
Sent: June 1, 2012 2:23 PM
To: 'Joseph Groia'; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

In the Monitor's view, it is relevant to the motion and will be an issue relevant to the Court on the motion. As your respective clients are seeking a payment from a Debtor under CCAA Court protection, the quantum of that payment is relevant – the current amount plus projected future amounts.

From: Joseph Groia [<mailto:jgroia@groiaco.com>]
Sent: June-01-12 2:14 PM
To: Matt Gottlieb; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

Why ?

From: Matt Gottlieb [<mailto:mgottlieb@counsel-toronto.com>]
Sent: June 1, 2012 2:13 PM
To: 'Joseph Groia'; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

Will you please advise of the fees to date that your clients are seeking.

From: Joseph Groia [<mailto:jgroia@groiaco.com>]
Sent: June-01-12 2:10 PM
To: Matt Gottlieb; 'Peter Roy (PLR@reolaw.ca)'; 'Gavin Smyth'; 'Sean Grayson'
Cc: 'Kofman, Bobby (Bobby.Kofman@duffandphelps.com)'; 'Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)'; 'Shea, Patrick'; 'McKinnon, Kelley (Kelley.McKinnon@gowlings.com)'; 'Thorne, Joe (Joe.Thorne@gowlings.com)'; Anne Marie Harkin
Subject: RE: UBS

We cannot do that as its all past[post filing] and all future fees incurred defending .

Thank you .

From: Matt Gottlieb [<mailto:mgottlieb@counsel-toronto.com>]

Sent: June 1, 2012 11:53 AM

To: Peter Roy (PLR@reolaw.ca); 'Joe Groia'; 'Gavin Smyth'; 'Sean Grayson'

Cc: Kofman, Bobby (Bobby.Kofman@duffandphelps.com); Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com); Shea, Patrick; McKinnon, Kelley (Kelley.McKinnon@gowlings.com); Thorne, Joe (Joe.Thorne@gowlings.com); Anne Marie Harkin

Subject: UBS

Importance: High

Gentlemen, would you please provide the Monitor with the quantum of fees your respective clients are seeking to be paid in connection with their respective motions returnable on June 13, 2012. Thank you.

Matthew P. Gottlieb

Direct: 416 644 5353

mgottlieb@counsel-toronto.com

Lax O'Sullivan Scott Lissus LLP

Suite 1920, 145 King Street West

Toronto ON M5H 1J8 Canada

T 416 598 1744 F 416 598 3730

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