Court File No. BK-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

BOOK OF AUTHORITIES

May 18, 2022

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TAB 1

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Samji (Re),*
2013 BCSC 2101

Date: 20131120
Docket: B121430
Registry: Vancouver

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy
of Rashida Abdulrasul Samji

Before: The Honourable Madam Justice Gerow

Reasons for Judgment
In Chambers

Counsel for the Applicant, Trustee in Bankruptcy:	C.J. Ramsay
Counsel for Mohinder Sandhu, Parminder Vickram, Dr. Cameron Vickram and Atul Mehra:	D.F. Sutherland
Counsel for the Plaintiff Class VA S121627:	P.R. Bennett
Place and Date of Hearing:	Vancouver, B.C. September 6 and October 18, 2013
Place and Date of Judgment:	Vancouver, B.C. November 20, 2013

[1] The applicant is the trustee in bankruptcy of Rashida Samji, Rashida Samji Notary Corporation, and Samji & Assoc. Holdings Ltd. (collectively, the "Samji Group"). The Samji Group operated a fraudulent investment scheme from 2003 until it was discovered in January 2012. Some investors received more money from the scheme than they invested (the "Net Winners"), while many others lost money (the "Net Losers"). The Net Losers comprise the majority of the creditors of the Samji Group's bankruptcy estates.

[2] On this application, the applicant seeks an order approving the terms of a settlement proposal with two of the Net Winners, John and Diana Tang (the "Tang Settlement"). Four of the Net Losers, Mohinder Singh Sandhu, Parminder Vickram, Dr. Cameron Vickram and Atul K. Mehra oppose the granting of the order (collectively, the "respondents"). The respondents take the position they would be materially prejudiced by the granting of the order because it would preclude their ability to bring an action for fraudulent preference and tracing of trust funds against the Tangs. As well, the respondents say the Tang Settlement would be a precedent for other Net Winners disgorging only their profits. The respondents say this type of settlement would result in an unfair sharing amongst the investors of the total losses from the scheme.

Background

[3] From 2003 to January 2012, the Samji Group promoted a fraudulent scheme in which "returns" were paid to investors from their own money or money paid into the scheme by subsequent investors, and not from profits earned by an individual or organization running a legitimate business. At no time did the Samji Group pursue any legitimate business purpose through the scheme. This type of fraudulent scheme is known as a Ponzi scheme.

[4] On or about December 5, 2012, Ms. Samji, Rashida Samji Notary Corporation and Samji & Assoc. Holdings Inc. were all assigned into bankruptcy. The applicant was appointed as the trustee in bankruptcy of each of the three estates.

[5] Approximately 218 investors invested in the scheme promoted by the Samji Group. Instead of depositing the investors' money into a trust account as agreed upon in Letters of Direction executed by investors, the Samji Group dispersed the monies without the investors' knowledge or consent. As a result of the Samji Group's conduct, certain investors suffered loss and damage because they did not receive as much money from the scheme as they invested.

[6] Some investors, including the Tangs, enjoyed false profits because they received more money from the scheme than they invested. The Tangs received approximately $157,800 more than the amount they invested in the scheme.

[7] In June 2013, the applicant began taking steps to recover some, or all, of the monies paid to the Net Winners. In August 2013, the applicant received a settlement proposal from the Tangs. The Tangs offered to repay all the funds they received from the scheme in excess of their investment provided they receive a release from any and all claims which the Samji Group's bankruptcy estate and its creditors may have against the Tangs.

[8] On August 19, 2013, the inspectors of the Samji Group's bankruptcy estate passed a resolution approving the acceptance of the Tang Settlement. The Tangs' proposal has been reviewed by the trustee and in the opinion of the trustee the acceptance of the Tang Settlement is in the best interests of the creditors of the Samji Group's estate.

[9] The applicant seeks an order approving the terms of the Tang Settlement including a release of any and all claims which the Samji Group's bankruptcy estate and its creditors have against the Tangs.

Trustee's Position

[10] The trustee takes the position that the Tang Settlement should be approved by the Court under its inherent jurisdiction. The trustee submits that the approval of the Tang Settlement is in the best interests of the Samji Group's creditors as a whole,

and that any potential prejudice to an individual creditor is outweighed by the benefits to the creditors as a whole.

[11] The trustee submits the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*], provides a scheme in which a trustee in bankruptcy is allowed to administer an estate without interference from creditors. It is very difficult for a trustee to administer an estate if every creditor who disagrees with the actions of the trustee can interfere, unless the creditor can show the trustee is exercising an excess of power or improperly administering the estate.

[12] The trustee submits that the two preconditions to a court exercising its inherent jurisdiction have been met in this case: (1) the *BIA* is silent on the point; and (2) the benefit of granting the relief outweighs the relative prejudice to those affected by it. The trustee points to the fact that the administration of the *BIA* requires a pragmatic problem-solving approach in which the realities of commerce and business efficacy are considered.

[13] The trustee says that if it is not allowed to enter into settlements with the Net Winners, lawsuits will have to be commenced against all of the Net Winners, and limitation periods are running out. The trustee and the inspectors are in a position to assess whether a settlement is advantageous to the creditors as a whole. The trustee points to the fact the inspectors have reviewed the Tang Settlement and approved it. The trustee disagrees that the order being sought sets a precedent for all other Net Winners, and says each case will be determined on its facts.

Respondents' Position

[14] The respondents take the position that the approval of the inspectors and the opinion of the trustee should be disregarded or discounted. The respondents submit that contrary to the assertion the trustee was not aware of any party who would be materially prejudiced by the Tang Settlement, they would be prejudiced in two respects:

1) The terms of the proposed order preclude pursuit of both a fraudulent preference and a tracing of trust funds claim by the respondents against the Tangs which might seek to recover the monies the Tangs would have lost if they shared the losses from the scheme equally with the Net Losers; and

2) The Tang Settlement would be part of, and a precedent for, an accounting adjustment whereby the Net Winners would disgorge their profits but no more. Setting such a precedent will not assist with the accounting and adjustment which is ultimately suitable under applicable principles and procedures, which mandate an adjustment to equalize recovery as far as practical.

[15] The respondents agree the Court has jurisdiction to grant the order being sought. However, the respondents submit the release sought goes beyond the scope of the bankruptcy to compromise a chose in action. The respondents say as a result granting such a release would exceed the power of a trustee and therefore the trustee is exercising excessive power.

[16] The respondents say they appear to have a cause of action against the Tangs for fraudulent preference, and that right should not be extinguished by granting the order sought. The Court ought not to extinguish a cause of action without hearing the case on its merits unless it meets a test somewhat more stringent but comparable to the plain and obvious test that there is no merit to the cause of action: *In the Matter of the Proposal of Maple Homes Canada Ltd.*, 2000 BCSC 1443 at paras. 30-34.

[17] The respondents also rely on *Re Titan Investment Limited Partnership*, 2005 ABQB 637, in arguing they have a fraudulent preference action against the Net Winners for not only their profits but also the amount of their investment.

[18] In the alternative, the respondents have made a trust claim which was declined by the trustee and which the respondents are intending to appeal. Trust

claims pursued by a claimant are not extinguished by the bankruptcy process except on their merits.

Analysis

Applicable Law

[19] A superior court retains its inherent jurisdiction in the context of proceedings under the *BIA*: s. 183(1) of the *BIA; Re Eagle River International Ltd.*, 2001 SCC 92 at para. 20.

[20] In order for a court to exercise its inherent jurisdiction in the context of proceedings under the *BIA*, two preconditions must be met:

1) The *BIA* must be silent on a point or not have dealt with the matter exhaustively; and

2) After balancing competing interests, the benefit of granting the relief must outweigh the relative prejudice to those affected by it.

Re Residential Warranty Co. of Canada Inc. (Bankrupt), 2006 ABQB 236 at para. 26; aff'd 2006 ABCA 293.

[21] The respondents take issue with the decision of the trustee to accept the Tang Settlement proposal. The section which provides relief for an aggrieved creditor under the *BIA* is s. 37 which provides:

> Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

[22] In *Re Hoque* (1996), 148 N.S.R. (2d) 142 (C.A.), the court discussed the role of the trustee, noting that even when the trustee has the benefit of a group of experienced creditors' representatives acting as inspectors, the trustee has to act with integrity and in a competent and reasonable manner. A court is to show deference to the business decision made by those entrusted by the creditors and the *BIA* to make such decisions. The court adopted the following comments at para. 41:

> I agree with the comments of Mcfarlane J. in *Re Groves-Raffin Construction Ltd. (No. 2)*, [1978] 4 W.W.R. 451, 28 C.B.R. (N.S.) 104 (B.C. S.C.) where he stated at (C.B.R.) 112:
>
> > In considering the conduct of a trustee it is well to keep in mind that the scheme of the Act is to allow the trustee to administer the estate under the supervision of the inspectors without interference unless there has been an excess of power, fraud, a lack of bona fides, or unless the actions of the trustee and the inspectors are unreasonable from the standpoint of the good of the estate.

[23] In *Roberts v. E. Sands & Associates Inc*., 2013 BCSC 902 at paras. 40-41, the court made the following comments in the context of a complaint by a creditor that the trustee should not have allowed claims of some of the creditors on the basis that a limitation period had expired:

> [40] In *Kortev v. Deloitte Haskins & Sells* (1996), 44 C.B.R. (3d) 259 (Alta. Q.B.), Cooke J. made these statements regarding the preferable procedure to be followed in order to resolve questions similar to the question here:
>
> > The purpose of the *Bankruptcy Act* is to ensure that insolvencies are dealt with expeditiously and efficiently. In the words of the Manitoba Court of Appeal:
> >
> > > The fundamental idea of the legislation is that all claims against the bankrupt be dealt with within the context of the bankruptcy proceedings.
> >
> > The Alberta Supreme Court has acknowledged that the *Bankruptcy Act* provides an expeditious and inexpensive method for distributing the property of an insolvent person among his creditors. (*Bowles v. Barber* (1985) 60 C.B.R. (N.S.) 311; Can. *Credit Men's Trust Assn. v. Umbrel* (1931) 13 C.B.R. 40) …
>
> [41] The solutions under the *B.I.A.* take into account the realities of commerce and business efficacy: "A strictly legalistic approach is unhelpful in that regard. What is called for is a pragmatic problem-solving approach which is flexible enough to deal with unanticipated problems, ...": *per* Topolniski J. in *Resident Warranty Co. of Canada Inc. (Re)* (2006), 21 C.B.R. (5th) 57 (Alta. Q.B.), at para. 27.

Application to the Facts

[24] I agree with the applicant and the respondents that the Court has the inherent jurisdiction to make the order approving the Tang Settlement, including the release.

[25] The issue is whether this is an appropriate case in which to exercise the Court's inherent jurisdiction to approve the Tang settlement proposal.

[26] I also agree with the applicant that the pre-condition that the *BIA* is silent with regards to this issue has been met. The *BIA* is silent with regards to the approval of a settlement between a bankrupt and third party that includes a full and final settlement of any and all claims against the third party which the bankrupt and the bankrupt's creditors may have against the third party.

[27] The second pre-condition is whether after balancing the competing interests, does the benefit of granting the relief outweigh the prejudice to those affected by it.

[28] As stated earlier, the respondents oppose the granting of the order because they have potential claims for fraudulent preference and tracing of trust funds, and the order sought would preclude them from advancing such claims against the Tangs. The trustee submits that the approval of the Tang Settlement proposal is in the best interests of the Samji Group's estates' creditors as a whole and any potential prejudice to the respondents is outweighed by the benefits to the creditors as a whole.

[29] The trustee points to the fact that if it is not permitted to enter into settlements with the Net Winners, actions will have to be commenced against every Net Winner and the costs will be exorbitant. There are a number of Net Winners who wish to settle in exchange for similar releases.

[30] It is apparent from a review of the *Titan* case relied upon by the respondents that it was decided on the basis of its facts. In *Titan*, the court found the individual operating the Ponzi scheme, Mr. Comte's decision to ignore the requests of certain investors for redemption of their funds and to instead pay full redemptions to investors who made no such requests, was evidence that Mr. Comte made a decision to prefer some investors over others. The respondents could not point to any other case in which a court has ordered that the Net Winners in a Ponzi scheme pay back not only the profits they received but also the principal they had invested.

[31] It is clear from the case law that both the trustee and inspectors are entitled to rely on legal advice as to the potential success of actions against the Net Winners.

[32] The trustee in this case submits that the approval of the Tang Settlement proposal will avoid potentially lengthy and expensive litigation which would not only subject the Samji Group's estates to a level of risk, but may in fact ultimately lead to the recovery of less funds for the creditors of the Samji Group's estates. The approval of the Tang Settlement will allow the trustee to move forward in negotiations with other investors who are willing pay back their profits from the investment scheme provided they are assured of a full and final release. The approval of the Tang Settlement proposal is key to the successful negotiation of settlements with other investors.

[33] In the trustee's submission the ability to settle some of the Samji Group's estates' claims would allow the trustee to administer the estates in an efficient manner and would likely provide for the best ultimate recovery for the creditors as a whole.

[34] In my view, the procedure followed by the trustee in attempting to have the Net Winners disgorge their profits in exchange for a release is sound and in keeping with the objectives of the *BIA*.

[35] The cases acknowledge that the purpose of the *BIA* is to ensure that bankruptcies are dealt with expeditiously and efficiently. In this case, not only has the trustee reviewed the proposed settlement and release, but the inspectors have also reviewed and approved it.

[36] The solutions under the *BIA* take into account the commercial realities of the circumstances of the particular bankruptcy. In this case, the approach the trustee is taking maximizes the returns to the creditors without having to commence costly litigation against all of the Net Winners. The trustee reviewed the terms of the Tang Settlement and determined it was in the best interests of the creditors as a whole.

[37] If the trustee is not able to enter into settlement discussions with investors who are willing to pay back any profit received from the scheme, the trustee will be forced to commence multiple, potentially costly, civil actions against all of the

investors who profited from the scheme even in circumstances where it would otherwise be more beneficial to the creditors to enter into a settlement.

[38] The decision of the trustee was to enter into a settlement with the Tangs without costly litigation. Having considered the evidence and the submissions of counsel, I have reached the same conclusion. In my view, the granting of a court ordered release in the context of the Tang Settlement does not set a precedent whereby the trustee cannot commence actions against other Net Winners, for the return of not only the profit they received but the invested capital if it is deemed appropriate. Actions have already been commenced by the trustee against some of the Net Winners.

[39] The respondents say the decision of the trustee to seek an order which would preclude them from commencing an action against the Tangs for fraudulent preference and the tracing of trust funds is unreasonable.

[40] However, the evidence is that the trustee is attempting to enter into settlements rather than pursuing costly litigation against all of the Net Winners. In my view, the decision of the trustee (with the approval of the inspectors) to accept the Tang Settlement was a legitimate business decision. The trustee and inspectors acted reasonably and the settlement was not contrary to the interests of the creditors generally.

Conclusion

[41] After balancing the competing interests, I am of the view that the benefit to the creditors as a whole of approving the Tang Settlement outweighs the potential prejudice to the respondents. As a result, I have concluded that this is an appropriate circumstance in which to exercise the Court's inherent jurisdiction to approve the Tang Settlement.

[42] Accordingly, I am making the following orders:

- The Tang Settlement proposal is approved and shall be binding upon the Samji Group's estates and the Samji Group's estates' creditors.

- Upon full payment of the Tang Settlement monies to the trustee:

  (a) any and all Tang claims, whether contingent or not, which the Samji Group's estates and/or the Samji Group's estates' creditors may have against the Tangs shall be released; and

  (b) the Tangs shall be released and have no further liability whatsoever to the Samji Group's estates and/or the Samji Group's estates' creditors.

"Gerow J."

TAB 2

COURT FILE NO.: 31-361359
DATE: 2002-12-02

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY

IN THE MATTER OF THE BANKRUPTCY OF
DOCTOR LANCE DAVID LEVY, of the City of Toronto,
In the Province of Ontario

Counsel: James H. Grout and Gregory R. Azeff - for the Trustee in Bankruptcy
Daniel R. Dowdall - for Lance David Levy and Milton Shier
William J. Meyer, Q.C. - for the Estate of Lillian Levy, deceased

Heard: April 8 and 9 and November 19, 2002

REASONS FOR DECISION

Cullity J.

[1] The Trustee in bankruptcy of the estate of Dr Lance Levy moved for an order approving the settlement of all claims of the estate against Dr Levy's former spouse, Cynthia Colby, and his stepfather, Milton Shier, and for an order granting Dr Levy an absolute discharge.

[2] The motion for each of the orders was opposed by the executors ("Lillian's Executors") of the estate of Dr Levy's deceased aunt, Lillian Levy ("Lillian"). The main thrust of their opposition to the settlement is that they have a motion pending pursuant to section 38 of the *Bankruptcy and Insolvency Act* (" BIA") in which they seek to acquire the claims of the estate which are the subject matter of the settlement. They also oppose the discharge of Dr Levy on the ground that he has allegedly made certain transfers and preferences that are alleged to have given rise to the claims they wish to acquire and has attempted to "flaunt" the bankruptcy system.

[3] Dr Levy is a medical doctor specializng in nutritional and eating disorders. He is divorced with two young children. The circumstances in which he was placed in bankruptcy arose, principally, out of his failure to satisfy an obligation he had assumed to make payments to Lillian in return for a release of her claims to employment benefits from business corporations that had been operated by Dr Levy's father and uncles, and that were in severe financial difficulties at the time. Lillian was the wife of one of the uncles who died while complicated and increasingly acrimonious negotiations among the families with respect to the protection of the businesses, and their respective personal interests, were continuing. She was represented by Allen Berg - the husband of her daughter - in the negotiations. The relationships between the families were strained and Berg - who is now one of Lillian's Executors and who then held her

power of attorney – participated actively in the negotiations relating to the family corporations, and the events that immediately preceded - and were the direct cause of - Dr Levy's bankruptcy. Mr. Berg has also led - or, possibly, constituted - the opposition to the settlement and the application for Dr Levy's discharge. From the evidence I heard - which included his and Dr Levy's oral testimony - his position on this motion reflects as much a determination to continue a family vendetta as an exercise of prudent judgment in his capacity as an executor of Lillian's estate.

[4] It was at Berg's suggestion that Dr Levy agreed to pay Lillian $ 40,000 a year for five years with the first payment to be made on January 1, 1991. Unlike Berg, Dr Levy was not, and is not, an experienced businessman and, in the litigation that subsequently ensued, the court found that his motivation in signing the agreement was to "do what he had to do to save his father". He defaulted on the first payment and in February of the same year, Lillian commenced proceedings against him. She died before judgment in the action.

[5] Dr Levy had been advised that he had a good defence based on economic duress. He had not received independent legal advice before making the agreement with Lillian. The court at trial expressed some sympathy for his position but found that the legal elements of the defence had not been proven and, on January 25, 1996 - some five years after the action had been commenced and, apparently, two years after the trial - it gave judgment against him for the full amount of $ 200,000. An appeal from the decision was dismissed on February 12, 1999.

[6] Dr Levy made a proposal to his creditors on June 11, 1999. Lillian's estate was one of the main creditors and, at the meeting to consider the proposal on October 21, 1999, only Lillian's Executors voted against its acceptance. As a result of that vote, the proposal was defeated and, in consequence, Dr Levy was deemed to have made an assignment in bankruptcy. At the meeting of creditors in the bankruptcy held immediately after the decision on the proposal, two inspectors were appointed. One of these, an employee of the Royal Bank, subsequently ceased such employment and did not participate in the work of the inspectors. She must, I believe, be considered to have resigned as an inspector and, although no attempt appears to have been made to fill the vacancy, no objection has been taken to the exercise of the inspectors' powers and responsibilities by the other inspector, a representative of Canada Customs and Revenue Agency.

[7] On November 24, 1999, solicitors for Dr Levy and Mr. Shier made a settlement offer to the Trustee. Shier had delivered a proof of claim and had attended - but, as a related person, was unable to vote - at the meeting of creditors that had rejected Dr Levy's proposal. Questions had subsequently been raised with respect to certain conveyances by Dr Levy to Shier and Colby and a payment of $115,000 to the latter pursuant to a separation agreement between Dr Levy and Colby and certain related transactions between them and Shier. The settlement offer involved the payment of $125,000 by Shier, and a release of his claim in the bankruptcy, in return for a transfer to him of all of the assets of the estate and a release of all claims that the Trustee might be able to assert against Shier and Miss Colby. The settlement was to be conditional on court approval.

[8] The Trustee proceeded to conduct a due diligence review of the merits of the settlement during the following 12 months. Lillian's Executors were aware of its terms and, when it appeared that the acceptance of the settlement was imminent, they served a notice of motion in which, among other things, they requested an order pursuant to subsection 38 (1) of the Act authorizing them - in their names and at their own risk and expense - to take proceedings to enforce claims of the estate, together with an order for the assignment of such claims to them pursuant to subsection 38 (2). In circumstances that are not entirely clear from the evidence - and to which I will return - the motion was adjourned following the Trustee's suggestion that it should be brought on immediately after the Trustee's motion for approval of the settlement in the event that such approval was denied.

[9] In a letter dated November 16, 2000, the Trustee recommended acceptance of the settlement to the inspector and, subsequently, received the latter's permission. The settlement was accepted by the Trustee on November 24, 2000.

[10] At the request of the Executors, the Trustee engaged in further due diligence with respect to the value of the assets in the estate and of those that were the subject of transfers by Dr Levy that the Executors wished to set aside. The Trustee also conducted a further analysis of the merits of the settlement and the relative advantages and disadvantages of proceedings by the Trustee, or by the creditors, to enforce the potential claims of the estate against Shier and Colby.

[11] One of the contentious issues related to the value of Dr Levy's shares of a corporation ("PLC"). The Trustee concluded that the shares had no value and, in so doing, relied on an opinion of the Honourable Lloyd W. Holden that the corporation would not be able to recover anything from a judgment obtained by its subsidiaries in litigation with another corporation. This matter is now of no consequence as it has been agreed that, as part of a settlement, the shares of PLC would remain with the Trustee for the benefit of the creditors other than Shier.

[12] The report of the Trustee that was filed with the court contains a detailed analysis of the likelihood that proceedings to set aside the conveyances made by Dr Levy in implementing the separation agreement with Colby would be successful and the consequences that would be expected to follow. The report of the Trustee that was filed with the court concludes:

> "In light of the defences to the various actions the Trustee could bring, the cost of proceedings and the likely recoveries, the Trustee is of the view that the settlement offer is fair and reasonable and recommends that it be approved by this Honourable Court."

[13] In its separate report on Dr Levy's application for a discharge, the Trustee indicated its support for an absolute discharge if the settlement was approved. The report indicated that, in the judgment of the Trustee, none of the facts set out in section 173 (1) of the BIA existed. Lillian's Executors filed a notice of objection to the grant of a discharge principally on the grounds that the conveyances to Shier and Colby pursuant to the separation agreement were fraudulent preferences and that Dr Levy had attempted to flout the bankruptcy system.

[14] The Trustee's motions for approval and for the discharge of Dr Levy were heard initially on April 8 and 9, 2002. *Viva voce* evidence was given and the witnesses were cross-examined. At the conclusion of the hearing on those days, I was satisfied that, subject to certain submissions of Mr. Meyer with respect to the motion under section 38 - a late development at the initial hearing - the orders requested should be granted. No criticism could, in my judgment, be directed at the manner in, or the extent to, which the Trustee had conducted its lengthy review of the merits of the settlement offer both before and - at the request of Lillian's Executors - after it had been accepted. The Trustee's conclusions with respect to the value of the claims against Shier and Colby could not, in my judgment, be considered, to any degree, unreasonable.

[15] It is well-settled that, when asked to approve a settlement or other exercise of powers given to a trustee under the BIA, it is not the function of the court to indicate whether it agrees with the trustee's decision. It does not second-guess the decision on the merits. Here, the power to settle claims was given to the Trustee who was obliged to obtain the permission of the inspector. It was to be exercised in the discretion of the trustee and the court is not to substitute its own discretion. The standard of review has been described in various ways. For example, in *Re Groves-Raffin Construction Ltd.*, (No. 2), [1978] 4 W.W.R. 451 (N.S.S.C.) it was said:

> "In considering the conduct of a trustee it is well to keep in mind that the scheme of the Act is to allow the trustee to administer the estate under the supervision of the inspectors without interference unless there has been an excess of power, fraud, a lack of bona fides, or unless the actions of the trustee and the inspectors are unreasonable from the standpoint of the good of the estate".

[16] This statement of principle was approved by the Nova Scotia Court of Appeal in *Re Hoque*, [1996] N.S.J. 55 which, in turn, was followed by Cameron J. in *Re Graham Mining Ltd.*, [2001] O. J. No. 2160 (S.C.J.) and by Lane J. In *Re Acepharm Inc.,* [2000] O.J. No. 942 (S. C.J.). Lane J. stated:

> "The sale of the assets of a bankrupt is a matter for the Trustee acting with the consent of the Inspectors under the authority of section 30 (1) (a) of the BIA. The court should only interfere if they act unreasonably or if there is a fraud: Re Qualicum Builders Supply Co. Ltd. (1988), 70 C.B.R. (N.S.) 302 (B.C.C.A.). The Trustee and the Inspectors must exercise reasonable business judgment and act with integrity. The courts should show deference to those entrusted by the creditors and authorized by the Act to make such decisions: Re Hoque (1996), 38 C. B. R. (3d) 133 at 141 - 2 (N.S.C.A.)."

[17] Lane J. followed previous decisions in which it was held that the court should not be asked by a trustee to approve a settlement He asked:

> "What Order should be made? There is authority that in respect of the settlement of claims, the trustee should not apply to the court for directions, but should rely

> upon the powers given by the BIA: Qualicum, supra, citing the Ontario case of Re Reeve-Dobie Mines Ltd. (1921), 50 O.L.R. 484. ...The court should not, therefore, expressly approve the settlement.
>
> The proper course for a creditor aggrieved by a decision of the Trustee is to move against it under section 37 of the BIA. There is no such motion before me, but counsel for [a creditor] submitted that the existence of the Trustee's motion was a sufficient basis for the court's jurisdiction to resolve the issues. His client's affidavit says it is sworn to oppose court approval and to require the trustee to obtain an appraisal... This is more than simple opposition and is in essence a cross- motion, albeit informally made. It will be dismissed."

[18] While, as I have indicated, it is not for the court to approve a settlement on its merits, I do not think it follows that, where a decision of a trustee is, or is likely to be, challenged, the court should not be willing to advise whether the trustee has acted properly in exercizing its discretion – or, on the contrary, has abused it – by, for example, the procedure it adopted in selling assets in the particular circumstances of the case, provided, of course, that there is sufficient evidence before the court to enable it to make such a determination. In *Re Acepharm Inc.*, Lane J. was prepared to advise and direct that objections raised by a creditor were not valid and that the trustee was not required to obtain an appraisal before selling particular assets. This is consistent with the approach the court adopts when asked to give advice and directions to other trustees with respect to the exercize of their discretionary powers and the position taken in bankruptcy cases does not appear to have been significantly different.

[19] There was similarly no motion under section 37 in this case but, where the propriety of an exercise of discretion conferred on a trustee in the BIA, subject to the consent of inspectors, is in issue, I do not think it matters whether an objecting creditor brings such a motion or merely opposes the trustee's motion for directions. Moreover, in either case, I believe the standard of review to be applied by the court must be the same and that the inquiries are to be limited to a consideration of the factors referred to in *Re Groves-Raffin Construction Ltd.* and the other authorities mentioned above: see the discussion of the provision that is now section 37 by Middleton J.A. in *Re Davies Footwear Co Ltd.* (1923), 53 O.L.R. 467, at page 469 where, in the view of the learned judge - and that of the Court of Appeal - the conduct of a trustee in dealing with tenders for the sale of an asset was criticized as "wholly improper" and "most objectionable".

[20] As I have indicated - but for the submission made by Mr. Meyer in connection with the motion under section 38 - I saw no reason for interfering with the Trustee's discretion and, in that sense, would have approved the settlement at the conclusion of the initial hearing.

[21] As far as the motion for a discharge was concerned, I was not prepared to find on the evidence that the conveyances on which Lillian's Executors rely in their notice of objection to a discharge were anything other than transactions intended to implement a *bona fide* matrimonial settlement that was negotiated and signed prior to the bankruptcy in return for the release of

Colby's claims arising out of the marriage. There is no evidence that would justify a conclusion that Dr Levy attempted to flout the system. The circumstances that gave rise to his bankruptcy were not discreditable. He made a proposal to his creditors shortly after the judgment obtained by Lillian's Executors against him was confirmed by the court and the more advantageous settlement offer followed within a few weeks after he was placed in bankruptcy as a result of the refusal of Lillian's Executors to accept the proposal. There was no evidence that suggested that he had not made a complete disclosure of his financial affairs, or had failed to co-operate with the Trustee. I was satisfied that, if the settlement was to be effected, the time had come when he should no longer carry the prolonged burden of his debts and should, in addition, be freed from attempts by Lillian's Executors to use the bankruptcy system to continue a family feud.

[22] One of Dr Levy's children suffers from language-based learning disabilities. He requires special schooling and attention and incurs other expenses that his father discharges over and above his support payments pursuant to the child support guidelines. Dr Levy estimated these expenses, and other additional expenses he discharges for the benefit of his children to amount to approximately $ 25,000 a year. With the permission of the inspector, the Trustee had, on June 22, 2000, waived Dr Levy's original obligation to pay $1,500 a month to the estate pursuant to section 68 of the BIA.

[23] Dr Levy's evidence was that his annual taxable income is, generally, within a range of $120,000 to $135,000 and, in a good year, it has been as high as $162,700. Were it not for the expenses I have mentioned, income at these levels would ordinarily justify a discharge only on condition that monthly payments of some amount should be made to the estate. As it is, I am satisfied that he has little, if any, surplus income available for that purpose. Moreover, the offer of $125,000 to be paid to the estate pursuant to the settlement reflected an assumption that, if the transactions implementing the separation agreement were overturned, Dr Levy's continuing obligations with respect to spousal support would eliminate any surplus income at the time of his discharge. For that reason, the offer made to the estate provided that any payments ordered to be made by him as a condition of the discharge, would reduce the lump-sum amount to be paid pursuant to the offer.

[24] Given the Trustee's assessment of the likelihood of success in setting aside the impugned transactions - an assessment with which, on the basis of the record, I saw no reason to disagree - I was satisfied that the Trustee's decision to accept the settlement on these terms could not be considered to be an improper exercise - or an abuse - of its discretion and, in these circumstances, I saw no reason why Dr Levy should not be granted an absolute discharge.

[25] Difficulty, however, arose when, in the course of his closing submissions, Mr. Meyer - who was not acting for Lillian's Executors at the time that the notice of motion pursuant to section 38 had been delivered - asked the court to consider specific terms and conditions that Lillian's Executors would accept in the order they would seek in the section 38 motion. These, he submitted, were sufficiently favourable to the creditors of the bankrupt's estate, other than those

who would be defendants to the claims Lillian's Executors wished to enforce, to justify the court's refusal to approve the settlement.

[26] No such terms or conditions had been referred to in the notice of motion and, prior to Mr. Meyer's closing submissions, Lillian's Executors had not communicated any similar offers to compensate the other creditors if the section 38 motion was granted. In response to an inquiry on behalf of the Trustee a few days before the hearing, Mr. Meyer had reported that he had received no instructions to make any such offers.

[27] Counsel for the Trustee and for Dr Levy voiced strong objections to the suggestion that the matters raised by Mr. Meyer could properly be considered by the court. When, subject to these objections, they addressed - and were critical of - the specific terms identified by him, Mr. Meyer proposed modifications that, he said, would be acceptable to his clients. These, in turn, led to the further objection that the court should not be prepared to preside over a "court house auction."

[28] As counsel for Dr Levy and the Trustee may have been taken by surprise by Mr. Meyer's introduction of issues that would arise under the section 38 motion into what had, until then, been treated as a hearing of the Trustee's motions for approval of the settlement and for Dr Levy's discharge, I adjourned the hearing to enable Lillian's Executors to deliver to the Trustee a written statement of the terms and conditions they would accept if an order was made pursuant to section 38. In an endorsement I said:

> "As ... the authorities indicate that there is a likelihood that some terms would have been imposed for the benefit of the other creditors if an order was made pursuant to subsection 38 (1), I do not think the Trustee was entitled to treat the existence of the pending motion as irrelevant to the exercise of its discretion with respect to acceptance of the settlement. It is unfortunate that the question of terms was not discussed in advance."

[29] The hearing continued on November 19, 2002. In the meantime, Mr. Meyer had delivered a statement of the proposed terms and conditions. In a supplementary report filed on behalf of the Trustee and concurred in by the inspector, the Trustee maintained its opposition to the propriety of their consideration in the context of the Trustee's motion and to the suggestion that the creditors other than Mr. Shier and Ms Colby would not be prejudiced.

[30] At the hearing on the return of the Trustee's motion, the submissions of Mr. Grout for the Trustee, and Mr. Dowdall, for Dr Levy and Mr. Shier, were primarily directed at the question of procedural propriety: at what was described as the integrity of the bankruptcy process. They also explained in more detail the facts relating to the adjournment of the section 38 motion, the reasons why the Trustee had not given weight to it at the time of the acceptance of the settlement and the lack of any communication to them of terms and conditions acceptable to Lillian's Executors prior to the hearing. For the most part, their explanations were not disputed by Mr. Meyer although, in some respects, they ranged beyond the evidence that had been given at the initial hearing. The circumstances in which the motion was adjourned in November, 2000 had

been referred to in the Trustee's report that was filed with the court with its notice of motion but, as counsel had, either, not anticipated - or, tactically, had not chosen to confront in advance - the position taken by Mr. Meyer in his closing submissions, little attention had been paid to it, and to the other matters when evidence was given at the original hearing.

[31] The notice of motion was dated November 2, 2000 and appears to have been set down to be heard on November 16. The report of the Trustee, for some unexplained reason, describes it as an application commenced on November 7 and suggests that the motion was adjourned after the Trustee had advised Lillian's Executors that the settlement offer had been accepted. However, the Trustee did not recommend acceptance of the offer to the inspector until November 16 and the report states that it was not accepted until November 24. My endorsement adjourning the hearing was based on an assumption that, contrary to the implication in the report, the notice of motion must have been served on the Trustee prior to acceptance of the settlement offer.

[32] On the resumption of the hearing, I was advised by counsel that the notice of motion under section 38 was delivered after it was clear to Lillian's Executors that the Trustee intended to recommend acceptance of the settlement. This was not disputed by Mr. Meyer and there was no suggestion that Lillian's Executors had been misled into thinking that the settlement had already been accepted. Nor was there any dispute over the truth of the statement in the report that they had been advised that the application "ought to be adjourned and brought on immediately after the motion by the trustee for the approval of this Honourable Court of the settlement in the event such court approval was not obtained". This, I believe, would have been an acceptable procedure and I am satisfied that, when the motion was adjourned, the Trustee was reasonable in anticipating that it would be followed.

[33] The terms of the settlement are marginally more favourable to the creditors than the terms that Lillian's Executors have now indicated, belatedly, that they are willing to accept. Even if that had not been so, I would accept the submissions of Mr. Grout and Mr. Dowdall that the procedure that Mr. Meyer wishes me to follow is not one that I should adopt. It is not disputed that the notice of motion was served when, after lengthy investigation and review of the terms of the settlement offer, the Trustee had, to the knowledge of Lillian's Executors, decided to accept them and to recommend them to the inspector. No offers to protect the other creditors were included as terms of the orders requested in the notice of motion or were otherwise communicated to the Trustee before the settlement was accepted or, indeed, before the continuation of the hearing on April 9, 2002.

[34] Whether or not their intention had been communicated to the Trustee - and it had not been - it was not open to Lillian's Executors to reserve the right to oppose approval of the settlement by the court on the ground that it was willing to accept terms in an order pursuant to section 38 that would be as, or even more, favourable to the other creditors but would not be disclosed before then. If such counter-offers were to be made, this should have been done when the settlement was under consideration by the Trustee. No such offers were made and the Trustee had no reason to suspect that they would be forthcoming at that time. All it received was a notice of motion requesting, in general terms, among other things, an order authorizing Lillian's Executors "to take proceedings in their own names and their own expense and risk on notice

being given to the other creditors of the contemplated proceeding, and on such terms as the court may direct" or, in the alternative, an order for the Trustee to assign and transfer to Lillian's Executors "all his right, title and interest in the chose in action or subject matter of the proceeding - including any document in support thereof." In view of the absence of any indication that Lillian's Executors were prepared to secure the benefits of the settlement for the other creditors, the Trustee's conclusions with respect to the likelihood of success in enforcing the alleged claims against Shier and Colby and the relative merits of the terms of the settlement offer, the Trustee was, in my opinion – contrary to the view I expressed in the endorsement - entitled to proceed to recommend acceptance of the settlement to the inspector notwithstanding the existence of the pending motion.

[35] The position advanced by Mr. Meyer on behalf of Lillian's Executors involves a misconception of the role of the court when asked to approve the settlement of a claim, or claims, of the estate. I refer, again, to the limited role of the court when asked to approve the settlement. It is not compatible with what I have been asked by Lillian's Executors to do in this case. In effect, I am expected to weigh the merits of the settlement accepted by the Trustee against those of the terms offered by Lillian's Executors for the first time late on the second day of the hearing in April – after the evidence on the motion for approval had been given - and modified, again, before it resumed on November 19 and, again, in the course of the hearing on that day. There was force in Mr. Dowdall's repeated objections to a judge presiding over - let alone participating in - a court house auction.

[36] If a Trustee has, with prior knowledge of creditors, entered into a settlement with which the court would not otherwise interfere, it is, I think, too late for them subsequently to move under section 38 for the right to enforce in their own names claims dealt with in the settlement. The same must be the case where, as here, the moving creditors consented to the adjournment of the motion pending the hearing of the motion to approve the settlement.

[37] For the above reasons, I find that the settlement - as amended at the commencement of the hearing - was within the powers of the Trustee and that no ground for disturbing it has been demonstrated. Dr Levy is granted an absolute discharge. Submissions on costs may be made in writing within 14 days of the release of these reasons or, if counsel would prefer to make oral submissions, they should obtain an appointment for the purpose.

CULLITY J.

Released: December 2, 2002

COURT FILE NO.: 31-361359
DATE: 2002-12-02

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE BANKRUPTCY OF DOCTOR LANCE DAVID LEVY, of the City of Toronto, In the Province of Ontario

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REASONS FOR DECISION

Cullity J.

Released: December 2, 2002

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TAB 3

Court Number 10985
Estate No. 51-117738

COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Bankruptcy of St.-Anne Nackawic Pulp Company Ltd.

- and -

IN THE MATTER OF an Application by the Province of New Brunswick

- and -

IN THE MATTER OF a Joint Application by ST. ANNE INDUSTRIES LTD. and A. C. POIRIER & ASSOCIATES INC., as Trustee in Bankruptcy of St. Anne-Nackawic Pulp Company Ltd.

- and -

IN THE MATTER OF a Joint Application by A. C. POIRIER & ASSOCIATES INC. as Trustee in Bankruptcy of St. Anne-Nackawic Pulp Company Ltd.; GREEN JAIN WEDLAKE INC. as Receiver of St. Anne-Nackawic Pulp Company Ltd.; ST. ANNE INDUSTRIES LTD.; and SUNNY CORNER ENTERPRISES INC., LORNEVILLE MECHANICAL CONTRACTORS LTD. AND THE PLAINTIFFS IN CQB CAUSE NUMBER F/C/873/04

Date of Hearing:	August 26, 2005
Date of Decision:	August 26, 2005
Place of Hearing:	Fredericton
Before:	Mr. Justice Peter S. Glennie

Appearances:

With respect to the Province's Motion:

Walter D. Vail, Q.C. Stephen J. Hill, Esq.	) for the Province of New Brunswick.)
Raymond P. Gorman, Q.C. H. David McLellan, Esq.	) for A. C. Poirier & Associates Inc., Trustee in Bankruptcy) of St. Anne-Nackawic Pulp Company Ltd.
R. Gary Faloon, Q.C. Gerald W. O'Brien, Esq.	) for Various Mechanics' Lien Claimants.)
D. Leslie Smith, Q.C. Edward Sellers, Esq. John MacDonald, Esq.	) for St. Anne Industries Ltd.))
D. Leslie Smith, Q.C.	) for Green Jain Wedlake Inc., Receiver of St. Anne-Nackawic Pulp Company Ltd.
Bettina Quistgaard, Esque.	) for CAW - Canada, Locals 219 and 1159

With respect to the Joint Motion of St. Anne Industries Ltd. and the Trustee:

Raymond P. Gorman, Q.C. H. David McLellan, Esq.	) for A. C. Poirier & Associates Inc., Trustee in Bankruptcy) of St. Anne-Nackawic Pulp Company Ltd.
D. Leslie Smith, Q.C. Edward Sellers, Esq. John MacDonald, Esq.	) for St. Anne Industries Ltd.))
D. Leslie Smith, Q.C.	) for Green Jain Wedlake Inc., Receiver of St. Anne-Nackawic Pulp Company Ltd.

With respect to the Joint Motion of the Trustee; the Receiver; St. Anne Industries Ltd.; Sunny Corner Enterprises Inc., Lorneville Mechanical Contractors Ltd., and the Plaintiffs in CQB Cause S/C/873/04:

Raymond P. Gorman, Q.C. H. David McLellan, Esq.	) for A. C. Poirier & Associates Inc., Trustee in Bankruptcy) of St. Anne-Nackawic Pulp Company Ltd.
R. Gary Faloon, Q.C. Gerald W. O'Brien, Esq.	) for Various Mechanics' Lien Claimants.)
D. Leslie Smith, Q.C. Edward Sellers, Esq. John MacDonald, Esq.	) for St. Anne Industries Ltd.))
D. Leslie Smith, Q.C.	) for Green Jain Wedlake Inc., Receiver of St. Anne-Nackawic Pulp Company Ltd.
Bettina Quistgaard, Esque.	) for CAW - Canada, Locals 219 and 1159

DECISION

GLENNIE, J. (Orally):

[1] There are three motions to be dealt with relating to the bankruptcy of St. Anne-Nackawic Pulp Company Ltd. ("St. Anne Pulp"). The first is the motion of the Province of New Brunswick (the "Province") seeking an order appointing an Interim Receiver of St. Anne Pulp; approving the Province's and St. Anne Industries Ltd.'s Agreements; and vesting the purchased assets in the Purchaser.

[2] The second motion is a joint motion of St. Anne Industries Ltd. and A. C. Poirier & Associates Inc., the Trustee in Bankruptcy of St. Anne Pulp allowing and approving the secured claim filed by St. Anne Industries Ltd. in the bankrupt estate of St. Anne Pulp and dismissing with prejudice the Notice of Disallowance of Security with respect to the security of St. Anne Industries Ltd. with respect to the assets of St. Anne Pulp dated March 24, 2005.

[3] The third motion is a joint motion by the Trustee in Bankruptcy of St. Anne Pulp; Green Jain Wedlake Inc. as Receiver of St. Anne Pulp; St. Anne Industries Ltd.; and certain lienholders of St. Anne Pulp seeking an order vacating the Preservation Order made by this Court and authorizing the Receiver to remit to St. Anne Industries Ltd. all proceeds of realization of the assets of St. Anne Pulp held in its preserved bank account; and dismissing with prejudice motions for Interim Injunctions and/or Preservation Orders that have been brought by the Trustee, and certain lienholders.

OVERVIEW

[4] St. Anne Pulp made an assignment in bankruptcy on September 15, 2004. The assignment in bankruptcy indicates a deficiency of assets to liabilities in the amount of $46,215,299.49.

[5] On October 25, 2004, by order of this Court, A.C. Poirier & Associates Inc. was appointed as Trustee in Bankruptcy of St. Anne Pulp, replacing the previous Trustee.

[6] Following its appointment, A. C. Poirier & Associates Inc. commenced an extensive review of the books, records and financial affairs of St. Anne Pulp as required pursuant to its duties as Trustee under the *Bankruptcy and Insolvency Act* (the "*BIA*"). This review included extensive examinations of numerous officers, representatives and employees of St. Anne Pulp, its ultimate parent company, Parsons & Whittemore Inc., and the auditors of St. Anne Pulp. The review and examinations were conducted in consultation with and with the approval of the Inspectors of the bankrupt estate of St. Anne Pulp.

[7] Initially, because of the large deficiency, the prospect for any recovery for the bankrupt estate of St. Anne Pulp was minimal.

[8] The Trustee, with the unanimous approval of the Inspectors, has entered into a global settlement involving a compromise of the claims of the Province and St. Anne Industries Ltd. in conjunction with the sale of the mill and related assets.

[9] Following months of negotiation, both the Province and St. Anne Industries Ltd. have agreed to compromise certain claims they may have against St. Anne Pulp and to provide certain funds on the closing of the proposed sales under the Province's Agreement and St. Anne Industries Ltd.'s Agreement.

[10] The Trustee and the Inspectors of the Bankrupt Estate of St. Anne Pulp have worked with counsel for the Trustee, the Observers, the Province, other secured creditors and their respective legal counsel to put together a comprehensive settlement.

[11] The comprehensive settlement provides for at least the following: significant payments to the lien claimants; payments to preferred creditors including employees, as provided for in the *BIA*; reopening of the mill and continuing employment for former employees; potential for recovery from tax refunds; dividend to unsecured creditors; repayment of the bulk of the Province's advances; and payment of outstanding costs of administration.

[12] The Trustee has confirmed that the interests of all parties are fully represented and that the settlement and sale of assets are in the best interests of all stakeholders including preferred creditors, lienholders and other parties.

[13] The settlement is binding on the parties, subject to the approval of this Court. It would result in the following: $1,500,000 to the Trustee for the benefit of the unsecured creditors as a result of the Province's Agreement of sale of the mill site and woodlands; $1,381,000 paid by St. Anne Industries Ltd. to the Trustee for the benefit of the unsecured creditors; between zero and $1,500,000 in potential tax refunds to the

Trustee for the benefit of unsecured creditors; St. Anne Industries Ltd., Parsons & Whittemore Inc. and the Province will not prove as unsecured creditors reducing the claims pool by an estimated $16,000,000; and $1,500,000 to the mechanics' lienholders as a result of the Province's Agreement.

[14] Pursuant to section 136(1)(d) of the *BIA*, this settlement would allow sufficient funds for all employees of St. Anne Pulp with a preferred claim to receive a payment of up to $2,000.

[15] The proposed sales should provide for significant recoveries for the mechanics' lienholders of St. Anne Pulp and some recovery for the employees and general creditors of St. Anne Pulp.

[16] In *Thomson Kernaghan & Co (Re)* [2003] O.J. No. 5300 (Ont. Sup. Ct.), Justice Farley described a settlement proposed by the Trustee as follows, at paragraph 15:

> ... The Trustee has reached the conclusion that the settlement is commercially reasonable. There would be certain recovery now for the Estate as opposed to the vicissitudes of litigation with no results for a substantial period of time, and no certainty of success against those defendants who may have exigible assets at the time that a judgment may be confirmed.

[17] I am satisfied that the Trustee in this case has driven a hard bargain over a considerable period of time and that the settlement and sale are in the best interests of unsecured creditors, preferred creditors and the lienholders.

[18] The Trustee is satisfied that the prices and values are fair and reasonable. It is, in my opinion, a commercially reasonable settlement.

[19] I am of the opinion that the global settlement is in the best interests of the bankrupt estate of St. Anne Pulp as it will result in payments of up to $2,000 per employee under section 136(12)(b) of the *BIA*; some recovery for unsecured creditors, and significant recovery for lienholders. It will also result in the Nackawic mill operating again and will benefit the former employees, the Town of Nackawic and the Province of New Brunswick. I agree with the Trustee, it is indeed time to move on. I therefore allow all three motions.

[20] Accordingly, orders will issue:

(a) for the appointment of an Interim Receiver of all of the undertaking and assets of St. Anne Pulp, excluding inventory and receivables;

(b) for the approval of the Province and St. Anne Industries Ltd.'s Agreements;

(c) for the vesting of the purchased assets in the purchaser;

(d) allowing and approving the secured claim filed by St. Anne Industries Ltd. in the bankrupt estate of St. Anne Pulp;

(e) dismissing with prejudice the Notice of Disallowance of Security with respect to the security of St. Anne Industries Ltd. in the assets of St. Anne Pulp dated March 24, 2005;

(f) vacating the Preservation Order made by this Court and authorizing the Receiver to remit to St. Anne Industries Ltd. all proceeds of realization of the assets of St. Anne Pulp held in its preserved bank account; and

(g) dismissing with prejudice motions for Interim Injunctions and/or Preservation Orders that have been brought by the Trustee, and certain lienholders.

Peter S. Glennie, J.C.Q.B.

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Court File No. BK-21-02734090-0031

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

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