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CITATION: *Boreal Capital Partners Ltd et al. (Re)*, 2021 ONSC 7802
COURT FILE NO.: CV-21-00672654-00CL
DATE: 2021-11-29

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

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

-AND-

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BOREAL CAPITAL PARTNERS LTD., JRB-331 SHEDDON HOLDINGS LTD.,
2123068 ONTARIO LIMITED, JRB-109 REYNOLDS HOLDINGS LTD., JRB-339
CHURCH HOLDINGS LTD., JRB-147 CHURCH HOLDINGS LTD, Applicants

BEFORE: Penny J.

COUNSEL: Rebecca L. Kennedy, Rachel Nicholson and Puya Fesharaki, for the Applicants

Peter J. Osborne, Alex Morrison and Greg Adams, for the proposed Monitor,
Ernst & Young Inc.

Daniel Shapira and Jessica Sorbara, for the DIP Lender, Halmont Properties
Corporation

James MacLellan and Bevan Brooksbank, for Trisura Guarantee Insurance
Company

HEARD (by videoconference in Toronto): November 25, 2021

ENDORSEMENT

Overview

- [1] This is an application for an initial order and other related relief under the *Companies Creditors Arrangement Act*, RSC 1985, c C-36.

- [2] This matter came before me at 2:00 PM on Thursday, November 25, 2021. After reviewing the application record and at the conclusion of oral submissions, I issued the initial order sought, with reasons to follow. These are the reasons.

- [3] The principal issues on the application are whether:
 - (a) the applicants meet the criteria to obtain relief under the CCAA;
 - (b) the court should grant a stay of proceedings, and whether this court should extend the stay of proceedings to the partnership entities involved in the enterprise;

Analysis

Do the applicants meet the criteria to obtain relief under the CCAA?

[14] The applicants are insolvent. Both the test under the BIA and the expanded *Stelco* test are satisfied in this case. The applicants' liabilities materially exceed their assets and they are experiencing an operational deficit: the applicants are unable to pay liabilities that are currently due and those coming due. In addition, the applicants are exposed to significant financial risk arising from claims of unsecured creditors and other stakeholders that the applicants will be unable to pay without interim financing. This includes a host of potential claims relating to delay or frustration of the development of the projects, such as by contractors and potential end users of the condominium units. The statutory financial threshold is not in issue.

Should the court grant the stay of proceedings and should the court extend the stay of proceedings to the partnership entities involved in the enterprise?

[15] Section 11.02(1) permits the court to grant an initial stay of up to 10 days on an application for an initial order, provided the stay is appropriate and the applicants have acted with due diligence and in good faith. Under s. 11.001, other relief granted under s. 11 of the CCAA at the same time as an initial order under s. 11.02(1) must be limited "to relief that is reasonably necessary for the continued operation of the debtor company in the ordinary course of business during that period."

[16] Absent exceptional circumstances, the relief granted during the initial stay period should be limited and where possible, the status quo should be maintained during that period. The initial stay period allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing. Whether particular relief is necessary to stabilize a debtor company's operations during the initial stay period is a factual determination, based on all of the circumstances of the particular debtor. There are no "hard and fast" rules: *Re Lydian International Limited*, 2019 ONSC 7473 [Commercial List].

[17] Here, the applicants are experiencing a liquidity crisis and are unable to meet their obligations generally as they become due. The applicants intend to continue operations and consult with their stakeholders in good faith if they are granted protection. Therefore, it is appropriate for this Court to grant the requested stay of proceedings in favour of the applicants.

[18] The CCAA applies to debtor companies, not partnerships. Nevertheless, where the operations of partnerships are integral and closely related to the operations of the applicants, it is well-established that the court has the jurisdiction to extend the protection of the stay of proceedings to those partnerships in order to ensure that the purposes of the CCAA can be achieved.

[19] The individual project partnerships are not applicants in this proceeding. The business and operations of the applicants are, however, deeply integrated with the partnerships at all

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CITATION: Canwest Publishing Inc., 2010 ONSC 222
COURT FILE NO.: CV-10-8533-00CL
DATE: 20100118

ONTARIO

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

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST
INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

COUNSEL: *Lyndon Barnes, Alex Cobb and Duncan Ault* for the Applicant LP Entities
Mario Forte for the Special Committee of the Board of Directors
Andrew Kent and Hilary Clarke for the Administrative Agent of the Senior
Secured Lenders' Syndicate
Peter Griffin for the Management Directors
Robin B. Schwill and Natalie Renner for the Ad Hoc Committee of 9.25% Senior
Subordinated Noteholders
David Byers and Maria Konyukhova for the proposed Monitor, FTI Consulting
Canada Inc.

PEPALL J.

REASONS FOR DECISION

Introduction

[1] Canwest Global Communications Corp. (“Canwest Global”) is a leading Canadian media company with interests in (i) newspaper publishing and digital media; and (ii) free-to-air television stations and subscription based specialty television channels. Canwest Global, the entities in its Canadian television business (excluding CW Investments Co. and its subsidiaries) and the National Post Company (which prior to October 30, 2009 owned and published the National Post) (collectively, the “CMI Entities”), obtained protection from their creditors in a

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[54] I am satisfied that the issue of notice has been appropriately addressed by the LP Entities. As to whether the amounts are appropriate and whether the charges should extend to the proposed beneficiaries, the section does not contain any specific criteria for a court to consider in its assessment. It seems to me that factors that might be considered would include:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

This is not an exhaustive list and no doubt other relevant factors will be developed in the jurisprudence.

[55] There is no question that the restructuring of the LP Entities is large and highly complex and it is reasonable to expect extensive involvement by professional advisors. Each of the professionals whose fees are to be secured has played a critical role in the LP Entities restructuring activities to date and each will continue to be integral to the solicitation and restructuring process. Furthermore, there is no unwarranted duplication of roles. As to quantum of both proposed charges, I accept the Applicants' submissions that the business of the LP Entities and the tasks associated with their restructuring are of a magnitude and complexity that justify the amounts. I also take some comfort from the fact that the administrative agent for the LP Secured Lenders has agreed to them. In addition, the Monitor supports the charges requested. The quantum of the administration charge appears to be fair and reasonable. As to the quantum

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CITATION: Springer Aerospace Holdings Limited, 2022 ONSC 6581
COURT FILE NO.: CV-22-00690657-00CL
DATE: 20221124

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED (the “CCAA”)

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS LIMITED AND 1138969 ONTARIO INC.

BEFORE: Penny, J.

COUNSEL: *Sharon Kour, Caitlin Fell and Joel Turgeon*, Counsel for the Applicants

Miranda Spence and Matilda Lici, Counsel for Proposed Monitor, MNP

Haddon Murray and Katherine Yurkovich, Counsel for Caisse Desjardins Ontario Credit Union Inc.

Vern DaRe, Counsel for the Proposed DIP Lender

HEARD: November 23, 2022

ENDORSEMENT

Overview and Issues

- [1] This is an application for relief under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36. It is made by 1138969 Ontario Inc. (o/a Springer Aerospace) (which I will refer to as “Springer”) and its sole shareholder, Springer Aerospace Holdings Limited (referred to as “Holdco”). Following the hearing, I granted the initial order with reasons to follow. These are the reasons.
- [2] Springer operates one of the largest aircraft maintenance, repair and overhaul businesses in Canada, dating back to 1972. Springer is one of the only “one-stop-shops” for aircraft maintenance in Canada. It is located in Echo Bay, near Sault Ste. Marie, Ontario. Springer employs about 100 people. It is the second largest employer in the region. The loss of employment and income for 100 households in a town of 1,600 residents would have serious implications in the local area. Springer is the only aerospace business in Northern Ontario, such that it is unlikely that the company’s employees would find similar employment in the area. Springer provides maintenance services to most of the airlines

The Charges

The DIP

- [15] Section 11.2(4) of the CCAA establishes a non-exhaustive list of criteria that the court must consider in deciding whether to grant a DIP lender's charge: the period during which the Applicants are expected to be subject to CCAA proceedings, how the Applicants' business and financial affairs are to be managed during the proceedings, whether the Applicants' management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants, the nature and value of the Applicants' property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the monitor supports the charge. DIP financing may be approved even if it potentially prejudices some creditors, as long as the prejudice is outweighed by the benefit to all stakeholders.
- [16] While management no longer enjoys the confidence of Desjardins, I am satisfied, at this stage of the application for an initial order, that the factors, considered as a whole, favour the grant of the relief sought. In particular, where the funding is sought on an interim basis, the Court must consider if the terms of the loan are limited to what is reasonably necessary for the continued operations of the company.
- [17] The initial proposed DIP loan and charge is \$600,000. The Applicants need liquidity to continue their operations during the restructuring period. According to the cash flows, the Applicants need to draw on the DIP loan to meet their payroll obligations this week. The proposed amount is roughly tailored to the initial 10 days. A first charge is a condition of advancing the DIP loan. The terms of the DIP loan term sheet are typical for such facilities approved in similar matters before the Commercial List. The DIP lender's charge will not secure any obligations existing before the initial order is made, satisfying the terms set out in s. 11.2(1) of the CCAA. The Monitor supports the approval of the DIP loan and the DIP lenders charge in the circumstances.

Administration Charge

- [18] The Court has jurisdiction to grant an administration charge under s. 11.52 of the CCAA. I am to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor.
- [19] The success of the Applicants' restructuring is dependent on the involvement of the Monitor and legal counsel. Those roles are not duplicative. While estimating the quantum of an administration charge is "an inexact exercise", the quantum of the administration charge sought is commensurate with the complexity of the Applicants' business and anticipated restructuring. The Applicants have incurred fees leading to this Application and are forecast to incur further fees in connection with the restructuring, including to prepare for the comeback hearing, communicating with employees and stakeholders following the

initial filing, and complying with statutory notices, mailings and communications. It is appropriate for the Court to grant the initial administration charge sought of \$80,000.

The Directors' Charge

- [20] The Applicants currently have no director and officer liability insurance. Obtaining director and officer insurance at this stage is unlikely to be within the realm of reasonable possibility.
- [21] To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors and officers, who have considerable institutional knowledge and specialized expertise. The proposed directors' charge is for the maximum amount of \$165,000, which is equivalent to approximately two weeks of the Applicants' payroll, including source deductions. That is the only reasonably anticipated potential exposure of directors and officers for the initial 10-day period of these CCAA proceedings. The proposed directors' charge provides assurance to employees that directors' liability for unpaid wages and vacation pay will be satisfied.
- [22] The directors' charge does not prime Desjardins' security and Desjardins suffers no prejudice. The proposed directors' charge secures only obligations and liabilities incurred after the commencement of the proceedings and does not apply to liability incurred as a result of gross negligence or wilful misconduct, which satisfies the requirements of s. 11.51(1) and 11.51(4) of the CCAA.
- [23] Finally, the Monitor supports the Applicants' request for the directors' charge.
- [24] The directors' charge is approved in the amount of \$165,000.

Pre-filing Amounts Owed to Key Suppliers

- [25] Courts have often granted orders under s. 11 of the CCAA allowing applicants to pay pre-filing amounts to critical suppliers with the consent of the monitor. In doing so, courts have considered: whether the goods and services concerned are integral to the business, the applicants' need for the uninterrupted supply of the goods or services, the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate, and the effect on the applicants' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.
- [26] Given Springer's location in Northern Ontario and the specialized nature of the aerospace business, Springer has limited vendors who are able to supply the specific products and services that Springer requires. Any interruption of supply would have a material adverse effect on the business. Springer is particularly vulnerable to interruptions as it does not stockpile significant inventory of parts and supplies in the ordinary course.
- [27] It is appropriate that the Applicants be entitled but not required to pay, with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the

date of the initial order, if these payments are necessary to avoid disruption to the operations of the Applicants' business during these proceedings.

Appointment of MNP as Monitor

[28] The Applicants propose to have MNP appointed as the Monitor. MNP is a "trustee" within the meaning of subsection 2(1) of the BIA, is established and qualified, and has consented to act as Monitor. The involvement of MNP as the court-appointed Monitor will lend stability and assurance to Springer's stakeholders. MNP is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.

The Sealing Order

[29] The confidential affidavit filed in this application contains appraisals of the Applicants' property appended as exhibits. This is sensitive information, the confidentiality of which must be preserved until a plan of compromise or other restructuring is completed. This is to preserve the ability of the Applicants and the Monitor to maximize value during the restructuring process.

[30] This court has jurisdiction to make the sealing orders sought under s. 137(2) of the *Courts of Justice Act*. There is a public interest in maximizing recovery in an insolvency that goes beyond each individual case. The relief sought meets the test in *Sherman Estate* and is appropriate in the circumstances.

Comeback Hearing

[31] The comeback hearing shall take place on December 2, 2022 at 11:00 AM

Penny, J.

Date: November 24, 2022

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CITATION: McEwan Enterprises Inc., 2021 ONSC 6453
COURT FILE NO.: CV-21-00669445-00CL
DATE: 2021-10-01

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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 MCEWAN ENTERPRISES INC.

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Robert J. Chadwick, Caroline Descours, and Trish Barrett* for the Applicant

Sean Zweig and Joshua Foster, for the Monitor

Virginie Gauthier, for The Cadillac Fairview Corporation Limited

HEARD and DETERMINED: September 28, 2021

REASONS RELEASED: October 1, 2021

ENDORSEMENT

1. The initial hearing of this matter took place on September 28, 2021. At the conclusion of the hearing, I granted an Initial Order with reasons to follow. These are the reasons.

A. OVERVIEW

2. McEwan Enterprises Inc. (“MEI”) is a full-service restaurant, catering, gourmet grocery and events company (the “Business”) based in the Greater Toronto Area (the “GTA”). MEI was founded in 1987 by Mark McEwan, who leads the development, preparation and delivery of the culinary aspects of the Business.

3. Capitalized terms used but not defined herein have the meanings given to such terms in the Affidavit of Dennis Mark McEwan sworn September 27, 2021 (the “McEwan Affidavit”).

4. MEI brings this application for an initial order (the “Initial Order”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”). Counsel to MEI submits that the principal objectives of these CCAA proceedings are to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of MEI and its Business. As part of its restructuring efforts pursuant to these CCAA proceedings, MEI intends to seek to complete the sale and transfer of the Business pursuant to the proposed Transaction (as defined below).

27. A company is also insolvent for the purposes of the CCAA if, at the time of filing, there is a reasonably foreseeable expectation that there is a looming liquidity condition or crisis that would result in MEI being unable to pay its debts as they generally become due if a stay or proceedings and ancillary protection are not granted by the court. (see: *Stelco, supra* at para. 40).

28. Having reviewed the McEwan Affidavit and hearing submissions, I am satisfied that MEI meets both the traditional test for insolvency under the BIA and the expanded test for insolvency based on a looming liquidity condition.

29. As at August 31, 2021, MEI has aggregate liabilities exceeding \$10 million. Thus, total claims against MEI exceed the \$5 million threshold amount under the CCAA.

30. Accordingly, I am satisfied MEI is a “debtor company” to which the CCAA applies.

31. Subject to the terms of the Initial Order, MEI intends to honour all of its obligations in respect of its employees, suppliers and service providers in the ordinary course, as well in respect of its customer gift cards and the Customer Program. Pursuant to the proposed Transaction, any and all outstanding amounts owing in respect of MEI’s employee, trade or customer obligations will be assumed by the Purchaser upon implementation of the Transaction.

32. I am also satisfied that the Court has the jurisdiction to permit payment of pre-filing obligations in a CCAA proceeding, including where such payments are critical to the ongoing operations of a debtor company or the maintenance of its customer, supplier and employee relationships. (See: *Canwest Global Communications Corp., Re* (2009), 59 C.B.R. (5th) 72 (Ont. Sup. Ct. J. [Commercial List]) at paras. 41, 43; *Cinram International Inc., Re*, 2012 ONSC 3767 at para. 37 and Sch. C at paras. 66-71; and *Performance Sports Group Ltd., Re*, 2016 ONSC 6800 at para. 24 [*Performance Sports*]).

33. In arriving at this conclusion, I have taken into account a number of factors in authorizing the payment of pay pre-filing obligations, including: (a) whether the goods and services were integral to the business of the applicant; (b) the applicant’s need for the uninterrupted supply of the goods and services; (c) whether the applicant had sufficient inventory of the goods on hand to meet its needs; (d) the effect on the applicant’s operations and ability to restructure if it could not make pre-filing payments; and (e) the fact that no payments would be made without the consent of the Monitor. (See: *Cinram, supra* at para. 37 and Sch. C at paras. 66-71; *Performance Sports, supra* at para. 25; and *JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at para. 24 [*JTI-Macdonald*]).

34. Pursuant to the proposed Initial Order, it is proposed that the Monitor not be required to comply with the notification requirements of Section 23(1)(a) of the CCAA to: (a) publish a newspaper notice in respect of the CCAA proceedings; (b) send a notice to known creditors; or (c) make publicly available a list showing the names, addresses and estimated claim amounts of those creditors.

35. I am satisfied that pursuant to Section 23(1)(a) of the CCAA, the Court has the jurisdiction to grant an order not requiring compliance with the applicable notice provisions and/or varying