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March 4, 2024
File No.: 231274.00057/20252

Mitch Stephenson
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Uploaded to CaseLines and Filed

Superior Court of Justice (Commercial List)
330 University Ave., 8th Floor
Toronto, ON M5G 1R7

Attention: The Honorable Justice Black

Your Honour:

Re: Export Development Canada v. Antamex Industries ULC
Court File No. CV-24-00715153-00CL

We are legal counsel to Export Development Canada (“EDC”) in the above-noted application in which EDC seeks, among other things, the appointment of Deloitte Restructuring Inc. (“**Deloitte**”) as the receiver (in such capacity, the “**Receiver**”) of the Property of Antamex Industries ULC.¹ We write to report to you on the status of the discussions among the various stakeholders in accordance with the direction at paragraph 40 of your endorsement dated February 27, 2024.

Upon the release of your endorsement, EDC’s counsel, the proposed Receiver and its counsel, Antamex’s counsel, the Sureties’ counsel, and the Landlord’s counsel immediately resumed their discussions.² These discussions proceeded on a without prejudice basis and resulted in the exchange of without prejudice proposals by EDC and by Antamex and the Sureties, none of which were accepted.

Today, EDC received a *with* prejudice proposal (in the form of a table) from Antamex and the Sureties which is attached as Schedule “A”. While the proposal is not acceptable to EDC, EDC has included a mark up of that proposal at Schedule “B” with an additional column named ‘EDC’s Position & Counter-Proposal’ which sets out a counter-proposal that would be acceptable to EDC.

If Antamex and the Sureties do not agree to EDC’s counter-proposal before 5:00 pm (Toronto time) today, EDC respectfully submits that this Court should grant the Receivership Order in respect of all of the Property of Antamex today.

¹ Capitalized terms used but not defined herein have the meanings given to them in the Affidavit of Adam Smith sworn February 21, 2024.

² “**Sureties**” means Euler Hermes North America Insurance Company, Aviva Insurance Company of Canada and Nationwide Mutual Insurance Company.



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While EDC, through counsel, engaged in without prejudice discussions with the Landlord last week, EDC did not receive any proposal from the Landlord until today at 12:02 pm (Toronto time). EDC has had extremely limited time to review this proposal; however, it does not appear acceptable to EDC.

We note that counsel for the Landlord also indicated last week that it wished to propose revisions to the draft receivership order to be included in our report to the Court. At 1:18 pm today, we received a letter from Landlord's counsel which is attached at Schedule "C". The Landlord's position as set forth in that letter is as follows:

Norwich 40 is the owner of all of the equipment at the Property. EDC has definitely abandoned any right or interest in the equipment located at the Property by failing and refusing to remove the equipment from the Property despite numerous opportunities to do so. Even if Norwich 40 does not own the equipment, Norwich 40 has no obligation to store or maintain the equipment indefinitely or to forgo its right to enter into a lease for the Property so as to mitigate its damages stemming from Solar Seal's breach of the Lease.

EDC respectfully submits that the positions expressed by the Landlord in its letter, while not supported in fact or in law, showcase precisely why a receivership order in respect of the US collateral is required now.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



Mitch Stephenson

MTS/ia

Cc: Stuart Brotman, Fasken Martineau DuMoulin LLP
Linc Rogers and Caitlin McIntyre, Blake, Cassels & Graydon LLP
Phil Reynolds and Richard Williams, Deloitte Restructuring Inc.
Wael Rostom and Jeffrey Levine, McMillan LLP (Counsel for Antamex)
James McLellan, Denise Bambrough, Mark Borgo, and Andrew Punzo, Borden Ladner Gervais LLP (Counsel for Sureties)
Chris Besant, Gardiner Roberts LLP (Counsel for the Landlord)



Schedule A

From: [Jeffrey Levine](#)
To: [Mitch Stephenson](#); [Stuart Brotman](#); "Reynolds, Phil"; "Williams, Richard"; "linc.rogers@blakes.com"; "McIntyre, Caitlin"
Cc: [Wael Rostom](#); "Punzo, Andrew"; "MacLellan, James"; "Bambrough, Denise L."; "Borgo, Mark"
Subject: [EXT] Antamex ats. EDC
Date: March-04-24 11:14:32 AM
Attachments: [image001.gif](#)
[With Prejudice- Adjournment Proposal to March 12, 2024\(143168335.3\).docx](#)

Adding Mitch.



Jeffrey Levine*

Partner – Group Head, Complex Disputes and Regulatory Regimes Group
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From: Jeffrey Levine

Sent: Monday, March 4, 2024 11:12 AM

To: Stuart Brotman <sbrotman@fasken.com>; Reynolds, Phil <philreynolds@deloitte.ca>; Williams, Richard <richwilliams@deloitte.ca>; linc.rogers@blakes.com; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Cc: Wael Rostom <Wael.Rostom@mcmillan.ca>; Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>; Borgo, Mark <MBorgo@blg.com>

Subject: Antamex ats. EDC

WITH PREJUDICE

Dear Counsel,

Further to paragraph 41 of Justice Black's Endorsement of February 27th, please find attached the Sureties' with-prejudice proposal for the terms of an adjournment to March 12th. Antamex agrees with the terms of the proposal. In particular, with respect to item 3 in the Sureties' proposal, subject to the caveats listed Antamex will also not request further adjournments past March 12th.

With respect to item 4, Antamex would expect that an agreed form of order would expressly provide that the Receiver has no powers, duties or responsibilities over Antamex's property or affairs other than in respect of EDC's priority collateral, and that costs of the limited receivership are secured only by Antamex's interest in EDC's priority collateral. Antamex would also submit for Justice Black's

consideration that the form of limited receivership order include a stay in favour of Antamex precluding the termination of contracts to which it is party by reason of the order.

Antamex asks that before Deloitte commences any liquidation of its priority collateral that Deloitte share its liquidation analysis with Antamex.

Justice Black also directed at paragraph 41 of his Endorsement that EDC's report to the court should include the position of the Landlord. Presently, neither Antamex nor the Sureties are aware of the Landlord's with-prejudice position.

We look forward to receiving a draft of EDC's report to Justice Black incorporating the foregoing at your earliest opportunity so that Antamex and the Sureties can assess whether there remain items about which the parties disagree that may need to be addressed in a responding report from Antamex due by 5pm today.

Yours truly,



Jeffrey Levine*

Partner – Group Head, Complex Disputes and Regulatory Regimes Group
Pronoun: He / Him / His - Il / lui / son
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With Prejudice: Sureties' Proposal for Adjournment to and including March 12, 2024

The Sureties require additional time to complete their investigation of Antamex's books and records, and consider whether and to what extent they are prepared to provide financial support to Antamex. To address EDC's concerns regarding potential prejudice in connection with the proposed adjournment of EDC's receivership application, the Sureties propose the following:

No.	Proposal	Rationale
1.	To pay an amount up to \$1,000,000.00 CAD into the Antamex bank account(s) promptly following March 12, 2024, in the event the Sureties do not commit to providing financial support to Antamex by March 12, 2024. Such amount will be equal to the verified amount disbursed by Antamex during the adjournment period of March 4, 2024 to March 12, 2024 ("Adjournment Period").	It appears from the books and records review to date that the amount of any disbursements <u>during this Adjournment Period</u> may be less than \$1 million. Furthermore, it is conceded that EDC does not have first priority on the Antamex bank accounts and is seeking a Receiver's Charge in the amount of \$500,000.00 pursuant to its most recent draft order. Accordingly, to address EDC's concern without affording it a windfall, the negotiated quantum of any reimbursement by the Sureties ought to consider the amount actually disbursed from the Antamex bank accounts during the applicable Adjournment Period and the amount of any prejudice to EDC.
2.	Antamex will pay the amount of \$255,000 USD to EDC per EDC loan agreement, subject to foreign exchange rates, for last loan payment not yet made.	
3.	Subject to any unanticipated material circumstances arising or an agreement between the parties, Sureties will not make further requests for an adjournment beyond March 12, 2024.	
4.	Sureties will not oppose the appointment of an asset- specific receiver over the US Collateral only ("Partial Receivership"), and subject to an agreement on the form of order between counsel acting reasonably. The Partial Receivership will be effective March 13, 2024.	An appropriate form and content of the order is crucial. As discussed and submitted to the court at the hearing, a receivership could result in adverse consequences under Antamex's construction contracts including the possibility of deemed default. As such, the specific purpose and scope of any partial receivership order must be clearly reflected therein to mitigate the risk of such adverse consequences. Otherwise, the purpose of any adjournment arrangement may be futile. The post-dated effective date is required to ensure that the Partial Receivership or any actions taken in connection therewith, do not interfere with, delay or hinder the sureties' investigation, as the sureties require Antamex to dedicate its time, information, and resources to the sureties' investigation during this limited Adjournment Period.
5.	During the Adjournment Period, Antamex may continue to operate in the ordinary course including performing as required under construction contracts with respect to the ongoing fabrication, supply and installation of materials.	

Schedule B

With Prejudice: Sureties' Proposal for Adjournment to and including March 12, 2024

The Sureties require additional time to complete their investigation of Antamex's books and records, and consider whether and to what extent they are prepared to provide financial support to Antamex. To address EDC's concerns regarding potential prejudice in connection with the proposed adjournment of EDC's receivership application, the Sureties propose the following:

No.	Proposal	Rationale	EDC's Position & Counter Proposal
1.	<p>To pay an amount into the <u>Deloitte trust account</u> promptly following March 12, 2024. Such amount will be equal to the verified amount disbursed by Antamex during the adjournment period of <u>February 27, 2024</u> to March 12, 2024 ("<u>Adjournment Period</u>"). <u>EDC will require reasonable access to the books and records of Antamex to verify the disbursements.</u></p> <p><u>In addition to such amounts, the Sureties will also agree to reimburse EDC directly for all professional fees and expenses reasonably incurred during the Adjournment Period to be evidenced by summary invoices provided to the Sureties. For greater certainty, payment of this amount will not be conditional on the Sureties' funding decision or any other matter and such amount will include the fees and disbursements (including HST) incurred by EDC's legal counsel and the proposed Receiver and its legal counsel.</u></p>	<p>It appears from the books and records review to date that the amount of any disbursements during this Adjournment Period may be less than \$1 million. Furthermore, it is conceded that EDC does not have first priority on the Antamex bank accounts and is seeking a Receiver's Charge in the amount of \$500,000.00 pursuant to its most recent draft order. Accordingly, to address EDC's concern without affording it a windfall, the negotiated quantum of any reimbursement by the Sureties ought to consider the amount actually disbursed from the Antamex bank accounts during the applicable Adjournment Period and the amount of any prejudice to EDC.</p>	<p>See markup of Sureties' proposal in the 'Proposal' column. In EDC's view, the revisions are reasonable and necessary to address the prejudice that EDC will suffer during the Adjournment Period, which period began on February 27, 2024.</p> <p>The amount held in trust by Deloitte shall be held for the benefit of the receivership estate. EDC will require access to Antamex's books and records for the purpose of verifying the expenditures incurred during the Adjournment Period. To date, Antamex has not provided any records or details about the anticipated expenditures.</p>
2.	<p>Antamex will pay the amount of \$255,000 USD to EDC per EDC loan agreement, subject to foreign exchange rates, for last loan payment not yet made.</p>		<p>EDC's records indicate that the last payment due was in fact received on February 20, 2024.</p>
3.	<p>Subject to any unanticipated material circumstances arising or an agreement between the parties, Sureties will not make further requests for an adjournment beyond March 12, 2024.</p>		<p>In the absence of another agreement between the parties, a hearing on March 12, 2024 (or as soon thereafter as the Court can accommodate) will be peremptory on the respondent and other interested parties.</p>
4.	<p>Sureties will not oppose the appointment of an asset-specific receiver over the US Collateral <u>and the related books and records including the</u></p>	<p>An appropriate form and content of the order is crucial. As discussed and submitted to the court at the hearing, a receivership could result in</p>	<p>See markup of Sureties' proposal in the 'Proposal' column.</p>

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	<p>books and records of Antamex (“Partial Receivership”), and subject to an agreement on the form of order between counsel acting reasonably.</p> <p>The Partial Receivership will be effective immediately.</p>	<p>adverse consequences under Antamex’s construction contracts including the possibility of deemed default. As such, the specific purpose and scope of any partial receivership order must be clearly reflected therein to mitigate the risk of such adverse consequences. Otherwise, the purpose of any adjournment arrangement may be futile.</p> <p>The post-dated effective date is required to ensure that the Partial Receivership or any actions taken in connection therewith, do not interfere with, delay or hinder the sureties’ investigation, as the sureties require Antamex to dedicate its time, information, and resources to the sureties’ investigation during this limited Adjournment Period.</p>	<p>The Landlord has not indicated a willingness to refrain from dealing with or granting use of the equipment located at the Norwich Glass Plant to any third party during the requested Adjournment Period. For this reason, EDC’s prejudice in respect of that equipment can only be dealt with by the immediate appointment of the Receiver over Antamex’s interests in that equipment and the related books and records.</p>
5.	<p>During the Adjournment Period, Antamex may continue to operate in the ordinary course including performing as required under construction contracts with respect to the ongoing fabrication, supply and installation of materials.</p>		<p>EDC is concerned about Antamex incurring additional obligations and liabilities which it may not be capable of honouring. In EDC’s view, Antamex’s activities should be limited to those which are essential to maintaining the value of the Property during the Adjournment Period.</p>

Deleted: March 13, 2024

Schedule C



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Mitch Stephenson
Fasken Martineau DuMoulin LLP
Counsel for Export Development Canada

Jeffrey Levine
McMillan
Counsel for Antamex Industries ULC

With Prejudice

Dear Mr. Stephenson and Mr. Levine:

This firm acts as United States counsel to Norwich 40 TGCI LLC (“Norwich 40”), which owns certain commercial real property located at 40 Wisconsin Avenue, Norwich, CT (the “Property”). This letter sets forth Norwich 40’s position as to the application by Export Development Canada (“EDC”) for the appointment of a receiver for Antamex Industries ULC (“Antamex”).

Norwich 40 believes that the factual presentation EDC made to the Court in its materials filed in connection with the receivership application was deficient as it conveyed the impression that (i) EDC was a victim that had no knowledge of what was happening at the Property until very recently. As set forth below, that was certainly not the case;(ii) Antamex was the owner of the equipment presently located on Property, when in fact that is disputed as our client asserts it has title to same and the Antamex claim appears to be tenuous; and (iii) it did not make it sufficiently clear that there is no entitlement in any party to keep the assets on the Property without the landlord’s consent.

Relevant Facts

Norwich 40 was a party to a commercial real property lease dated as of October 15, 2021 (the “Lease”) with Solar Seal Architectural LLC nka Naverra LLC (“Solar Seal”). Pursuant to the Lease, Solar Seal leased the Property on which it operated a Glass Manufacturing Plant.

Norwich 40 and EDC entered into a Landlord Agreement dated as of October 15, 2015, whereby Norwich agreed to provide EDC with 15 days notice to cure any defaults and 30 days following termination of the Lease to remove 5 pieces of equipment identified on Schedule 1 to the Landlord Agreement (the “EDC Collateral”). EDC agreed that its collateral was limited to the EDC Collateral identified on Schedule 1 and that it shall have no right to remove anything from the property except for such EDC Collateral. The EDC does not claim to hold a priority lien position with respect to any assets beyond the EDC Collateral. EDC agreed that its right of access under the agreement would not extend beyond 30 days and that any EDC Collateral remaining on the property after such 30 day time period shall be deemed to have been abandoned by EDC and EDC shall have no further interest therein.

Notwithstanding Antamex’s alleged ownership of certain assets located at the property, Antamex did not enter into (or seek to enter into) a landlord agreement with Norwich 40 regarding such assets.

Solar Seal defaulted under the lease by, among other things, failing to make the rental payments due February 2023 and thereafter and failing to provide a replacement letter of credit in accordance with the Lease. Solar Seal was provided notices of default on January 20, 2023 and February 2, 2023, February 17, 2023, March 28, 2023, with a copy to Antamex.



Norwich 40 sent EDC a Notice to Lender on March 28, 2023, by which EDC was given a 15 day period to cure Solar Seal's defaults. EDC failed to cure the default.

On or about June 20, 2023, Norwich 40 notified EDC, Solar Seal, and Antamex of the default and that the Lease would be terminated effective June 21, 2023 as a result of Solar Seal's defaults. Norwich 40 issued a Notice to Quit dated June 20, 2023, demanding that Solar Seal vacate the property by June 26, 2023. Solar Seal failed to cure the default. As a result, Norwich 40 commenced an eviction proceeding in Connecticut Superior Court, Norwich Housing Court on June 27, 2023.

The eviction trial occurred on October 16, 2023 at which Solar Seal contested Norwich 40's eviction action. A Judgment of Eviction was entered by the Housing Court in Norwich 40's favor on November 9, 2023.

Norwich 40 sent EDC a letter on November 11, 2023 providing EDC with a copy of the eviction decision and 60 days notice (30 days more than required under the Landlord Agreement) to remove the EDC Collateral from the property in accordance with the terms of the Landlord Agreement between Norwich 40 and EDC. EDC did not remove any of the equipment in response to this notice.

Solar Seal appealed the eviction decision and Norwich 40 requested an appellate bond. On November 20, 2023, the Court entered an order requiring the posting of a bond of \$1,360,904 within 30 days in order to perfect an appeal. No such bond was posted.

The Appeal was dismissed on December 18, 2023 because Solar Seal failed to take appropriate steps to perfect its appeal.

On or about January 3, 2024, Norwich 40 retook possession of the property pursuant to its rights under the eviction decision.

On January 11, 2024, Norwich 40 sent another letter to EDC providing EDC with another 30 day window to remove the equipment located at the Connecticut property. Antamex was copied on the notice. Neither EDC nor Antamex took any steps to remove any of the equipment from the property by the requested deadline.

Because EDC did not remove the EDC Collateral by February 10, 2024, EDC abandoned its right to remove the EDC Collateral from the property and has no interest in any of the assets located at the Property.

Further, under Connecticut law, any assets remaining on the Property more than 15 days following the eviction have been deemed abandoned to Norwich 40 and Norwich 40 is now the owner of all such assets and is free to take any action it sees fit as to such assets.

Relevant Evidence Relating to Title Issues

Antamex and EDC have taken the position in the Canadian proceedings that Antamex and not Solar Seal was the owner of certain equipment located at the Property. As communicated to counsel for EDC and Antamex, the evidence belies this position. For example, Ryan Spurgeon, President of Antamex, in an email to EDC dated January 16, 2024 admits that the Purchase Orders for the Equipment are in name of Solar Seal rather than Antamex but claims without evidence that the purchase orders all contained typographical errors (See A340 of the record).

Further, EDC appears to acknowledge that a sale of the assets allegedly owned by Antamex at the Property cannot take place unless and until all title and lien issues with respect to such assets has been cleared up. For example, an email from Adam Smith of the EDC dated January 31, 2024 makes clear that Tiger (the company EDC approached to sell the assets at the Property) has taken the position that



there will need to be clarity regarding title to equipment and lien priorities before moving forward with a sale process. (See A414 of the record)

Position of Norwich 40

Norwich 40 is the owner of all of the equipment at the Property. EDC has definitely abandoned any right or interest in the equipment located at the Property by failing and refusing to remove the equipment from the Property despite numerous opportunities to do so. Even if Norwich 40 does not own the equipment, Norwich 40 has no obligation to store or maintain the equipment indefinitely or to forgo its right to enter into a lease for the Property so as to mitigate its damages stemming from Solar Seal's breach of the Lease.

Norwich 40 has repeatedly made clear to EDC and Antamex that it was desirous of moving forward with a lease to a new tenant, either one to a tenant that can use the equipment located at the Property or one that cannot use the equipment at the Property. If a new tenant cannot use the equipment at Property, then the equipment will need to be removed and disposed of.

Norwich 40 was fortunate to locate a new tenant that desires to use the equipment at the Property and is willing to enter into a lease without prejudice to the outcome of a quiet title action in Connecticut as to ownership of the equipment at the Property. It is Norwich 40's intention to enter into this lease after March 4, 2024. Norwich 40 does not believe such a lease would impair the rights of EDC or Antamex to litigate the title issues in the Connecticut along with any other party that may claim an interest in the equipment. As a result, it is Norwich 40's position that nothing Norwich 40 intends to do in the United States necessitates any action by the Court. If Norwich 40 is prevented from entering into a lease with this new tenant, then Norwich 40 would seek to promptly dispose of the equipment so that it could lease the Property to a new tenant that desires to lease the Property in a vacant condition.

Form of Receivership Order

We proposed that the clause below be added to the receivership order. Norwich 40 believes the suggested addition is appropriate given that the equipment located at the Property is located outside of Canada and that Antamex's claim to such equipment is disputed if not tenuous. Norwich 40 does not take a position on the receivership as long as the clause is added. Otherwise it reserves the right to object to the jurisdiction to extend the receivership order with respect to assets in the United States, and reserves the right to make a limited appearance to contest jurisdiction, without prejudice to its right to elect to oppose the orders on the merits. That said, Norwich 40 has no vested interest in weighing in on the decision as to who should be making decisions with respect to any claims Antamex may have with respect to such assets

Proposed Additional Clause to be added to Receivership Order:

32A. Notwithstanding anything else in this Order, nothing in this order shall be deemed to affect, limit, or stay the rights of any person entity or creditor from exercising its rights or remedies in respect of property located in the United States of America, including without limitation the right to commence proceedings in the United States of America to determine the ownership of property located there.

We thank you for giving us this opportunity to express Norwich's 40's position, which is being made without prejudice to any arguments it may have as to the jurisdiction of the Court.

Respectfully,

J. Sullivan

James Sullivan