

COURT FILE NUMBER 643 of 2016
COURT QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE SASKATOON
APPLICANTS 101133330 SASKATCHEWAN LTD. and
101149825 SASKATCHEWAN LTD.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF 101133330 SASKATCHEWAN LTD. and 101149825 SASKATCHEWAN LTD.

**SUPPLEMENTAL BRIEF OF LAW FILED ON BEHALF OF THE
APPLICANTS, 101133330 SASKATCHEWAN LTD. and 101149825
SASKATCHEWAN LTD.**

1. This supplemental brief of law is filed to correct an error in the Applicants' original brief dated April 23, 2019 (the "**First Brief**").
2. At paragraph 10 of the same, it was submitted on behalf of the Applicants that:

10. Where the debtor company is an employer, ss. 36(7) provides that the Court must also be '*satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and 5(a) [of the CCAA] if the court had sanctioned the compromise or arrangement.*' Interestingly enough, the present version of the CCAA does not contain a ss. 6(4)(a). There is only a standalone ss. 6(4) with no additional subsections. Some commentators attribute this inconsistency to certain 2007 amendments to the CCAA having altered the numbering of ss. 6(3)-(6) without making a corresponding amendment to ss. 36(7). In the absence of further direction from Parliament, the Applicants must consider the legislation as drafted. For the sake of economy, ss. 6(4) and 6(5)(a) are reproduced in the context of the discussion below.

[Emphasis added.]

3. This statement was made in error, as the *CCAA*'s internal inconsistency noted therein *has* been addressed in the most recent amendments. The present version of ss. 36(7) reads as follows:

6...

(7) The court may grant the authorization only if the court is satisfied that the company

can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

[Emphasis added.]

4. For ease of reference, ss. 6(5)(a) and (6)(a) read:

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and...

...
(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

...

[Emphasis added.]

5. The Applicants submissions with respect to ss. 5(a) appear at paragraphs 22-24 of the First Brief. By way of supplement, there is an issue that has arisen since the filing of the First Brief, which is explained in paragraphs 3-4 of the Fourteenth Supplementary Affidavit of John Orr sworn April 25, 2019 (the "**Fourteenth Affidavit**"). While 33330's bookkeeper had confirmed the potential amount owing to 33330's former employee, Mr. Armstrong, to be \$173.10, Employment Standards has subsequently advised that its 2016 assessment of Mr. Armstrong's unpaid vacation pay for the six

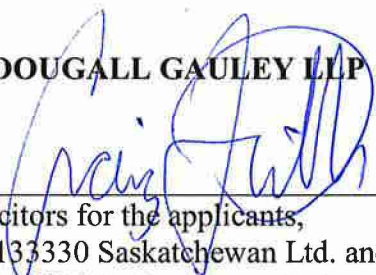
month period preceding the Initial Order indicates that Mr. Armstrong has a claim for \$2,077.20. The supporting information provided by Employment Standards has been given to the Monitor for review, and the draft Order has been amended to provide for a \$2,000.00 holdback (i.e., the maximum amount for which he may have a statutory preference) as security for any amount that may ultimately be determined to be owing to Mr. Armstrong pursuant to ss. 6(5)(a) of the *CCAA*.

6. With respect to ss. 6(6)(a) of the *CCAA*, the Fourteenth Affidavit confirms that 33330 is not a participant of any prescribed pension plan, such that the same does not apply.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of April, 2019.

McDOUGALL GAULEY LLP

Per:


Solicitors for the applicants,
101133330 Saskatchewan Ltd. and
101149825 Saskatchewan Ltd.

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