

IN THE COURT OF APPEAL OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

Respondent
(Plaintiff)

AND:

VANCOUVER
JUL 04 2018
COURT OF APPEAL
REGISTRY

WEDGEMOUNT POWER LIMITED PARTNERSHIP
WEDGEMOUNT POWER (GP) INC.
WEDGEMOUNT POWER INC.

Respondents
(Defendants)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Appellant
(Applicant)

**WRITTEN ARGUMENT OF DELOITTE RESTRUCTURING INC.,
COURT-APPOINTED RECEIVER OF THE RESPONDENTS,
WEDGEMOUNT POWER LIMITED PARTNERSHIP,
WEDGEMOUNT POWER (GP) INC. and WEDGEMOUNT POWER INC.**

Vicki Tickle

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Court-appointed Receiver of the Respondents, Wedgemount
Power Limited Partnership, Wedgemount Power (GP) Inc. and
Wedgemount Power Inc.

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Authority

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1. On May 12, 2017, on the application of Industrial Alliance Insurance and Financial Services Inc. (“**IA**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, as amended, Deloitte Restructuring Inc. (the “**Receiver**”) was appointed by Order of the Supreme Court of British Columbia (the “**SCBC**”) as receiver of the Respondents, Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. (collectively, the “**Wedgemount Entities**”).
2. The Wedgemount Entities are parties to an electricity purchase agreement dated March 6, 2015 (the “**EPA**”) with British Columbia Hydro and Power Authority (“**BCH**”).
3. On April 3, 2018, the Receiver filed an application (the “**Receiver’s Application**”) seeking a declaration of the SCBC that BCH could not terminate the EPA on the basis of any then existing ground or fact.
4. On April 3, 2018, BCH filed an application (the “**Arbitration Act Arbitration**”) seeking an order of the SCBC staying, or in the alternative dismissing, the Receiver’s Application.
5. On May 4, 2018, Mr. Justice Butler of the BCSC dismissed the Arbitration Act Application (the “**May 4 Decision**”), and heard the Receiver’s Application.
6. On May 18, 2018, in respect of the Receiver’s Application, Mr. Justice Butler held that BCH was estopped from terminating the EPA on the basis of a failure to meet commercial operation pursuant to the EPA by September 30, 2017 (the “**May 18 Decision**”). The oral reasons for judgment of Mr. Justice Butler in respect of the May 18 Decision are published at 2018 BCSC 971 (“**May 18 Reasons**”).
7. In reliance on the May 4 Decision and the May 18 Decision, the Receiver resumed the sale process in respect of the Wedgemount Entities’ run-of-river independent power project located near Whistler, British Columbia (the “**Project**”), and engaged in discussions and correspondence with counsel for 28165 Yukon Inc. (“**Yukon**”), the owner of certain lands on which portions of the Project are located.
8. The Receiver also, among other things: undertook ongoing care and maintenance at the Project site; dealt with Yukon’s request for the relocation of penstock (piping) sections from Yukon’s right of way; prepared updates for posting to the Sale Process data room; discussed with the Receiver’s consultant the consultant’s report regarding Project site drainage conditions and integrity of the temporary diversion channel; and updated IA.
9. On June 1, 2018, BCH filed a Notice of Appeal in respect of the May 18 Decision.
10. On June 18, 2018, IA filed a Notice of Motion seeking an order pursuant to sections 10(2) and 28 of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77 (the “**CAA**”), section 193 of the BIA and rule 31 of the *Bankruptcy and Insolvency General Rules*, CRC 1978, c. 368 that:

- (a) this Honourable Court does not have jurisdiction to hear BCH's appeal of the May 4 Decision; or
 - (b) in the alternative, the Notice of Appeal filed by BCH on June 1, 2018 be struck and the appeal of the May 18 Decision be dismissed.
11. On June 22, 2018, BCH filed a Notice of Motion seeking orders pursuant to section 10(2) of the CAA that:
- (a) the Notice of Appeal filed by BCH on June 1, 2018 stand as a Notice of Application for Leave to Appeal;
 - (b) the time for seeking leave to appeal pursuant to section 193 of the BIA be extended; and
 - (c) BCH be granted leave to appeal.
12. The May 18 Decision is grounded on the specific facts of this case: May 18 Reasons, paras 62 and 64.
13. If the relief sought by BCH is granted, and the appeal proceeds in the ordinary course, significant prejudice will be suffered by various stakeholders of the Wedgemount Entities, including (but not limited to) IA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: July 4, 2018



Counsel for the Receiver
Vicki Tickle