



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**ENDORSEMENT**

COURT FILE NO.: CV-24-00715153-00CL DATE: MARCH 13 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: **EXPORT DEVELOPMENT CANADA v ANTAMEX INDUSTRIES ULC et al**

BEFORE: **JUSTICE W. BLACK**

**PARTICIPANT INFORMATION**

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**ENDORSEMENT OF JUSTICE W. BLACK:**

1. Further to the parties' attendance before me on March 12, 2024 and my endorsement for that hearing, the parties were back before me today, as contemplated by my endorsement, having had an additional 24 plus hours to see if a deal could be reached.
2. Unfortunately, that did not prove to be the case, and so I heard additional submissions today about next steps.
3. At the outset, it is important to note that here is no opposition to Deloitte now being appointed as receiver over all assets, undertaking and properties of the respondent Antamex Industries ULC, and I make that Order, effective immediately. In addition to the now-evident lack of opposition to the appointment of the receiver, I find that the appointment is just and convenient as required by s. 243 of the BIA, and that indeed the circumstances more than justify the immediate involvement of the receiver to take control of various aspects of Antamex's operations and financial dealings. In that regard I also note that there is no dispute about EDC's right to appoint a receiver under its security, and no question that EDC gave proper notice of its intention to do so.
4. With one exception, discussed below, there is also no opposition to the form of Order proposed to confirm that receivership.
5. Rather, the submissions in response to the proposed receivership consisted of two themes.
6. First, from the Sureties, counsel intimated that the Sureties were frustrated by the lack of progress in the discussions with EDC and the receiver over the last few days, including with respect to priority issues. Nonetheless, counsel assured the Court that the Sureties are willing without reservation to collaborate and cooperate with the receiver.
7. The Sureties, joined on this score by counsel for Suffolk Construction, and counsel for the owner of the projects in Boston with which Suffolk is involved and to which Anatmex is a supplier/subcontracter, emphasized the need for the receiver immediately to understand the status of certain materials fabricated by Antamex for those Boston projects (and other projects) and to ensure that Antamex's contractual obligations are fulfilled in a timely way to avoid substantial potential damages.
8. Understandably, counsel for the receiver responded that the receiver will need any and all relevant information in that regard as soon as possible, that the receiver is encouraged by the willingness of the Sureties and others to work with the receiver quickly and cooperatively, and that it will endeavor, subject to appropriate caution and prudence, to make the necessary determinations about the right steps to take vis-à-vis the materials and projects at issue as soon as appropriate.
9. I should note that Suffolk explicitly reserved the rights it had asserted in relation to the Partial Receivership Order, but expressed a willingness to engage with the receiver to see what can be done, and potentially to avoid the need to join issue with the receiver (and EDC) about Suffolk's purported termination of the relevant subcontracts, and the rights and remedies it purports to have as a result of those terminations. EDC and the receiver likewise reserved their arguments concerning the effect of the Partial Receivership Order, and their position that the purported terminations were ineffective.
10. On these issues, I simply advised the parties that to the extent these potential issues emerge as stumbling blocks, I will make myself available to hear and adjudicate any such items.
11. The second theme – really a pair of discreet issues – was raised by counsel for Antamex.

12. First, Antamex's counsel advised that an amount of just over \$431,000.00 was set aside within the last day or so for a regular payroll distribution to employees (216 in number).
13. Counsel expressed the view that the employees may well have a trust claim relative to those funds, and simply asked that the receiver pay particular regard to the money set aside for that purpose, and not co-mingle those funds within the general account.
14. To the extent that the receiver determines that funds in that amount were in fact earmarked for payment to Antamex employees for past service to Antamex, I expect that it will take steps to preserve those funds for the benefit of employees as appropriate. I also expect that, even if the receiver necessarily determines to terminate the employment of employees, which it specifically acknowledged it may have to do, it will do so in a fashion that allows it to retain or rehire those employees who are critical to any ongoing operations of the entity as the receiver may determine, in order to maximize the value for all concerned.
15. Second, Antamex takes issue with a provision included in the receivership Order as paragraph 3(r).
16. That paragraph provides that the receiver may examine under oath any current or former directors or officers of the Debtor in accordance with Rule 34 of the Rules of Civil Procedure (the rule governing out of court examinations generally).
17. Antamex argues that this provision is not included within the model Order, and that the relevant statutory and common law authorities, while allowing for this kind of power, make clear that it is to be resorted to only in exceptional circumstances.
18. Antamex says that its relevant personnel have cooperated thus far with the receiver in the partial receivership, and intend to continue to do so, and that there is no indication or basis currently for the broad examination powers contemplated in paragraph 3(r).
19. EDC responds, on this point, that Antamex has not in fact been fully cooperative to this point, and that the circumstances in Connecticut in particular are sufficiently messy that the receiver requires Antamex's fulsome and immediate cooperation, and expeditious access to all relevant information.
20. Relative to paragraph 3(r), there is no evidence before me at the moment to justify including what I accept would constitute a broad power not typically included in an initial receivership Order. I ask that EDC's counsel remove that provision, and provide an amended Order for my review and signature.
21. That said, I reiterate that I will make myself available to the parties as and when issues arise, and so if it proves to be the case that Antamex's officers and/or directors are being less than fully attentive and cooperative, I can and will imbue the receiver with such additional investigative powers, potentially including the ability to conduct examinations under oath, as I find necessary.
22. In sum, in making the receivership Order at this time, I am encouraged by the evident intention of the receiver, who is acknowledged by all parties to be appropriately experienced and otherwise suitable for this role, to proceed carefully but expeditiously to determine what is in the best interests of all concerned in terms of realizations and/or continued operations here. I am satisfied that the receiver has not prejudged or pre-determined what will maximize value, and is committed to making informed and reasonable decisions.
23. I am also encouraged by the stated intention of the Sureties, Antamex, and other impacted parties such as Suffolk and the owner of the Boston projects, to communicate and cooperate with the receiver to that end.
24. I expect all interested parties to abide by those stated intentions.
25. I will be available as events warrant, and will look forward to reports from the receiver in due course.

