



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00715153-00CL

DATE: May 22, 2024

NO. ON LIST: 3

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

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
McIntyre, Caitlin Rogers, Linc	Lawyers for the Receiver (Antamex Industries ULC)	caitlin.mcintyre@blakes.com linc.rogers@blakes.com
Williams, Richard Reynolds, Phil	The Receiver, Deloitte Restructuring Inc.	richwilliams@deloitte.ca philreynolds@deloitte.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Stephenson, Mitch	Export Development Canada	mstephenson@fasken.com
Bambrough, Denise	Aviva Insurance Company Of Canada	DBambrough@blg.com
	Nationwide Mutual Insurance Company	

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Nathwani, Jay	Klimer Platforms Inc	jnathwani@margiestrub.com
Dicker, Jeff (Self Represented)	Former Antamax Employee	Jeff.dicker@rogers.com
Wallrap, Albert	Krisro Metal Industries Corp.	awallrap@sutherlaw.com

ENDORSEMENT OF JUSTICE KIMMEL:

[1] Two motions came before the court today:

- a. A motion by Deloitte Restructuring Inc. ("Deloitte") in its capacity as court-appointed receiver (in such capacity, the "Receiver") of Antamex Industries ULC ("Antamex")
 - i. granting the Receiver enhanced investigative powers;
 - ii. directing certain former employees of Antamex to return property of Antamex to the Receiver;
 - iii. approving an auction services agreement (the "ASA") entered into by the Receiver and Platinum Asset Services Inc. ("Platinum");
 - iv. authorizing the Receiver to enter into a transaction for the assignment of Antamex's interest in certain financing leases (the "Bystronic Lease");
 - v. approving the activities of the Receiver between March 5, 2024 and May 16, 2024, as set out in the First Report of the Receiver dated May 16, 2024 (the "First Report"); and
 - vi. sealing the Confidential Appendices to the First Report.
- b. A consent motion by Klimer Platforms Inc. ("Klimer") for an Order lifting the stay to permit certain lien claimants to proceed with their lien actions as against Antamex and permitting Aviva Insurance Company of Canada ("Aviva") to intervene in those lien actions.

[2] I have signed the consent order and it may issue as signed. Aviva's counsel appeared today and confirmed that the form of order was consistent with similar orders granted in other receiverships.

[3] One of the employees against whom the Receiver was seeking an order for the return of property, Mr. Dicker, appeared today to request an adjournment of that aspect of the motion. The property in question is laptop computers. Mr. Dicker wishes to file an affidavit to explain why the laptop he has is not the property of Antamex. I granted the adjournment and directed Mr. Dicker to provide his affidavit and any other responding material to the Receiver and serve it on the service list within two weeks of today. Mr. McLeod, the other employee with a laptop, did not appear but he should be afforded the same additional time to provide a response to the

receiver's motion for the return of his laptop, should he wish to avail himself of that additional time. If the Receiver is not satisfied with the additional evidence provided by either or both of Mr. Dicker and Mr. McLeod and still wishes to pursue its motion for the return of the laptop computers in their possession, it may bring this aspect of the motion back on in conjunction with its next scheduled motion. I agree with the Receiver that this issue need not be brought forward to be addressed on its own.

[4] Counsel for the Receiver advised that it is not seeking today the relief in respect of the transaction for the assignment of Antamex's interest in the Bystronic Lease. That aspect of the Receiver's motion is also adjourned.

[5] The balance of the Receiver's motion is granted based on the revised form of order provided after the hearing that removed the relief in respect of the Bystronic Lease and the return of former employee property. This revised form of order also made some amendments to the sealing order provisions to ensure that the sealing order is appropriately circumscribed.

[6] The Receiver's factum for this motion was very thorough and addressed all aspects of the relief sought, including the authority for granting the relief and the factual justification for so doing. This is exemplary of what the Commercial Court expects and makes the work of the court more efficient. It allows matters such as this involving multiple issues to proceed even where limited time has been scheduled.

[7] In the interests of time and expediency, I will adopt by reference, rather than repeat in this endorsement, what the Receiver has said in its factum with respect to the granting of enhanced investigative powers to the Receiver, the approval of the ASA, the approval of the activities of the Receiver as set out in the First Report and the sealing order. In summary:

- a. The request for enhanced investigative powers was contemplated at the time the receivership order was made, although not demonstrated to be needed at that time. The Receiver has presented evidence now to show that this order is necessary to facilitate the receiver's ability to investigate the affairs of the debtor company. It will enable the Receiver to obtain additional information regarding the circumstances surrounding the acquisition of the US Glass Equipment by Antamex and the corresponding loans advanced by EDC. Such power will ensure that full and complete disclosure is obtained from those examined and assist the Receiver with determining whether the US Glass Equipment properly constitutes Property of Antamex's estate. Examples of other receiverships in which these enhanced powers have been granted include: *Starline Production Rentals Inc. and Screen Linx Management Limited v. Convention & Trade Show Electrical Services Ltd.*, Order Appointing Receiver dated September 27, 2021, section 4; and *Ontario Securities Commission v. Factorcorp Inc. and Factorcorp Financial Inc.*, Order dated October 17, 2007, section 4(1).

- b. The test in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 OR (3d) 1 (ONCA) has been satisfied in respect of the requested approval of the ASA . The Receiver believes that the ASA will enable it to obtain the best price for Antamex's equipment and assets, while minimizing expenses, which is in the interests of all stakeholders. The secured creditors support the approval of the ASA and no one has indicated any opposition to it. In the Receiver's view, an auction is the only reasonable and efficient means for liquidating equipment and assets like the ones to be sold at the proposed auction and the Receiver has confidence in Platinum as the auctioneer. The future vesting provisions or standard for this type of order.
- c. The activities of the Receiver described in the First Report reflect the Receiver's mandate. Their approval is consistent with the purposes for so doing set out in *Re Target Canada Co.*, 2015 ONSC 7574 and the approval language has been appropriately qualified to limit reliance upon the approval to the Receiver in accordance with the court's practice.
- d. In the insolvency context, courts have applied the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25 and granted sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders. The revised sealing order provisions are limited in scope to only those documents necessary and only for as long as necessary to achieve the appropriate balance between the privacy and confidentiality of the commercial interests at stake in these insolvency proceedings that are in need of protection and the open court principle. The first confidential exhibit to be sealed contains information that the Receiver believes may impact its ability to conduct a full, fair and objective investigation into the proper ownership of the US Glass Equipment. The three other exhibits contain confidential information about transactions that the Receiver is negotiating or seeking to implement in the context of these proceedings. Where possible, redacted versions of some of these exhibits are in the public court file. The order now provides for when they will all be unsealed. The sealing orders remain subject to further review of the court.

[8] For these reasons and those more fully elaborated upon in the Receiver's factum filed on this motion, I have signed the revised form of order. It shall have immediate effect without the necessity of formal issuance and entry.



KIMMEL J.