

**VANCOUVER**

Court of Appeal File No. CA45324

**JUL 05 2018**

**COURT OF APPEAL**

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REGISTRY**

BETWEEN:

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**RESPONDENT  
(PLAINTIFF)**

AND:

**WEDGEMOUNT POWER LIMITED PARTNERSHIP,  
WEDGEMOUNT POWER (GP) INC.  
and WEDGEMOUNT POWER INC**

**RESPONDENTS  
(DEFENDANT)**

AND:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

**APPELLANT  
(APPLICANT)**

**WRITTEN RESPONSE OF THE RESPONDENT,  
INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

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Court-appointed Receiver of Wedgemount  
Power Limited Partnership et al**

1. The applications of British Columbia Hydro and Power Authority ("BC Hydro") are based on the following propositions:
  - a. The court below was not sitting "in bankruptcy"
  - b. The Court of Appeal Rules apply to these proceedings
  - c. The appeals of BC Hydro have merit
  - d. The time should, and can be extended
  - e. BC Hydro evidenced a bona fide intention to appeal during the appeal period and communicated that to counsel for the Receiver
  - f. There is no prejudice to permitting BC Hydro to pursue its appeals

In answer to each of these assertions, Industrial Alliance respectfully submits the following:

**THE COURT BELOW WAS EXERCISING JURISDICTION CONFERRED BY THE *BANKRUPTCY AND INSOLVENCY ACT* (the "*BIA*") AND THE *BIA GENERAL RULES* APPLY**

2. The Receivership Order was made pursuant to the *BIA* and the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

Leduc Affidavit, Tab A, at paras. 1, 8, 12, 16, 19

3. The Receiver complied with the requirements of Part XI of the *BIA*, namely, delivering copies of the Receiver's Reports and necessary Notices to the Office of the Superintendent of Bankruptcy and posting the Receiver's Reports on the Receiver's website.

McKie Affidavit #3 at para. 4.

4. Justice Butler Expressly granted the May 4<sup>th</sup> Order on the Receiver's pursuant to the provisions of s. 243(1) (a) and (b) of the *BIA* and the terms of the Receivership Order.

May 4<sup>th</sup> Reasons at para. 38

5. Justice Bulter also relied on the inherent jurisdiction conferred on the court under the *BIA*.

May 4<sup>th</sup> Reasons at para. 48;

See also: *2003945 Alberta Ltd. v. 1951584 Ontario Inc.*, 2018 ABCA 48

6. The same reasoning applied to the May 18<sup>th</sup> Decision of Butler J. The Receiver sought directions of the court pursuant to s. 243 (1) (a) and (b) of the *BIA*.

**THE APPEALS HAVE NO MERIT**

7. The appeal of the May 4<sup>th</sup> Decision is moot. The event that BC Hydro sought to stay has occurred.

8. The May 18<sup>th</sup> Decision is entirely based on factual findings of the trial judge.

May 18<sup>th</sup> Reasons at para. 62

9. No error of law or fact has been identified in respect of the May 18<sup>th</sup> decision.

**THE TIME SHOULD NOT BE EXTENDED**

- 10. In this case, it is not in the interest of justice that time should be extended.
- 11. The one appeal is moot, the other would require this Honourable Court to set aside findings of fact of the trial judge.
- 12. The appeals have no merit.
- 13. This is "real time" insolvency litigation.
- 14. The most important factor on an application to appeal in such a case is the effect on the process.
- 15. These appeals will frustrate the process and make a successful restructuring or sale impossible. These appeals put the entire process in peril.

**BC HYDRO DID NOT COMMUNICATE AN INTENTION TO APPEAL**

- 16. BC Hydro has sat on its rights.
- 17. There is no evidence that BC Hydro had an intention to appeal prior to May 30, 2018.
- 18. There is no evidence that BC Hydro or its counsel misapprehended the relevant appeal periods.

**THERE IS SIGNIFICANT PREJUDICE TO PERMIT BC HYDRO TO ADVANCE THESE APPEALS**

- 19. The significant prejudice is outlined in a confidential affidavit of the Receiver, but in short, these appeals have delayed negotiations with key stakeholders, caused a reduction in price of millions of dollars, and have resulted in a number of buyers simply walking away from their bids. This is anathema to the policy objectives of the insolvency regime, *BIA* and receiverships.
- 20. Both Butler J. and Fitzpatrick J. identified urgency as a significant factor in these proceedings. The Respondents have pursued determinations of the conflicts in these proceedings on their merits with alacrity.
- 21. The procedural steps taken or not taken by BC Hydro have had, and risk having, the effect of eliminating any prospect of a successful restructuring or sale of the insolvent assets.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated: July 5, 2018

  
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Counsel for the Respondent  
Jeffrey D. Bradshaw