

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

_____)	
In re:)	Case No. 12-30214
)	
VALLE FOAM INDUSTRIES (1995))	Chapter 15
INC.)	
)	Judge Mary Ann Whipple
Foreign Applicant in Foreign)	
Proceedings)	
_____)	
)	
In re:)	Case No. 12-30215
)	
DOMFOAM INTERNATIONAL INC.)	Chapter 15
)	
Foreign Applicant in Foreign)	Judge Mary Ann Whipple
Proceedings)	
_____)	
)	
In re:)	Case No. 12-30218
)	
A-Z SPONGE & FOAM PRODUCTS)	Chapter 15
LTD.)	
)	Judge Mary Ann Whipple
Foreign Applicant in Foreign)	
Proceedings)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF CHAPTER 15 PETITIONS
FOR RECOGNITION OF FOREIGN PROCEEDINGS AND
EX PARTE MOTION FOR PROVISIONAL RELIEF**

INTRODUCTION

Deloitte & Touche Inc. is the court-appointed monitor (the “**Monitor**”) and foreign representative of Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”), and A-Z Sponge & Foam Products Ltd (“**A-Z**” and, together with Valle Foam and Domfoam, the “**Valle Foam Group**”) in proceedings (the “**Canadian Proceedings**”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pending before the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”).

The Monitor commenced these Chapter 15 cases (the “**Chapter 15 Cases**”) ancillary to the Canadian Proceedings by filing Verified Petitions for Recognition for each member of the Valle Foam Group as a foreign applicant (together, the “**Chapter 15 Verified Petitions**”) with the accompanying documentation required by Sections 1504 and 1515 of title 11 of the United States Code.¹ The Monitor seeks the entry of an order: (i) recognizing the Canadian Proceedings as “foreign main proceedings”; (ii) enforcing the Initial Order of the Ontario Court dated Thursday, the 12th day of January 2012 (the “**Canadian Order for Relief**”), which is attached as Exhibit A to the Chapter 15 Verified Petitions, and (iii) granting such other and further relief as is appropriate under the circumstances.

¹ Unless otherwise indicated, all section references are to title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), all rule references are to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), all references to “Local Bankruptcy Rules” or “LBR xxxx-x” are to the Local Rules for the United States Bankruptcy Court, Northern District of Ohio, and all references to “Chapter XX” are to chapter xx of the Bankruptcy Code.

The Monitor has also filed an *ex parte* Motion for Provisional Relief (the “**Motion for Provisional Relief**”) seeking an order pursuant to Sections 1519, 362, and 105 of the Bankruptcy Code provisionally staying (i) any execution against any of the assets of the Valley Foam Group and (ii) the commencement or continuation of any actions or proceedings concerning the assets, rights, obligations or liabilities of the Valley Foam Group until such time as these Chapter 15 Cases are recognized as “foreign proceedings” or dismissed.

The Monitor submits this Memorandum of Law in support of the Chapter 15 Verified Petitions and the Motion for Provisional Relief.

FACTUAL BACKGROUND

The Court is respectfully referred to the Chapter 15 Verified Petitions and the Motion for Provisional Relief for all relevant background information regarding the business and litigation reasons for the commencement of these Chapter 15 Cases.

SUMMARY OF ARGUMENT

All of the assets, operations, and employees of the Valle Foam Group are located in Canada. The Canadian Proceedings were commenced to ensure that the Valle Foam Group could continue to operate as a going concern while seeking to effectuate a restructuring or a sale of its businesses. The Canadian Proceedings are entitled to the recognition and relief provided by Chapter 15 of the Bankruptcy Code. The Monitor believes that the recognition of the Canadian Proceedings and the imposition of the provisional relief sought herein will best assure the fair

treatment of cross-border creditors, the protection of the plaintiffs who have settled litigation with the Valle Foam Group, and the efficient administration of all Canadian and U.S. proceedings.

I. **The Court Has Jurisdiction To Recognize The Canadian Proceedings And Grant The Relief Requested**

This Court has jurisdiction over these Chapter 15 Cases pursuant to 28 U.S.C. §§ 1334 and 157(a) and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

Although the Valle Foam Group has no assets in the United States, its members are defendants in at least sixteen (16) antitrust actions. A verdict in any one of them could result in damages well beyond the value of the Valle Foam Group. The sixteen known antitrust actions have been consolidated in the United States District Court for the Northern District of Ohio (Toledo); therefore, venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. §§ 1410(2).

II. **This Court Should Recognize The Canadian Proceedings As Foreign Main Proceedings**

The Monitor filed Chapter 15 Verified Petitions to secure this Court's recognition of the Canadian Proceedings. The Canadian Proceedings satisfy the definition of a "foreign proceeding" set out in Section 101(23) of the Bankruptcy Code because they are collective judicial proceedings in Canada under a law relating to the adjustment of a debt, and the assets of the Valle Foam Group are subject to the control and supervision of the Ontario Court for the purpose of

reorganization or liquidation. All of the assets, operations, and employees of the Valle Foam Group are located in Canada; therefore, by definition, the Canadian Proceedings are the “foreign proceedings” with respect to each member of the Valley Foam Group.

As long as Section 1506 of the Bankruptcy Code is not implicated, Section 1517(a) mandates recognition of a “foreign proceeding” if:

1. The foreign proceeding for which recognition is sought is a “foreign main proceeding;”
2. The foreign representative applying for recognition is a person or body, and;
3. The petition meets the requirements of Section 1515 of the Bankruptcy Code.

A. *The Canadian Proceedings Are Foreign Main Proceedings That Satisfy the First Prong of Section 1517(a)*

The first prong of Section 1517(a) requires that the Canadian Proceedings satisfy the definition of a “foreign main proceeding.” According to Section 1517(b) of the Bankruptcy Code, a “foreign proceeding” shall be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has the center of its main interests (“CoMI”). *See also* Section 1502 of the Bankruptcy Code. All debtors have a single CoMI, and that CoMI is located in a single country. *See In re Tien Chiang*, 437 B.R. 397, 403 (Bankr. C.D. Cal. 2010). Pursuant to Section 1516(c) of the Bankruptcy Code, “[i]n the absence of evidence to the contrary, the debtor’s registered office . . . is presumed to be the center of the debtor’s main interests.”

All members of the Valle Foam Group have their registered offices in Canada. None of the members of the Valle Foam Group have any assets outside of Canada. Furthermore, no person has ever suggested otherwise. For these reasons, all of the members of the Valle Foam Group have their CoMIs in Canada. As such, the Canadian Proceedings are foreign proceedings currently pending in the country where all of the Valle Foam Group members have their CoMIs, which means that the Canadian Proceedings must be “foreign main proceedings.”

Therefore, this Court should recognize the Canadian Proceedings as “foreign main proceedings” that satisfy the first requirement of Section 1517(a) of the Bankruptcy Code.

B. *The Monitor is the Foreign Representative of the Valle Foam Group Who Satisfies the Second Prong of Section 1517(a)*

The second prong of Section 1517(a) requires that the “foreign representative applying for recognition is a person or a body.” Section 101(24) of the Bankruptcy Code defines a “foreign representative” as “a person or body . . . authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” A “person” under the Bankruptcy Code includes individuals, partnerships, and corporations. See Section 101(41); see also *In re Oversight & Control Comm’n of Avanzit, S.A.*, 385 B.R. 525, 540 (Bankr. S.D.N.Y. 2008) (recognizing that the legal definitions of “persons” and “bodies” are extremely broad).

These Chapter 15 Cases were commenced by the Monitor, who was appointed by the Ontario Court pursuant to the CCAA to monitor the business and financial

affairs of the Valle Foam Group. As part of its court-appointed duties, the Monitor is tasked with administering the reorganization of the Valle Foam Group and authorized to act as the Valle Foam Group's representative in both Canada and international jurisdictions. *See* Canadian Order for Relief ¶¶ 22-23. By virtue of this appointment, the Monitor, therefore, is a “foreign representative” within the meaning of sections 101(24) and 1517(a) of the Bankruptcy Code. *See, e.g., In re Tien Chiang*, 437 B.R. 397, 401-02 (Bankr. C.D. Cal. 2010) (recognizing Mendlowitz & Associates, Inc., the trustee in a Canadian bankruptcy, as a “foreign representative” that satisfies Section 1517(a)(2) of the Bankruptcy Code); *In re Gandi Innovations Holdings, LLC.*, No. 09-51782-C, 2009 Bankr. LEXIS 2751, at *3 (Bankr. W.D. Tex. June 5, 2009) (recognizing BDO Dunwoody Limited, the Canadian Monitor, as a “foreign representative” that satisfies Section 1517); *In re Innua Canada LTD.*, No. 09-16363, 2009 Bankr. LEXIS 995, at *12-14 (Bankr. D.N.J. Apr. 15, 2009) (recognizing RSM Richter Inc., the receiver in a Canadian bankruptcy, as a “foreign representative” who satisfies Section 1517 under the Bankruptcy Code); *In re ROL Mfg. (Canada) LTD.*, No. 08-31022, at *1 (Bankr. S.D. Ohio Apr. 17, 2008) (recognizing a Canadian proceeding as “foreign main proceeding” and a court-appointed monitor, Raymond Chabot Inc., as a “foreign representative” pursuant to Section 1517 of the Bankruptcy Code).² Furthermore, pursuant to Section 1516(a) of the Bankruptcy Code, this Court is entitled to

² Copies of unpublished decisions, briefs, and orders referred to herein are attached for the Court's convenience as Exhibit A.

presume that the Monitor, as identified in the Canadian Order for Relief, is a foreign representative.

Therefore, for all of the above mentioned reasons, this Court should recognize the Monitor as a “foreign representative” who satisfies the second prong of Section 1517(a) of the Bankruptcy Code.

C. The Chapter 15 Verified Petitions Meet the Requirements of Section 1515 of the Bankruptcy Code

Finally, this Court should recognize the Canadian Proceedings as “foreign main proceedings” because the Chapter 15 Verified Petitions meet the requirements of Section 1515, thereby satisfying all of the prongs of Section 1517(a) of the Bankruptcy Code.

Under Section 1515, the Chapter 15 Verified Petitions must satisfy three (3) requirements. First, a “foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.” Section 1515(a). As already detailed above, the Monitor, who filed the Chapter 15 Verified Petitions, is a foreign representative appointed by the Ontario Court to represent the Valle Foam Group in the Chapter 15 Cases. As such, the Monitor satisfies Section 1515(a) of the Bankruptcy Code. Second, the Chapter 15 Verified Petitions were accompanied by a certified copy of the Canadian Order for Relief, thereby satisfying Section 1515(b)(1) of the Bankruptcy Code. Finally, the Chapter 15 Verified Petitions were “accompanied by a statement identifying all foreign proceedings with respect to [the Valle Foam

Group] that are known to” the Monitor, thereby meeting the last requirement of Section 1515. Section 1515(c) of the Bankruptcy Code.

Therefore, for all of the above reasons, this Court should hold that the Chapter 15 Verified Petitions meet the three requirements of Section 1515 of the Bankruptcy Code.

D. Conclusion

As shown above in great detail, the Monitor has satisfied all three of the requirements of Section 1517(a) of the Bankruptcy Code. Therefore, this Court should issue an order recognizing the Canadian Proceedings as foreign main proceedings. Furthermore, should this Court grant such an order, the Monitor hereby requests that, in order to protect the assets of the Valle Foam Group, that the Court also issue an order giving effect to the Canadian Order for Relief pursuant to Section 1521 of the Bankruptcy Code.

III. **The Court Should Grant The Monitor’s Motion For Provisional Relief Because It Is Urgently Needed To Protect The Valle Foam Group And Its Creditors**

Section 1519 of the Bankruptcy Code provides that this Court may grant provisional relief at the Monitor’s request during the “gap period” between the filing of the Chapter 15 Verified Petitions and the Court’s ruling on the recognition. As with any provisional relief under Section 1519, the Court’s relief would last only until the Court enters an order of recognition. If the Court ultimately grants the Monitor’s request for recognition under Section 1517, then the Monitor would enjoy several types of automatic protections, including an automatic stay under Section

362, and other forms of requested relief. *See* Sections 1520(a) and 1521(a) of the Bankruptcy Code.

The imposition of an automatic stay pursuant to Section 362 is one of the available forms of relief under Section 1519 of the Bankruptcy Code. *See In re KPMG Inc., Foreign Representative of Redcorp Ventures Ltd. and Redfern Resources Ltd.*, No. 09-12019 (Bankr. W.D. Wa. Mar. 9, 2009) (granting a Section 362 automatic stay under Section 1519 of the Bankruptcy Code); *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850 (C.D. Cal. 2008) (granting a provisional automatic stay pursuant to Section 1519). In its Motion for Provisional Relief, the Monitor requested that this Court issue an order immediately applying a provisional, automatic stay to the Chapter 15 Cases pursuant to Sections 1519(a)(3), 1521, 362, and 105(a) of the Bankruptcy Code.

In order to succeed on its Motion for Provisional Relief, the Monitor must demonstrate only that “relief is urgently needed to protect the assets of the debtor or the interests of the creditors.” Section 1519(a). As explained in great detail in *In re Pro-Fit Holdings*, “the imposition of the § 362 automatic stay as provisional relief under § 1519 is not injunctive relief that is subject to the § 1519(e) requirement imposing the standards for an injunction.” *In re Pro-Fit Holdings*, 391 B.R. at 867; *see id.* at 864 (“The stay under § 362 is fundamentally different in several respects from an injunction.”); *see also In re KPMG Inc., Foreign Representative of RedCorp Ventures Ltd. and Redfern Resources Ltd.*, No. 09-12019, *Ex Parte* Emergency Motion of Foreign Representative for Relief Under 11 U.S.C. §§ 1519, 105, and

362(a), at *5 (Bankr. W.D. Wa. Mar. 6, 2009) (requesting a provisional automatic stay pursuant to Sections 362 and 1519 and stating that the standards for injunctive relief are inapplicable to this request), *In re KPMG Inc., Foreign Representative of Redcorp Ventures Ltd. and Redfern Resources Ltd.*, No. 09-12019 (Bankr. W.D. Wa. Mar. 9, 2009) (granting request for provisional automatic relief pursuant to Sections 362 and 1519 of the Bankruptcy Code). As such, the standards for obtaining a preliminary injunction are inapplicable to the Monitor's current request for Section 1519 relief.³

Relief in the form of an automatic stay is urgently needed in the Chapter 15 Cases to protect both the assets of the debtors and the interests of the creditors. First, the Valle Foam Group faces the significant and real threat of class action and opt-out litigation in the United States. A potential civil judgment against any of the members of the Valle Foam Group in the U.S. would vastly exceed their current cash reserves and swamp the efforts of the Monitor to restructure the companies in an orderly way. Therefore, an automatic stay against all potential litigation--at least until the Court rules on the Chapter 15 Verified Petitions--is crucial to guarantee the Monitor the necessary time to sell some or all of the businesses and/or wind down operations.

Second, a stay pursuant to Sections 362 and 1519 is necessary to protect the interests of the Valle Foam Group's creditors. The Valle Foam Group has

³ Nevertheless, the Monitor believes that it would deserve relief pursuant to Sections 362 and 1519 of the Bankruptcy Code even if the standards for preliminary injunctive relief did apply. *See Tumblebus Inc. v. Cranmer*, 399 F.3d 754, 760 (6th Cir. 2005) (stating the requirements for a preliminary injunction).

successfully negotiated settlements with several groups of U.S. class action plaintiffs. In these settlements, the plaintiffs preserved their right to file as creditors in the Canadian Proceedings, but agreed to voluntarily dismiss their U.S. class actions lawsuits in return for the Valle Foam Group's cooperation in Canada. If this Court does not grant an automatic provisional stay pursuant to Sections 362, 1519, 1521, and 105 then the current U.S. class action plaintiffs risk receiving nothing from the Valle Foam Group and being punished for their willingness to compromise.

Therefore, for all of the above mentioned reasons, the Monitor's request for an automatic, provisional stay pursuant to Sections 362, 1519, 1521, and 105 of the Bankruptcy Code should be granted as it is urgently needed to protect the Valle Foam Group and its creditors.

CONCLUSION

For the foregoing reasons, the Monitor respectfully requests that this Court:

- 1) Recognize the Canadian Proceedings as "foreign main proceedings" pursuant to Section 1517 of the Bankruptcy Code, and;
- 2) Grant the Monitor's *Ex Parte* Motion for Provisional Relief Under Sections 1519, 1521, 362, and 105 of the Bankruptcy Code. The requested orders are attached as respective Exhibits to the Chapter 15 Verified Petitions and the Motion for Provisional Relief.

Dated: January 23, 2012

Respectfully submitted,

/s/ Mary K. Whitmer

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