

2019 01G 2868
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF: An Application by BRITISH CONFECTIONERY COMPANY LIMITED and BRITISH BAZAAR COMPANY LIMITED (the "Applicants") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as am.

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2019 01G 2868
Date of filing of document:	
Name of filing party or person:	Tim Hill, Q.C., (Counsel for the Applicants)
Application to which document being filed relates:	Application for an extension of stay pursuant to Section 11.02(2) of the <i>Companies' Creditors Arrangement Act</i> ("CCAA")
Statement of purpose in filing:	Application

Interlocutory Application
(Inter Parties)

Nature of Application

Upon Application of British Confectionery Company Limited ("Confectionery") and British Bazaar Company Limited ("Bazaar") (collectively "the Companies"), the Applicants herein say:

1. The Companies seek orders as follows:
 - (a) An Order abridging the notice periods pursuant to the *Rules of the Supreme Court, 1986*, Rule 2.01(1);
 - (b) An Order directing that service on the service list set out in Schedule "A" hereto is sufficient for the purposes of this Application;
 - (c) An Order pursuant to Section 11.02(2) of the CCAA extending the stay of proceedings in this matter commencing from and including the 28th day of May, 2019, the first available court date after June 30, 2019; and

- (d) An Order sealing the Confidential Addendum to the 1st Report of the Monitor, such that said Addendum may be filed with the Court on a confidential basis until the completion of the restructuring process.

Procedural History

2. On November 5, 2018, the Companies filed Notices of Intention to Make a Proposal pursuant to section 50.4 of the *BIA* (the "NOI Filings"). Deloitte Restructuring Inc. was appointed as the Licensed Insolvency Trustee (the "Proposal Trustee") under the NOI Filings (and subsequently as Monitor upon the *CCAA* filing).

3. On December 4, 2018, the Court granted the following orders:

- (a) An order pursuant to Section 50.4(9) of the *BIA* extending the time to file a Proposal in this proceeding, such extension to be up to and including January 18, 2019;
- (b) An order pursuant to Section 7.02 of the *Rules of the Supreme Court, 1986* and Section 3 of the *Bankruptcy and Insolvency General Rules*, for the administrative consolidation of the proceedings herein.

4. On January 15, 2019, the Court granted the following orders:

- (a) An order pursuant to Section 50.4(9) of the *BIA* extending the time to file a Proposal in this proceeding, such extension to be up to and including March 5, 2019;
- (b) An order pursuant to Section 64.2 of the *BIA* declaring that the professional advisors of the Companies shall have a charge over the assets of the Companies in respect of fees and expenses.

5. On March 1, 2019, the Court granted the following orders:

- (a) Abridging the notice periods for service on the Interim Application (*Inter Partes*);
- (b) Providing that service on the service list was sufficient for the purposes of the Application;

(c) extending the time to file a Proposal in this proceeding, such extension to be up to and including April 4, 2019; and

(d) Sealing the Confidential Addendum to the 3rd Report of the Proposal Trustee, *pro tem*.

6. On April 4, 2019, the Court granted the following orders:

(e) Abridging the notice periods for service on the Interim Application (*Inter Partes*);

(f) Providing that service on the service list was sufficient for the purposes of the Application;

(g) extending the time to file a Proposal in this proceeding, such extension to be up to and including May 5, 2019; and

(h) Sealing the Confidential Addendum to the 3rd Report of the Proposal Trustee, *pro tem*.

7. On May 1, 2019, the matter was converted from Division I of the *BIA*, and an Initial Order was issued pursuant to Section 11.02(1) of the *CCAA*. An order also issued sealing the Confidential Addendum to the 4th Report of the Proposal Trustee, *pro tem*.

Material Facts

8. The Companies are incorporated in Newfoundland and Labrador.

9. The material facts with respect to this application are set out in greater detail in the First, Second, Third and Forth Reports of the Proposal Trustee filed in the *BIA* Division I process. A Report of the Monitor is being filed contemporaneously with these Application materials. What follows is a brief summary of the facts.

10. Confectionery and Bazaar are the primary operating entities of a group of companies. Confectionery operates a manufacturing facility from leased premises located in St. John's, Newfoundland and Labrador. This facility specializes in the production of specialty paper products; specifically, break-open lottery and promotional products.

11. Bazaar is a company wholly owned by Confectionery. Bazaar owns and administers customer contracts for the purchase of break-open lottery and promotional products. To fulfill these contracts, Bazaar purchases tickets directly from Confectionery. Outside of the purchase and sale of tickets from Confectionery, the economic activity within Bazaar is negligible.

12. A significant portion of the Companies' revenue is generated from two customers: Atlantic Lottery Corporation ("ALC") and British Columbia Lottery Corporation ("BCLC").

13. On October 31, 2018, Confectionery, Bazaar and David Connolly Sr. received a demand for repayment of outstanding amounts owing and a notice of intention to enforce security from the Bank of Montreal ("BMO").

14. On November 5, 2018, Confectionery and Bazaar made the NOI Filings.

15. Over the last four years the Companies' sales performance has demonstrated significant variability. The financial performance during this period was impacted by the following factors:

- (i) Operational and organizational deficiencies –a number of factors have hindered the ability of the Companies to operate efficiently;
- (ii) Development costs – the Companies invested in development costs related to new product offerings, production improvements and barcode technology which have not as yet generated an economic return;
- (iii) 2016 inventory write off –a review of inventory in 2016 which resulted in a write off of approximately \$1.3 million;
- (iv) 2017 ALC product recall – during fiscal 2017, seven ALC games distributed into the market were recalled, and an additional six games in production were withheld, all due to reports that the barcodes on certain tickets were not validating properly;
- (v) Fire at production facility – in December 2017, a fire at the production facility resulted in the destruction of finished goods inventory and equipment;

(vi) Contract renegotiations with ALC – Effective July 1, 2018, British extended its contract with ALC at a price per ticket approximately 30% lower than the previous contract; and

(vii) Production delays –Production delays experienced in fiscal 2017 have had residual effects that were still impacting the Company during the initial quarters of fiscal 2018.

16. The Companies undertook a number of restructuring initiatives prior to the NOI filings. These included:

- (i) reorganizing the Companies' ownership structure;
- (ii) partnering with another company so as to increase the Companies' ability to source product and sell to the United States and central Canadian market;
- (iii) hiring of a Chief Financial Officer in March 2018 and a new corporate accountant in October 2018; and
- (iv) focusing on overhead cost reductions.

17. Since the date of the NOI Filing, the Companies' activities have included, but were not limited to:

- (i) working with the Proposal Trustee to complete statutory requirements, including giving notice to creditors and preparing the NOI Cash Flow;
- (ii) meeting in person with both key customers, ALC and BCLC;
- (iii) holding discussions with potential lenders and equity sources;
- (iv) working with the Proposal Trustee to answer questions of creditors and establish payment arrangements regarding post-filing obligations;

- (v) working with the Proposal Trustee to organize discussions with the significant secured and unsecured creditors including BMO, Atlantic Canada Opportunities Agency and Business Investment Corporation;
- (vi) working with the Proposal Trustee to monitor actual cash flow and reporting on variances to the NOI Cash Flow;
- (vii) working with the Proposal Trustee and legal counsel to satisfy information requests made by ALC;
- (viii) Having discussions with potential lenders, equity sources and the government of Newfoundland and Labrador;
- (ix) Working with the Proposal Trustee to develop a Confidential Information Memorandum ("CIM") in support of the search for alternative financing;
- (x) Cooperating with the Proposal Trustee in reviewing the expressions of interest received from potential financing sources and parties interested in purchasing the Companies' assets;
- (xi) Working with the Proposal Trustee to solidify equity investment and financing, or an asset sale, such as to enable a Proposal to be made; and
- (xii) Obtaining an offer from a third party investor ("the Investor") which is subject to, *inter alia*, the participation as a lender of the Province of Newfoundland and Labrador, Department of Tourism, Culture, Industry and Innovation ("TCII").

18. Since the date of the Initial Order, the Companies' activities have included, but were not limited to:

- (i) working with the Monitor to complete statutory requirements, including giving notice to creditors and preparing the requisite filing information;
- (ii) assisting the Investor with respect to its due diligence activities arising from the Investor's accepted offer of April 9, 2019;

- (iii) responding to requests for information from TCII and the Investor;
- (iv) reviewing options for an asset sale in the event that the Investor's offer does not close;
and
- (v) assisting the Monitor as requested and required.

19. The Investor has advised, *inter alia*, that:


- (i) The Investor has substantially completed its due diligence in connection with its offer; and
- (ii) In the event that TCII does not participate as a lender, the Investor wishes to make an offer to purchase the assets of the companies as a "stalking horse" bidder.

Relief Sought

20. The Companies therefore apply for orders as stipulated in paragraph 1 hereof:

- a) abridging the notice periods on this Application;
- b) directing that service on the service list set out in Schedule "A" hereto is sufficient for the purposes of this Application;
- c) extending the stay of proceedings in this matter;
- d) sealing the Confidential Addendum to the Report of the Monitor, such that said Addendum may be filed with the Court on a confidential basis until the completion of the restructuring process; and
- e) such other and further relief as this Honourable Court deems just.

DATED at Dartmouth, Nova Scotia, this 22nd day of May, 2019.



Tim Hill, Q.C., Solicitor for the Applicants
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To: The Counsel and others listed in Schedule "A" hereto

ISSUED at St. John's, in the Province of Newfoundland and Labrador this day of May, 2019.

Registrar

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Affidavit of Blair Connolly

I, Blair Connolly, of St. John's, Newfoundland and Labrador, swear as follows:

1. I have read and understand the foregoing application.
2. I have personal knowledge of the facts contained therein and they are true to the best of my knowledge and belief.
3. I have personal knowledge of the facts contained in this Application, and they are true to the best of my knowledge and belief.
4. It is this deponent's view that the Companies have acted in good faith and with due diligence.

SWORN before me at
St. John's, Province of Newfoundland
And Labrador,
this ____ day of May, 2019.

Blair Connolly

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NOTICE OF HEARING

You are hereby notified that you must attend before a judge presiding in chambers at the Court House at Duckworth Street, St. John's, Newfoundland and Labrador on the 27th day of May, 2019, at the hour of 2.45 o'clock in the afternoon or so soon thereafter as the application can be heard for the hearing of the application in the above noted matter.

AND FURTHER TAKE NOTICE that the judge may make and order in favour of the Applicant in your absence and without further notice unless you or your solicitor appear at the time and place noted above.

To: the Service List

Schedule "A"

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