2016 Hfx. No. 454744

Supreme Court of Nova Scotia

Application by Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") for relief under the Companies' Creditors Arrangement Act

MONITOR'S BOOK OF AUTHORITIES

Ben Durnford,
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Purdy's Wharf Tower II
Halifax NS
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Solicitor for the Monitor,
Deloitte Restructuring Inc.

INDEX

TAB 1

CITATION: Cline Mining Corporation (Re), 2015 ONSC 622
COURT FILE NO.: CV-14-10781-00CL
DATE: 2015-01-30

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

BEFORE: Regional Senior Justice G.B. Morawetz

COUNSEL: *Robert J. Chadwick* and *Logan Willis*, for the Applicants Cline Mining Corporation et al.

Michael DeLellis and *David Rosenblatt*, for the FTI Consulting Canada Inc., Monitor of the Applicants

Jay Swartz, for the Secured Noteholders

HEARD: January 27, 2015

ENDORSEMENT

[1] Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "Applicants") seek an order (the "Sanction Order"), among other things:

a. sanctioning the Applicants' Amended and Restated Plan of Compromise and Arrangement dated January 20, 2015 (the "Plan") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"); and

b. extending the stay, as defined in the Initial Order granted December 3, 2014 (the "Initial Order"), to and including April 1, 2015.

[2] Counsel to the Applicants submits that the Recapitalization is the result of significant efforts by the Applicants to achieve a resolution of their financial challenges and, if implemented, the Recapitalization will maintain the Applicants as a unified corporate enterprise and result in an improved capital structure that will enable the Applicants to better withstand prolonged weakness in the global market for metallurgical coal.

[3] Counsel submits that the Applicants believe that the Recapitalization achieves the best available outcome for the Applicants and their stakeholders in the circumstances and achieves results that are not attainable under any other bankruptcy, sale or debt enforcement scenario.

[4] The position of the Applicants is supported by the Monitor, and by Marret, on behalf of the Secured Noteholders.

[5] The Plan has the unanimous support from the creditors of the Applicants. The Plan was approved by 100% in number and 100% in value of creditors voting in each of the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class.

[6] The background giving rise to (i) the insolvency of the Applicants; (ii) the decision to file under the CCAA; (iii) the finding made that the court had the jurisdiction under the CCAA to accept the filing; (iv) the finding of insolvency; and (v) the basis for granting the Initial Order and the Claims Procedure Order was addressed in *Cline Mining Corporation (Re),* 2014 ONSC 6998 and need not be repeated.

[7] The Applicants report that counsel to the WARN Act Plaintiffs in the class action proceedings (the "Class Action Counsel") submitted a class proof of claim on behalf of the 307 WARN Act Plaintiffs in the aggregate amount of U.S. $3.7 million. Class Action Counsel indicated that the WARN Act Plaintiffs were not prepared to vote in favour of the Plan dated December 3, 2014 (the "Original Plan") without an enhancement of the recovery. The Applicants report that after further discussions, agreement was reached with Class Action Counsel on the form of a resolution that provides for an enhanced recovery for the WARN Act Plaintiffs Class of $210,000 (with $90,000 paid on the Plan implementation date) as opposed to the recovery offered in the Original Plan of $100,000 payable in eight years from the Plan implementation date.

[8] As a result of reaching this resolution, the Original Plan was amended to reflect the terms of the WARN Act resolution.

[9] The Applicants served the Amended Plan on the Service List on January 20, 2015.

[10] The Plan provides for a full and final release and discharge of the Affected Claims and Released Claims, a settlement of, and consideration for, all Allowed Affected Claims and a recapitalization of the Applicants.

[11] Equity claimants will not receive any consideration or distributions under the Plan.

[12] The Plan provides for the release of certain parties (the "Released Parties"), including:

(i) the Applicants, the Directors and Officers and employees of contractors of the Applicants; and

(ii) the Monitor, the Indenture Trustee and Marret and their respective legal counsel, the financial and legal advisors to the Applicants and other parties employed by or associated with the parties listed in sub-paragraph (ii), in each case in respect of claims that constitute or relate to, *inter alia,* any

> Claims, any Directors/Officer Claims and any claims arising from or connected to the Plan, the Recapitalization, the CCAA Proceedings, the Chapter 15 Proceedings, the business or affairs of the Applicants or certain other related matter (collectively, the "Released Claims").

[13] The Plan does not release:

(i) the right to enforce the Applicants' obligations under the Plan;

(ii) the Applicants from or in respect of any Unaffected Claim or any Claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or

(iii) any Director or Officer from any Director/Officer Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

[14] The Plan does not release Insured Claims, provided that any recourse in respect of such claims is limited to proceeds, if any, of the Applicants' applicable Insurance Policies.

[15] The Meetings Order authorized the Applicants to convene a meeting of the Secured Noteholders, a meeting of Affected Unsecured Creditors and a meeting of WARN Act Plaintiffs to consider and vote on the Plan.

[16] The Meetings were held on January 21, 2015. At the Meetings, the resolution to approve the Plan was passed unanimously in each of the three classes of creditors.

[17] None of the persons with Disputed Claims voted at the Meetings, in person or by proxy. Consequently, the results of the votes taken would not change based on the inclusion or exclusion of the Disputed Claims in the voting results.

[18] Pursuant to section 6(1) of the CCAA, the court has the discretion to sanction a plan of compromise or arrangement where the requisite double-majority of creditors has approved the plan. The effect of the court's approval is to bind the company and its creditors.

[19] The general requirements for court approval of the CCAA Plan are well established:

a. there must be strict compliance with all statutory requirements;

b. all materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done, which is not authorized by the CCAA; and

c. the plan must be fair and reasonable.

(see *Re SkyLink Aviation Inc.*, 2013 ONSC 2519)

[20] Having reviewed the record and hearing submissions, I am satisfied that the foregoing test for approval has been met in this case.

[21] In arriving at my conclusion that the Plan is fair and reasonable in the circumstances, I have taken into account the following:

a. the Plan represents a compromise among the Applicants and the Affected Creditors resulting from discussions among the Applicants and their creditors, with the support of the Monitor;

b. the classification of the Applicants' creditors into three voting classes was previously approved by the court and the classification was not opposed at any time;

c. the results of the Sale Process indicate that the Secured Noteholders would suffer a significant shortfall and there would be no residual value for subordinate interests;

d. the Recapitalization provides a limited recovery for unsecured creditors and the WARN Act Plaintiffs;

e. all Affected Creditors that voted on the Plan voted for its approval;

f. the Plan treats Affected Creditors fairly and provides for the same distribution among the creditors within each of the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class;

g. Unaffected Claims, which include, *inter alia*, government and employee priority claims, claims not permitted to be compromised pursuant to sections 19(2) and 5.1(2) of the CCAA and prior ranking secured claims, will not be affected by the Plan;

h. the treatment of Equity Claims under the Plan is consistent with the provisions of the CCAA; and

i. the Plan is supported by the Applicants (Marret, on behalf of the Secured Noteholders), the Monitor and the creditors who voted in favor of the Plan at the Meetings.

[22] The CCAA permits the inclusion of third party releases in a plan of compromise or arrangement where those releases are reasonably connected to the proposed restructuring (see: *ATB Financial* v. *Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 ("*ATB Financial*"); *SkyLink, supra;* and *Re Sino-Forest Corporation*, 2012 ONSC 7050, leave to appeal denied, 2013 ONCA 456).

[23] The court has the jurisdiction to sanction a plan containing third party releases where the factual circumstances indicate that the third party releases are appropriate. In this case, the record establishes that the releases were negotiated as part of the overall framework of the compromises in the Plan, and these releases facilitate a successful completion of the Plan and the Recapitalization. The releases cover parties that could have claims of indemnification or

contribution against the Applicants in relation to the Recapitalization, the Plan and other related matters, whose rights against the Applicants have been discharged in the Plan.

[24] I am satisfied that the releases are therefore rationally related to the purpose of the Plan and are necessary for the successful restructuring of the Applicants.

[25] Further, the releases provided for in the Plan were contained in the Original Plan filed with the court on December 3, 2014 and attached to the Meetings Order. Counsel to the Applicants submits that the Applicants are not aware of any objections to the releases provided for in the Plan.

[26] The Applicants also contend that the releases of the released Directors/Officers are appropriate in the circumstances, given that the released Directors and Officers, in the absence of the Plan releases, could have claims for indemnification or contribution against the Applicants and the release avoids contingent claims for such indemnification or contribution against the Applicants. Further, the releases were negotiated as part of the overall framework of compromises in the Plan. I also note that no Director/Officer Claims were asserted in the Claims Procedure.

[27] The Monitor supports the Applicants' request for the sanction of the Plan, including the releases contained therein.

[28] I am satisfied that in these circumstances, it is appropriate to grant the releases.

[29] The Plan provides for certain alterations to the Cline Articles in order to effectuate certain corporate steps required to implement the Plan, including the consolidation of shares and the cancellation of fractional interests of the Cline Common Shares. I am satisfied that these amendments are necessary in order to effect the provisions of the Plan and that it is appropriate to grant the amendments as part of the approval of the Plan.

[30] The Applicants also request an extension of the stay until April 1, 2015. This request is made pursuant to section 11.02(2) of the CCAA. The court must be satisfied that:

(i) circumstances exist that make the order appropriate; and

(ii) the applicant has acted, and is acting in good faith and with due diligence.

[31] The record establishes that the Applicants have made substantial progress toward the completion of the Recapitalization, but further time is required to implement same. I am satisfied that the test pursuant to section 11.02(2) has been met and it is appropriate to extend the stay until April 1, 2015.

[32] Finally, the Monitor requests approval of its activities and conduct to date and also approval of its Pre-Filing Report, the First Report dated December 16, 2014 and the Second Report together with the activities described therein. No objection was raised with respect to the Monitor's request, which is granted.

[33] For the foregoing reasons, the motion is granted and an order shall issue in the form requested, approving the Plan and providing certain ancillary relief.

R.S.J. Morawetz

Date: January 30, 2015

TAB 2

CITATION: Target Canada Co. (Re), 2015 ONSC 7574
COURT FILE NO.: CV-15-10832-00CL
DATE: 2015-12-11

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP. AND TARGET CANADA PROPERTY LLC.**

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *J. Swartz* and *Dina Milivojevic*, for the Target Corporation

Jeremy Dacks, for the Target Canada Entities

Susan Philpott, for the Employees

Richard Swan and *S. Richard Orzy*, for Rio Can Management Inc. and KingSett Capital Inc.

Jay Carfagnini and *Alan Mark*, for Alvarez & Marsal, Monitor

Jeff Carhart, for Ginsey Industries

Lauren Epstein, for the Trustee of the Employee Trust

Lou Brzezinski and Alexandra Teodescu, for Nintendo of Canada Limited, Universal Studios, Thyssenkrupp Elevator (Canada) Limited, United Cleaning Services, RPJ Consulting Inc., Blue Vista, Farmer Brothers, East End Project, Trans Source, E One Entertainment, Foxy Originals

Linda Galessiere, for Various Landlords

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Applicants (the "Monitor") seeks approval of Monitor's Reports 3-18, together with the Monitor's activities set out in each of those Reports.

[2] Such a request is not unusual. A practice has developed in proceedings under the Companies' Creditors Arrangement Act ("CCAA") whereby the Monitor will routinely bring a motion for such approval. In most cases, there is no opposition to such requests, and the relief is routinely granted.

[3] Such is not the case in this matter.

[4] The requested relief is opposed by Rio Can Management Inc. ("Rio Can") and KingSett Capital Inc. ("KingSett"), two landlords of the Applicants (the "Target Canada Estates"). The position of these landlords was supported by Mr. Brzezinski on behalf of his client group and as agent for Mr. Solmon, who acts for ISSI Inc., as well as Ms. Galessiere, acting on behalf of another group of landlords.

[5] The essence of the opposition is that the request of the Monitor to obtain approval of its activities – particularly in these liquidation proceedings – is both premature and unnecessary and that providing such approval, in the absence of full and complete disclosure of all of the underlying facts, would be unfair to the creditors, especially if doing so might in future be asserted and relied upon by the Applicants, or any other party, seeking to limit or prejudice the rights of creditors or any steps they may wish to take.

[6] Further, the objecting parties submit that the requested relief is unnecessary, as the Monitor has the full protections provided to it in the Initial Order and subsequent orders, and under the CCAA.

[7] Alternatively, the objecting parties submit that if such approval is to be granted, it should be specifically limited by the following words:

> "provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval."

[8] The CCAA mandates the appointment of a monitor to monitor the business and financial affairs of the company (section 11.7).

[9] The duties and functions of the monitor are set forth in Section 23(1). Section 23(2) provides a degree of protection to the monitor. The section reads as follows:

> (2) Monitor not liable – if the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

[10] Paragraphs 1(b) to (d.1) primarily relate to review and reporting issues on specific business and financial affairs of the debtor.

[11] In addition, paragraph 51 of the Amended and Restated Order provides that:

> ... in addition to the rights, and protections afforded the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including for great certainty in the Monitor's capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part.

[12] The Monitor sets out a number of reasons why it believes that the requested relief is appropriate in these circumstances. Such approval

(a) allows the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;

(b) brings the monitor's activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;

(c) provides certainty and finality to processes in the CCAA proceedings and activities undertaken (eg., asset sales), all parties having been given an opportunity to raise specific objections and concerns;

(d) enables the court, tasked with supervising the CCAA process, to satisfy itself that the monitor's court-mandated activities have been conducted in a prudent and diligent manner;

(e) provides protection for the monitor, not otherwise provided by the CCAA; and

(f) protects creditors from the delay in distribution that would be caused by:

a. re-litigation of steps taken to date; and

b. potential indemnity claims by the monitor.

[13] Counsel to the Monitor also submits that the doctrine of issue estoppel applies (as do related doctrines of collateral attack and abuse of process) in respect of approval of the Monitor's activities as described in its reports. Counsel submits that given the functions that court approval serves, the availability of the doctrine (and related doctrines) is important to the CCAA process. Counsel submits that actions mandated and authorized by the court, and the activities taken by the Monitor to carry them out, are not interim measure that ought to remain open for second guessing or re-litigating down the road and there is a need for finality in a CCAA process for the benefit of all stakeholders.

[14] Prior to consideration of these arguments, it is helpful to review certain aspects of the doctrine of *res judicata* and its relationship to both issue estoppel and cause of action estoppel. The issue was recently considered in *Forrest* v. *Vriend*, 2015 Carswell BC 2979, where Ehrcke J. stated:

25. "TD and Vriend point out that the doctrine of *res judicata* is not limited to issue estoppel, but includes cause of action estoppel as well. The distinction between these two related components of *res judicata* was concisely explained by Cromwell J.A., as he then was, in *Hoque* v. *Montreal Trust Co. of Canada* (1997), 162 N.S.R. (2d) 321 (C.A.) at para. 21:

> 21 *Res judicata* is mainly concerned with two principles. First, there is a principle that "... prevents the contradiction of that which was determined in the previous litigation, by prohibiting the relitigation of issues already actually addressed.": see Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (1991) at p. 997. The second principle is that parties must bring forward all of the claims and defences with respect to the cause of action at issue in the first proceeding and that, if they fail to do so, they will be barred from asserting them in a subsequent action. This "... prevents fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation, but which properly belonged to it."; *ibid* at 998. Cause of action estoppel is usually concerned with the application of this second principle because its operation bars all of the issues properly belonging to the earlier litigation.

...

30. It is salutary to keep in mind Mr. Justice Cromwell's caution against an overly broad application of cause of action estoppel. In *Hoque* at paras. 25, 30 and 37, he wrote:

> 25. The appellants submit, relying on these and similar statements, that cause of action estoppel is broad in scope and inflexible in application. With respect, I think this overstates the true position. In my view, this very broad language which suggests an inflexible application of cause of action estoppel to all matters that "could" have been raised does not fully reflect the present law.

...

> 30. The submission that all claims that could have been dealt with in the main action are barred is not borne out by the Canadian cases. With respect to matter not actually raised and decided, the test appears to me to be that the party should have raised the matter and, in deciding whether the party should have done so, a number of factors are considered.

...

> 37. Although many of these authorities cite with approval the broad language of *Henderson* v. *Henderson, supra*, to the effect that any matter which the parties had the opportunity to raise will be barred, I think, however, that this language is somewhat too wide. The better principle is that those issues which the parties had the opportunity to raise and, in all the circumstances, should

> have raised, will be barred. In determining whether the matter should have been raised, a court will consider whether proceeding constitutes a collateral attack on the earlier findings, whether it simply assets a new legal conception of facts previously litigated, whether it relies on "new" evidence that could have been discovered in the earlier proceeding with reasonable diligence, whether the two proceedings relate to separate and distinct causes of action and whether, in all the circumstances, the second proceeding constitutes an abuse of process.

[15] In this case, I accept the submission of counsel to the Monitor to the effect that the Monitor plays an integral part in balancing and protecting the various interests in the CCAA environment.

[16] Further, in this particular case, the court has specifically mandated the Monitor to undertake a number of activities, including in connection with the sale of the debtors assets. The Monitor has also, in its various Reports, provided helpful commentary to the court and to Stakeholders on the progress of the CCAA proceedings.

[17] Turning to the issue as to whether these Reports should be approved, it is important to consider how Monitor's Reports are in fact relied upon and used by the court in arriving at certain determinations.

[18] For example, if the issue before the court is to approve a sales process or to approve a sale of assets, certain findings of fact must be made before making a determination that the sale process or the sale of assets should be approved. Evidence is generally provided by way of affidavit from a representative of the applicant and supported by commentary from the monitor in its report. The approval issue is put squarely before the court and the court must, among other things conclude that the sales process or the sale of assets is, among other things, fair and reasonable in the circumstances.

[19] On motions of the type, where the evidence is considered and findings of fact are made, the resulting decision affects the rights of all stakeholders. This is recognized in the jurisprudence with the acknowledgment that res judicata and related doctrines apply to approval of a Monitor's report in these circumstances. (See: *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, [2006] O.J. No. 1834 (SCJ Comm. List); *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, 2007 ONCA 145 and *Bank of America Canada v. Willann Investments Limited*, [1993] O.J. No. 3039 (SCJ Gen. Div.)).

[20] The foregoing must be contrasted with the current scenario, where the Monitor seeks a general approval of its Reports. The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.

[21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad

application of res judicata and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.

[22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

[23] By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:

(a) allows the Monitor to move forward with the next steps in the CCAA proceedings;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

(f) protects the creditors from the delay and distribution that would be caused by:

(i) re-litigation of steps taken to date, and

(ii) potential indemnity claims by the Monitor.

[24] By limiting the effect of the approval, the concerns of the objecting parties are addressed as the approval of Monitor's activities do not constitute approval of the activities of parties other than the Monitor.

[25] Further, limiting the effect of the approval does not impact on prior court orders which have approved other aspects of these CCAA proceedings, including the sales process and asset sales.

[26] The Monitor's Reports 3-18 are approved, but the approval the limited by the inclusion of the wording provided by counsel to Rio Can and KingSett, referenced at paragraph [7].

Regional Senior Justice G.B. Morawetz

Date: December 11, 2015

TAB 3

2016 Hfx No. 453673

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended

- and -

IN THE MATTER OF: A Plan of Compromise or Arrangement of Hefler Forest Products Limited

DISCHARGE ORDER

BEFORE THE HONOURABLE JUSTICE GLEN MCDOUGALL, IN CHAMBERS

UPON MOTION by Green Landers Limited ("Green Landers"), in its capacity as Monitor (the "**Monitor**") for Hefler Forest Products Limited (the "**Applicant**") for an Order approving the Monitor's actions, reports and fees, as well as the fees of its counsel, discharging the Monitor and terminating these CCAA proceedings;

UPON READING the Eighth Report of the Monitor dated April 24, 2017 (the "Eighth Report") and the Ninth Report of the Monitor dated August 28th, 2017 (the "**Ninth Report**"), the latter of which includes affidavits from Ross Landers and from D. Bruce Clarke, Q.C.;

AND UPON HEARING D. Bruce Clarke, Q.C., counsel for the Monitor, together with such other counsel as were present;

NOW UPON MOTION:

IT IS HEREBY ORDERED AND DIRECTED THAT:

1. Any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Ninth Report.

APPROVAL OF ACTIVITIES

2. The actions of the Monitor as described in its Reports to the Court are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. The fees and disbursements of the Monitor for the period from July 13, 2016 to August 24, 2017, inclusive, as set out in the Ninth Report, are hereby approved.

4. The fees and disbursements of the Monitor's counsel, Burchells LLP ("Burchells") for the period from July 26, 2016 to August 24, 2017, inclusive, as set out in the Ninth Report are hereby approved.

5. The estimated fees and disbursements of the Monitor and Monitor's counsel to complete their remaining duties and the administration of these CCAA Proceedings, as set out in the Ninth Report, are hereby approved.

DISCHARGE OF THE MONITOR

6. Green Landers is discharged as Monitor of the Applicant and shall have no further duties as Monitor, save and except as set out in paragraph 5 of the Ninth Report and paragraph 7 herein. Green Landers' discharge is effective immediately on the filing of a certificate with the Court (the "**Discharge Certificate**") certifying that:

   (a) fees and disbursements of the Monitor and of its counsel have been paid in full; and

   (b) any and all matters that may be incidental to the termination of these CCAA Proceedings or any other matters necessary to complete the CCAA Proceedings have been completed.

7. The Monitor has satisfied all of its obligations pursuant to the CCAA and these CCAA Proceedings and shall have no further obligations, liabilities, responsibilities or duties as Monitor, save and except as set out in paragraph 5 of the Ninth Report and paragraph 7 herein and the filing of the Discharge Certificate.

8. Notwithstanding the foregoing, the Monitor shall have the authority from and after the date of this Order to complete any matters that may be incidental to the termination of

these CCAA Proceedings or any other matters necessary to complete these CCAA Proceedings, including as set out in the Ninth Report and specifically including delivery of the balance of Hefler Trust Funds to Royal Bank of Canada as provided for in Section 11 of the Distribution Order of this Court dated May 9, 2017.

9. In addition to the rights and protections afforded the Monitor under the CCAA, and the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor, or any reliance thereon, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties or obligations in the CCAA Proceedings or this Order or as requested by the Applicant, save and except for any claim or liability arising out of any actionable negligence or misconduct on the part of the Monitor.

10. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

11. Notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor at law or pursuant to the Initial Order.

TERMINATION OF CCAA PROCEEDING

12. The Critical Supplier Charge and the Administrative Charge shall be and is hereby terminated, discharged and vacated in its entirety upon the Monitor's filing with this Court of the Discharge Certificate.

13. The CCAA Proceedings shall be and are hereby terminated upon the Monitor's filing with this Court of the Discharge Certificate.

DATED at Halifax, Nova Scotia, this 8 day of September, 2017.

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.

I hereby certify that the foregoing is a true copy of the original order on file herein.

Dated the 8 day of September
A.D., 2017.

GINA DIDIODATO
Deputy Prothonotary

GINA DIDIODATO
Deputy Prothonotary

1840051.2

TAB 4

2012 Hfx No. 374606

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

IN THE MATTER OF: A Plan of Compromise or Arrangement of North End United Housing Co-operative Ltd.

Court Administration
JAN 1 1 2013
Halifax, N.S.

G McD, J

ORDER

BEFORE THE HONOURABLE JUSTICE GLEN G. McDOUGALL:

Grant Thornton Limited ("**Grant Thornton**"), in its capacity as Monitor of North End United Housing Co-operative Ltd., appointed pursuant to order issued January 25, 2012, has filed a motion for an order approving the Monitor's Eighth Report and earlier reports, approving the professional fees, and discharging Grant Thornton as Monitor herein;

Upon reading the Affidavit of Robert G. MacKeigan, Q.C., sworn on December 19, 2012, the Monitor's Eighth Report and the other materials on file herein;

Upon motion of Robert G. MacKeigan, Q.C., it is hereby ordered:

1. The actions of Grant Thornton summarized and referred to in the Monitor's Eighth Report dated December 3, 2012, and all earlier reports of the Monitor on file herein be ratified and approved;

2. The invoices for professional fees and disbursements of the Monitor, counsel for the Monitor and counsel for NEU be approved in the amounts summarized in Section 4.0 of the Monitor's Eight Report.

3. The Monitor be and it is hereby discharged from its duties under the order issued on January 25, 2012 and the subsequent orders issued herein, including the order dated September 10, 2012.

4. The discharge of Grant Thornton Limited as Monitor by this order does not in any way affect the duties of Grant Thornton Limited as Receiver appointed pursuant to the order issued herein on September 10, 2012.

Issued January 11, 2013.

Nancy Roberts
~~PROTHONOTARY~~

NANCY ROBERTS
Deputy Prothonotary

IN THE SUPREME COURT OF NOVA SCOTIA
I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.
Dated the 11 day of January A.D., 2013
2553851 v3
Nancy Roberts
Deputy Prothonotary

TAB 5

APR 17 2014

SUPREME COURT OF NOVA SCOTIA

Hfx No. 355063

IN THE MATTER OF:	The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
AND IN THE MATTER OF:	A Plan of Compromise or Arrangement of NewPage Port Hawkesbury Corp.
	Applicant

DISCHARGE ORDER

BEFORE THE HONOURABLE JUSTICE JOHN D. MURPHY IN CHAMBERS

UPON MOTION by Ernst & Young Inc. ("**E&Y**"), in its capacity as Monitor (the "**Monitor**") of NewPage Port Hawkesbury Corp. (the "**Applicant**" or "**NPPH**") for an Order approving the Monitor's actions, reports and fees, as well as the fees of its counsel, discharging E&Y as Monitor and terminating these CCAA proceedings;.

UPON READING the Seventeenth Report of the Monitor dated February 6, 2014 (the "**Seventeenth Report**"), the Affidavit of George Kinsman sworn February 6, 2014 (the "**Kinsman Affidavit**"), the Affidavit of Maria Konyukhova sworn February 6, 2014 (the "**Konyukhova Affidavit**") and the Affidavit of Tim Hill sworn September 5, 2013 (the "**Hill Affidavit**");

AND UPON HEARING Elizabeth Pillon, counsel for the Monitor, together with such other counsel as were present;

NOW UPON MOTION:

IT IS HEREBY ORDERED AND DIRECTED THAT:

1. Any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Seventeenth Report.

APPROVAL OF ACTIVITIES

2. The actions of the Monitor as described in the Eleventh to the Seventeenth Reports of the Monitor, and the Supplement to the Thirteenth Report, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. The fees and disbursements of the Monitor for the period from September 9, 2011 to June 20, 2013, inclusive, and the Monitor's fees and disbursements, as estimated, to complete its remaining duties and the administration of these CCAA Proceedings, all as set out in the Kinsman Affidavit and the Seventeenth Report, are hereby approved.

4. The fees and disbursements of the Monitor's counsel, Stikeman Elliott LLP ("**Stikeman**") for the period from September 9, 2011 to November 15, 2013, inclusive, and Tim Hill ("**Hill**"), for the period from September 5, 2011 to April 10, 2013, inclusive, and Stikeman's and Hill's fees and disbursements, as estimated, in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA Proceedings, all as set out in the Pillon Affidavit, the Hill Affidavit and the Seventeenth Report, are hereby approved.

DISCHARGE OF THE MONITOR

5. E&Y is discharged as Monitor of Newpage and shall have no further duties as Monitor, save and except as set out in paragraph 105 of the Seventeenth Report and paragraph 7 herein. E&Y's discharge is effective immediately on the filing of a certificate with the Court (the "**Discharge Certificate**") certifying that:

   a. fees and disbursements of the Monitor and of its counsel have been paid in full; and

   b. any and all matters that may be incidental to the termination of these CCAA Proceedings or any other matters necessary to complete the CCAA Proceedings have been completed.

6. The Monitor has satisfied all of its obligations pursuant to the CCAA and these CCAA Proceedings and shall have no further obligations, liabilities, responsibilities or duties as Monitor, save and except as set out in paragraph 105 of the Seventeenth Report and paragraph 7 herein and the filing of the Discharge Certificate.

7. Notwithstanding the foregoing, the Monitor shall have the authority from and after the date of this Order to complete any matters that may be incidental to the termination of these CCAA Proceedings or any other matters necessary to complete these CCAA Proceedings, including as set out in the Seventeenth Report.

8. In addition to the rights and protections afforded the Monitor under the CCAA, the Plan, the Initial Order and the Sanction Order, the Monitor shall not be liable for any act or omission on the part of the Monitor, or any reliance thereon, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties or obligations in the CCAA Proceedings and/or this Order or as requested by the Applicant, save and except for any claim or liability arising out of any negligence or misconduct on the part of the Monitor.

9. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

10. Notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor at law or pursuant to the Initial Order.

TERMINATION OF CCAA PROCEEDING

11. The Administrative Charge shall be and is hereby terminated, discharged and vacated in its entirety upon the Monitor's filing with this Court of the Discharge Certificate.

12. The CCAA Proceedings shall be and are hereby terminated upon the Monitor's filing with this Court of the Discharge Certificate.

DATED at Halifax, Nova Scotia, this 17th day of April, 2014.

Bonnie Walton
Deputy Prothonotary

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document, identified by the seal of the court, is a true copy of the original document on the file herein.

APR 17 2014

Bonnie Walton
Deputy Prothonotary

TAB 6

Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 24TH
	)	
JUSTICE MORAWETZ	)	DAY OF APRIL 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./ PUBLICATIONS CANWEST INC., CANWEST BOOKS INC., AND CANWEST (CANADA) INC.

Applicants

ORDER

(RE: TERMINATION OF CCAA PROCEEDINGS & DISCHARGE OF THE MONITOR)

THIS MOTION, made by FTI Consulting Canada Inc. ("**FTI**"), in its capacity as monitor ("**Monitor**") to Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., and Canwest (Canada) Inc. (collectively, the "**Applicants**") and Canwest Limited Partnership/Canwest Societe en Commandite (the "**Limited Partnership**", and together with the Applicants, the "**LP Entities**") for an order, among other things, (a) terminating the proceedings (the "***CCAA* Proceedings**") of the LP Entities under the Companies Creditors' Arrangement Act (the "***CCAA***"); and (b) discharging and releasing the Monitor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-Sixth Report of the Monitor dated April 16, 2013 (the "**Twenty-Sixth Report**"), the Affidavit of Paul Bishop sworn April 16, 2013 (the

"**Bishop Affidavit**"), the Affidavit of Daphne J. MacKenzie sworn on April 16, 2013 (the "**MacKenzie Affidavit**") and on hearing from counsel for the Monitor and other such counsel as were present, no one else appearing although duly served.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein, including the Twenty-Sixth Report, is hereby abridged and that the motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the Twenty-First Report of the Monitor dated March 23, 2012, the Twenty-Second Report of the Monitor dated May 24, 2012, the Twenty-Third Report of the Monitor dated July 25, 2012, the Twenty-Fourth Report of the Monitor dated October 24, 2012, the Twenty-Fifth Report of the Monitor dated January 29, 2013 and the Twenty-Sixth Report, and the activities of the Monitor described in each of them, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from November 1, 2011 to March 31, 2013, inclusive, and the Monitor's fees and disbursements, as estimated, to complete its remaining duties and the administration of these *CCAA* Proceedings, all as set out in the Bishop Affidavit and the Twenty-Sixth Report, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel, Stikeman Elliott LLP ("**Stikeman**"), for the period from October 31, 2011 to January 31, 2013, inclusive, and Stikeman's fees and disbursements, as estimated, in connection with the completion by the Monitor of its remaining duties and the

administration of these *CCAA* Proceedings, all as set out in the MacKenzie Affidavit and the Twenty-Sixth Report, are hereby approved.

DISCHARGE OF THE MONITOR

5. **THIS COURT ORDERS** that FTI is discharged as Monitor of the LP Entities effective immediately and shall have no further duties as Monitor, save and except as set out in paragraph 7 herein and the filing of a certificate with the Court, substantially in the form attached hereto as Schedule "A" (the "**Monitor's Certificate**"), certifying that:

(a) fees and disbursements of the Monitor and of Stikeman have been paid in full; and

(b) any and all matters that may be incidental to the termination of the Proceedings or any other matters necessary to complete the *CCAA* Proceedings as requested by the LP Entities and agreed to by the Monitor have been completed.

6. **THIS COURT ORDERS AND DECLARES** that the Monitor has satisfied all of its obligations pursuant to the *CCAA* and these *CCAA* Proceedings and shall have no further obligations, liabilities, responsibilities or duties as Monitor, save and except as set out in paragraph 7 herein and the filing of the Monitor's Certificate.

7. **THIS COURT ORDERS** that, notwithstanding the foregoing, the Monitor shall have the authority from and after the date of this Order to complete any matters that may be incidental to the termination of these *CCAA* Proceedings or any other matters necessary to complete these *CCAA* proceedings as requested by the LP Entities and agreed to by the Monitor.

8. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the Initial Order, in any other Order of this Court in the *CCAA*

Proceedings or the *CCAA*, FTI, whether in its capacity as Monitor or otherwise, Stikeman, and their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of these *CCAA* Proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

9. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against FTI in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on at least seven days' prior written notice to FTI and upon further order securing, as security for costs, the full indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

10. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor at law or pursuant to the Initial Order.

STAY EXTENSION

11. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 21 of the Initial Order) is hereby extended until and including the date on which the Monitor's Certificate is filed with the Court.

TERMINATION OF *CCAA* PROCEEDING

12. **THIS COURT ORDERS** that the *CCAA* Proceedings shall be and are hereby terminated upon the Monitor's filing with this Court of the Monitor's Certificate.

13. **THIS COURT ORDERS** that following the Monitor's filing of the Monitor's Certificate, the Court-ordered charges set forth in the Initial Order shall be discharged and released.

14. **THIS COURT ORDERS AND REQUESTS** the aid and recognition (including assistance pursuant to Section 17 of the CCAA) of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or territory or any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of and giving effect to this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 25 2013

SCHEDULE "A"
Monitor's Certificate

Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./ PUBLICATIONS CANWEST INC., CANWEST BOOKS INC., AND CANWEST (CANADA) INC.

MONITOR'S CERTIFICATE
(RE: DISCHARGE OF MONITOR)

RECITALS

A. Pursuant to the Order of this Honourable Court dated January 8, 2010, Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., and Canwest (Canada) Inc. (collectively, the "**Applicants**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "***CCAA***") pursuant to the Initial Order of Justice Pepall (the "**Initial Order**"). The Initial Order also granted relief in respect of Canwest Limited Partnership / Canwest Societe en Commandite (together with the Applicants, the "**LP Entities**") and appointed FTI Consulting Canada Inc. ("**FTI**") as monitor (the "**Monitor**") of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the "***CCAA* Proceedings**".

B. The CCAA Proceedings have been completed in accordance with the Orders of this Court and under the supervision of the Monitor.

C. Pursuant to the Order of this Court dated April [24], 2013, the Monitor may be discharged and the *CCAA* Proceedings may be terminated upon filing of this Monitor's Certificate with the Court.

THE MONITOR CERTIFIES the following:

1. The fees and disbursements of the Monitor and of the Monitor's counsel, Stikeman Elliott LLP, have been paid in full.

2. The Monitor has completed any and all matters that may be incidental to the termination of the *CCAA* Proceedings or any other matters necessary to complete the *CCAA* Proceedings as requested by the LP Entities and agreed to by the Monitor.

DATED at Toronto, Ontario this _____ day of _____, 2013.

FTI CONSULTING INC., solely in its capacity as Monitor of the LP Entities and not in its personal or corporate capacity

By: _____

Name: Paul Bishop
Title: Senior Vice President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Applicants

Court File No: CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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