



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: February 27, 2024

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

BEFORE: JUSTICE BLACK

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
BROTMAN, STUART STEPHENSON, MITCH	EXPORT DEVELOPMENT CANADA	<a href="mailto:sbrotman@fasken.com">sbrotman@fasken.com</a> <a href="mailto:mstephenson@fasken.com">mstephenson@fasken.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
ROSTOM, WAEL SPURGEON, RYAN	ANTAMEX INDUSTRIES ULC	<a href="mailto:wael.rostom@mcmillan.ca">wael.rostom@mcmillan.ca</a> <a href="mailto:rspurgeon@antamex.com">rspurgeon@antamex.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
SALMAS, JOHN	HSBC BANK CANADA	<a href="mailto:john.salmas@dentons.com">john.salmas@dentons.com</a>
PUNZO, ANDREW MACLELLAN, JAMES	EULER HERMES ALLIANZ TRADE	<a href="mailto:apunzo@blg.com">apunzo@blg.com</a> <a href="mailto:jmaclellan@blg.com">jmaclellan@blg.com</a>
ROGERS, LINC	DELOITTE RESTRUCTURING INC	<a href="mailto:Link.rogers@blakes.com">Link.rogers@blakes.com</a>
BANBROUGH, DENISE	AVIVA NATIONWIDE	<a href="mailto:dbambrough@blg.com">dbambrough@blg.com</a>
CHRIS BESANT BONIS CHARANCLE	THIRD PARTY	<a href="mailto:cbesant@grllp.com">cbesant@grllp.com</a> <a href="mailto:nbonischarancle@grllp.com">nbonischarancle@grllp.com</a>

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## **ENDORSEMENT OF JUSTICE BLACK:**

- [1] This matter was scheduled for the applicant Export Development Canada (“EDC”)’s application to appoint Deloitte Restructuring Inc. (“Deloitte”) as receiver, without security, of all present and future assets, undertakings and properties of Antamex Industries ULC (“Antamex”).
- [2] Antamex is a British Columbia corporation with its principal place of operations in Concord, Ontario. It is in the business of designing, manufacturing and installing custom modular glass facades for multi-story buildings, and does so, including currently, at a number of projects throughout North America.
- [3] EDC made a loan (the “EDC Loan”) to Antamex to finance the purchase of certain glass production equipment (the “EDC collateral”) to be leased to and used by Naverra LLC (“Naverra”), a Delaware company. Naverra, in addition to being a supplier to Antamex of architectural glass products, is also a guarantor of Antamex’s obligations under the EDC Loan. The EDC Loan is also secured by a general security agreement (the “EDC GSA”). EDC’s security encompasses a full array of Antamex’s assets (i.e. it is not limited to the EDC Collateral).
- [4] The EDC Collateral equipment purchased by Antamex with the proceeds of the EDC Loan was leased and used by Naverra at the Norwich Glass Plant in Norwich, Connecticut.
- [5] In June of 2023, in circumstances in which Naverra was apparently defaulting on rent payments (and other obligations) the landlord at the Norwich Glass Plant premises (the “Landlord”) commenced eviction proceedings and, in November of 2023, obtained judgment for immediate possession of those premises.
- [6] By November of 2023 when the Landlord obtained that judgment, Naverra had shut down its operations, abandoned the Norwich Glass Plant premises, and laid off all or most of its workforce. The Landlord “changed the locks” in early January of 2024, blocking access to the premises and to the EDC Collateral that was the subject of the lease from EDC to Naverra.
- [7] EDC says that the events concerning Naverra and the Norwich Glass Plant had a materially adverse effect on Antamex’s operations and Naverra’s ability to honour its guarantee. They also constituted an event of default under the EDC Loan. EDC asserts that the consequences of Naverra’s conduct imperil its ability to collect the EDC Loan, and its interest in the EDC Collateral, and that its security position will continue to deteriorate.
- [8] On January 10, 2024, EDC issued a demand letter notifying Antamex of the defaults under the EDC Loan, and demanding payment in full of its indebtedness. EDC also issued on that day a Notice of Intention to Enforce a Security (the s. 244 Notice). The 10-day notice period under the BIA has expired, and Antamex has not to date repaid the indebtedness owing to EDC, which as of February 20, 2024 totaled USD \$10,462,962.93, and continues to accrue interest.

- [9] The EDC GSA provides that on the occurrence of an event of default, EDC is entitled to commence proceedings and to seek the appointment of a receiver.
- [10] EDC asserts that the appointment of a receiver is expedient and appropriate in the circumstances, in that Antamex will soon exhaust its liquid assets, thereby potentially eliminating the prospect of a going-concern sale and further eroding the value of the business and its property. It also argues that a court-supervised sale process will result in more value for all stakeholders, and that because there are competing claims to Antamex's property, and multiple secured parties, a transparent Court-supervised process would be to the benefit of all concerned.
- [11] In the materials it originally uploaded in connection with this application to appoint Deloitte as receiver, EDC says that near the end of January of 2024, Antamex advised EDC that it did not have sufficient liquidity to continue its operations beyond the end of February 2024 and also advised that it did not have funds to pay its external legal counsel.
- [12] In a supplementary application record filed on the eve of the application, however, EDC provided copies of an email exchange between EDC's counsel and recently appointed counsel for Antamex. In that email exchange, Antamex requested a 2-week adjournment of the hearing of EDC's receivership application, inasmuch as Antamex had engaged in discussions with its sureties (in connection with bonds relative to various Antamex projects) (the "Sureties") regarding the possibility of those Sureties providing funding.
- [13] Antamex's counsel described that possibility as serious, and advised that the Sureties were committing extensive resources to evaluate and respond to Antamex's request, but he also advised that the Sureties would need two weeks to complete their review. He advised that the Sureties were very seriously considering funding Antamex, and that a receivership before that process was allowed to unfold would be detrimental to the going-concern prospects of the business and the completion of ongoing projects, and to Antamex's stakeholders.
- [14] Counsel and other representatives of the Sureties, Euler Hermes North America Insurance Company, Aviva Insurance Company of Canada and Nationwide Mutual Insurance Company were in attendance at the hearing.
- [15] The email exchange about Antamex's request for a 2-week adjournment and about the evaluation by and possible financing from the Sureties took place on the Friday through Sunday (February 23-25) before the hearing of the application scheduled for Tuesday morning (February 27). It appears that the exchange likely continued up to the time of the hearing, but the materials, which had to be finalized and filed at a certain point, contain emails only through February 25.
- [16] On Monday (February 26), Antamex finalized a responding record, uploaded either Monday night or Tuesday morning, in which it noted, in an affidavit of its president Ryan Spurgeon, that an adjournment, if granted, would permit Antamex time to secure further funding for its work on several construction projects of the benefit of its stakeholders and without material prejudice to EDC.
- [17] Mr. Spurgeon also pointed out that Antamex has continued to make its scheduled, ordinary course payments in accordance with the EDC Loan, and currently has approximately CAD \$3 million in its accounts less about \$200,000.00 in outstanding cheques.

- [18] He deposed that the significant payments to be made over the next two weeks would be for employee payroll and statutory remittances, as well as critical payments to vendors. He suggested that, accordingly, a 2-week adjournment would cause no material prejudice to EDC. Antamex's counsel went further in his submissions, contending that these payments would have to be made in priority to other payments in any event (regardless of whether or not a receiver is put in place).
- [19] Mr. Spurgeon also deposed that, since being served with EDC's application record last week (on Thursday, February 22, 2024), Antamex had engaged (restructuring) counsel, and had turned to what it viewed as its last potential funding option, being the Sureties, who had a significant stake by virtue of bonding certain of Antamex's obligations under its various subcontracts relative to ongoing projects across North America.
- [20] He advised that each of the Sureties has material exposure under their respective bonds if Antamex's work is not complete. As a result, Mr. Spurgeon says, consistent with the contents of the email exchange between the parties over the weekend before the hearing of the application, the Sureties took Antamex's request very seriously, and immediately took steps to commit resources to evaluate and respond to the request.
- [21] He said that the Sureties had engaged a consultant to review relevant books and records, that Antamex had established a data room (and extensively populated it by the end of the day on Sunday, February 25, 2024), and that the Sureties had commenced their review at Antamex's offices.
- [22] Finally, he noted that Antamex has about 180 full-time employees on its payroll and 40 part-time unionized employees, and a payroll which in 2023 totaled over \$20 million. Mr. Spurgeon expressed the concern that a receivership, if granted, would put these jobs in jeopardy. He described other potential impacts, with respect to suppliers, customers, general contractors and project owners, if Antamex does not carry on as a going concern.
- [23] Counsel for the Sureties echoed and supported the submissions made on behalf of Antamex. In response to my questions, counsel maintained that the Sureties' review could not be completed in less than two weeks, and that discussions had been ongoing – interrupted by the hearing – on possible assurances and consideration potentially to be provided by the Sureties/Antamex to EDC to give comfort to EDC about the requested adjournment.
- [24] Counsel for the Landlord, Mr. Besant, also attended the hearing. He advised that the Landlord had just engaged him (it already has U.S. counsel acting for it in connection with the pre-existing eviction proceedings relative to the Norwich Glass Plant) such that he had not had an opportunity to file materials.
- [25] The Landlord's submissions walk a fine line. Mr. Besant emphasized that it already has a judgment in Connecticut which allows it to take possession of the EDC Collateral (and other equipment) and to sell that equipment if it sees fit. On the other hand, the Landlord is aware of EDC's asserted priority, would prefer to engage in discussions with EDC/Antamex about the current options, and would prefer a negotiated and orderly approach to the use or disposition of the equipment at issue.
- [26] In Antamex's submissions it had asserted that there was no risk to the EDC Collateral if it sits idle in the Norwich Glass Plant for the next two weeks, such that EDC's position relative to the EDC Collateral would not be prejudiced by a two-week adjournment.

- [27] The Landlord's position, as I perceive it, does not go quite that far. It may be that the Landlord would be content to wait for an additional brief period of time before taking any steps relative to the EDC Collateral, but, fairly, the Landlord wishes to engage in discussions with the parties to understand the options and the plan going forward.
- [28] In my view, the Landlord's position is in keeping with and reflective of the status of the matter generally when it came before me.
- [29] That is, my sense was that the discussions that had commenced between and among the key players here were incomplete at the time the hearing came on.
- [30] Only one hour had been booked for the hearing, which was significantly inadequate for me to hear the full positions of all stakeholders, and which suggests to me that, understandably, EDC was not expecting Antamex's last minute resort to the Sureties for potential financing, nor the interest and participation of the Sureties in the proceeding.
- [31] I should emphasize that this is in no way EDC's fault. It appears that, until EDC served its application on February 22, 2024, Antamex had not fully informed all stakeholders of the full extent of its predicament, nor the likelihood that EDC would take immediate steps to appoint a receiver.
- [32] EDC should not be prejudiced by Antamex's delay in alerting stakeholders to the extent of its peril.
- [33] On the other hand, I am concerned, assuming my perception is accurate, that in the flurry of activity between the service of the application and the hearing before me, the parties have not had a full opportunity to explore near term options.
- [34] In the circumstances, I am not yet prepared to order the receivership that EDC seeks.
- [35] However, I am also not prepared to simply adjourn the matter for two weeks.
- [36] As EDC points out, there is no guarantee, if a two-week adjournment is granted, that the Sureties will in fact provide the financing necessary to address EDC's position, or that they will decide to assist Antamex at all. That delay, without any assurance or consideration to EDC, is understandably untenable for EDC, and its concern that the necessary expenditures during that two-week period will erode Antamex's cash to the point of imperiling a going concern option is well taken. I also note EDC's submission that, whether or not I grant a receivership to the full extent it seeks, there should be no impediment to granting a receivership at least with respect to the EDC Collateral, and that given the uncertainty of the Landlord's position, the delay on that front may also undermine EDC's ability to recover or realize on that EDC Collateral.
- [37] I direct the parties to continue their discussions between now and Monday March 4, 2024. Those discussions should include ongoing communications among EDC, Antamex and the Sureties about what assurances and consideration can be provided to EDC to give it comfort about possibly extending the adjournment beyond March 4, 2024, and up to the full two weeks that Antamex seeks (which would extend the adjournment to March 12, 2024).

- [38] There should also be discussions with the Landlord, to allow the parties to understand the nature and extent of the Landlord's willingness to cooperate with respect to the EDC Collateral, and to allow the Landlord to understand what kind of orderly approach may be available relative to the EDC Collateral. In this regard I am taking Mr. Besant at his word, that the Landlord is prepared, so long as it is included in the discussions, to refrain from taking precipitous steps relative to the EDC Collateral.
- [39] In other words, I expect the current status quo to remain in place between now and March 4, 2024, to allow for the discussions described above to proceed in a slightly less frenetic way.
- [40] I direct EDC's counsel to report to me, in writing, by 1 p.m. on Monday March 4, 2024, as to the state of discussions by that time.
- [41] My hope is that EDC's counsel will be reporting an agreement or consensus as to next steps, and that the content of the written report will reflect that consensus. Of course, regardless, the report from EDC's counsel should be copied to all interested parties. The report should endeavor to advise me of the positions of the key stakeholders, including the Sureties and the Landlord.
- [42] In case there is no agreement, or incomplete agreement, I will allow counsel for Antamex to provide a response to EDC's counsel's report by 5 p.m. on that same day, March 4, 2024. Again, to the extent required, I will expect this response to advise of the positions of the Sureties and the Landlord. I do not wish to receive separate reports from stakeholders other than EDC and Antamex.
- [43] In the event that there remains substantial disagreement between and among the parties as of the end of the day on March 4, 2024, I will then make a decision as to where the matter goes from there, and in particular whether and to what extent there will be a receivership, and/or whether or not there will be an extension of the adjournment to March 12, 2024.
- [44] My sense is that there were more parties and counsel present than shown on the list at the top of this endorsement, and so I ask that counsel ensure that this endorsement is circulated to all interested parties.

February 27, 2024



Justice Black