

COURT OF APPEAL FOR ONTARIO

CITATION: Grant Forest Products Inc. (Re), 2015 ONCA 192

DATE: 20150319

DOCKET: M44756 (C58636)

Doherty, Gillese and Lauwers JJ.A.

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 Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP

BETWEEN

Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc.,
and Grant U.S. Holdings GP

Applicants

and

The Toronto-Dominion Bank, in its capacity as agent for secured lenders holding first lien security and the Bank of New York Mellon, in its capacity as agent for secured lenders holding second lien security

Respondents

Andrew J. Hatnay and James Harnum, for the moving parties, the court-appointed Representative Counsel to non-union active employees and retirees of U.S. Steel Canada

Mark Bailey, for the appellant the Superintendent of Financial Services of Ontario

John D. Marshall and Roger Jaipargas, for the respondent West Face Capital Inc.

Heard: In writing

On a motion for leave to intervene.

ENDORSEMENT

[1] This appeal involves s. 57(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, s. 30(7) of the *Personal Property Security Act*, R.S.O. 1990, c. P.10, and the recent Supreme Court of Canada decision in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271.

[2] The court-appointed representatives of the non-union active employees and retirees of United States Steel Canada Inc. (“USSC”) and the court-appointed representative counsel in unrelated proceedings of the USSC under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”), move for leave to intervene in this appeal as a friend of the court. There are approximately 6,000 affected employees and retirees of USSC subject to the representation order.

[3] The moving parties first learned of this appeal a few days after the parties to this appeal had completed argument and the court had reserved its judgment. They moved quickly to be added as an intervener. They say that the decision of this court in this appeal is expected to have a significant impact on the rights of the USSC pension plan members, both in the current restructuring negotiations and when the pension plans are wound up, in a liquidation of USSC under the CCAA, if restructuring is not achievable.

[4] They further submit that, if permitted to intervene, they will make a useful contribution because they will provide the perspective of employees and retirees on the issues. There is no employee or retiree representation on the appeal. They further submit that, because the oral hearing of this appeal was only concluded very recently and the decision is under reserve, its intervention will not unduly delay release of this court's decision nor will it cause an injustice to any party opposing its motion.

[5] The Superintendent of Financial Services for Ontario (the "Superintendent") is the appellant in these proceedings. It supports the intervention motion.

[6] West Face Capital Inc. ("West Face"), a secured creditor of Grant Forest Products Inc., was the main respondent in the appeal. It opposes the motion on two grounds.

[7] First, West Face says that the moving parties are not appropriate persons to act as a friend of the court because the decision in this matter will have no direct impact on the USSC CCAA proceeding and will not bind or directly affect the interests of those whom the moving parties represent. Furthermore, it argues, the interests of pension plan members were represented on the appeal by the Superintendent and the Administrator.

[8] Second, West Face argues that the moving party will not make a useful contribution to the resolution of this appeal without causing injustice. West Face says that the intervention would significantly increase its costs by requiring it to re-argue the appeal in response to the moving parties' submissions. It also contends that the timing of the motion undermines its position as a respondent. Had the intervention been granted before the appeal was heard, it could have changed its approach to, and preparation of, its position and arguments. Furthermore, it says that permitting an intervention in an appeal after argument has been completed compromises the appeal process.

[9] We accept the moving parties' submissions. Given the nature of this case and the issues in it, we are of the view that there is a likelihood that the moving parties will make a useful contribution by bringing the perspective of pension plan members affected by such issues.

[10] To address the issue of possible injustice, we limit the moving parties to addressing only those issues already raised in this appeal and to the existing record. Further, in the circumstances, we are of the view that West Face is entitled to the additional costs reasonably incurred in responding to the moving parties' submissions.

[11] We are mindful of West Face's contention that, because of the timing of this motion, it will have lost the opportunity to orally respond to the moving

parties' arguments. The panel reserves the right to call for further oral argument after receipt of further submissions arising from this endorsement.

DISPOSITION

[12] Accordingly, we grant leave to the moving parties to intervene as a friend of the court. They may file a factum, not exceeding 20 pages, within 10 days of the date of this endorsement. West Face and any other party wishing to respond shall have 20 days within which to file a responding factum, not to exceed 20 pages. If West Face files a responding factum, the moving parties shall pay West Face's reasonable legal costs incurred in preparing the same.

