

CITATION: Nortel Networks Limited (Re) , 2010 ONCA 464
DATE: 20100622
DOCKET: C52117

COURT OF APPEAL FOR ONTARIO

O'Connor A.C.J.O., Feldman and Blair JJ.A.

BETWEEN

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 Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation

Application Under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

John D. Marshall and J. Szunski, U.K. Pensions Regulator

B. Burden and D. Ward, Pension Protection Fund Trustee

F. Myers, Jay Carfagnini and P. Kolla, for Monitor, Ernst & Young Inc.

A. Merskey, for the Nortel Companies

M. Starnino, for the Superintendent of Financial Service

Jonathan Bida, for Former Employees of Nortel

Derek J. Bell, for Nortel Noteholders

Alex MacFarlane, for Canadian Lawyers for the Official Committee of Unsecured Creditors

Heard and orally released: June 16, 2010

On appeal from the order of Justice Morawetz of the Superior Court of Justice dated February 26, 2010.

ENDORSEMENT

[1] We agree with Morawetz J. that the service of the Warning Notice breached the stay provisions in the Initial Order. The service of the Notice is, therefore, a nullity for purposes of the *Companies' Creditors Arrangement Act* proceedings.

[2] With respect to the remedy, we do not interfere with para. 3 of the order below subject to this clarification: Paragraph 3 should not operate so as to preclude the U.K. Trustee and/or the Pension Protection Fund from seeking to assert, by way of amendment of the Proof of Claim, if necessary, a claim in the *Companies' Creditors Arrangement Act* process for pension contribution shortfalls, including for the relief they assert they would have been able to establish in the U.K. Financial Support Direction process.

[3] In the result, the appeal is dismissed.

[4] We are only going to deal with the costs in this court. The costs of the proceedings below are left to the court below. We order the U.K. Pensions Regulator to pay the Monitor's costs fixed in the amount of \$50,000 and the Nortel companies' costs fixed in the amount of \$40,000. Both awards include GST and disbursements and cover the motion to expedite, the leave to appeal and today's appeal. No other costs are ordered.

D. Owen A.C.J.O.

L. Kelderman J.A.

Pat Blain J.A.