

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

DATE: July 30, 2015

PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises-en-cause

and

FTI CONSULTING CANADA INC.

Monitor

and

MFC INDUSTRIAL LTD.

Objecting Party

and

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
Objecting Parties/Petitioners

JUDGMENT ON
(1) THE CCAA PARTIES' MOTION TO EXTEND THE STAY PERIOD (#184),
(2) MFC'S NOTICE OF OBJECTION (#186), AND
(3) THE UNION'S NOTICE OF OBJECTION AND MOTION TO EXTEND THE DELAY
FOR LEAVE TO APPEAL (#188)

INTRODUCTION

[1] In the context of the ongoing proceedings under the *Companies' Creditors Arrangement Act*¹ involving the Bloom Lake Parties and the Wabush Mines Parties, they seek an extension of the stay periods to November 6, 2015. Notices of objection were filed by MFC Industrial Ltd. and by the Union.

[2] Subsidiarily, MFC seeks an order that the Wabush Mines Parties or the Monitor provide certain information.

[3] Finally, the Union makes a motion asking that its delay to file a motion for leave to appeal from a judgment of the Court dated June 26, 2015 be extended.

EXTENSION OF THE STAY PERIOD

[4] The initial order with respect to the Bloom Lake Parties was issued on January 27, 2015. The stay period was extended on February 20, 2015 and on April 17, 2015, and it expires on July 31, 2015.

[5] The initial order with respect to the Wabush Mines Parties was issued on May 20, 2015. The stay period was extended on June 9, 2015 and it expires on July 31, 2015.

[6] The Parties are asking the Court to extend the stay periods to November 6, 2015.

[7] The Parties are in the midst of the SISF, a process to sell the assets, but that process is not complete. They say that they need the additional time to complete the sale process and to seek the Court's approval of the various sales of assets. They also

¹ R.S.C., 1985, c. C-36.

say that they need the additional time to obtain approval of and implement a claims process, and to determine how best to distribute the sale proceeds.

[8] The Monitor filed its Eighth Report in which it supports the request for an extension. Nigel Meakin, a representative of the Monitor, testified at the hearing.

[9] The Monitor's Report and Mr. Meakin's testimony establish the following:

- The Parties and the Monitor have received offers to purchase assets pursuant to the SISP and, in parallel, the Monitor received liquidation proposals;
- The Parties and the Monitor are analyzing the offers and are in contact with the offerors, in order to clarify the offers and to determine which offers or combination of offers produce the best return for the creditors;
- The three month extension should be sufficient to bring the offers on which the Parties wish to proceed to the Court;
- The Bloom Lake Parties should have sufficient cash resources to carry on their limited operations until November 6, 2015;
- The Wabush Mines Parties should have sufficient interim financing to carry on their limited operations until November 6, 2015; and
- In the opinion of the Monitor, the Parties have acted and are acting in good faith and with due diligence and the extension of the stay periods is appropriate.

[10] The test for extending a stay is found in Sections 11.02(2) and (3) of the CCAA:

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[11] Notices of objection were filed by MFC and by the Union.

[12] MFC complains that it has not received sufficient information from the Parties and the Monitor with respect to the assets that it has a contractual right to acquire and about the SISP generally. One other creditor, Canadian Iron Ore Railcar Leasing LP, made a similar comment with respect to the SISP but recognized that the confidentiality concerns raised by the Parties and the Monitor might justify a delay in the disclosure of information.

[13] The Union makes its objection to ensure that it does not prejudice its appeal against the Court's ruling on pension and other post retirement benefits.

[14] Other stakeholders present at the hearing supported or at least did not object to the request for an extension.

[15] The Court is satisfied that the extension is appropriate. The Parties are engaged in a serious process and they are pursuing it diligently and in good faith. It is in the interests of the stakeholders as a whole that the process be allowed to continue because it offers the best hope for the highest realization for the stakeholders.

[16] MFC pleaded it has the contractual right under Clause C(3) of the Wabush Sublease to acquire the Wabush Mine infrastructure and related property at their "reasonable market price" in the six months after termination of the Wabush Sublease. It says that those rights are at risk if the extension is granted.

[17] MFC's right is contingent because the Sublease has not been terminated. It is true that Wabush Mines failed to pay a \$750,000 royalty payment due July 25, 2015, but that does not immediately trigger the rights under Clause C(3). Wabush Mines has 30 days in which to cure the failure to pay, and if it fails to do so, MFC can send a 60 day termination notice. In other words, it will be at least 90 days before the Sublease can be terminated. Wabush Mines, in consultation with the Monitor, is considering whether it should pay the \$750,000 and avoid the termination of the Wabush Sublease.

[18] Moreover, MFC's right is protected by the Court's order on June 9, 2015, which provides:

[12] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA parties *nunc pro tunc* is without prejudice to the rights, if any, of

MFC Industrial Ltd. ("**MFC**") if any, vis-à-vis the Wabush CCAA Parties, including pursuant to an Amendment and Consolidation of Mining Leases dated September 2, 1959 and related sub-leases (as amended from time to time) as it relates to the property of Wabush CCAA Parties;

[13] **RESERVES** the right of IOC, SIPA and of MFC to raise any such rights at a later stage if need be;

[19] MFC raised concerns about the current activities on the site, and in particular whether the Parties were dismantling or destroying the infrastructure. MFC had attempted to obtain information in advance of the hearing and was frustrated by the Parties' refusal to provide it.

[20] These concerns were largely resolved by a letter sent July 29, 2015² and by Mr. Meakin's testimony at the hearing. The work at the site is limited to care and maintenance, including environmental monitoring and dust control. The Parties have not undertaken any reclamation activities.

[21] MFC also raised concerns with respect to the dissemination of information as to the SISP. Similar concerns were raised by Canadian Iron Ore Railcar Leasing LP. Those concerns are not such as to justify not extending the stay. The Court considers that it has sufficient information at this stage to justify the extension. The Court will address below whether it should issue an order providing for the disclosure of certain additional information.

[22] Finally, the objection raised by the Union is not really an objection to the extension but is more in the nature of a reservation of rights with respect to its appeal. The Union wishes to appeal from the Court's judgment dated June 26, 2015 on pension and other post retirement benefits. It objects to the extension because the extension has the effect of extending the order from which it wants to appeal.

[23] Having filed its notice of objection, the Union can hardly be said to have consented to the extension or renounced to its appeal. However, there is no basis in the notice of objection for the Court to refuse the extension.

[24] For all of the foregoing reasons, the Court grants the extension of the stay periods to November 6, 2015.

DISCLOSURE OF INFORMATION

[25] As a subsidiary conclusion, MFC asked that the Court order the Parties or the Monitor to provide the following information:

² Exhibit R-8.

- (a) details of the activities currently being conducted at the Wabush mine properly, including whether such activities are limited to simple maintenance and dust control, and the reasons therefore;
- (b) confirmation that the Wabush JV will not commence reclamation activities or other actions that may be contrary to MFC's rights under the Wabush Sublease, including the Reversionary Rights and the Purchase Rights; and
- (c) confirmation that none of the liquidation proposals received and being considered affect or impair MFC's rights under the Wabush Sublease as contemplated under the Court order approving the SISP.

[26] As set out above, the letter provided on July 29, 2015 and Mr. Meakin's testimony answered (a). With respect to (b), Mr. Meakin said that there have been no reclamation activities and no contact with the government of Newfoundland and Labrador with respect to reclamation activities.

[27] The Court recognizes MFC's concern that something could happen to the assets while the CCAA process is ongoing. Without deciding whether MFC has the right to an order preserving those assets, the Court will order the Parties to give notice to MFC before dismantling or destroying the infrastructure at the site, in order to allow MFC to take whatever proceedings it considers appropriate to protect its rights. The foregoing order will not apply if all royalty payments are up to date, because MFC's rights in that case are too remote.

[28] With respect to the SISP, however, the Court prefers to allow the Parties and the Monitor to conduct their negotiations with potential purchasers confidentially. Any premature disclosure of information can only help the potential purchasers negotiate a better price, to the detriment of the stakeholders as a whole.

APPEAL BY THE UNION

[29] The Union wishes to appeal for the Court's decision dated June 26, 2015 with respect to the pensions and other post retirement benefits.

[30] Unfortunately, the Union made the common mistake of assuming that the delay for filing the motion for leave to appeal under the CCAA was the same 30 day delay as exists in the *Code of Civil Procedure*. In fact, the delay under Section 13 of the CCAA is only 21 days. As a result, the motion for leave to appeal, which was filed on July 24, 2015, within 30 days of the judgment, was filed late.

[31] Under Section 14(2) of the CCAA, the only court which has jurisdiction to grant further time for an appeal is the court appealed from.

[32] The test for whether to grant further time was set out by Justice Mayrand in *Papiers Gaspésia*:

1. Un motif valable pour [justifier] le délai additionnel;
2. La manifestation à la partie adverse de l'intention d'interjeter appel dans le délai prescrit;
3. Le préjudice pouvant résulter d'un délai additionnel;
4. Le caractère sérieux de l'appel.³

[33] It is clear that this test is met in the present matter:

- The lawyer's mistake is a valid ground justifying the extension of the delay.⁴ This is particularly true in the present case where the short delay frequently leads to mistakes;
- Further, the Union acted with diligence. When it learned on July 21, 2015 that the delay was 21 days and not 30 days, it was already outside the 21 day delay. It filed its motion for leave to appeal on July 24, 2015, only three days later and within the 30 day delay;⁵
- There is no prejudice to the Parties because another motion for leave to appeal from the same judgment was filed by another party within the 21 day delay; and
- The Court of Appeal will have the opportunity to consider the seriousness of the appeal when it hears the motions for leave to appeal on August 5, 2015.

[34] The Court will therefore grant the delay requested by the Union and will declare that the motion for leave to appeal was filed within this further delay.

[35] As a further matter, the Union's notice of objection can be read as a motion to suspend execution of the June 26, 2015 judgment. That question is better left to the Court of Appeal.

[36] Finally, the Union asks the Court to dispense the Union from any obligation to provide security. As acknowledged by counsel at the hearing, that appears to be an issue for the Court of Appeal to decide in the context of the motion for leave to appeal.

³ *Papiers Gaspésia inc. (Arrangement relatif à)* (2004), AZ-50234475 (C.S.), par. 20.

⁴ *Cité de Pont Viau c. Gauthier Mfg. Ltd.*, [1978] 2 R.C.S. 516, p. 527-528.

⁵ See *Groupe de scieries GDS inc. (Arrangement relatif à)*, 2006 QCCS 5717, par. 14.

FOR THESE REASONS, THE COURT HEREBY:**I. WITH RESPECT TO THE MOTION TO EXTEND THE STAY PERIODS (#184):**

[37] **GRANTS** the motion;

[38] **EXTENDS** the Stay Period ordered in the Bloom Lake Initial Order until November 6, 2015;

[39] **ORDERS** that paragraph 8 of the Bloom Lake Initial Order be amended as follows:

8. **ORDERS** that, until and including November 6, 2015, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the CCAA Parties, or affecting the business operations and activities of the CCAA Parties (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 11 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

[40] **EXTENDS** the Stay Period ordered in the Wabush Initial Order until November 6, 2015;

[41] **ORDERS** that paragraph 7 of the Wabush Initial Order be amended as follows:

7. **ORDERS** that, until and including November 6, 2015, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Wabush CCAA Parties, or affecting the business operations and activities of the Wabush CCAA Parties (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 11 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Wabush CCAA Parties or affecting the Business or the Property of the Wabush CCAA Parties are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

[42] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;

[43] **WITHOUT COSTS.**

II. WITH RESPECT TO MFC INDUSTRIAL LTD.'S NOTICE OF OBJECTION (#186)

[44] **DISMISSES** the notice of objection;

[45] **ORDERS** the CCAA Parties to give notice to MFC before dismantling or destroying the infrastructure at the Wabush Mines site, unless all royalty payments due by Wabush Mines to MFC are up to date;

[46] **WITHOUT COSTS.**

III. WITH RESPECT TO THE UNION'S NOTICE OF OBJECTION AND MOTION TO EXTEND THE DELAY TO ASK FOR LEAVE TO APPEAL (#188)

[47] **DISMISSES** the notice of objection;

[48] **GRANTS** the motion to extend the delay to ask for leave to appeal;

[49] **EXTENDS** the delay for filing the motion for leave to appeal from the Court's decision dated June 26, 2015 to July 27, 2015;

[50] **DECLARES** that the motion for leave to appeal filed by the Union on July 24, 2015 was filed within the delay;

[51] **WITHOUT COSTS.**



Stephen W. Hamilton, J.S.C.

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Date of hearing: July 30, 2015