

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-062362-237

DATE: July 4, 2024

BY THE HONOURABLE KAREN M. ROGERS, J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT OF:

ÉBÉNISTERIE ST-URBAIN LTÉE
and
WOODLORE INTERNATIONAL INC.
and
EURO-RITE CABINETS LTD.
Debtors
and

RAYMOND CHABOT INC.
Monitor
and

ROYAL BANK OF CANADA
Applicant in Continuance/Secured Creditor
and

NAPOLÉON BOUCHER
and
DENIS LABROSSE
Respondents

ORDER TO CANCEL THE D&O CHARGE OF THE DEBTORS
(Sections 11 and 11.51 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

ON READING the Applicant in continuance's *Amended Application to Cancel the D&O Charge of the Debtors* (the "**Application**") pursuant to sections 11 and 11.51 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), the affidavit and the exhibits in support thereof;

CONSIDERING the notice of the Application;

CONSIDERING the submissions of Applicant in continuance's attorneys and the submitted Plan of argument;

CONSIDERING the orders of this Court dated January 26, 2024 and April 4, 2024, as well as the written reasons dated April 9, 2024;

CONSIDERING that the April 9, 2024 written reasons state, amongst other things, the following:

[9] The Court is doubtful the Monetary Application Hearing will proceed within the next 12 months. In fact, it is likely to proceed later as other Secured Creditors have already confirmed their intent to file similar applications, which would be heard at the same time, and the matter is highly contentious.

[10] Furthermore, if and when it does proceed, the case would likely be taken under advisement and the eventual Judgment, when rendered, would be subject to appeal.

[11] Thus, if the Court issued the Stay Order, the CCAA process, including the Distribution process, would be significantly delayed.

[12] At this point, the Monitor has issued the closing certificate of the Court authorized transaction, holds the proceeds of the sale in trust and is ready to distribute the proceeds according to the ranking of the priorities and charges set by law or Court Order.

[13] The distribution of the proceeds is currently delayed due to disagreements between concerned parties on the value of certain priority claims. If they cannot arrive to an agreement, the matter will come before the Court in short order.

[14] To issue the Stay Order Request and delay the CCAA process, including the distribution of the proceeds of sale, would be contrary to the objectives of the CCAA, the concerned parties and is unnecessary.

[...]

[18] Furthermore, the same orders can be rendered by the Court under Section 11 CCAA without having to decide on the issue of good faith.

CONSIDERING the email of Mtre. Neil Peden dated April 11, 2024, in which he advises the Court that his clients, Messrs. Boucher and Labrosse, intend to consent, without admission, to the conclusions sought in the Application, solely on the basis of section 11 of the CCAA:

Messrs. Boucher and Labrosse take note of paragraph 18 of your written reasons dated April 9, 2024, in which the Court indicates that the D&O application can be rendered by the Court under section 11 of the CCAA without having to decide on the issue of good faith. On this basis, Messrs. Boucher and Labrosse wish to advise the Court of their intention to consent, without admission, to the conclusions requested in the D&O Application.

Consequently, in response to the Court's request reflected in paragraph 23 of your written reasons, Messrs. Boucher and Labrosse advise the Court that they do not intend to make evidence at the D&O Application Hearing unless, despite the foregoing paragraph, it is for any reason necessary or advisable for them to do so in order to prevent a finding at the D&O Application Hearing that they have failed to act in good faith as required by section 18.6 of the Companies Creditors' Arrangement Act.

CONSIDERING that in paragraph 169 of the RBC Amended Application, RBC reserves all of its rights and recourses in relation to previous and future declarations by this Court that Denis Labrosse and Napoléon Boucher acted in bad faith pursuant to section 18.6 CCAA;

CONSIDERING that Mtre. Peden, in his capacity as counsel to Messrs. Boucher and Labrosse, received notification that the Application was proceeding before the Court on May 28, 2024;

CONSIDERING that Me Peden did not appear on behalf of his clients on May 28th, 2024, and this, even if the Court wrote to him on two prior occasions to inquire as to his clients' intent.¹ The Court further informed him in the last communication of May 6, 2024 that if he failed to reply within a set delay, the Court would assume his clients are not contesting the Application;

CONSIDERING that on May 28, 2024, the Monitor offered to contact Messrs. Boucher and Labrosse, and inquire into the reason Me Peden was not responsive;²

¹ Exhibit C-1, en liasse, e-mails of April 30, 2024 and of May 6, 2024.

² Minutes of hearing of May 28, 2024.

CONSIDERING that on May 28, 2024, the hearing on the Application took place and the Application was taken under advisement;

CONSIDERING that on May 28, 2024, the Monitor reported to the Court that he had spoken with Messrs. Boucher and Labrosse who had confirmed, amongst other matters, that Me Peden still represented them, but they did not know why he had not appeared before the Court on May 28, 2024;³

CONSIDERING that on June 11, 2024, the Monitor's attorney advised the Court in writing, with a copy to interested parties, that Mr. Labrosse had not succeeded in speaking with Me Peden yet and he was in communication with other attorneys;⁴

CONSIDERING that during a subsequent hearing of June 21, 2024, the Monitor received an e-mail from Mr. Boucher confirming that Me Peden was no longer his and Mr. Labrosse's attorney.⁵

CONSIDERING that since then the Court has not received anything from Me Peden, Messrs. Boucher or Labrosse or any other attorney regarding the replacement of Me Peden in the file;

CONSIDERING that Me Peden has not officially ceased occupying as of the date of this Order;

CONSIDERING that over one month has gone by since the Court has taken the Application under advisement and the Monitor informed Messrs. Boucher and Labrosse of the hearing;

CONSIDERING that a decision on this issue is time sensitive as the distribution process under the CCAA proceedings has begun;

CONSIDERING that the Court will rule under Section 11 of the CCAA and not decide on the issue of Messrs. Boucher and Labrosse's good faith as required in Me Peden's e-mail of April 11, 2024;

CONSIDERING the consent or absence of contestation of all relevant parties;

CONSIDERING the cancellation of the subsequent transaction, as per an Order of this Court rendered on January 26, 2024, and the grounds for such cancellation as detailed, amongst other in an *Application for the Cancellation of the Subsequent Transaction* filed by the Applicant/Secured Creditor;

³ Exhibit C-2; e-mail of May 28, 2024 from Me Reynaud to the Court with copies to interested parties.

⁴ Exhibit C-3, e-mail of June 11, 2024.

⁵ Minutes of hearing of June 21, 2024.

CONSIDERING the provisions of the CCAA;

CONSIDERING that it is appropriate to render an order to cancel the Debtors' D&O Charge initially created pursuant to the Initial Order rendered by this Court on May 12, 2023 (the "**Initial Order**") as amended pursuant to the Amended and Restated Initial Order rendered on May 24, 2023 (the "**Debtors' D&O Charge**") and the ERC D&O Charge initially created pursuant to the amended and restated initial order rendered by the Court on June 16, 2023 (the "**ERC D&O Charge**");

WHEREFORE THE COURT:

[1] GRANTS the Application;

SERVICE

[2] ORDERS that any prior delay for the presentation of this Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof;

CANCELLATION OF THE D&O CHARGE

[3] ORDERS that the Debtors' D&O Charge and the ERC D&O Charge are hereby cancelled and discharged and shall be removed and deleted as charges against any of the property of the Debtors (as defined in the May 12, 2023, and June 6, 2023, orders) as of the issuance of this Order and shall be deemed to have never been created nor existed;

GENERAL

[4] RESERVES the parties' rights with regards to any future argument pertaining to or related to section 18.6 of the CCAA;

[5] DECLARES that the present Order and all other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada;

[6] REQUESTS the aid and recognition of any Court or administrative body in any Province of Canada, any Canadian Federal Court or administrative body, any Federal or State Court or administrative body in the United States of America, and any Court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[7] ORDERS the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

[8] THE WHOLE, without costs.


KAREN M. ROGERS, J.C.S.

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Hearing date: May 28, 2024