# SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-062362-237

DATE: April 9, 2024

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

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**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

**BANQUE ROYAL DU CANADA IN ITS CAPACITY AS AN INTERESTED PERSON CONTINUING HSBC BANK CANADA'S SUIT**
Applicant/Secured Creditor
and

**NAPOLÉON BOUCHER**
and
**DENIS LABROSSE**
and
**15569621 CANADA INC. (FORMERLY 9501-8222 QUÉBEC INC.)**
and

JR1825

**WILLIAM M. MELNIK**
and
**THE MELNIK FAMILY TRUST 2043**
and
**TAYCO OFFICE FURNISHINGS INC.**
Respondents

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WRITTEN REASONS: JUDGMENT OF APRIL 4, 2024 REJECTING NAPOLÉON BOUCHER'S AND DENIS LABROSSE'S VERBAL REQUEST TO POSTPONE AND SUSPEND THE HEARING ON THE APPLICATION TO CANCEL THE D&O CHARGE UNTIL THE HEARING ON THE APPLICATION FOR THE CONDEMNATION OF NAPOLÉON BOUCHER AND DENIS LABROSSE

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[1] These CCAA proceedings have been ongoing since May 12, 2023, and are under special case management. The concerned parties are intimately familiar with the procedural background of this case. As such, without the necessity for preliminaries, the Court will immediately pass to the matter at issue.

[2] The Court gave verbal reasons on April 4, 2024, but considers it appropriate to confirm them in writing for reference purposes.

[3] On April 4, 2024, two applications of interest were on the docket (**Applications**), both initiated by the Royal Bank of Canada, an interested person continuing the proceedings of HSBC Bank Canada pursuant to articles 196 and following of the *Code of Civil Procedure*.[1]

- An *Application by HSBC Canada Bank to cancel the D&O charge of the Debtors* claiming the actions of Mr. Boucher and Mr. Labrosse (**B & L**) in particular exhibited a blatant lack of respect for the CCAA restructuring process in that they misled and deceived the Secured Creditors, the Monitor and the Court by intentionally omitting to disclose a non authorized transaction which undid part of a judicially authorized transaction; It seeks the cancellation of the D&O charge in the amount of 650,000$ for Woodlore and EBSU and 450,000$ for ERC. (**D&O Application)**

- An *Amended Application by HSBC Canada Bank for the condemnation of Napoléon Boucher and Denis Labrosse (***Monetary Application***)* alleging notably:

> 4. Specifically, the Authorized Transaction was presented to this Court, to the Monitor and to the Debtors' secured creditors as a transaction with an unrelated third party, although an agreement in

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1 A notice of Continuation of suit was filed by the Royal Bank of Canada at the hearing of April 4, 2024.

principle between the Melnik Group, on the one hand, and Labrosse and Boucher, on the other hand, pursuant to which EBSU and ERC would be "flipped" to Labrosse and Boucher, was concealed from this Court and the secured creditors.

5. Labrosse and Boucher (and others) did everything in their power to mislead and deceive the Monitor, the secured creditors and, ultimately, this Court regarding the true nature of their arrangement with the Melnik Group. They did so because they knew full well that HSBC would never have consented to the Authorized Transaction had it known that Labrosse and Boucher would end up owning EBSU and ERC. They also knew that disclosing their arrangement with the Melnik Group would have necessarily called into question the integrity of the SISP.

6. This unconscionable behaviour from Labrosse and Boucher (and others) constitutes a blatant breach of the duty to act in good faith codified at section 18.6 of the CCAA and an extreme lack of candour. Labrosse and Boucher cannot and should not be permitted to benefit from such an appalling behaviour, especially in a context where all of the Debtors' secured creditors, including first and foremost HSBC, are facing losses of millions of dollars. Leaving this conduct unpunished would bring the administration of justice into disrepute and tarnish the legitimacy of the entire restructuring process.

7. As a result, HSBC submits that this Court should hold Boucher and Labrosse personally liable for the pre-Monitor's certificate indebtedness of ERC and EBSU towards HSBC, i.e.: $19 076 000,66.

8. On January 24, 2024, HSBC filed an Application for the Cancellation of the Subsequent Transaction and Other Reliefs, which was granted on January 26, 2024, with reasons to be issued at a later date. The Court issued a Cancellation Order, pursuant to which the Court approved a partial settlement term sheet (the "Partial Settlement Term Sheet") and declared that LabrosseCo is no longer a shareholder of EBSU and ERC and that the Melnik Group is the sole owner of all outstanding shares of EBSU and ERC, essentially unwinding the Undisclosed Transaction. Confirmations of ownership of the shares in the capital stock of EBSU and ERC were issued by LabrosseCo on January 26, 2024, confirming the transfer of the shares.

9. Under the terms of the Partial Settlement Term Sheet, HSBC undertook not to seek any relief against the Melnik Group, EBSU, ERC and Woodlore in relation to the Undisclosed Transaction and to amend HSBC's Application for the Partial Revocation of the RVO; accordingly, hence, the present amended Application.

[4] On April 4, 2024, B & L's attorney verbally requested the stay of the D&O Application until such a time as the hearing on the Monetary Application proceeds. (**Stay Order Request or Stay Order**). To justify the Stay Order Request, B & L argue that the Applications raise the same issues of law and fact. As such, if the Court decided on the D&O Application before the hearing on the Monetary Application, B & L would be bound by important judicial determinations before they could offer their defence on these issues.

[5] The Applications are in part based on article 18.6 of the CCAA and the judicial discretion of the Court to render appropriate orders upon its finding that B & L have failed to act in good faith.

[6] B & L underscore their concern that a judicial determination of their failure to act in good faith in the context of the *D&O Application* would carry-over to the *Monetary Application* and would be a predetermination of their bad faith without them having the possibility to show their good faith.

[7] It is to be noted that under section 11 of the *Companies' Creditors Arrangement Act*, the Court has the authority to render "appropriate" orders without having to determine whether an interested person acted in good faith or not.

[8] For the purpose of the Stay Order Request, the Court will assume that B & L were either Directors or Officers of the Woodlore, EBSU and ERC during the relevant period and could thus benefit from the D&O Charge.

[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.

[15] Even upon a judicial finding of bad faith on the part of B & L, the Court must still determine whether the respective orders sought are appropriate under the circumstances.

[16] Given the significant differences between the Orders sought in the Applications and the required analysis as to the appropriateness of them, a judicial finding of bad faith is not indicative, and in no way conclusive, as to the Court's ultimate decision.

[17] The duration of the hearing for the D&O application will be much shorter than the one for the Monetary Application and B & L can make evidence on the issue of their good faith at the D&O application hearing should they chose, but the hearing will proceed in a timely manner to allow the CCAA process to move forward.

[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.

[19] On the issue of the appropriateness of the Order, the Monitor testified that as far as his calculations are concerned, a possible $86,000 could be claimed as a D&O Charge by B & L if all the other conditions are met. The Court does not know if this amount is disputed by B & L, as their attorney was incapable of providing the Court with what he believed to be a ballpark amount of a potential claim.

[20] Without in anyway making a predetermination, this element and others could potentially be considered by the Court in its determination of the appropriateness of the order.

[21] Furthermore, on January 26, 2024 in the context of another application, the Court found B & L to have acted contrary to their obligations of good faith and rendered an "appropriate order" under the authority of section 18.6 CCAA.

[22] Again, this finding is not indicative, and in no way conclusive as to how the Court will rule on the Applications and in each case the "appropriateness" of the orders sought must be considered.

[23] The Court has asked that B & L to advise it by April 11th, 2024 of its intention to make evidence during the D&O Application Hearing and to provide an estimate on the required time at hearing.

[24] Given the above, the D&O Application will not be stayed.

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Date of hearing: April 4, 2024