

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 6th
)
JUSTICE CONWAY) DAY OF MARCH, 2020
)

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 2607380 ONTARIO INC. (the "Applicant")

ENDORSEMENT

Unofficial Transcription

Counsel: Elizabeth Pillion
Sanja Sopic
Nicholas Avis
Stikeman Elliott LLP (for the Applicant)

Gabriela Caracas
*Fogler Rubinoff LLP (for Celernus
Investment Partners Inc.)*

Raj Sahni
*Bennett Jones LLP (for Richter Advisory
Group Inc, Monitor)*

C. Haddon Murray
Heather Fisher
Gowling WLG (for Meridian Credit Union)

Harvey Chaiton
Chaitons LLP (for Bridging Finance Inc.)

John Salmas
*Dentons Canada LLP (for Cortland Credit
Lending Corporation)*

Philip Cho
*WeirFoulds LLP (for Crossroads Christian
Communications Inc.)*

March 6, 2020

This is the comeback hearing from the initial order under the CCAA that I granted on Feb 25/20. One App seeks to continue + expand the order. Meridian has agreed to provide DIP financing of 7.15 million, 2.375 is to go to contractors for pre-filing amounts owed. Bridging Finance (BFI) opposes the continuation of the order + seeks a receivership instead. The first 2 secureds (BFI is 3rd), Meridian and CCCI, support the CCAA, as does the Monitor who has been actively involved over the 10 day initial stay period.

The onus is on the Applicant at this hearing to demonstrate that a CCAA order is appropriate in the circumstances. There is no onus on BFI to demonstrate that it should be set aside: *Target Canada Co, Re* 2015 ONSC 303, at para 82.

The evidence before me is that the Applicant owns this large multi-purpose building. It is currently tenanted by studio, office + event space tenants. The A has 9 full time employees and 8 indep contractors. The A was in the process of renovating + upgrading this property until liquidity issues resulted in the suspension of renovations last summer. The main contractor is Maple. The Monitor has been in discussions with Maple resuming construction, establishing a budget, and setting timelines that would see construction completed in the fall. The Monitor's opinion is that doing so through Maple is the best available option in the circumstances. The ultimate goal is to refinance this property or sell it through a SISP process. Maple has refused to continue construction without payment of its pre-filing accounts.

The decision of whether to appoint a receiver or grant the CCAA order is discretionary. I must consider + balance the competing interests of the various stakeholders to determine which remedial process is more appropriate: *Romspen Investment Corp v. 6711162 Canada Inc.* 2014 ONSC 2781 at para 61; *Hush Homes (Re)*, 2015 ONSC 370, para 20 + 23.

This case is unlike the ones relied on by BFI. This is not a vacant land or a building being constructed. There is an operating business here, with a number of different stakeholders, tenants, employees of the A, indep contractors and unsecureds. There is an opportunity here to stabilize the business, get it past its liquidity crisis, complete the renovations + enhance the value of the business for all stakeholders.

Moreover, the Applicant has a concrete plan, with specific timelines and a developed budget. BFI, on the other hand, is quite vague in its proposal. There is nothing to give this court any assurance that putting a receiver in + starting from scratch w/ a yet to be identified contractor is a better alternative. The A has demonstrated that there is a way forward w/ DIP financing + the contractor that is well versed in the project, knows what is required, and how to work around accommodating the existing tenants.

It is not entirely clear how much equity is in the property. However, the confidential appraisal + the one relied on by BFI when it made its investment appears to cover the *[illegible]* encumbrances, even w/ the DIP. The costs to complete the reno put forward by the App (2.5 million) are no higher than + indeed less than those proposed by BFI (3.0 - 3.7 million).

Overall, I consider it more appropriate to stabilize this business, complete the renovation to fully optimize its rental potential and finance it through the arrangements proposed in the CCAA. In my view, that is the preferable route for all stakeholders. I have no difficulty w the enhanced Monitor's powers to see the project through + control the flow of funds.

The DIP facility is approved + meets the criteria of s. 11.2 of the CCAA (as per para 52 of the A's factum). The A seeks to designate the "contractors" as critical suppliers under s. 11.4. I am satisfied that Maple + its key subcontractor Barrie Glass are indeed critical suppliers. Based on the Monitor's report that they are experienced w/ the projects + are the best option to complete

it, the fact that completing the renovation is the key to restoring the vitality of this business + the restructuring effort, I consider them to be critical - see *Index Energy Mills Road Corp. (Re)*, 2017 ONSC 4944 at para 30-31.

I am also prepared to authorize the pre-filing payments to them. I am satisfied that the circumstances of this case meet the criteria in *Cinnam International Inc, Re*, 2012 ONSC 3767, para 68. Again, the evidence before me is that Maple/Barrie are the best option for this company + that they will not resume their work w/o payments of their pre-filing charges. The Monitor will be keeping a close eye on all payments to them + minimizing the amounts of those payments. They are ready to go + will resume construction asap. This is in everyone's interests.

Finally, I have considered the submissions re Nuvo Network. Given its interrelated connections to the App + the fact that some leases are in its name, I consider it appropriate to embrace it in the stay. The stay provision until October 24/20 makes sense as the construction should be completed by then. Any stakeholder is free to return to Court before then. The receivership app is dismissed + the app to continue the CCAA order is granted.

OTG as signed by me. No costs sought or awarded.

/s/ Conway J.