
From: Gilmore, Madam Justice Cory (SCJ)

Sent: January-14-21 7:22 PM

To: Richard Swan <SwanR@bennettjones.com>; Raj Sahni <sahnir@bennettjones.com>; Jaipargas, Roger <RJaipargas@blg.com>; Robb English <renglish@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; adascanio@scottpetrie.com; Sinnadurai, Ananthan (MAG) <Ananthan.Sinnadurai@ontario.ca>; Phoenix, Graham <gphoenix@loonix.com>

Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List

Subject: Pace Savings & Credit Union Limited v. Clearbeach Resources et al. - Court File No. CV-20-00644116-00CL

[External / Externe]

Endorsement of Gilmore, J.

The Respondents Clearbeach and Forbes (“the Debtors”) bring a motion for a bankruptcy transition Order for the benefit of their stakeholders but also to ensure that environmental obligations associated with their gas and oil wells continue to be properly managed. The Applicant (“Pace”) supports a termination of the stay of proceedings in relation to the Debtors and their resulting bankruptcies. It opposes all other relief sought by the Debtors and seeks the appointment of MNP Ltd. as the Substituted Proposal Trustee.

This matter has come before the court a number of times prior to this motion. The proposal proceedings have been subject to a stay which was originally ordered on August 20, 2020. The stay was extended several times to today's date.

Prior to today's hearing, the Debtors and the Applicant agreed to the terms of a draft Order with respect to Pace's motion for the substitution of a proposal trustee, possession of property, retention of a service provider and other administrative issues. The Ministry of the Attorney General does not consent to the terms of this Order and in particular paragraphs 6, 7 & 8 of that proposed Order.

Specifically, Mr. Sinnadurai raises several concerns in relation to the draft order as follows:

1. A bankruptcy should not be permitted without a competent operator in place. Oil and gas wells require a competent operator in order to be safe as they present potential hazards which could compromise public health and safety as well as the environment.
2. In the event that no operator is in place, the landowners may become liable for any damage caused by the wells. Significant obligations should not be imposed on over 400 private landowners without notice and an opportunity to respond.
3. The regulatory scheme in Ontario in relation to oil and gas wells relies on competent operators being in place.

Both Richter and MNP submit that the best approach is to sign the draft Order, put MNP in place and start negotiations. Mr. Swan on behalf of Clearbeach and Forbes does not disagree. Mr. Phoenix on behalf of MNP and Mr. Swan have concerns about notice of this proceeding being given to hundreds of landowners. It would only cause unnecessary alarm. The goal is to run a court-supervised sale process and put in a new operator. In any event, the landowners would be given notice as creditors on the Statement of Affairs in a bankruptcy.

The Court is concerned about a "gap" in the event that no operator is in place during any transition process specifically in relation to the public health and environmental concerns articulated by Mr. Sinnadurai. I am prepared to sign the draft Order so long as there is a provision that an operator will be put in place by the MNP within a specified period of time. Counsel may provide a revised draft Order for my review in the short term or alternatively this can be further discussed at the next appearance on February 11, 2021. The stay will remain in place until then.

The parties will return to deal with the balance of the issues on February 11, 2021 at 10:00 a.m. for one hour before me.



Madam Justice Cory A. Gilmore
Ontario Superior Court of Justice