

The Court is being asked to authorize a sale of assets outside the ordinary course of business by a debtor under a notice of intention to make a proposal in bankruptcy.

The Court has the power to make such an order under Section 65.13(1) of the *Bankruptcy and Insolvency Act*.

The factors to be considered by the Court include the following, according to Section 65.13(4) BIA:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

The process leading to the Asset Purchase Agreement before the Court was narrow but deep. It was narrow in the sense that the Debtor was approached by the Purchaser in late 2016 and the parties have been in negotiation since then. No one else was invited to make an offer. It was deep in the sense that the negotiations have been long and detailed. The parties signed a Letter of Intent on May 23, 2017 (Exhibit R-7), an Offer to Purchase on September 27, 2017 (Exhibit R-8), and an Asset Purchase Agreement on November 10, 2017 (Exhibit R-9). Each document was the result of lengthy and detailed negotiations.

The fact that only one potential purchaser was ever spoken to is not ideal. However, the Debtor explains that the Purchaser was the only possible purchaser given the industry in which the Debtor carries on business.

The Debtor is an integrated veal producer. It owns 18,000 to 20,000 calves which it raises on its corporate farms or with contract farmers, and it owns a processing plant.

Existing industry regulations make it difficult for someone outside the industry to purchase the Debtor's assets.

The Purchaser is the Debtor's major competitor. Together, they have 90% of the market. There are two other competitors, but they are much smaller (10% of the market) and the Debtor does not believe that they have the financial means to purchase the Debtor.

Further, there have been rumours circulating about the possible sale of the Debtor since September 2017. Since then, neither the Debtor nor the Trustee has received any indication of interest from any other potential purchaser.

The Court concludes that the sale process was reasonable in the circumstances.

Richter became Trustee when the Debtor filed its Notice of Intention on November 2, 2017. However, Richter had a consulting mandate from the Banque Nationale (the largest secured creditor) since May 29, 2017 that include reviewing the operations of the Debtor.

As a result, Richter as Trustee did not approve the sale process in advance, but Richter has known about the sale process since its appointment as consultant. It has been kept aware of what was going on and it has provided some accounting assistance to the Debtor in the process. It now supports the transaction.

In the circumstances, the Court considers that the Trustee has approved the sale process.

Further, the Trustee has filed a report in which it states its opinion that the transaction will generate a greater realization and be more beneficial to the creditors than a liquidation, which is the likely alternative to the transaction.

In accordance with Section 65.13(3) BIA, the Debtor gave notice of the present motion to its secured creditors. The Banque Nationale, which is the principal secured creditor was kept informed of the negotiations and supports the motion. Financement Agricole Canada and the Banque Laurentienne are also secured creditors and they support the transaction. The Fédération des producteurs de bovins, which may be a secured creditor, also supports the transaction.

The principal unsecured creditor is Grober Inc. It is a sister company. Its shareholder, Mr. Bartelse, who is also a shareholder of the Debtor, testified at the hearing and indicates that he supports the transaction.

The Debtor also served the proceedings on two litigation creditors of the Debtor, Peggy Lambert on behalf of a class of potential creditors and Hometown Pork. Both attended the hearing to question whether the price is sufficient.

The Court considers that the consultation of creditors was sufficient.

As for the effects of the transaction on the creditors and other interested parties, this must be considered at two levels.

In terms of creditors, the sale proceeds will be sufficient to pay in full the secured creditors. Subject to closing adjustments, claims against the escrowed amounts and taxes, the transaction could generate up to \$4 million for the unsecured creditors. In addition, there are a number of assets excluded from the sale which could generate some funds for the unsecured creditors.

In addition, the transaction will result in the continuation of the Debtor's operations. This means that 275 people will be keep their jobs and that the contract farms and other suppliers will keep an important customer. These are significant benefits that are not always present in an insolvency file.

The final consideration listed in Section 65.13(4) BIA is whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

The witnesses provided a detailed analysis of the purchase price:

- The accounts receivable are sold for 100 cents in the dollar, with a right to claim back uncollected amounts;
- The livestock is valued according to a formula that starts with the acquisition cost, adds the costs related to raising the livestock, and then adds \$1.5 million to reflect the profit that the Debtor would have earned on the livestock;
- The inventory is valued at its cost;
- The long term assets include seven farms and the processing plant. The farms are valued based on recent evaluations and the processing plant is valued at its municipal evaluation.

The Court is satisfied that the consideration is reasonable in light of the market value of the assets. In the circumstances, the Court is not concerned that the purchase price allocated to the goodwill is only \$1.

The cases suggest that the Court should consider two additional factors in its analysis: the business judgment of the Debtor and the recommendation of the Trustee.

In the exercise of its business judgment, the Debtor negotiated a price and presents the transaction to the Court for its authorization. These were arm's length negotiations with its principal competitor. There is no evidence that the business judgment of the individuals negotiating on behalf of the Debtor was in any way compromised by any personal interest: Mr. de Somma does not appear to have any personal interest in the transaction, and although Mr. Bartelse obtained a contract to provide feed to the Purchaser, the quantity is reduced from its present level and it is at market price. Moreover, he is giving a non-compete clause.

Further, the Trustee has recommended that the Court authorize the transaction. The Court gives weight to that recommendation, given the Trustee's obligations as an officer of the court.

At the end of the day, the evidence is clear that this is a reasonable transaction for the Debtor and there is no evidence to suggest that there is a better deal out there. Moreover, the Debtor does not have the luxury of time to start looking for another transaction. It has a negative cash flow and no one willing to fund it.

For all of these reasons, the Court will authorize the transaction.