CITATION: Laurentian University of Sudbury v. Huntington University, 2021 ONSC 5771
COURT FILE NO.: CV-21-00656040-00CL
DATE: 2021-08-27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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 LAURENTIAN UNIVERSITY OF SUDBURY

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor Ernst & Young Inc.

Vern W. DaRe, for the DIP Lender

Pamela Huff and Aryo Shalviri, for Royal Bank of Canada

Mitch Stephenson, for Toronto-Dominion Bank

George Benchetrit, for Bank of Montreal

Peter J. Osborne, for the Board of Governors

Natasha MacParland, Lender Counsel for the Applicant

Danielle Stampley and Brendan Scott, for Laurentian University Staff Union (LUSU)

Andrew J. Hatnay, for Thorneloe University

Joseph Bellissimo and Natalie Levine, for Huntington University

André Claude, for University of Sudbury

Charlotte Chien, for Northern Ontario School of Medicine

Sarah Godwin and Immanuel Lanzaderas, for Canadian Association for University Teachers

Linda Chen, for the Information and Privacy Commissioner of Ontario

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General Association (LUSA)

HEARD: August 27, 2021

ENDORSEMENT

[1] Laurentian University of Sudbury (the "Applicant") brings this motion for an order: (i) extending the Stay Period up to and including January 31, 2022; and (ii) approving the Second DIP Amendment to extend the Maturity Date of the Applicant's DIP Facility to January 31, 2022. (Defined Terms are as referenced in the Applicant's Factum)

[2] The Monitor supports the requested relief.

[3] There was no opposition to the requested relief.

[4] The Applicant contends that the proposed stay extension should be granted because the Applicant is expected to have sufficient funds to continue operations during the proposed Stay Period. The Applicant also contends that it needs the additional time to have creditor claims determined, negotiate a plan, implement the recommendations of its internal reviews and advance its restructuring in all respects, and that it continues to act in good faith and with due diligence. The Applicant further contends that the Second DIP Amendment should be approved and that the Applicant requires the extension of the Maturity Date to provide the time necessary to develop a Plan with its creditors, which is required in order to be able to exit from the CCAA proceedings and effect a refinancing of the DIP Loan.

[5] The evidentiary support for the motion is contained in the Affidavit of Dr. Robert Haché sworn August 20, 2021 and in the Seventh Report of the Monitor. In addition, in its factum at paragraph 29, counsel to the Applicant has summarized the steps taken by the Applicant to further its restructuring since the granting of the Stay Extension Order on May 2, 2021.

[6] Paragraph 29 reads as follows:

> 29. Since the granting of the Stay Extension Order on May 2, 2021, the Applicant has been engaged throughout and taken significant steps towards identifying opportunities for improvement in its operations, in implementing the restructuring changes arising from the Term Sheets approved by the Court in late April, 2021, resolving outstanding issues with its stakeholders and is taking the necessary steps in order to be in a position to develop a framework for a Plan to present to creditors. The Applicant has, with the assistance of and in consultation with the Monitor and the CRO, among other things:
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> (a) maintained operations in the ordinary course during the Stay Period, including the continuance of all student classes (virtually, due to the pandemic) in the Spring 2021 term without disruption;

(b) developed a return to campus plan for thousands of students that strives to ensure the health and safety of students, faculty, staff and visitors;

(c) received and responded in a timely manner to a significant volume of telephone calls and emails from stakeholders;

(d) opened registration for Fall term courses that commence on September 8, 2021;

(e) negotiated the terms of a transition of services with Thorneloe University and University of Sudbury following the applicable disclaimers;

(f) implemented amendments to the Pension Plan to ensure the long-term sustainability of the Pension Plan and reduce the risk of going concern or solvency special payments;

(g) resolved all pre-filing grievances with LUFA;

(h) engaged extensively with several key stakeholders and various government agencies regarding the Applicant's ongoing commitment to deliver robust, dynamic French-language programming to its students;

(i) cooperated with the investigations of the Auditor General of Ontario and the *French Language Services Act* Commissioner and facilitated on-site access;

(j) convened meetings with several research-granting agencies that are responsible for funding a significant amount of research conducted by the Applicant to secure continued funding;

(k) commenced a review of the Applicant's real estate portfolio, working closely with the Real Estate Advisor; and

(l) issued a Request for Proposals for a full-scale operational and governance review intended to establish policies, procedures and systems that will promote accountability and sustainability within the Applicant's operations and governance.

[7] Pursuant to s. 11.02 of the CCAA, an extension of a stay of proceedings can be granted where: (i) the applicant satisfies the court that an extension of the stay of proceedings is appropriate in the circumstances; and (ii) the applicant further satisfies the court that it has acted, and is acting, in good faith and with due diligence.

[8] In my view, the Applicant has satisfied both parts of this test.

[9] A substantial amount of work has already been completed in this restructuring However, a lot of work remains for the Applicants' restructuring to be completed successfully and this can only be achieved through an extension of the Stay of Period

[10] The required Revised Cash Flow Forecast has been submitted and it demonstrates that the Applicant will have sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.

[11] With respect to the proposed DIP Amendment, the DIP Lender advised the Applicant that it would require payment of an extension fee equal to 1% of the total principal amount of the DIP Financing ($35 million), being $350,000 (the "Extension Fee"). The basis for the Extension Fee was addressed in the factum at paragraphs 43 – 46. I am satisfied that the Extension Fee is reasonable and appropriate in the circumstances.

[12] Sections 11 and 11.2 of the CCAA provides statutory jurisdiction to approve the Second DIP Amendment.

[13] In *US Steel Canada Inc. (Re)*, 2016 ONSC 4838 at paras. 16 – 19, the court approved an agreement that extended the maturity of an existing DIP loan. In approving the agreement, the court noted, among other things:

(a) the DIP loan provided an important cash buffer to meet any unforeseen working capital needs during the extended period;

(b) the DIP loan provided for stability in the debtor's restructuring;

(c) the DIP loan provided confidence to employees, customers and suppliers about the continuity of the debtor companies operations; and

(d) there was no evidence of any material prejudice to any creditor of the debtor company if the amendment was approved and implemented.

[14] I am satisfied that these factors are relevant to the situation currently facing the Applicant and that these factors, as well as the enumerated factors set out in s. 11.2(4) of the CCAA, support the approval of the second DIP Amendment.

[15] Counsel to Thorneloe University brought to my attention that certain issues with respect to Thorneloe are still being negotiated with the Applicant.

[16] Counsel to the Canadian Association for University Teachers also brought to my attention that certain intellectual property issues are still under discussion with the Applicant.

[17] Finally, the Information and Privacy Commissioner of Ontario took no position on the stay extension but did request that the accommodation provided to the Commissioner at paragraph [61] of the Endorsement of February 12, 2021, be maintained. This provision provides that the Commissioner can request reconsideration of the applicability of the stay at a future date. This accommodation is to be maintained.

[18] In the result, the motion is granted and the order has been signed in the form presented.

Chief Justice G.B. Morawetz

Date: August 27, 2021