

CITATION: Laurentian University of Sudbury, 2022 ONSC 3214

COURT FILE NO.: CV-21-00656040-00CL

DATE: 2022-05-31

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 and Mitch Grossell*, for the Applicant

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

Charlie Sinclair, for Laurentian University Faculty Association

Danielle Stampley, for Laurentian University Staff Union

George Benchetrit, for Bank of Montreal

André Claude, for the University of Sudbury

Andrew J. Hatnay, for Thorneloe University

Dylan Chochla, for Toronto-Dominion Bank

Bradley Wiffen, for Financial Regulatory Services Authority

Aryo Shalviri, for Royal Bank of Canada

David Ullmann, for the Art Gallery of Sudbury

Joe Bellissimo, for Huntington University

HEARD and

DETERMINED: May 30, 2022

REASONS: May 31, 2022

ENDORSEMENT

- [1] Laurentian University of Sudbury ("LU") brings this motion for:
- (a) an order (the "Stay Extension Order") extending the Stay Period up to and including September 30, 2022; and
 - (b) an order (the "USudbury Pension Agreement Approval Order") approving the Pension Participation Agreement with the University of Sudbury ("U Sudbury") regarding its obligations under the retirement plan of LU (the "Pension Plan").
- [2] The motion was not opposed.
- [3] The evidence to support the requested relief is set out in the Affidavit of Dr. Robert Haché sworn May 23, 2022 (the Haché Affidavit) and in the 13th Report of the Monitor (the "Report").
- [4] The Monitor supports the relief sought by LU.
- [5] LU has continued to operate in the ordinary course since the filing of these CCAA proceedings.
- [6] LU reports that 95% of all claims filed against LU in the Claims Process have now been resolved. Further, LU and the Monitor have been engaged in discussions in an effort to develop a plan of compromise or arrangement (the "CCAA Plan").
- [7] The Stay Period is currently set to expire on May 31, 2022. LU submits that it requires an extension of the Stay Period in order to continue the progress that it is making towards the presentation of the CCAA Plan to its creditors. LU is working towards seeking a Meeting Order by the end of June 2022.
- [8] LU submits that the proposed Stay Extension Order should be granted pursuant to s. 11.02(2) of the CCAA because LU will have sufficient funds to continue operations during the Stay Period, and LU needs the additional time to negotiate the CCAA Plan and advance its restructuring in all respects. LU submits that it has and continues to act in good faith and with due diligence. The required Cash Flow Forecast has been filed which indicates that LU will have sufficient liquidity to continue operations during the requested extension period.
- [9] With respect to the Pension Plan, LU reports that the Pension Plan has undergone changes since the commencement of the CCAA proceedings, arising from the Pension Plan amendments agreed to in the Laurentian University Faculty Association Term Sheet, the Laurentian University Staff Union Term Sheet and the Huntington Transition Agreement. These changes were submitted for registration to both the Financial Services Regulatory Authority ("FSRA") and Canada Revenue Agency.

[10] LU also reports that it has continued to negotiate with USudbury and Thorneloe University regarding the terms of their continued participation in the Pension Plan.

[11] On May 16, 2022, LU and USudbury entered into a Pension Participation Agreement regarding USudbury's obligations *vis-à-vis* the Pension Plan, subject to approval by the court (the "USudbury Pension Participation Agreement"). The key terms of the USudbury Pension Participation Agreement provide for the notional segregation of assets and liabilities relating to the USudbury Members, a mechanism to permit USudbury to make top-up contributions towards their former members' commuted value payments, and an agreement that USudbury is solely responsible for funding the benefits payable from the Pension Plan to USudbury Members.

[12] FSRA is not opposing the relief sought on the basis that the USudbury Participation Agreement is a contract between LU and USudbury and the terms of such Agreement do not limit the responsibilities and obligations of the Administrator or each participating employer, respectively, under the *Pension Benefits Act*. Any regulatory relief that might be requested would proceed through the regulatory process in accordance with the *Pension Benefits Act*.

[13] The language in the foregoing paragraph was provided by FSRA and is acceptable to both LU and USudbury. It is also acceptable to the court.

Law and Analysis

[14] LU seeks an extension of the Stay Period up to and including September 30, 2022.

[15] The test for an extension is set out in s. 11.02 of the CCAA. Having reviewed the record and hearing submissions, I am satisfied that LU has acted, and is acting, in good faith and with due diligence and that an extension of the Stay Period to September 30, 2022 is reasonable and appropriate in the circumstances.

[16] With respect to the approval of the USudbury Pension Plan Agreement, the jurisdiction of the court to approve transactions and settlements is well recognized and is derived from s. 11.02 of the CCAA and the inherent jurisdiction of the court to "fill the gaps" of the CCAA in order to give effect to its objects. (See *Nortel Networks Corp., (Re)*, [2009] O.J. No. 3169 (Ont. S.C.) at para. 30; *Re Canadian Red Cross Society*, [1998] O.J. No. 3306 (Ont. S.C.) at para. 43).

[17] The relevant considerations when approving a settlement in the CCAA context are well-established:

- (a) is a settlement fair and reasonable?
- (b) does the settlement provide substantial benefit the stakeholders?
- (c) is a settlement consistent with the purpose and spirit of the CCAA?

(See *(Re) Walter Energy Canada Holdings, Inc.*, 2017 BCSC 1968 at para. 35 – 36; *Robertson v. ProQuest Information & Learning*, 2011 ONSC 1647 at para. 28.)

[18] The record establishes that the USudbury Pension Participation Agreement is the result of several months of negotiations between LU and USudbury regarding the treatment of USudbury and the USudbury Members under the Pension Plan.

[19] I am satisfied that the USudbury Pension Plan Participation Agreement represents a fair and reasonable bargain that ensures beneficial, fair and equitable treatment for USudbury Members, while ensuring that LU has the certainty it requires as administrator of the Pension Plan. In my view, this settlement is consistent with the purpose and spirit of the CCAA.

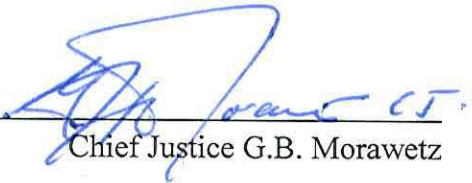
[20] LU reports that it is not aware of any party in this proceeding that objects to the approval of the USudbury Pension Participation Agreement.

[21] Further, the Monitor supports LU entering into the USudbury Pension Participation Agreement.

[22] Having reviewed the record and hearing submissions, I am satisfied that it is appropriate to approve the USudbury Pension Participation Agreement.

Disposition

[23] The motion is granted and two orders have been signed in the form submitted.


Chief Justice G.B. Morawetz

Date: May 31, 2022