CITATION: Laurentian University of Sudbury, 2022 ONSC 5850
COURT FILE NO.: CV-21-00656040-00CL
DATE: 2022-10-17

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, Derek Harland and Mitch Grossell*, for the Applicant

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

Mitch Stevenson, for the Toronto Dominion Bank

Matthew Lerner, for the Board of Governors

Roderic McLauchlan, for Canadian Universities Reciprocal Insurance Exchange

HEARD and DETERMINED: October 12, 2022

REASONS: October 17, 2022

ENDORSEMENT

[1] At the conclusion of the oral hearing, I granted the motion with reasons to follow. These are the reasons.

[2] Ernst & Young Inc., in its capacity as Court-appointed Monitor (the "Monitor") of Laurentian University of Sudbury ("LU" or the "Applicant") brought this motion for an order approving:

(a) the Tenth Report of the Monitor dated January 24, 2022, the Eleventh Report of the Monitor dated April 13, 2022, the Thirteenth Report of the Monitor dated May 27, 2022 (together, the "Reports") and the Seventeenth Report of the Monitor dated October 5, 2022, together with the conduct and activities of the Monitor referred to therein;

(b) the fees and disbursements of the Monitor for the period from January 1, 2022 to July 1, 2022;

(c) the fees and disbursements of EY FAAS for the period from January 1, 2022 to July 1, 2022 for its provision of accounting assistance to LU in connection with the preparation of its year-end financial statements; and

(d) the fees and disbursements of the Monitor's counsel, Stikeman Elliott LLP ("Stikeman"), for the period from January 1, 2022 to July 1, 2022.

[3] No party requested an adjournment and the motion proceeded on an unopposed basis, with the Board of Governors taking no position.

[4] The Seventeenth Report provides a detailed summary of the activities of the Monitor, EY FAAS and Stikeman throughout the period under review, together with a detailed breakdown of the fees and disbursements of the Monitor, EY FAAS and Stikeman. The Seventeenth Report also supplements the Reports, which also detail the activities of the Monitor, EY FAAS and Stikeman.

[5] In addition, affidavits filed by lead professionals of the Monitor and Stikeman provide a listing of the accounts sought to be approved, including summaries of each account, individual professionals who have worked on the matter, average hourly billing rates, the total number of hours worked and total associated professional fees. I do note that Stikeman's accounts have been redacted to remove privileged, confidential and sensitive information.

[6] The Monitor requests fees of $2,294,720 plus applicable HST. EY FAAS seeks $438,448.50 plus applicable HST. Stikeman requests $1,991,905.95, disbursements of $5,630.93 plus applicable HST.

[7] In the Seventeenth Report, the Monitor states that in its professional judgment, the amounts requested to be approved are fair and reasonable in the circumstances. This statement was not challenged.

[8] The factum filed by counsel to the Monitor provides a summary of the activities of the Monitor and its counsel at paragraphs 20 and 21:

> [20] … The more significant matters that the Monitor has undertaken to assist the Applicant include: (a) continuing to resolve claims through the Claims Process and the Compensation Claims Process; (b) assisting in the preparation of cash-flow forecasts and disbursement review; (c) reporting to the Court on the status of the CCAA proceeding; (d) assisting the Applicant in connection with responding to information requests and liaising with significant stakeholders; and (e) assisting the Applicant in preparing the Plan and related materials, including drafting the Meeting Order.
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> [21] The Monitor's counsel has represented the Monitor in all aspects of the CCAA proceeding during the Period, including in connection with: (a) at least eight

motions, Court hearings and case conferences; (b) participating in the Grievance Resolution Process; (c) the review, dispute and resolution of disputed claims filed pursuant to the various claims procedures approved in the CCAA proceedings; (d) responding to information requests and liaising with significant stakeholders; and (e) assisting the Applicant in preparing the Plan and related materials."

[9] The issues on this motion are:

(a) should the Court approve the fees and disbursements of the Monitor, EY FAAS and Stikeman?

(i) Does this Court have the jurisdiction to pass the accounts of the Monitor, EY FAAS and Stikeman?

(ii) Are the accounts of the Monitor, EY FAAS and Stikeman fair and reasonable?

(b) should the Court approve the Reports and the Seventeenth Report, and the conduct and activities referred to therein?

[10] Paragraphs 29 and 30 of the Initial Order provide that the Monitor and its counsel shall be paid their reasonable fees and disbursements, at their standard rates and charges and that the Monitor and its legal counsel shall pass their accounts from time to time before the Court.

[11] I am satisfied that it is not necessary or desirable to engage in a review of each individual entry to determine whether the accounts are fair and reasonable. Having reviewed the record, I am satisfied that the Monitor's, EY FAAS' and Stikeman's accounts are fair and reasonable.

[12] In arriving at this conclusion I have taken into account the guidance provided by the Court of Appeal for Ontario in *Confectionately Yours Inc., (Re)*, 2002, 36 CBR (4^{th}) 200 at para. 51 which set out a number of factors to be considered in a review of the fees and disbursements of a Court officer. These factors include:

(a) the nature, extent and value of the assets being handled;

(b) the complications and difficulties encountered;

(c) the degree of assistance provided by the company, its officers or its employees;

(d) the time spent;

(e) the Monitor's knowledge, experience and skill;

(f) the diligence and thoroughness displayed;

(g) the responsibilities assumed;

(h) the results achieved; and

(i) the cost of comparable services when performed in a prudent and economical manner.

[13] These CCAA proceedings have given rise to a number of novel legal, operational, governance, regulatory and practical issues. As noted in the factum, these proceedings have been highly contentious and scrutinized by creditors and the public. These proceedings represent the first time in Canada that a publicly funded educational institution has filed for creditor protection under the CCAA.

[14] LU stakeholders are numerous and the Monitor was challenged with coordinating, negotiating and liaising with many stakeholders that do not typically feature in a conventional CCAA proceeding.

[15] The efforts of the Monitor and its counsel and numerous other stakeholders contributed to LU's ability to formulate a Plan, which has been approved by the creditors and has been sanctioned by this Court.

[16] I accept the submission of counsel to the Monitor that a consideration of the factors articulated above supports the conclusion that the requested remuneration of the Monitor, EY FAAS and Stikeman is fair and reasonable. As such, their fees and disbursements for the period are approved.

[17] The Monitor also requests that the Reports, and the Seventeenth Report and the described conduct and activities be approved. As noted in *Re Target Canada Co.*, a request to approve a Monitor's Report is not unusual. (See: *Re Target Canada Co.*, 2015 ON SC 7574 at para. 2). In *Re Target*, it was stated that there are good policy and practical reasons for the Court to approve of monitor's activities and provide a level of protection for monitors during a CCAA process.

[18] No adverse comment has been raised with respect to the content of the Reports, including the Seventeenth Report and no party opposed the Monitor's requested relief.

[19] I am satisfied that it is appropriate to approve the Reports and the Seventeenth Report together with the conduct and activities described therein.

[20] The motion is granted and an order reflecting the foregoing has been signed.

Chief Justice G.B. Morawetz

Date: October 17, 2022