

CITATION: Laurentian University of Sudbury, 2023 ONSC 632

COURT FILE NO.: CV-21-656040-00CL

DATE: 2023-01-25

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 Derek Harland*, for the Applicant

Ashley Taylor, for the Court-appointed Monitor, Ernst & Young Inc.

Steven G. Shoemaker, for James Crispo and Dominique Ansell

Dawne Jubb, Interim General Counsel for Laurentian University

Massimo Di Giovanni, for the Canadian Universities Reciprocal Insurance
Exchange

HEARD: January 25, 2023

ENDORSEMENT

[1] Laurentian University of Sudbury ("LU") brings this motion for a vesting order, vesting all of LU's right, title and interest in and to the Subject Property, being a portion of real property described as the University Property, in favour of James Crispo and Dominique Ansell (collectively, the "Neighbours") on an "as is, where is" basis.

[2] LU owns the University Property and the Neighbours own property that abuts the University Property. Certain structures erected by the prior owners of the abutting property encroach upon the University Property. The structures are located on the Subject Property. Since 2016, the University and the Neighbours have been discussing a potential resolution of their differences but these discussions did not result in a resolution of the issue. In 2018, the University commenced an action against the Neighbours seeking a declaration that the Neighbours have no title, right or interest in the University Property. On July 11, 2022, LU and the Neighbours entered into a Settlement Agreement to resolve outstanding issues. The Settlement Agreement provides that LU will seek a vesting order within the *Companies' Creditors Arrangement Act* ("CCAA"), proceedings to transfer and vest its interest in the Subject Property in the Neighbours, on an "as is,

where is” basis. In exchange, the Neighbours will pay LU \$20,000, the action will be dismissed and all issues relating to the encroachments will be resolved.

[3] The encroachment dispute predates the CCAA proceedings.

[4] Section 11.1(f) of the Exit Loan Agreement in the CCAA proceedings requires LU to obtain the consent of the Exit Lender prior to selling, transferring or disposing of its assets or property. The Ministry of Colleges and Universities (“MCU”) is the Exit Lender and has confirmed its support of the Settlement Agreement and has consented to the requested form of Vesting Order.

[5] The Ministry of Natural Resources and Forestry has confirmed that it consents to the requested form of Vesting Order.

[6] The City of Greater Sudbury has confirmed that it does not oppose the motion.

[7] Counsel to LU has advised that parties who may be affected by the relief sought have been served with the motion record and no party has indicated an intention to oppose the motion.

[8] The proposed Vesting Order directs the land registrar to discharge, delete and expunge from title to the Subject Property certain instruments that are listed on Schedule “C” to the Vesting Order.

[9] The sole issue for determination is whether the Vesting Order should be granted.

[10] Section 100 of the *Courts of Justice Act* (“CJA”) provides:

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[11] Counsel to LU submitted that Ontario courts have suggested that s. 100 of the CJA does not provide a freestanding right to property simply because the court considers the result equitable and that, in order to grant a vesting order, the court’s jurisdiction must have some other route (See: *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508 at para 39.)

[12] Counsel submits that various sources in addition to s.100 of the CJA provide the jurisdictional basis to grant the Vesting Order.

[13] First, the purpose of the Settlement Agreement, including the Vesting Order, is to resolve the issue of the encroachments. Section 37(1) of the *Conveyancing and Law of Property Act* (the “CLPA”) provides that the court may require that land upon which lasting improvements have been made be retained by the person who made the improvements in exchange for just compensation for the land. This section is the main ground raised by the Neighbours in their defence of the action. Counsel submits that this section empowers the court to: (i) require the Neighbours to retain the Subject Property and to pay LU just compensation for it; and (ii) grant a vesting order effecting the transfer the Subject Property from LU to the Neighbours pursuant to s. 100 of the CJA.

[14] Second, the transaction contemplated by the Settlement Agreement is essentially a sale or disposition of real property, which the court has jurisdiction to authorize pursuant to section 36(1) of the CCAA. In the CCAA proceedings, the Initial Order authorized LU to dispose of assets valued at less than \$50,000 outside the ordinary course of business. Although this transaction concerns disposition of the subject property for \$20,000, in order to facilitate the closing of the transaction, the parties request the proposed Vesting Order.

[15] Third, the court is empowered by section 11 of the CCAA to make any order that it considers appropriate in the circumstances. Counsel submits that the court has previously relied upon this section to establish jurisdiction to grant vesting orders where such jurisdiction was not found in section 36 of the CCAA (See: *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para 37.

[16] Accordingly, counsel submits that s. 100 of the CJA, together with s. 37(1) of the CLPA, section 36(1) of the CCAA or section 11 of the CCAA collectively, provide jurisdiction to this court to make the Vesting Order. I accept this submission.

[17] Counsel to LU also addressed a *Planning Act* issue, noting that if the Settlement Agreement had provided for transfer of the subject property in the absence of a vesting order, the subdivision control provisions of the *Planning Act* would be engaged. Counsel added that this would increase the expense of, and delay and any possible resolution of the action.

[18] The subdivision control provisions of the *Planning Act* are engaged when there is a conveyance by way of deed or transfer. In *Terrace Bay Pulp Inc., (Re)*, 2012 ONSC 4247 (Ont. S.C.) [*"Terrace Bay"*] at paras 69 – 72, I found that the granting of a vesting order is not, for the purposes of section 50(3) of the *Planning Act*, a conveyance by way of deed or transfer. In making this determination, reference was made to *Lama v. Coltsman* (1978), 20 O.R. (2d) 98 (Ont. Co. Ct.), where the court found that the vesting of land by court order does not constitute a "conveyance" by way of "deed or transfer" and, therefore, "a vesting order comes outside the purview of the *Planning Act*". Counsel submitted that it has been accepted in Ontario courts that land transferred pursuant to a vesting order does not engage the subdivision control provisions of the *Planning Act* (See: *Holmsten v. Karson Kartage & Konstruktion Ltd.*, [1997] O.J. No. 1532 (Ont. Gen. Div.) at para. 13 and *724597 Ontario Inc. v. Merol Power Corp.*, 2005 CanLII 41537 (Ont. S.C.) [*"Merol Power"*]). Counsel also referenced that the power to grant a vesting order is equitable in nature, and discretionary and such discretion should be exercised cautiously and be consistent with appropriate planning principles (See: *Merol Power, supra* at para 14).

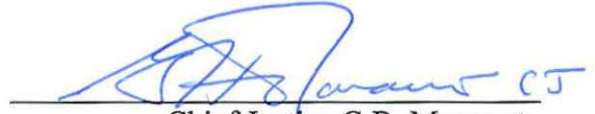
[19] LU is not aware of any opposition to the requested Vesting Order and no party has raised concern that if the Vesting Order is granted it would be inconsistent with planning principles.

[20] In addition, in the absence of a Vesting Order being granted, LU and the Neighbours would need to either: (i) negotiate a new settlement or (ii) continue litigating the action. In either event, costs would continue to be incurred and the issues as between LU and the Neighbours will persist.

[21] Finally, I note that, given that the CCAA Plan of Arrangement has been approved by the Court, the Monitor did not take part in the negotiations as between LU and the Neighbours, and takes no position on this motion.

[22] Having reviewed the record and having been persuaded by the submissions of counsel to LU, I am satisfied that it is appropriate, in these circumstances, to grant the Vesting Order.

[23] The motion is granted and the Order has been signed.


Chief Justice G.B. Morawetz

Date: January 25, 2023