CITATION: Imperial Tobacco Limited, 2024 ONSC 6890
COURT FILE NOS.: CV-19-616077-00CL, CV-19-615862-00CL and CV-19-616779-00CL
DATE: 2024-12-10

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**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Mark E. Meland, André Lespérance and Tina Silverstein*, for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Québec Class Action Plaintiffs)

Raymond Wagner, K.C. and Kate Boyle, Representative Counsel for the Pan-Canadian Claimants

Andrea Grass, for Actis Law Group

Linc Rogers, for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.

Robert Cunningham, for the Canadian Cancer Society

Jacqueline Wall, for the Province of Ontario

HEARD: December 9, 2024

ENDORSEMENT

[1] This matter concerns the ongoing insolvency proceedings involving JTI-Macdonald Corp. ("JTI"), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "Imperial") and Rothmans Benson & Hedges Inc. ("RBH"). This endorsement relates to all three applicants.

[2] The representative counsel for the Pan-Canadian Claimants seeks interlocutory injunctive relief against Actis Law Group and its principal, Andrea Grass (together, "Actis"). For the reasons that follow, the injunction is granted.

Background

[3] In March 2019, JTI, Imperial and RBH commenced insolvency proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA Proceedings"). The CCAA proceedings were precipitated by a class-action judgment rendered in Québec for over $13.5 billion.

[4] Since that time, JTI, Imperial, RBH (collectively, the "Tobacco Companies"), their respective monitors, the claimants, and The Honourable Warren K. Winkler, K.C., the Court-appointed Mediator, have spent thousands of hours in hundreds of court-ordered mediation sessions.

[5] These negotiations culminated in proposed CCAA plans for each of the Tobacco Companies. Under these proposed plans, the Tobacco Companies would collectively pay more than $32.5 billion to be divided among several parties, including class-action plaintiffs and each of the provinces and territories. In exchange for these payments, the Tobacco Companies would be granted a full and final release and emerge as going concerns.

[6] Meeting Orders and Claims Procedure Orders were issued on October 31, 2024. Pursuant to the Meeting Orders, creditors meetings to vote on the CCAA plans are scheduled for this Thursday, December 12.

[7] On December 9, 2019, Wagners was appointed as class counsel for the Pan-Canadian Claimants (PCC) to represent their interests in connection with these proceedings. The Pan-Canadian Claimants are individuals, excluding the Québec Class-Action plaintiffs in relation to the claims in the Québec Class-Action, who have asserted or may be entitled to assert a claim related to, among other things, the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of tobacco products.

[8] The Respondent Actis published a website purporting to offer representation in the "Canadian Tobacco Class Action Settlement". This website encouraged individuals to submit their information in order to participate in the class-action. It stated that Actis offers its services on a contingency fee basis. The website was taken down before this hearing, but Actis asserts that there is nothing improper in offering its services in this way.

[9] Wagners, in its capacity as class counsel seeks an interlocutory injunction until the Court renders its decision on any sanction orders in the proceedings. They ask that Actis be required to:

(a) Take down the website advertising services related to the CCAA proceedings;

(b) Cease and desist all solicitation of services or provision of advice to the PCC;

(c) Provide a list of persons who signed up or provided information to Actis in response to its advertising services in connection with the CCAA proceeding;

(d) Destroy records in its possession relating to the CCAA proceeding.

[10] I am satisfied that the test for an interlocutory injunction has been met, pursuant to s. 101 of the *Courts of Justice Act* and Rule 40.01 of the *Rules of Civil Procedure*.

Analysis

[11] Section 101 of the *Courts of Justice Act* provides that an interlocutory injunction or mandatory order may be granted where it appears to a judge of the court to be just or convenient to do so.

[12] The test for an interlocutory injunction is set out by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney-General)*, at 334. The test requires the moving party to demonstrate that:

(a) there is a serious issue to be tried;

(b) irreparable harm will result if the relief is not granted; and

(c) the balance of convenience favours the moving party.

[13] This analysis must be contextualized by the ongoing CCAA proceeding. The CCAA creates a single proceeding model to promote the "equitable and orderly resolution of insolvency disputes". This approach is "intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights": *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, 475 D.L.R. (4th) 1, at paras. 54-55.

[14] To this end, this Court is empowered under s. 11 of the CCAA to "make any order it considers appropriate in the circumstances".

A. Serious Issue to be Tried

[15] The threshold to satisfy this requirement is low. So long as the claim is not frivolous or vexatious, this factor of the test will generally be satisfied: *RJR-MacDonald*, at 335.

[16] I am satisfied that this low threshold is met. Whether an order should be granted under s. 11 of the CCAA presents a serious issue.

[17] The interests of the PCC are represented in this proceeding by the court-appointed class counsel. If the CCAA plan is approved by the creditors and sanctioned by the Court, the PCC will require no additional legal representation. They will be entitled to assert their claims under the PCC Compensation Plan with the support of Wagners and its agents.

[18] By advertising legal services and soliciting retainers, Actis stands to interfere with the equitable and orderly resolution of the CCAA proceedings. It risks confusing the claimants and interfering with their representation by the court-appointed class counsel at a critical point in the proceedings. Claimants may be led to mistakenly believe that they must sign up for Actis's services to obtain their entitlements. They may also fail to sign up to receive information from the court-

appointed class counsel on the mistaken belief that they have taken the necessary steps to receive such information.

B. Irreparable Harm

[19] The second element of the *RJR-MacDonald* test is whether the moving parties will suffer irreparable harm if the injunction is not granted. What must be established on this part of the test is whether refusing to grant an injunction will cause harm that cannot be remedied at some later stage: *RJR-MacDonald*, at 341.

[20] I am satisfied that allowing Actis to advertise legal services and solicit retainers in connection with the CCAA proceedings poses a risk of irreparable harm. The CCAA proceedings are in a critical stage, with Creditors Meetings taking place on December 12. The court-appointed class counsel requires the ability to make timely and effective communications with the members of the class it represents. By interposing itself between class counsel and the PCC, Actis can interrupt this communication and risk introducing confusion which may undermine the equitable and orderly conduct of the CCAA proceedings.

[21] Additionally, Actis's participation in this proceeding would interfere with the CCAA Plans as they will be presented to creditors on December 12. It may be appropriate in some claims processes for lawyers to offer their services to help claimants pursue their claims. However, these proceedings and these claims processes are unique.

[22] As counsel to the Province of Ontario noted, the process to file claims has been streamlined and claimants are not responsible for the compensation of PCC Counsel.

[23] Ontario supported the position of PCC Counsel as did The Canadian Cancer Society.

[24] In my view, the offering of Actis, on a category fee basis at this stage of the proceedings, is not desirable in this case.

[25] The claimants in this matter are vulnerable, and some have waited over 26 years to realize their claims. The PCC Compensation Plan is specially crafted to meet these unique circumstances and to reduce any further hardship for the claimants. It is specifically designed to eliminate any need for the services Actis proposes to offer. Wagners has procured an agent to manage its communications with potential claimants and to support them in making their claims. Offering such services for a fee, when the PCC are entitled to receive them at no cost, would undermine the very purpose of important aspects of the CCAA Plans.

[26] In the context of these CCAA proceedings, which are uniquely complex and span over five years, such harms cannot be remedied once inflicted.

C. Balance of Convenience

[27] The third factor, the balance of convenience, considers which of the parties will suffer the greater harm from the granting or refusal of an interlocutory injunction. I must also consider the public interest at this stage: *RJR-Macdonald*, at 348-49.

[28] I am satisfied the balance of convenience favours granting the injunction. Absent an injunction, there is a serious risk that the PCC' interests and their representation by class counsel will be undermined due to confusion caused by Actis's advertising and soliciting activities. Such confusion in turn risks undermining the orderly and equitable resolution of the insolvency proceedings.

[29] On the other hand, Actis purports to offer services that are within the mandate of class counsel. It proposes to help potential claimants determine their eligibility to make a claim in the proceeding. These are services that class counsel are mandated to provide under the PCC Compensation Plan. In the unique circumstances of these CCAA proceedings and these Compensation Plans, Actis's legitimate interest in offering such services is limited at best.

Notice

[30] Rule 40.02 of the *Rules of Civil Procedure* specifies that an interlocutory injunction granted without notice may not exceed a period of 10 days. However, the Court may dispense with compliance with any rule in the interest of justice: r. 2.03. Moreover, the Supreme Court of Canada has recognized that procedural flexibility is a "hallmark" of insolvency law: *Peace River*, at para. 64.

[31] I am satisfied that notice should be waived in this case. Actis attended the hearing and made submissions on its behalf. The CCAA proceedings are at a critical stage, and it is vital that matters proceed as set out in the Meeting Orders and the Claims Procedure Orders. To that end, it is necessary that Actis be enjoined from advertising legal services or soliciting retainers from claimants until a decision is rendered on any sanction orders in this matter.

Undertaking

[32] Rule 40.03 of the *Rules of Civil Procedure* provides that, on a motion for an interlocutory injunction, "the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party."

[33] The court retains discretion to waive this requirement where appropriate, for instance where the motion is brought by a representative on behalf of a class: *Li et al. v. Barber et. al.*, 2022 ONSC 1176, at para. 38. I am satisfied that it is appropriate to waive the requirement for an undertaking in these circumstances. If compensation is owed to Actis, I am satisfied that it can be adequately addressed when this Court makes a decision regarding any sanction orders.

Disposition

[34] The injunction is granted.

[35] As an Officer of the Court, Ms. Grass – the principal of Actis – will not be required to provide evidence of confirming destruction of all copies of the "Actis List" as defined in the order.

C.J.

Chief Justice Geoffrey B. Morawetz

Date: December 10, 2024