

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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 NELSON EDUCATION LTD.
AND NELSON EDUCATION HOLDINGS LTD.

Applicants

AFFIDAVIT OF ANNETTE FOURNIER
(sworn May 20, 2015)

I, ANNETTE FOURNIER, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a law clerk employed by Thornton Grout Finnigan LLP (“TGF”) and am part of the team providing representation to the Royal Bank of Canada (“RBC”) in the within-noted matter. As such I have knowledge of the matters affirmed herein, and where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe such information to be true.
2. All capitalized terms used herein and not defined are as defined in the Affidavit of Greg Nordal sworn on May 11, 2015 (the “**Nordal Affidavit**”) filed by the Applicants in support of their application for protection pursuant to the CCAA.
3. In respect of the Applicants, RBC is:

- (a) a First Lien Lender holding approximately 12% of the principal amounts outstanding under the First Lien Credit Agreement and is the only First Lien Lender that is not a Consenting First Lien Lender;
 - (b) a Second Lien Lender, holding the largest share of the principal amounts outstanding, and the Second Lien Agent under the Second Lien Credit Agreement; and
 - (c) the financial institution providing the Cash Management System to the Applicants.
4. Attached hereto as Exhibit "A" is a letter from counsel for RBC, as Second Lien Lender and Second Lien Agent, to counsel to the Applicants dated September 16, 2014.
5. I swear this Affidavit in support of RBC's objections made at the Comeback Hearing on May 29, 2015 and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 20th day of
May, 2015



Commissioner for Taking Affidavits

Asim Iqbal



ANNETTE FOURNIER

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September 16, 2014

Mr. Robert Chadwick
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, OH M5H 2S7

Re: Nelson Education Ltd.

Dear Rob:

We represent Royal Bank of Canada, as a lender and as agent, under the Second Lien Credit Agreement, dated as of July 5, 2007 (as amended or modified from time to time, the "Second Lien Credit Agreement"), by and among Nelson Education Ltd. ("Borrower"), Nelson Education Holdings Ltd., as Holdings, Royal Bank of Canada, as Administrative Agent and Collateral Agent (in such capacity, the "Second Lien Agent"), and the lenders from time to time party thereto (collectively, the "Second Lien Lenders"). Any capitalized terms set forth but not defined herein have the meanings ascribed to such terms in the Second Lien Credit Agreement.

The Second Lien Agent understands that the Borrower has reached an agreement with a steering committee of lenders under its First Lien Credit Agreement, dated as of July 5, 2007 (the "First Lien Credit Agreement"), by and among the Borrower, Holdings, Wilmington Trust, National Association, as successor Administrative Agent and Collateral Agent (in such capacity, the "First Lien Agent"), and the lenders from time to time party thereto (collectively, the "First Lien Lenders") on a restructuring of the Borrower's obligations under the First Lien Credit Agreement (the "Restructuring"). The Second Lien Agent was excluded from any discussions with the First Lien Lenders regarding the Restructuring and is not aware of all of its material terms. Based on what it knows, however, the Second Lien Agent is concerned that the Restructuring, if implemented, would violate the Loan Documents. Accordingly, the Second Lien Agent would like to receive the following information by noon on Friday, September 19.

Consent Fee

The Restructuring includes an early consent fee (the "Consent Fee") payable to First Lien Lenders who sign a support agreement by September 25, 2014. The Second Lien Agent estimates that the Consent Fee would result in payments through the end of 2014 of approximately \$12 million. The Second Lien Agent's questions and concerns regarding the Consent Fee include the following:

- A. Is the Second Lien Agent's calculation of the Consent Fee correct?
- B. The Consent Fee appears to be an increase in the interest rate under the First Lien Credit Agreement of more than 3%. Does the Borrower's calculation differ and, if not, is the Consent Fee permissible under Section 5.3 of the Intercreditor Agreement?

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C. What does the Borrower contemplate if one or more First Lien Lenders do not sign a support agreement? Is it the Borrower's view that such a non-supporting First Lien Lender would still be entitled to its ratable portion of the Consent Fee under Section 2.14 of the First Lien Credit Agreement?

D. If a non-consenting First Lien Lender elects to challenge the Restructuring, is it the Borrower's view that such lender continues to be entitled to have its legal and other fees reimbursed under the First Lien Credit Agreement?

E. What analysis did the Borrower perform to determine the impact of the payment of the Consent Fee on constituencies other than the First Lien Lenders? In particular, what is the business justification underlying the Consent Fee given that:

(i) the Borrower's default under the First Lien Credit Agreement obligates it to pay only an increase in the default interest rate;

(ii) the Consent Fee reduces the Borrower's cash balances and value at the outset of a sales process in which the Borrower (and its officers and directors) have a duty to maximize value for the benefit of all constituencies;

(iii) the Consent Fee reduces the Borrower's cash balances at a time when the Borrower has prepared for an insolvency proceeding, and may need DIP financing;

(iv) the Consent Fee does not reduce the uncertainty inherent in the Borrower's sales process (described below); and

(v) the Borrower is not current on all of its other obligations including, without limitation, interest and fees owed to the Second Lien Lenders.

F. The Second Lien Agent understands that the Restructuring offers no recovery to the Second Lien Lenders. If accurate, then the Borrower must view the claims under the First Lien Credit Agreement as the fulcrum claims in any restructuring (incorrectly in our view). If that is the Borrower's view, then why does it need to pay any Consent Fee and reduce its cash balances?

Sales Process

A. Over a period of months, the Second Lien Agent has requested that the Borrower share its operating results, projections and cost savings plan. None of that information has been provided, and yet it would seem critical to any potential purchaser of the Borrower. Does such information exist and, if so, why hasn't it been provided to the Second Lien Agent? If it does not exist, can the Borrower market its assets effectively?

B. The Second Lien Agent has requested the Borrower's view on the pro forma financial impact (including potential realized synergies from purchasers) on the Borrower of (i) selling the K-12 and higher education business segments in a single transaction, (ii) selling the K-12 and higher education

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business segments in separate transactions and (iii) selling one business segment and retaining the other. Does such information exist and, if so, why hasn't it been provided to the Second Lien Agent? If it does not exist, can the Borrower market its assets effectively?

C. The sales process appears to face a number of potential obstacles, including from non-consenting First Lien Lenders, the Second Lien Lenders, other creditors, Cengage and "Heritage Canada." How did the Borrower conclude that it could be marketed effectively in the face of these uncertainties?

D. In light of what appears to be the possibility, and perhaps likelihood, of an insolvency proceeding, has the Borrower considered eschewing the Consent Fee and immediately commencing such a proceeding, and marketing its assets while operating in insolvency?

E. Does the Borrower believe that a sale can be consummated without (i) unanimous consent of the Second Lien Lenders or (ii) a CCAA or CBCA proceeding?

F. Does the Borrower believe that prospective buyers would consummate a sale without (i) unanimous consent of the Second Lien Lenders or (ii) a CCAA or CBCA proceeding?

The "Credit Bid"

A. The Restructuring contemplates a purported "credit bid" that results in a restructuring of the First Lien Credit Agreement and the issuance to the First Lien Lenders of shares in Newco. What legal precedent is the Borrower relying on for completing such a transaction?

B. Was the "credit bid" structured to circumvent the voting rights of the Second Lien Lenders under Section 6.9 of the Intercreditor Agreement?

C. Has the Borrower received assurance that First Lien Lenders who receive shares in Newco will provide whatever undertakings Heritage Canada requires of them?

D. Does the Borrower believe that the credit bid can proceed without (i) unanimous consent of the Second Lien Lenders or (ii) a CCAA or CBCA proceeding?

E. How would the credit bid be implemented in, and outside of, an insolvency proceeding?

Other Questions

A. How does the Borrower plan to treat the claims of the Second Lien Lenders and Second Lien Agent?

B. Is the Borrower insolvent? If not, on what basis has the Borrower made this determination?

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C. On what basis has the Borrower decided to continue to pay unsecured creditors in full, while failing to address the claims of the Second Lien Lenders?

D. Has the Borrower made any determination as to which of its vendors are critical?

The Borrower has agreed to a Restructuring that does not address the Second Lien Lenders' claims. This is disappointing, given that the Second Lien Agent provided unprecedented cooperation to the Borrower in an effort to reach a consensual deal, including waivers of due dates of interest payments and offers to provide a recovery to hopelessly out-of-the-money equity holders. Furthermore, there was a meeting between the Second Lien Agent and the Borrower's CEO, and their respective advisors, in Toronto two weeks ago during which the Second Lien Agent and Borrower agreed on the outline of a proposal to resolve their claims. The Second Lien Agent participated in that meeting at the request of one of the Borrower's board members, who did not show up (he was available by phone, but only to the Borrower and its advisors). The Second Lien Agent has not received any follow-up from the Borrower since that meeting, and questions whether the proposal has been discussed with the First Lien Lenders.

Please note that this letter sets forth only those concerns about the Restructuring that have arisen from the Second Lien Agent's current understanding of its structure. Nothing contained herein is intended to be, or shall be, construed as a waiver or forbearance of any of the rights, remedies, and powers of the Second Lien Lenders or Second Lien Agent against the Borrower, the First Lien Agent, the First Lien Lenders or the Second Lien Lenders' Collateral, or a waiver of any Defaults or Events of Default, or a consent to any departure by the Borrower or the First Lien Lenders from the express provisions of the Second Lien Credit Agreement and the other Loan Documents. The Second Lien Agent, on behalf of the Second Lien Lenders, hereby expressly reserves all of its remedies, powers, rights, and privileges under the Second Lien Credit Agreement, the Intercreditor Agreement and the other Loan Documents, at law, in equity, or otherwise.

Sincerely,



Andrew V. Tenzer
U.S. Counsel to the Second Lien Agent

cc: D.J. Miller, Thornton Grout Finnigan LLP
Paul Shalhoub, Willkie Farr & Gallagher LLP
Kevin Zych, Bennett Jones LLP
Dean Mullett, Alvarez & Marsal
Jeffrey Rose, Wilmington Trust, NA
Jonathan Miller, CDG Group
Les Vowell, RBC

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 NELSON EDUCATION LTD.
AND NELSON EDUCATION HOLDINGS LTD. (collectively, the "APPLICANTS")

Court File No.: CV15-10961-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at **Toronto**

AFFIDAVIT OF ANNETTE FOURNIER
SWORN MAY 20, 2015

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