Court File No. CV-11-9509-00CL

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 RENIN CORP., RENIN CORP. US AND KINGSTAR PRODUCTS (WESTERN) INC.

APPLICANTS

FACTUM OF THE APPLICANTS

December 8, 2011

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The Applicants

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The Applicants.

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FACTUM OF THE APPLICANTS

Overview

1. Renin Corp. ("Renin"), Renin Corp. US ("Renin US") and Kingstar Products (Western) Inc. ("Kingstar" and together with Renin and Renin US, the "Applicants") seek this Court's protection under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA").[1] The Applicants are at an impasse and in need of immediate relief. By this Application, the Applicants seek an order pursuant to the CCAA:

(a) declaring that the Applicants are companies to which the CCAA applies;

(b) staying all proceedings or remedies taken or that might be taken in respect of the Applicants, any of the Applicants' property or any default of the Applicants, without leave of the Court, except as otherwise set forth therein;

(c) directing the Applicants to pay, in the ordinary course, all of their financial obligations, whether accrued before or after the date of the initial order, except in respect of principal and interest on the 2nd Lien Loans (as defined herein);

(d) appointing FTI Consulting Canada Inc. ("FTI"), as monitor (the "Proposed Monitor") of the Applicants in connection with these proceedings;

(e) permitting the Applicants to file a plan of arrangement (the "Plan") with respect to the 2nd Lien Loans;

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[1] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ["CCAA"].

(f) authorizing the Applicants to grant a charge as security for the payment of fees and other costs of certain professionals in connection with these proceedings; and

(g) approving the accommodation agreement dated as of December 8, 2011 between Renin, Renin US and GE (as defined herein) (the "Accommodation Agreement") and authorizing and directing Renin and Renin US to enter into the Accommodation Agreement and perform their obligations thereunder.

2. The Applicants will further seek an order in these proceedings:

(a) authorizing the Applicants to implement a claims procedure in respect of the 2nd Lien Loans for voting and arrangement purposes in respect of the Plan;

(b) authorizing the Applicants to conduct a meeting of the 2nd Lien Lenders (as defined herein) in respect of the Plan; and

(c) dispensing with certain publication and notice requirements.

The Facts

3. The facts are set out in the affidavit of Kevin Campbell sworn December 8, 2011 (the "Campbell Affidavit"), the affidavit of Steven M. Friedman sworn December 8, 2011, and the pre-filing report of the Proposed Monitor dated December 8, 2011 and are briefly summarized below. Capitalized terms used herein and not otherwise defined have the meaning ascribed to such terms in the Campbell Affidavit.

Background

4. The Applicants together with DSH Europe and DSH UK are part of a corporate group (collectively, the "Renin Group"), of which Renin is the parent corporation.[2] The Renin Group is managed on an enterprise basis from 110 Walker Drive, in Brampton, Ontario.[3]

5. The Renin Group is a leading manufacturer of closet doors, wall décor, systems and hardware and fabricated glass with manufacturing and distribution centers in Ontario (Concord and Brampton), British Columbia (Vancouver), Mississippi (Tupelo) and England (London).[4]

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[2] Affidavit of Kevin Campbell sworn December 8, 2011 ("Campbell Affidavit") at para. 22.
[3] Campbell Affidavit at paras. 20 - 23.

6. While the business of the Renin Group is operationally sound, it has been adversely affected by the cyclical downturn of the housing industry in the United States.[5]

Financial Impasse

7. The Applicants are at an impasse. The Applicants have been unable to secure the agreement of one of their five 2nd Lien Lenders to a waiver and extension agreement extending the maturity of the 2nd Lien Loans by approximately two years and continuing the paid-in-kind ("PIK") interest arrangements currently in place for a similar period, which is the essence of the Plan.[6]

Default under the 2nd Lien Credit Agreement

8. Renin and Renin US are in default of their obligations under a credit agreement dated November 21, 2007 (the "2nd Lien Credit Agreement" or "2nd Lien Loans" as the context may require) with five private lenders (the "2nd Lien Lenders"). The 2nd Lien Credit Agreement was amended by an Amendment No. 5, which provided that the Applicants were permitted to accrue interest on the 2nd Lien Loans and pay it in kind, rather than in cash (the "**PIK Interest Arrangements**"). The PIK Interest Arrangements terminated on August 31, 2011. The Applicants failed to make a scheduled interest payment on September 30, 2011 (the "2nd Lien Default"). The Applicants do not currently have the means to repay the 2nd Lien Loans or interest thereon.[7]

9. As of November 30, 2011, Renin and Renin US were indebted under the 2nd Lien Credit Agreement in an amount in excess of $57 million.[8]

10. The 2nd Lien Loans are secured by a first ranking security against the Applicants' fixed assets, certain excluded cash assets, and a pledge of Renin's shares, and a second ranking security against the working capital assets of the Applicants.[9]

Default under the 1st Lien Credit Agreement

11. The 2nd Lien Default has triggered defaults under a credit agreement dated as of October 18, 2007 with GE Canada Finance Holding Company and General Electric Capital

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[4] Campbell Affidavit at paras. 25 and 27.
[5] Campbell Affidavit at paras. 10 and 29.
[6] Campbell Affidavit at paras. 7-13.
[7] Campbell Affidavit at para. 6.
[8] Campbell Affidavit at para. 52.

Corporation (together in their capacity as lenders and as agents for themselves and on behalf of the other lenders, "GE"), which was to mature on October 31, 2011 (the "1st Lien Credit Agreement" or the "GE Loans" as the context may require).[10] The outstanding indebtedness under the 1st Lien Credit Agreement is in excess of $10 million.[11]

12. GE has declined to renew the 1st Lien Credit Agreement without a restructuring or refinancing of the 2nd Lien Loans and has provided a limited forbearance in respect of the GE Loans for the stated purpose of permitting the Applicants to restructure or refinance the 2nd Lien Loans.[12]

13. The GE Loans are secured by a first-ranking security against the working capital assets of the Applicants and by a second-ranking security against the Applicants' fixed assets, certain excluded cash assets, and a pledge of Renin's shares.[13]

Attempts to effect a consensual restructuring

14. Despite repeated and persistent attempts over a number of months to restructure the 2nd Lien Loans, only four of the five 2nd Lien Lenders have agreed to the terms of the restructuring proposal put forward by the Applicants (the "Waiver and Consent").[14] Those four lenders account for over 80% of the value outstanding on the 2nd Lien Loans.[15]

15. Despite numerous discussions and negotiations with the fifth lender, Satinland Finance S.À.R.L., an entity controlled by Fortelus, ("Fortelus") that lender has refused to agree to the Waiver and Consent or any restructuring at this time of the 2nd Lien Loans, loan buy-outs or equity conversion which might have averted the Applicants' current circumstances.[16]

16. The Applicants have explored whether the sale of the Renin Group, which was the option favoured by Fortelus, was a viable option.[17] Neither the other 2nd Lien Lenders, nor GE, was supportive of this option. Moreover, GE would not allow its security to be depleted for such a purpose.[18] Even if such a process were otherwise feasible, absent the agreement of GE, the

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[9] Campbell Affidavit at paras. 53 and 55.
[10] Campbell Affidavit, at para. 14.
[11] Campbell Affidavit, at para. 35.
[12] Campbell Affidavit, at paras. 40 - 42.
[13] Campbell Affidavit, at paras. 36 - 38.
[14] Campbell Affidavit, at para. 12.
[15] Campbell Affidavit, at para. 12.
[16] Campbell Affidavit, at paras. 66 – 70 and 95.
[17] Campbell Affidavit, at para. 76.
[18] Campbell Affidavit at paras. 76, 79, 80, 83 and 84.

Applicants will be in breach of their agreements with GE if they unilaterally purport to conduct an out-of-court sale process.[19]

17. Fortelus now requires that (i) the Applicants' business be shut down and their assets liquidated, or (ii) its debt be purchased for substantial consideration.[20] A demand letter was delivered by Fortelus to the Applicants on November 24, 2011. Following the expiry of the 30 day period described in that demand letter, Fortelus will be free to take certain enforcement steps, including a bankruptcy application.[21]

18. No other stakeholder favours a shut down.[22] The value of the assets is far from sufficient to discharge the secured liabilities.[23] The book value of the Applicants' current assets is approximately $25 million and an appraisal recently conducted showed a liquidation value for the fixed assets significantly less than $3 million. Eco Master Fund Limited, one of the 2nd Lien Lenders, states that the current EBITDA of the Applicants' business and the lack of willing purchasers in the Applicants' industry dictate that even in a going concern sale, the 2nd Lien Lenders would face a very significant shortfall.[24]

19. The Applicants have the support of GE and the other 2nd Lien Lenders to implement the Plan. GE is willing to continue to finance the Applicants once they have agreed to a binding restructuring of the terms of the 2nd Lien Loans by agreeing to provide them with a further accommodation for the duration of the CCAA proceedings and to renew the 1st Lien Credit Agreement for two years, upon successful implementation of the Plan.[25]

20. In connection with the Plan, the Applicants will enter into a fourth amendment to the 1st Lien Credit Agreement (the "Exit Facility") to provide the Applicants with continued access to liquidity in the period following Plan implementation. The Plan provides for a specific consent of the 2nd Lien Lenders, which would be required pursuant to the terms of an Intercreditor Agreement between GE and the 2nd Lien Lender in order to implement the Exit Facility.

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[19] Campbell Affidavit at para. 84.
[20] Campbell Affidavit at para. 95.
[21] Campbell Affidavit at para. 96.
[22] Campbell Affidavit at paras. 97 and 101.
[23] Campbell Affidavit at paras. 33 and 76.
[24] Affidavit of Steven M. Friedman, sworn December 8, 2011 at para. 11.
[25] Campbell Affidavit at paras. 44 and 98.

21. Each of the 2nd Lien Lenders is a sophisticated commercial party. Four of the five 2nd Lien Lenders, including Fortelus, are private equity funds. The fifth is controlled by a founder of one of the Applicants' predecessor companies.[26]

22. As noted, GE has provided a limited forbearance pursuant to a forbearance agreement dated as of October 31, 2011 (the "Forbearance Agreement").[27] The limited purpose of the Forbearance Agreement was to facilitate a restructuring of the 2nd Lien Loans.

23. The Plan is substantially based upon the terms of the Waiver and Consent, which (i) extends the maturity date of the 2nd Lien Loans to November of 2014 from November of 2012, and (ii) converts the interest component to PIK interest, payable in cash on the extended maturity date (the "Restructuring Proposal").[28] It essentially extends arrangements that have been in place since September of 2009 for another two years.

24. Given Fortelus' position, the CCAA process is the only means by which the Restructuring Proposal may be implemented. The Restructuring Proposal is the sole objective of the Plan. The Applicants will continue to service all of their obligations in the ordinary course, except for interest on the 2nd Lien Loans (which is currently not being serviced), but as noted below, the overall balance of the 2nd Lien Loans is not being compromised under the Plan.[29]

25. The Applicants contemplate an expedited process, in order to minimise disruption, impact on cash flow and the business, and which process has been agreed to by four of the five 2nd Lien Lenders and GE. In particular, the process (i) establishes a limited claims procedure for the affected claims; (ii) approves the filing of the Plan; and (iii) authorizes a creditors' meeting to be held on December 19, 2011 for the 2nd Lien Lenders to vote in respect of the Plan (the "Requested Relief").[30]

26. The current impasse jeopardizes the Applicants' ability to continue as a going concern enterprise. The Plan is the only viable option to preserve the business in these circumstances.[31]

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[26] Campbell Affidavit at para. 47.
[27] Campbell Affidavit at paras. 40 and 41.
[28] Campbell Affidavit at para. 10.
[29] Campbell Affidavit at para. 16.
[30] Campbell Affidavit at paras. 19 and 111.
[31] Campbell Affidavit at paras. 88 and 128.

27. Without the Plan, the Applicants' will likely be forced to shut down their ongoing business and their assets would be liquidated, with the loss of over 300 jobs.[32] The secured lenders would suffer shortfalls and unsecured creditors (being unsecured lenders owed in excess of $4,000,000 and unsecured trade creditors owed substantially more) will likely receive nothing at all.[33]

28. The operations of the Applicants' customers will also be negatively impacted by a lack of continued supply by the Applicants and the non-completion of work which has, in some cases, already been paid for.

29. The proposed restructuring plan is the only viable restructuring alternative that would ensure that all creditors remain entitled to payment of the entirety of their outstanding claims. No sales process nor valuations have been produced or suggested by any party which would otherwise allow for even close to full payment of all creditors. Further, creditors whose consent to any sale would be required have indicated that they would not consent to a sales process. Finally, no party has stepped forward to indicate its willingness to fund a protracted going concern sales process and, as a result, any such process would likely fully deplete any remaining liquidity that the Applicants have.

Proposed Court-supervised restructuring

30. These CCAA proceedings have a limited scope. The Applicants intend to file the Plan immediately upon receiving authorization to do so.

31. Only a single class of creditors, being the 2nd Lien Lenders, are affected by the Plan.[34]

32. The Plan does not compromise any amount owing to the 2nd Lien Lenders.[35] If the Plan is implemented, it is contemplated that the full principal amount and interest will be due on the extended maturity date.[36]

Claims Procedure and Creditor Classification for Voting on the Plan

33. The proposed claims procedure ascribes a claim amount (the "Proven Claim") to each 2nd Lien Lender, comprising the full amount owed, as shown on the Applicants' books and

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[32] Campbell Affidavit at paras. 30 and 132.
[33] Campbell Affidavit at paras. 60 and 62.
[34] Campbell Affidavit at para. 16.
[35] Campbell Affidavit, at paras. 10 and 16.
[36] Campbell Affidavit at para. 16.

records, as at November 30, 2011 to each 2nd Lien Lender in regard to its respective portion of the 2nd Lien Loans, including all accrued and unpaid interest.[37]

34. The Proven Claim is the basis for calculating the vote by the 2nd Liens Lenders in respect of the Plan. The Proven Claim amounts are not compromised by the Plan.[38]

35. The claims procedure contemplates that to the extent any 2nd Lien Lender disagrees with its Proven Claim it shall file a Notice of Dispute with the Proposed Monitor by December 16, 2011. If that 2nd Lien Lender and the Proposed Monitor, in consultation with the Applicants, are unable to resolve the dispute, the Proposed Monitor shall serve and file a motion requesting the court's determination of the value of the claim to be heard immediately prior to the sanction hearing in respect of the Plan.[39]

Creditors' Meeting

36. The draft Claims Procedure and Creditors' Meeting Order contemplates that the creditors' meeting will be held on December 19, 2011. The deadline for the receipt of the proxies is 5pm on December 16, 2011.

37. Although the timeframe for the filing of proxies to vote in respect of the Plan is abbreviated, the Applicants have already received proxies accepting the proposed Plan from four of the five 2nd Lien Lenders.[40] While such proxies could be revoked prior to the meeting, the submission of these proxies shows at the very least that the requisite majorities of affected creditors are receptive to the proposed process and the Plan. The only party that has not cast a vote, Fortelus, is otherwise fully aware of the proceedings and the purpose of the Plan and has been aware of the Restructuring Proposal for months.[41]

The Issues and the Law

The Applicants are "debtor companies" to which the CCAA applies

38. Section 3(1) of the CCAA provides that the CCAA applies in respect of a "debtor company" or "affiliated debtor companies" where the total of claims against such company or companies exceeds five million dollars.

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[37] Campbell Affidavit at para. 124.
[38] Campbell Affidavit at para. 16 and 126.
[39] Campbell Affidavit at para. 125.
[40] Campbell Affidavit at para. 18 and 114.
[41] Campbell Affidavit at para. 12.

39. The Applicants are eligible for protection under the CCAA because they are "debtor companies" and the debts against the Applicants exceed five million dollars.

40. Section 2 of the CCAA defines "company" as "any company, corporation or legal person incorporated by an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated...".[42]

41. The Applicants are "companies" within section 2 of the CCAA:

(a) Renin is a corporation formed under the *Business Corporations Act* (Ontario);

(b) Kingstar is a corporation formed under the *Business Corporations Act* (British Columbia); and

(c) Renin US is a corporation formed under the laws of the State of Delaware. Its head office is located in Brampton, Ontario, and its operations are integral to, and closely integrated with, those of Renin and Kingstar.[43] Renin US also has certain assets in Canada. Each of the foregoing factors make Renin US a company to which the CCAA should apply. [44]

42. Collectively, the claims of the Applicants' secured creditors are well in excess of the statutory threshold[45].

43. "Debtor companies" for the purposes of the CCAA also generally must be insolvent.[46] The CCAA does not define insolvency. In interpreting the meaning of "insolvent", courts often look to the definition of "insolvent person" in section 2 of the *Bankruptcy and Insolvency Act*[47] (the "BIA"). [48]

44. Section 2 of the BIA defines an "insolvent person", in relevant part, as one who:

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[42] CCAA, s. 2 ("company").
[43] *Smurfit-Stone Container Canada Inc. (Re)* (2009), 50 C.B.R. (5th) 71 at para. 19 (Ont. S.C.J.)
[44] *Global Light Telecommunications Ltd. (Re)*, [2004] B.C.J. No. 1153 at para. 17 (B.C.S.C.).
[45] CCAA, s. 3(1).
[46] CCAA, s. 2 ("debtor company").
[47] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ["BIA"].
[48] Although the Applicants submit that they are insolvent within the meaning of section 2 of the BIA, they further submit that the definition of "insolvent" should be given an expanded meaning in order to give effect to the CCAA's rehabilitative goal (see *Re Stelco Inc.* (2004) 129 A.C.W.S. (3d) 1065 at paras. 25, 40 and 69).

(a) is for any reason unable to meet his obligations as they generally become due;

(b) has ceased paying his current obligations in the ordinary course of business as they generally become due; or

(c) does not have property that, in the aggregate, is, at a fair valuation or a fairly conducted sale under legal process, sufficient to enable payment of all of his obligations, due and accruing due.[49]

45. As detailed in the Campbell Affidavit, the Applicants are unable to meet their obligations under the 1st Lien Credit Agreement and the 2nd Lien Credit Agreement. If the Plan is not implemented, GE's forbearance will cease and the Applicants will be subject to the remedies available to GE. The Applicants are also in default of their current obligations under the 2nd Lien Credit Agreement and Fortelus has requested that the agent thereunder accelerate the loans and take enforcement steps.

46. Kingstar is a guarantor of obligations under both the 1st Lien Credit Agreement and the 2nd Lien Credit Agreement. Kingstar does not have sufficient assets to meet its obligations under the Guarantee.

This Court has jurisdiction to receive this application

47. This Application is properly before the Court as the head offices of each of the Applicants are located in Brampton, Ontario. Although Renin US principally carries on business in the United States, management and control is exercised from Brampton and the company has certain assets in Canada and its operations are highly integrated with those of Renin and Kingstar.[50]

An expedited process is appropriate in the circumstances

48. The CCAA is remedial legislation, intended to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy. Courts have repeatedly held that the purpose of the CCAA is to preserve an insolvent company as a viable operation

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[49] BIA, s. 2 ("insolvent person").
[50] CCAA, s.2 ("company").

and to allow it to reorganize its affairs to the benefit not only of the debtor but its creditors as well.[51]

49. The effectiveness of the CCAA is dependent on a broad and flexible exercise of the Court's jurisdiction in order to facilitate a restructuring and to continue the debtor company as a going concern in the interim period. Section 11 of the CCAA provides the courts with a broad and liberal power in order to achieve the overall objective of the CCAA. An interpretation of the CCAA that is facilitative of restructurings is in line with the remedial purpose of the CCAA.

50. The Plan is the sole mechanism to resolve the current payment issues between the Applicants and the 2nd Lien Lenders in order to preserve the Applicants as a going concern and avoid a liquidation.

51. It is respectfully submitted that it is appropriate in the circumstances for the Court to grant the requested relief on the expedited timetable proposed. In the appropriate circumstances, the courts have shown a willingness to expedite the filing of a plan and the holding of the creditors meeting to vote in respect of such plan[52]. It is in the best interests of all stakeholders that the CCAA proceedings be expedited in order to avoid unnecessary expense and confusion and minimal disruption to the business and for its employees. An extended CCAA proceeding would likely result in, among other things, difficulties in obtaining payment from customers and difficulty securing supplies.

52. The requested relief will benefit a broad cross-section of stakeholders including employees, suppliers, creditors and customers. Such a purpose is consistent with the CCAA. Given the nature and purpose of the CCAA, this Court has the authority and jurisdiction to grant the requested relief on the expedited timeframe proposed.

53. No affected creditor will be surprised by the contents of the Plan. The affected creditors are extremely limited in number and all have been apprised of the Restructuring Proposal for a number of months. As recently as December 5, 2011 discussions took place with Fortelus on the Restructuring Proposal and the proposed process. Email updates were provided to Fortelus thereafter.

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[51] *Quintette Coal Ltd. v. Nippon Steel Corp.* (1990), 22 A.C.W.S. (3d) 81 at 109, 80 C.B.R. (N.S.) 98 (B.C.S.C.).

[52] Examples of limited duration CCAA proceedings approved by this Court include proceedings in respect of *Allen-Vanguard Corporation* (CV-09-00008502-00CL) at paras. 6, 7 and 18. See also *Xerium Technologies Inc.* (Re), 2010 ONSC 3974 (CanLII) at para. 29.

54. The Applicants do not expect that material disputes over the quantum of any Proven Claim should arise. The only claims in issue are the claims of 2nd Lien Lenders pursuant to the 2nd Lien Credit Agreement. These claims are readily ascertainable and verifiable.

The classification of creditors under the Plan is appropriate

55. In this case, the 2nd Lien Lenders are the only affected creditors under the Plan. The five such 2nd Lien Lenders have the same legal rights in relation to the Applicants, as their claims arise under the same instrument and their claims are secured by the same security. As such, the 2nd Lien Lenders have the necessary commonality of interest to be classed together for the purpose of voting in respect of the Plan.[53]

Newspaper Notice and Notice to Creditors

56. Subsection 23(1)(a)(i) of the CCAA provides that upon the granting of an initial order, the monitor shall publish a newspaper notice containing certain prescribed information in one or more newspapers "once a week for two consecutive weeks, unless otherwise directed by the court."

57. Subsection 23(1)(a)(ii)(B) and (C) of the CCAA provide that the monitor shall send a notice to every known creditor who has a claim of more than $1,000 advising such creditor that the initial order is publicly available, and shall prepare a list of the names and addresses of such creditors and make the list publicly available in the prescribed manner.

58. The practical purpose of the newspaper publication and the notice to creditors is to ensure that any party that may have an interest in a debtor company's insolvency proceedings receive notice thereof.

59. As discussed, only the 2nd Lien Lenders are affected by the proceedings and the Plan, all of which are aware of the terms thereof.

60. Accordingly, requiring that the Proposed Monitor comply with subsections 23(1)(a)(i) or 23(1)(a)(ii)(B) and (C) will require the Applicants to incur significant costs without achieving the intended benefit. Where the cost was neither necessary nor warranted, this Court has dispensed with such notice requirements.[54] Given the limited effect of the proceedings on

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[53] *Re Stelco Inc.* (2005), 144 A.C.W.S. (3d) 15 at paras. 21 and 30, 15 C.B.R. (5th) 307 (O.N.C.A.)
[54] *Xerium Technologies Inc.* (Re), 2010 ONSC 3974 (CanLII) at para. 30.

creditors, the scope of the Plan, the proxy votes already submitted in respect of the Plan and the anticipated short duration of the proceedings, it is respectfully submitted that there is no need to compel the Proposed Monitor to give this notice.

Court-ordered Charges

61. In order to protect the fees and expenses of the Proposed Monitor, its counsel and counsel to the Applicants, the Applicants seek a charge in favour of these professionals to secure payments of their reasonable fees and disbursements incurred both prior to filing and after in the amount of $750,000 (the "Administration Charge") over all of the assets of the Applicants, with recourse first to certain excluded cash assets.

62. In order to grant the Administration Charge, the Court must be convinced that (i) notice has been given to the secured creditors likely to be affected by the charge; (ii) the amount is appropriate; and (iii) the charge should extend to all of the proposed beneficiaries.[55]

63. The only secured creditors likely to be affected by the Administration Charge are GE and the 2nd Lien Lenders and all such parties have received notice of the Applicants' application for this order.

64. While there are other registrations under the personal property security regimes in Ontario (the "PPSA Secured Parties"), they are equipment lessors and as such, will not be affected by the Administration Charge, which will not cover the assets under lease. To the extent beneficiaries of statutory deemed trusts are secured creditors for the purposes of the CCAA, the Applicants do not seek priority of the Administration Charge over those deemed trust claims that the Applicants have determined are relevant to their circumstances. In the Applicants' view, the relevant parties are those who hold claims in respect of some deductions from wages, GST/QST, and vacation pay; however, as indicated in the Campbell Affidavit, Renin and Renin US are current in respect of such amounts and intend to remain so throughout these proceedings.[56]

65. The Proposed Monitor considers the amount of the Administration Charge to be appropriate given the work estimated to be undertaken and GE and all of the 2nd Lien Lenders, excluding Fortelus, have consented to the amount of the Administration Charge.

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[55] *Canwest Global Communications Corp. (Re)*, [2009] O.J. No. 4286 at para. 38 (Ont. S.C.J.).

66. It is submitted that each beneficiary of the Administration Charge has played, and will continue to play, a critical role in the implementation of the Plan. There is no unwarranted duplication of roles among the beneficiaries.

67. It is further submitted that it is unlikely that these professionals would continue to participate in these proceedings if the Administration Charge is not approved to secure their professional fees and disbursements, and therefore approval of the Administration Charge is appropriate.

Appointment of the Proposed Monitor

68. FTI is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

69. FTI has consented to its appointment as Monitor of the Applicants in connection with these proceedings and has reviewed the reasonableness of the cash flow forecasts prepared by management in respect of the Applicants.

70. FTI has prepared a pre-filing report recommending the requested relief.

Sanction of Plan

71. Assuming the Initial Order is granted, the authority to file the Plan is also granted and the Plan is approved by the requisite majorities of creditors, the Applicants intend to return to court on December 22, 2011 to seek an order sanctioning the Plan in accordance with Section 6 of the CCAA.

72. Due to the compressed timeframe, and in order to ensure that all interested parties have as much notice as possible, the Applicants believe it is beneficial to provide their positions relevant to the question of whether the Plan should be sanctioned at the current time.

73. The Court, in deciding whether to sanction a plan, is to consider three factors according to existing jurisprudence:

(a) has there been strict compliance with all statutory requirements?

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[56] Campbell Affidavit at para. 65.

(b) has anything been done or purported to be done that is not authorized by the CCAA?;

(c) is the plan fair and reasonable?[57]

74. The Applicants propose to comply with all statutory requirements and court orders and to undertake their restructuring process in full compliance with the provisions of the CCAA.

75. It may be premature to evaluate at this stage whether the Applicants have complied with the requirements of (a) and (b) above. These matters will be factually determinable at a later date. However, the fairness and reasonableness of the proposed Restructuring Proposal can be evaluated on the assumption that the Plan will be accepted by all of the affected creditors other than possibly Fortelus, which would amount to approval by 80% of affected creditors by number and over 80% of affected creditors by value.

76. The question of fairness and reasonableness has been distilled into the following analyses:

> Does [the] plan represent a fair and reasonable compromise that will permit a viable commercial entity to emerge? It is also an exercise in assessing current reality by comparing available commercial alternatives to what is offered in the proposed plan.[58]
>
> Turning to the fairness and reasonableness of a *CCAA* Plan requirement, its assessment requires the Court to consider the relative degrees of prejudice that would flow from granting or refusing the relief sought. To that end, in reviewing the fairness and reasonableness of a given plan, the Court does not and should not require perfection.[59]
>
> The Act envisions that the rights and remedies of individual creditors, the debtor company, and others may be sacrificed, at least temporarily, in an effort to serve the greater good by arriving at some acceptable reorganization which allows the debtor company to continue in operation[60]
>
> The court is 'called upon to weigh the equities, or balance the relative degrees of prejudice, which would flow from granting or refusing the relief sought under the Act...If a debtor company, in financial difficulties, has a reasonable chance of staving off a liquidator by negotiating a compromise arrangement with its creditors, 'fairness' to its creditors as a whole, and to its shareholders, prescribes that it should be allowed an

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[57] *Re Canwest Global Communications* (2010), 70 C.B.R. (5th) 1 at para. 14 (Ont. S.C.J.).
[58] *Canwest Global Communications (Re)* (2010), 70 C.B.R. (5th) 1 at para. 19 (Ont. S.C.J.).

[59] *AbitibiBowater Inc. (Arrangement realtif a)* (2010), 72. C.B.R. (5th) 80 at para 33 (QCSC)
[60] *Olympia & York Developments Ltd. (Re)*(1993), 12 O.R. (3d) 500 at 505 (Ont. Gen. Div.)

> opportunity to do so, consistent with not 'unfairly' or 'unreasonably' depriving secured creditors of their rights under their security.[61]

77. In connection with the above general analyses, a number of factors have been established to evaluate the fairness and reasonableness of a particular plan under the CCAA. Those factors include the following[62]:

(a) whether the requisite majority of creditors approved the Plan;

(b) what creditors would have received on bankruptcy or liquidation as compared to the Plan;

(c) whether the rights of creditors have been oppressed;

(d) whether the Plan, if implemented, will allow the Applicants' business to continue as a going concern;

(e) whether the Proposed Monitor is of the view that the Plan is advantageous to the affected creditors, is fair and reasonable and recommends its sanction; and

(f) whether there is evidence that a going concern liquidation would attract greater value than that reflected in the Plan;

78. In the current circumstances the foregoing factors all point to the appropriateness of sanctioning the Plan. We assume, at this stage, that the requisite majority of creditors will approve the Plan. The appraisals received by the Proposed Monitor lead to the conclusion that the Plan provides a better opportunity for recoveries to creditors than a liquidation would. No creditors will be oppressed by the Plan. Through the Restructuring Proposal, the 2nd Lien Lenders are being dealt with transparently and fairly. The Plan would allow the business of the Applicants to continue as a going concern. The Proposed Monitor has indicated that it will support the Plan's sanction. Finally, in the circumstances a going concern sale process is neither desired by creditors nor practically feasible.

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[61] *Olympia & York Developments Ltd. (Re)*(1993), 12 O.R. (3d) 500 at 508 and 509 (Ont. Gen. Div.)
[62] *Canwest Global Communications (Re)* (2010), 70 C.B.R. (5th) 1 at para. 21 and 31 (Ont. S.C.J.), *Canadian Red Cross Society (Re)* (2000), 19 C.B.R. (4th) 158 at paras. 25 and 28(Ont. S.C.J.),, *Vicwest Corp. (Re)* (2003), 125 A.C.W.S. (3d) 761 at para 18 (Ont. S.C.J.)

79. The Proposed Monitor will recommend the sanction of the Plan, pending receipt of a favourable vote of creditors.

80. The role of the Court in a restructuring setting is to establish boundaries and act as a referee in the process. The Ontario Court of Appeal explains that decisions on the composition of a plan and its acceptance should largely be left to the applicant company and its creditors:

> The company's role in the restructuring, and that of its stakeholders, is to work out a plan or compromise that a sufficient percentage of creditors will accept and the court will approve and sanction...the court is not entitled to usurp the role of the directors and management in conducting what are in substance the company's restructuring efforts.[63]

81. The business judgment rule as applied by courts in this jurisdiction is guided by the principle that judges, whether supervising restructuring proceedings or otherwise, should be "very hesitant to second-guess the business decisions of directors and management". The Ontario Court of Appeal has adopted the following statement in this regard:

> Business decisions, honestly made, should not be subjected to microscopic examination. There should be no interference simply because a decision is unpopular with the minority.[64]

82. The Applicants have exercised their business judgment in composing the Plan and the affected creditors will exercise their business judgment in voting on the Plan. The Court's interference with these exercises of judgment would not be warranted in the current circumstances. This is particularly so given the sophisticated nature of the affected creditors in this particular case.

83. When reviewing a decision by affected creditors to approve a particular plan a Court should respect the business judgment of the creditors voting on the plan and the applicant in composing the plan. As explained by Justice Pepall: "the case law is replete with references to the need to respect business judgment...and that the Court will not second guess business decisions reached."[65]

84. This court has described the burden of an opposing creditor as "very heavy" when seeking to upset a plan that the required majority have found that they can vote for. It is not the Court's function to second guess the business people with respect to the business aspects of

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[63] *Re Stelco Inc.* (2005), 78 O.R. (3d) 254 (C.A.) at para. 26, citing *Re Stelco Inc.* (2005), 75 O.R. (3d) 5 at para. 44.
[64] *Stelco Inc.* (2005), 75 O.R. (3d) 5 at paras. 65 – 68 (Ont. C.A.).
[65] *Vicwest Corp. (Re)* (2003), 125 A.C.W.S. (3d) 761 at para. 19 (Ont. S.C.J.)

the Plan, descending into the negotiating arena and substituting the Court's view of what is fair and reasonable for that of the judgement of participants. It is submitted that the parties themselves know best what is in their interests in those areas.[66]

85. Further, a Court should be reluctant to refuse to accept a plan approved by creditors where there are no realistic desirable practical alternatives to the sanction of the plan and no other alternative plan is put forward by anyone. The provision of speculative and risky potential alternatives should not be sufficient to suggest that a particular approved plan is not fair and reasonable.[67]

86. While it would be desirable for the contractual rights of all creditors to be fully preserved and maintained in all circumstances, that is not the nature of a CCAA proceeding. As stated by the Nova Scotia Court of Appeal:

> [I]t is clear that the C.C.A.A. grants a court the authority to alter the legal rights of parties other than the debtor company without their consent...
>
> Any objections to a particular plan must be examined in light of what is in the best interests of the class of secured creditors to which they belong and of the creditors as a whole...
>
> At first blush the reduction of their interest rate from approximately 13 per cent to 11 per cent appears to represent a greater loss than can fairly be imposed upon them. However what they are entitled to is not what they would recover if the contract were to be continued to its fulfilment as originally contemplated. What they are entitled to... is what they would recover from an insolvent company upon liquidation.[68]

87. The Plan is entirely consistent with all of the foregoing principles of fairness and reasonableness.

88. The Plan would permit the Applicants to emerge as entities carrying on a viable going concern commercial business. While the Applicants may face a liquidity crunch at the current time, the temporary relief provided by the Plan is intended to provide the accommodation needed for the Applicants to meet their obligations as they become due going forward and to provide the Applicants with sufficient runway to emerge from the current downturn in the housing industry.

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[66] *Central Guaranty Trustco Ltd. (Re)* (1993), 21. C.B.R. (3d) 139 at para. 3 and 4 (Ont. S.C.J.), and *T. Eaton Co. (Re)* (1999), 15 C.B.R. (4th) 311 at paras. 5 and 6 (Ont. S.C.J.)

[67] *Vicwest Corp. (Re)* (2003), 125 A.C.W.S. (3d) 761 at para. 23 (Ont. S.C.J.) and *T. Eaton Co. (Re)* (1999), 15 C.B.R. (4th) 311 at para. 8 (Ont. S.C.J.), AbitibiBowater Inc. (Arrangement realtif a) (2010), 72. C.B.R. (5th) 80 at para 41 (QCSC)

89. No party has presented any viable alternatives to the Restructuring Proposal. While one may suggest that a sales process is warranted, the Applicants do not have sufficient liquidity to support such a process and the primary provider of financing, being GE would not support any type of protracted sales process. The vast majority of relevant stakeholders oppose any form of sales process.

90. The rights of the 2nd Lien Lenders may be sacrificed to some extent. However, any such sacrifice is minimal and amounts only to a delay in payment. Each of the affected creditors is still receiving more under the Restructuring Proposal than would be available on a liquidation, where any recoveries are uncertain except insofar as one can reasonably conclude that such recoveries would be far less than the amounts owed to the affected creditors.

Conclusion

91. This Plan, if implemented, will benefit creditors, employees, customers and suppliers, and other stakeholders of the Applicants. If the requested relief is not granted, the most likely outcome is cessation of business and liquidation of the Renin Group on a piecemeal basis. This result will have an immediate adverse impact on the employees, suppliers, customers, and other creditors of the Renin Group. Furthermore, the Applicants anticipate that the 2nd Lien Lenders would face a huge shortfall in a liquidation scenario. The Applicants therefore request an order substantially in the form of the draft initial order and draft claims procedure and creditors' meeting order filed with the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Norton Rose OR LLP

[68] *Keddy Motor Inns Ltd. (Re)* (1992), 90 D.L.R. (4th) 175 at 251, 256 and 260 (N.S.C.A.)

SCHEDULE "A"

CASES

1 *Global Light Telecommunications Ltd. (Re)*, [2004] B.C.J. No. 1153 (B.C.S.C.)

2 *Smurfit-Stone Container Canada Inc. (Re)* (2009), 50 C.B.R. (5th) 71 (Ont. S.C.J.)

3 *Re Stelco Inc.* (2004), 129 A.C.W.S. (3d) 1065, 2004 CLB 11197 (Ont. S.C.J.)

4 *Canwest Global Communications Corp. (Re)*, [2009] O.J. No. 4286, 181 A.C.W.S. (3d) 853 (Ont. S.C.J.)

5 *Quintette Coal Ltd. v. Nippon Steel Corp.* (1990), 22 A.C.W.S. (3d) 81, 80 C.B.R. (N.S.) 98 (B.C.S.C.)

6 *Allen-Vanguard Corp. (Re)*, [2011] O.J. No. 3946 (Ont. S.C.J.)

7 *Xerium Technologies Inc.* (Re), 2010 ONSC 3974 (CanLII)

8 *Re Stelco Inc.* (2005), 144 A.C.W.S. (3d) 15, 15 C.B.R. (5th) 307 (ON. C.A.)

9 *Re. Canwest Global Communications* (2010), 70 C.B.R. (5th) 1 (Ont. S.C.J.)

10 *AbitibiBowater inc. (Arrangement realtif a)* (2010), 72 C.B.R. (5th) 80 (QCSC)

11 *Olympia & York Developments Ltd. (Re)* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.)

12 *Re Stelco Inc.* (2005), 78 O.R. (3d) 254 (C.A.)

13 *Stelco Inc.* (2005), 75 O.R. (3d) 5 (Ont. C.A.)

14 *Canadian Red Cross Society (Re)* (2000), 19 C.B.R. (4^{th}) 158 (Ont. S.C.J.)

15 *Vicwest Corp. (Re)* (2003), 125 A.C.W.S. (3d) 761 (Ont. S.C.J.)

16 *Central Guaranty Trustco Ltd. (Re)* (1993), 21. C.B.R. (3d) 139 (Ont. S.C.J.)

17 *T. Eaton Co. (Re)* (1999), 15 C.B.R. (4th) 311 (Ont. S.C.J.)

18 *Keddy Motor Inns Ltd. (Re)* (1992), 90 D.L.R. (4th) 175 (N.S.C.A.)

SCHEDULE "B"

RELEVANT STATUTES

1. *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

2(1) In this Act, ...

"company" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

"debtor company" means any company that

(*a*) is bankrupt or insolvent,

(*b*) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(*c*) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(*d*) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

3. (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

23. (1) The monitor shall

(*a*) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than $1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

2. *Bankrputcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

2. In this Act,...

insolvent person"
« personne insolvable »

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(*a*) who is for any reason unable to meet his obligations as they generally become due,

(*b*) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(*c*) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

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 RENIN CORP., RENIN CORP. US and KINGSTAR PRODUCTS (WESTERN) INC.

APPLICANTS

Court File No. CV-11-9509-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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