



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00743136-00CL

DATE: July 18, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: In the Matter of the Companies Creditors Arrangement of Shaw-Almex Industries Limited et al

BEFORE: MADAM JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] The Applicants seek two orders.
- [2] First, an approval and vesting order (the “**AVO**”) is sought: (i) approving the Asset Purchase Agreement dated as of July 10, 2025 (the “**Asset Purchase Agreement**”) between, the Applicants and Almex Canada, Limited (the “**Purchaser**”) and the transaction contemplated thereby (the “**Transaction**”); (ii) declaring that Timothy Shaw or Pamela Shaw have no interest in the Intellectual Property as defined in the Asset Purchase Agreement; and (iii) sealing Confidential Exhibit "1" to the Affidavit of Andrew Hustrulid sworn July 14, 2025 (the “**Confidential Exhibit**”) and the Confidential Supplement to the Third Report of the Monitor (the “**Confidential Supplement**”) until further order of the Court.
- [3] Second, an order (the “**Ancillary Order**”) is sought: (i) approving an amended DIP Facility in the maximum principal amount of \$4,641,000 and increasing the DIP Lender’s Charge accordingly; (ii) extending the Stay of Proceedings up to and including September 5, 2025; (iii) approving the First Report dated May 27, 2025 of FTI Consulting Canada Inc. (“**FTI**”) in its capacity as court-appointed monitor (the “**Monitor**”) of the Applicants, the Supplement to the First Report of the Monitor dated May 28, 2025, the Second Report of the Monitor dated June 27, 2025 and the Third Report of the Monitor dated July 16, 2025 (collectively, the “**Reports**”) and the activities of the Monitor and its counsel in the Reports; and (iv) approving the fees and disbursements of the Monitor and its legal counsel (the “**Professional Fees**”), as described in the fee affidavits appended to the Monitor's Third Report.
- [4] No opposition was raised to any of the requested relief by any person.

- [5] Terms used but not otherwise defined herein have the meaning provided to them in the factum of the Applicants filed on this motion.

Background

- [6] On March 29, 2025, SAIL filed a notice of intention to make a proposal pursuant to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended. FTI consented to act as the proposal trustee of SAIL's estate.
- [7] On May 13, 2025, I granted an Initial Order which, among other things: (a) continued the NOI proceeding commenced by SAIL under the purview of the CCAA and granted Shaw Almex Fusion, LLC protection under the CCAA; (b) appointed FTI as the Monitor of the Applicants with enhanced powers; (c) granted a stay of all proceedings until May 30, 2025; (d) authorized the Applicants to borrow up to a maximum principal amount of \$1,836,000 under a facility (the "**DIP Facility**") from Royal Bank of Canada in its capacity as DIP Lender; and (e) granted an administration charge and a DIP Lender's Charge over the Property.
- [8] Further background on the proceedings was provided in my endorsement of May 13, 2025. On May 13, 2025, I also granted an order approving a sale and investment solicitation process (the "**SISP Approval Order**").
- [9] Most recently, on June 27, 2025, I approved an increase in the DIP Facility and an extension of the Stay of Proceedings until today.
- [10] The SISP has now run its course and the Applicants have entered into the Asset Purchase Agreement. If approved, the Transaction is contemplated to close August 12, 2025. The amendment to the DIP Facility for which approval is sought is intended to support the Applicants through to the extended target closing date.

Issues

- [11] The issues to be determined today are:
- a. Should the Asset Purchase Agreement and the Transaction be approved;
 - b. Is the declaration that Timothy Shaw and Pamela Shaw have no interest in the Intellectual Property appropriate;
 - c. Should the Confidential Exhibit and the Confidential Supplement be subject to a limited sealing order;
 - d. Should the DIP Facility be further amended with a corresponding increase to the DIP Lender's Charge;
 - e. Should the Stay Period be Extended; Should the Reports and the activities of the Monitor as set out therein be approved; and

f. Should the Professional Fees be approved?

Analysis

Approval of Asset Purchase Agreement and the Transaction

- [12] Pursuant to s. 36 of the CCAA, the Court has the jurisdiction to approve a sale transaction within the context of CCAA proceedings. Subsection 36(3) sets out the following factors for the Court to consider when determining whether to authorize a sale of assets by a debtor company in a CCAA proceeding: (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances; (b) whether the monitor approved the process leading to the proposed sale or disposition; (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy; (d) the extent to which the creditors were consulted; (f) the effects of the proposed sale or disposition on the creditors and other interested parties; and (g) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
- [13] As set out in *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 2870 at para. 13. The criteria enumerated in s. 36(3) of the CCAA largely overlap with the traditional common law criteria established in *Royal Bank of Canada v Soundair Corp.*, 1991 ONCA 2727 [*Soundair*] at para. 16 for approval of a sale of assets in an insolvency scenario and those principles remain relevant when considering the statutory test, as follows: (a) whether the Court-appointed officer has made sufficient effort to get the best price and has not acted improvidently; (b) the interest of all parties; (c) the efficacy and integrity of the process by which the offers are obtained; and (d) whether there has been unfairness in the working out of the process.
- [14] In considering the above criteria, it is appropriate to approve the Transaction in the present circumstances. The SISP was developed with significant input from the Monitor and was administered by the Court-appointed Monitor. The evidence is that the Monitor administered the SISP in accordance with the terms of the SISP Approval Order in an even-handed and fair manner. Diligent and comprehensive efforts to obtain the highest and best price available in the circumstances were made. The process was designed to canvass a wide range of potential transaction structures, including a sale of, or investment in, the Business. To ensure broad market exposure, the Monitor prepared a detailed solicitation letter outlining the acquisition opportunity in respect of the Business and the Property, which was distributed to approximately 147 known and credible prospective purchasers and investors.
- [15] The purchase price as contemplated in the Asset Purchase Agreement is superior to the other bids that were submitted in the course of the SISP. The Transaction provides material value for the Applicants' creditors and permits the Business to continue under a new entity that will preserve employment for most of the Applicants' employees, provide

continued services to its customers, provide for the continuation of the Assumed Contracts, and maintain ongoing revenue for the Applicants' critical vendors.

- [16] The Monitor is of the view that the Transaction presents the best possible outcome for the stakeholders in the circumstances. The Monitor also is of the view that a bankruptcy and/or liquidation would be a suboptimal outcome as compared to the Transaction because the Applicants' secured creditors will likely recover significantly less proceeds in a liquidation, employees would be terminated, and customers and vendors would suffer losses.
- [17] There is no opposition to the Transaction and is supported by the DIP Lender.
- [18] The requested AVO contains a provision (the "**Waiver Provision**") that provides that any Person that is a party any Agreement (a) that constitutes a Purchased Asset or Purchased Business Name and is transferred to the Purchaser at Closing (an "**Assigned Agreement**"), or (b) to which any Purchased Subsidiary is a party as of Closing is forever barred from exercising any right or remedy under such Agreement by reason of the insolvency of the Applicants, the commencement of the CCAA proceedings or NOI proceedings, the completion of the Transaction, any assignment or change of control occurring in connection with the Transaction, and any default under such Agreement that is not continuing after Closing.
- [19] As it relates to Assigned Agreements, relief in the nature of the Waiver Provision is consistent with precedent and is commonly granted in assignment and approval and vesting orders in CCAA proceedings (see the various cases referenced at para 39 of the Applicants' factum). The Waiver Provision in relation to the Purchased Subsidiary Agreements is particularly important in the circumstances of this case, where the Purchaser is agreeing to purchase the shares of foreign subsidiaries without the benefit of local insolvency or recognition proceedings. There is precedent in the context of corporate restructurings for the Court to grant relief similar to the Waiver Provision to protect and preserve the value of contracts held by non applicants (see references at para 42-43 of the Applicants' factum). In the circumstances I am satisfied that the provision is appropriate under s. 11 of the CCAA.

Declaration re Intellectual Property

- [20] The Applicants seek a declaration that neither Timothy Shaw nor Pamela Shaw, has any interest in or to the Intellectual Property. This relief is being sought at the request of the Purchaser and as a condition to the completion of the Transaction. The Applicants' Business operations are fundamentally reliant on the use of their Intellectual Property, which include various registered and unregistered wordmarks, trademarks, and other proprietary assets under which the Applicants conduct their commercial activities. It is essential to the Purchaser that it obtain unambiguous, exclusive, and unencumbered rights to the Applicants' Intellectual Property.

- [21] In *S.A. v. Metro Vancouver Housing Corp.* 2019 SCC 4 (CanLII), [2019] 1 SCR 99 at para. 60., the Supreme Court of Canada summarized the legal test for the granting of declaratory relief: “Declaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought.”
- [22] In my view these criteria are met in this case. The Court has the jurisdiction under s. 11 of the CCAA, on notice to any other person or without notice as it may see fit, to make any order that it considers appropriate in the circumstances. Further, under s. 97 of the *Courts of Justice Act* the Court has the jurisdiction to make binding declarations of right, whether or not any consequential relief is or could be claimed. The need for declaratory relief in relation to the Applicants’ Intellectual Property is a real and important issue given the terms of the Asset Purchase Agreement and the concerns expressed by FTI, in its capacity as proposal trustee and subsequently as Monitor, that Mr. Shaw may be currently using, or intends to use, the Applicants’ Intellectual Property in connection with a competing business. The Applicants, the Monitor and the Purchaser have a genuine interest in confirming the Applicants’ ownership of the Intellectual Property to the exclusion of Mr. and Mrs. Shaw. The value that the Purchaser is prepared to pay for the Applicants’ Business and assets are heavily dependent on the Applicants’ Intellectual Property. The Applicants do not believe, and there is no evidence, that Mr. Shaw or Mrs. Shaw have any legal, economic or beneficial interest in the Intellectual Property listed on the Intellectual Property Schedule. Counsel for Mr. Shaw confirmed that he does not oppose the requested relief. Although served, Mrs. Shaw did not appear or take a position.
- [23] Accordingly, I find that the requested declaration is appropriate in the circumstances.

Limited Sealing Order

- [24] The limited sealing order being sought is necessary to preserve the Applicants and Monitor's ability to maximize the value of the Applicants' assets. I am satisfied that the requested sealing order for the Confidential Exhibit and the Confidential Supplement meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in insolvency proceedings to maximize the realization of assets. The Monitor has undertaken to bring a motion to lift the sealing on the occurrence of certain events as set out in the Confidential Supplement. I direct counsel for the Applicant and the Monitor to file a hard copy of the respective confidential material with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

DIP Facility and DIP Lender's Charge

- [25] Most Recently, the Amended DIP Facility was approved up to the maximum amount of \$3,646,500. The Applicants are now requesting approval of a further amendment to the DIP Facility which extends certain milestones and increases the maximum amount to be borrowed by the Applicants to \$4,641,000 million.
- [26] Section 11.2 of the CCAA permits the Court to approve the Third Amended DIP Facility and the DIP Lender's Charge on notice to those secured creditors that would be affected and in an amount that the Court considers appropriate having regard to the Applicants' cash flow forecast.
- [27] All secured creditors who are affected by the proposed DIP Lender's Charge, including the increase thereof, have been served with a copy of the Applicants' motion record and the Revised and Extended Cash Flow Forecast Projections discussed in the Third Report show that the Applicants require access to the Third Amended DIP Facility to provide the Applicants with necessary funding to continue their Business and operations and to advance their restructuring efforts, including to a completion of the Transaction.
- [28] The Monitor supports the third amendment to the DIP Facility and the corresponding increase to the DIP Lender's Charge. No person opposes the requested increase and, in the circumstances, I am satisfied that approval of the Third Amended DIP Facility and corresponding increase to the DIP Lenders' Charge is appropriate.

Stay of Proceedings

- [29] The Applicants sought in their material to extend the Stay Period to September 5, 2025. As discussed at the hearing, the request to extend the Stay Period was adjusted to September 10, 2025. The DIP Lender confirmed that additional extension was satisfactory to the DIP Lender.
- [30] It is anticipated that the Transaction will close by August 12, 2025. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the stay of proceedings for any period "it considers necessary". To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.
- [31] As set out in the Supplement to the Third Report, the Applicants have acted and are continuing to act in good faith and with due diligence. As confirmed at the hearing by the Monitor with respect to the extended date of September 10, 2025, the Revised and Extended Cash Flow Forecast Projections demonstrates that the Applicants are expected to have sufficient liquidity to operate through the proposed Extended Stay Period, subject to the approval of the Third Amended DIP Facility. The Applicants with the support of the Monitor are of the view that the Extended Stay Period is necessary and appropriate in the circumstances to provide the Applicants with the breathing space and operational stability

to continue preserve the Business as a going concern while maximizing value for the benefit of their stakeholders through these CCAA proceedings. I agree.

Approval of Reports

[32] The Applicants seek approval of the Reports and the activities set out therein. There are good policy and practical reasons to grant the approval of a monitor's reported activities see *Target Canada Co (Re)*, 2015 ONSC 1487, at paras 2, 22-23. The evidence is that the Monitor has carried out its duties in a reasonable and efficient manner, consistent with its powers as set out in the CCAA and in the interests of the Applicants' stakeholders generally. There are no objections to the Reports and accordingly they are approved. The draft order provides that only the Monitor may rely on such approval.

Approval of Professional Fees

[33] The Applicants also seek approval of the Professional Fees, being the fees and disbursements of the Monitor and its legal counsel as set out in the Third Report. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Applicants' assets and liabilities, as well as the complexity of the Applicants' Business and the Proceeding. In considering these guiding principles, the fees of the Monitor and its counsel are appropriate and are approved.

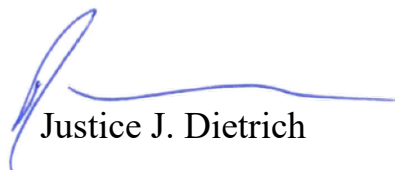
Disposition

[34] Orders to go in the form signed by me this day.

[35] A further hearing is booked before me for **60 minutes on September 10, 2025 at 10:00 am (virtual)**. It is anticipated at that hearing a further extension of the stay period will be sought along with approval to make a distribution from the proceeds of the Transaction.

[36] As well, counsel advises that the motion scheduled before me for July 21, 2025 in this matter is substantially settled, subject to certain documentation that is expected to be exchanged this afternoon. Accordingly, the hearing on Monday, July 21, 2025. is converted to a 60 minute case conference (virtual) commencing at 10:00 am.

July 18, 2025



Justice J. Dietrich

Amended as of: July 21, 2025, to reflect correct participation information.