



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: May 30, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: SHAW-ALMEX INDUSTRIES LIMITED et al

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Other:

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] There are two motions before me today.
- [2] First, the Applicants seek an order (i) extending the stay of proceedings up to and including July 18, 2025; and; (ii) approving an amended DIP Facility in the maximum principal amount of \$2,828,500 and increasing the DIP Lender's Charge accordingly. The relief requested by the Applicants is not opposed.
- [3] Second, the Monitor seeks an order (the "**Property Preservation Order**") that, among other things, requires that Mr. Timothy Shaw and Mrs. Pamela Shaw deliver all Property in their possession to the Monitor, provide details of any intellectual property stored remotely and to delete same following confirmation from the Monitor, cooperate fully with the Monitor to recover and secure the Property, prohibits Mr. Shaw from entering the Applicant's building or facilities other than to return Property, prohibits Mr. Shaw from employing or soliciting individuals currently employed by the Applicant, authorizes the Monitor to examine under oath any persons thought to have knowledge of the affairs of the Applicants or the Property and authorizes the Monitor to take certain steps with respect to Shaw India.
- [4] Terms used but not otherwise defined herein have the meaning provided to them in the factum of the Applicants and the Monitor filed on these motions.
- [5] The relief requested by the Monitor was not opposed, however, Mr. Clarke who is historical intellectual property counsel to the Applicants has expressed certain concerns about the logistics of the order. The Monitor and counsel to the Applicants are in discussions with Mr. Clarke and if needed a case conference can be scheduled through the Commercial List Office before me next week to address any concerns related to Mr. Clarke.
- [6] Although Mr. Shaw was served with the material, and has been responding to the Monitor in respect of other matters, Mr. Shaw did not appear today. Nor does it appear that Mr. Shaw has retained counsel.
- [7] For the reasons provided below, the relief requested today (subject to certain amendments discussed during the hearing) is granted. The Property Preservation Order requested by the Monitor contains a provision that any interested party (including Mr. Or Mrs. Shaw, the Applicants or the Monitor) may apply to this Court to vary order amend that order.

Background

- [8] On March 29, 2025, SAIL filed a notice of intention to make a proposal (“**NOI**”) pursuant to the provisions of the Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended. FTI Consulting Canada Inc. (“**FTI**”) consented to act as the proposal trustee (the “**Proposal Trustee**”) of SAIL’s estate.
- [9] 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; 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 (d) granted an administration charge and a DIP Lender’s Charge over the Property.
- [10] Further background on the proceedings was provided in my endorsement of May 13, 2025. Specifically, it was a term of the Amended DIP Term Sheet that the Court grant FTI as monitor enhanced powers to preserve, protect and exercise control over the Applicants' business. As outlined in the report of FTI as the Proposal Trustee and proposed Monitor dated May 11, 2025, this followed certain concerns encountered by the Proposal Trustee during the NOI proceeding with respect to Mr. Shaw's conduct. Mr. Shaw took issue with certain of the concerns identified in the report, but there was no opposition to the request for enhanced powers to be provided to the Monitor.
- [11] On May 13, 2025, I also granted an order approving a sale and investment solicitation process (the “**SISP Approval Order**”). The SISP Approval Order contemplated letters of intent to be submitted by May 22, 2025. The Monitor has advised that Qualified Bidders have now been invited into the second phase of the SISP. Binding offers are currently due on June 12, 2025.

Issues

- [12] The issues to be determined today are:
- a. Should the Amended DIP Facility and increased DIP Lender's Charge be granted;
 - b. Should the stay of proceedings be extended until July 18, 2025; and
 - c. Should the Monitor's request for the Property Preservation Order be granted?

Analysis

DIP Facility and DIP Lender's Charge

- [13] Pursuant to the Initial Order, I approved the Applicants’ Amended DIP Term Sheet and granted a corresponding DIP Lender’s Charge in the maximum principal amount of \$1,836,000 plus interest and fees. The Applicants are now seeking approval to increase

the Amended DIP Facility to the maximum amount of \$2,626,500 and approval of the corresponding increase of the DIP Lender's Charge.

- [14] Section 11.2 of the CCAA permits the Court to approve the 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.
- [15] 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 Cash Flow Forecast shows that the Applicants require access to the Amended DIP Facility to provide the Applicants with necessary funding to continue their Business and operations and to advance their restructuring efforts, including the on-going continuation of the SISP.
- [16] The Monitor supports the amendment to the DIP Facility by the Applicants 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 Amended DIP Facility and corresponding increase to the DIP Lenders' Charge is appropriate.

Stay of Proceedings

- [17] The Applicants seek to extend the Initial Stay Period to July 18, 2025, which is a period intended to allow for the completion of the SISP and a return to Court for approval of a proposed transaction. 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.
- [18] The Applicants have acted and are continuing to act in good faith and with due diligence. Since the granting of the Initial Order, the Applicants have, among other things, reached out to numerous stakeholders, including its customers, their employees, suppliers, the management of the subsidiaries within the Almex Group, and the DIP Lender.
- [19] The Applicants have also terminated the majority of Fusion's employees and assisted the Monitor in implementing the SISP, with the objective of facilitating an operational and financial restructuring of the Business. The Cash Flow Forecast demonstrates that the Applicants have sufficient liquidity to operate through the proposed Extended Stay Period, subject to the approval of the First Amendment and the corresponding increase of the DIP Lender's Charge. 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 and SISP. I agree.

Property Preservation Order

- [20] In the Proposal Trustee's Second Report, the Monitor expressed certain concerns with Mr. Shaw's conduct, but advised that those concerns were still being investigated. Those concerns included that some of SAIL's Property had been transferred to other parties outside of the ordinary course of business and without the Proposal Trustee's consent or knowledge. For example, Mr. Shaw moved (or caused to be moved) approximately 20 of SAIL's machines located at the Atlanta Facility to a related party's warehouse, and the Proposal Trustee was only advised of this occurrence after-the-fact. Further, the Proposal Trustee was advised that Mr. Shaw requested and received portable hard drives containing copies of certain of SAIL's intellectual property. Receivables which Mr. Shaw had advised could be expected the week of May 9, 2025 in the amount of \$1.25 million are actually expected by the end of June and Mr. Shaw had been asking employees about their interest and loyalty in joining a new company that may acquire some or all of SAIL's Business.
- [21] In the First Report of the Monitor, the Monitor outlines difficulties it has encountered in obtaining reliable, timely, and consistent information from SAIL and specifically outlines various concerns with Mr. and Mrs. Shaw's conduct. Mr. Shaw's employment with SAIL was terminated on May 13, 2025 as was the employment of certain individuals related to Mr. Shaw. Mr. Shaw's termination notice instructed him to make arrangements with SAIL for the return of "all company property including any laptops and call phones. Arrangements will be made for vehicles etc."
- [22] Notwithstanding the Mr. Shaw's termination, Mr. Shaw continued to engage in conduct that frustrated the Applicants' restructuring efforts. With the exception of certain vehicles that have been returned, Mr. Shaw has not facilitated the return of any of the Applicants' other Property in his possession.
- [23] As well, on May 17, 2025, the Monitor learned that Mr. Shaw had changed the locks to SAIL's premises at 103 Isabella Street in Parry Sound, Ontario. Despite correspondence from Mrs. Shaw that she is working to return the property, as noted the Property has not been returned.
- [24] It has also come to the Monitor's attention that a residential home is owned by SAIL at 15 Shaw Almex Drive, Parry Sound, Ontario. This home is located on the same parcel of land as SAIL's manufacturing facility at 17 Shaw Almex Drive, Parry Sound. It appears that the rent paid by the tenant at the home has been paid directly to Mrs. Shaw who has not remitted the rent to SAIL.
- [25] Further details regarding the removal of equipment at the Atlanta Facility to an adjacent property owned by Shaw DeKalb Properties LLC (of whom Mrs. Shaw is purportedly the owner, sole manager, president and CEO) are provided in the Monitors' Report. Not all of the equipment apparently fit at the building owned by Shaw DeKalb Properties LLC and some was put into three trailers. The timeline for the removal of Fusion's Property from the Atlanta Facility is not clear. However, the Monitor understands that it started on or

before May 4, 2025, and continued after the granting of the Initial Order. The Monitor reports that at some point, Mr. Shaw directed the security cameras to be shut off.

- [26] It also appears that Mr. Shaw was engaged in discussions regarding the sale of the Fusion Property, however, the purchase did not take place.
- [27] The Monitor has also raised concerns that Shaw India may be using (or at risk of using) the Applicants' own services and/or intellectual property to compete with the Applicants.
- [28] It is in the context of this concerning conduct that the Monitor seeks the Property Preservation Order.
- [29] Section 11 of the CCAA gives the Court the authority to grant "any order that it considers appropriate in the circumstances." In exercising its discretion under the CCAA, the Court is to keep three baseline considerations in mind: (a) the appropriateness of the order being sought; (b) due diligence and; (c) good faith on the applicant's part: see *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53 at para 85.
- [30] Section 11 of the CCAA and the inherent jurisdiction of the Court permits the making of orders against third parties where their actions may potentially prejudice the success of a plan under the CCAA: see *T. Eaton Co.* (1997), [1997] O.J. at para 6.
- [31] The provisions of the requested order requiring Mr. Shaw to return Property to the Applicants are consistent with the Initial Order already granted. The Monitor has made good faith efforts to collect the Property without success. The relief requested is also consistent with orders made in other CCAA proceedings (see cases referenced at para 33 - 35 of the Monitor's Factum), in receivership proceedings and in bankruptcy proceedings.
- [32] Mr. Shaw's employment with the Applicants has been terminated. He no longer has an entitlement to retain the Property and the Property is important to Applicant's business and the ongoing SISP.
- [33] The provisions of the requested order requiring Mr. and Mrs. Shaw to cooperate with the Monitor in its efforts to recover and secure the Property are also consistent with the Initial Order already granted. Although Mr. Shaw and Mrs. Shaw are no longer employed with the Applicants, Mr. Shaw remains, for the time being, a director and shareholder of the Applicants. Former shareholders, officers, directors, Assistants and advisors are not explicitly captured by paragraphs 22 and 24 of the Initial Order. To ensure that Mr. Shaw and Mrs. Shaw continue to be under an obligation to co-operate with the Monitor, the proposed Property Preservation Order explicitly and directly imposes a duty to co-operate on them. Similar relief has been granted in other CCAA proceedings where the Monitor has been granted enhanced powers (see the cases referenced at para 44 of the Monitors Factum).

- [34] The proposed Property Preservation Order also prohibits Mr. Shaw from: (a) destroying, discarding, disposing of, erasing, interfering with or removing from the Applicants any Property currently in the Applicants' possession or control; (b) entering any of the Applicants' buildings or facilities other than to facilitate the return of Property to the Applicants; and (c) employing, engaging, offering employment or engagement to or soliciting the employment or engagement of or otherwise enticing away from the employment or engagement of the Applicants any individual who is employed or engaged by the Applicants, or procuring or assisting any other Person to employ or engage, offer employment, or engagement, or solicit the employment or engagement of or otherwise entice away from the employment or engagement of the Applicants any such individual.
- [35] The relief sought by the Monitor is analogous to the relief sought in a motion for an interim prohibitive injunction. The test for an injunction was set out in *RJR-MacDonald Inc. v. Canada* (1994), 111 D.L.R. 385 (Can. S.C.C.) at 334-5, where the Supreme Court of Canada held that it is appropriate to grant a prohibitive injunction on an interim basis when: (a) there is a serious question to be tried; (b) the applicant will suffer irreparable harm absent the injunction; and (c) the balance of convenience favours granting the injunction.
- [36] The threshold of showing there is a serious issue to be tried is a low threshold in that the claim that is not frivolous and vexatious and stands a reasonable chance of success at trial see: *Arc Compute v. Anton Allen*, 2025 ONSC 1745 at para 28. Here, the evidence from the Monitor is that to date, Mr. Shaw has dispossessed the Applicants of significant amounts of Property, has taken steps to establish a competitor that potentially uses the Applicants' Property, and is soliciting the Applicants' employees to join his new business. This evidence satisfies me that there exists a serious issue to be tried that Mr. Shaw has breached his fiduciary duties as a director of SAIL and Fusion and the obligation to act in good faith under the CCAA.
- [37] Should Mr. Shaw continue the conduct referred to above and refuse to return or continue to interfere with the Applicants' Property, this will call cause irreparable harm to the Applicants business and ongoing SISF.
- [38] Further, I am satisfied that the balance of convenience favours the Applicants. The proposed relief is not permanent, on its terms the restrictions expire when the CCAA proceeding terminates. Any interested party, including Mr. or Mrs. Shaw is also free to bring a motion seeking to vary the relief requested today.
- [39] The Property Preservation Order requested also provides the Monitor with the power to examine certain persons under oath who, among other things, are reasonably thought to have knowledge of the affairs of the Applicants. The language in the proposed Property Preservation Order is based on subsections 163(1), 163(3) and 167 of the BIA, which relate to the examination of a bankrupt. Similar powers have been granted to CCAA monitors in other proceedings: see *In the Matter of the Companies' Creditors Arrangement Act* and *In the Matter of a Plan of Compromise or Arrangement of Original*

Traders Energy Ltd. and 2496750 Ontario Inc., 2023 ONSC 753 at paras 53-55 and *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 at para 124.

[40] At this point, I am not persuaded that relief relate to Shaw India is necessary or appropriate. However, if issues arise in this regarding, the Applicants or Monitor may request relief related to Shaw India in the future.

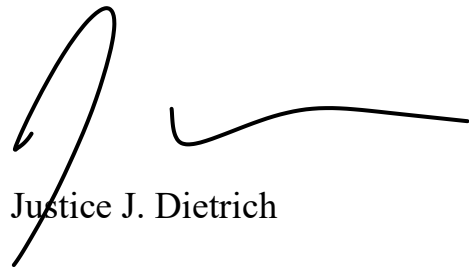
[41] Accordingly, the terms of the Property Preservation Order requested, subject the amendments discussed at today's hearing are appropriate.

Disposition

[42] Orders to go in the forms signed by me this day.

[43] A further hearing this matter is scheduled before me for **2 hours (virtual) commencing at 10:00 am on June 27, 2025.**

May 30, 2025



Justice J. Dietrich