

CITATION: Springer Aerospace Holdings Limited, 2022 ONSC 6581
COURT FILE NO.: CV-22-00690657-00CL
DATE: 20221124

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED (the “CCAA”)

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS LIMITED AND 1138969 ONTARIO INC.

BEFORE: Penny, J.

COUNSEL: *Sharon Kour, Caitlin Fell and Joel Turgeon*, Counsel for the Applicants

Miranda Spence and Matilda Lici, Counsel for Proposed Monitor, MNP

Haddon Murray and Katherine Yurkovich, Counsel for Caisse Desjardins Ontario Credit Union Inc.

Vern DaRe, Counsel for the Proposed DIP Lender

HEARD: November 23, 2022

ENDORSEMENT

Overview and Issues

[1] This is an application for relief under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36. It is made by 1138969 Ontario Inc. (o/a Springer Aerospace) (which I will refer to as “Springer”) and its sole shareholder, Springer Aerospace Holdings Limited (referred to as “Holdco”). Following the hearing, I granted the initial order with reasons to follow. These are the reasons.

[2] Springer operates one of the largest aircraft maintenance, repair and overhaul businesses in Canada, dating back to 1972. Springer is one of the only “one-stop-shops” for aircraft maintenance in Canada. It is located in Echo Bay, near Sault Ste. Marie, Ontario. Springer employs about 100 people. It is the second largest employer in the region. The loss of employment and income for 100 households in a town of 1,600 residents would have serious implications in the local area. Springer is the only aerospace business in Northern Ontario, such that it is unlikely that the company’s employees would find similar employment in the area. Springer provides maintenance services to most of the airlines servicing the Northern Ontario region, including the fly-in and Indigenous communities

located there. Air transport is critical for the delivery of food, fuel and medical supplies and for the provision of air ambulance services to these remote areas.

- [3] Springer experienced major disruptions to its business as a result of the COVID-19 shutdown and resulting impact on the travel and aviation industry. The pandemic exacerbated existing operational inefficiencies following a rapid expansion by the company and growth initiatives designed to increase top line revenue.
- [4] The Applicants' primary secured creditor, Caisse Desjardins Ontario Credit Union Inc., has delivered demands and notices under s. 244 of the BIA for amounts advanced by Desjardins under a line of credit and two term loans. In total, \$5,747,228.31 was outstanding to Desjardins as of July 2022. Springer is unable to pay the amounts outstanding to Desjardins. In addition, Springer has accrued payables in the ordinary course of its business, including unsecured trade payables in excess of \$1.6 million and property taxes of \$186,000.
- [5] The Applicants require interim financing to meet their ordinary course obligations. As of November 22, 2022, their cash position has deteriorated leaving a cash balance of only \$1,400. Absent an immediate cash infusion, Springer will not be able to make payroll this week. Desjardins declined the opportunity to be the provider of the needed interim financing. Although Desjardins did not oppose the initial order, it did not agree to it either. Desjardins has made its concerns known, coalescing essentially around two major issues: i) the extent of the loss of its priority due to its first charge being "primed" by proposed charges under the CCAA; and (ii) the delay in realizing on its loan (and attendant increased risk of deterioration of its security position) if the attempt at restructuring is not formulated and executed promptly and successfully.
- [6] With this context in mind, the issues on this application are:
- a. Does the court have jurisdiction to grant the relief requested under the CCAA and should a stay of proceedings be granted?
 - b. Should the court approve the DIP term sheet and grant the charges sought?
 - c. Should the court permit payment of pre-filing amounts on the terms requested?
 - d. Should MNP be appointed as Monitor? and
 - d. Should the court seal the confidential affidavit?

Jurisdiction

- [7] The evidence satisfies me that the Applicants are unable to meet their obligations as they become due. They have accrued payables in the ordinary course of business that they cannot meet and are unable to pay amounts owed to secured parties.
- [8] I am also satisfied that it is appropriate for both Applicants to be included as applicants in these proceedings as "affiliated companies" under the CCAA. The Applicants' business is

fully integrated. Holdco owns the premises and the facilities where the business is operated. The Applicants have jointly and severally cross-guaranteed and cross-collateralized their obligations to Desjardins and two other secured creditors, the Northern Ontario Heritage Fund and the Development Corporations.

- [9] The Applicants are corporations collectively owing over \$5 million in outstanding liabilities. They have delivered the documents and financial statements required under s. 10(2) of the CCAA.

Stay

- [10] Section 11.02(1) of the CCAA provides that the court may order a stay of proceedings on an initial CCAA application for a period of not more than 10 days. Section 11.001 of the CCAA provides that relief granted on an initial CCAA application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that initial 10-day period.
- [11] This is not proposed to be a “liquidating CCAA”; it is an attempt to operationally and financially restructure. It is clear that no effective restructuring could be achieved if creditors were permitted to enforce against either of the Applicants. The complete cessation of the Springer business or even a major disruption would likely be irreparable. Springer has built its business up since 1972. It has trained and retained a skilled workforce through the COVID-19 pandemic. It has developed a reputation and expertise in a specialized industry and its customers are large corporations and governments who rely on Springer’s services. The Monitor concurs that the Applicants represent a viable business. While the CCAA filing may cause some disruption to the business, a shut down or liquidation would likely effectively terminate operations with little or no chance of recovery.
- [12] At first blush, the evidence suggests that the value of the land, in addition to the equipment and other assets of the Applicants, likely exceeds liabilities owing to Desjardins. As noted above, Desjardins does not, with reservations, oppose the initial order at this time.
- [13] The Applicants have worked with MNP, the proposed Monitor, to assess and determine appropriate operational restructuring steps to execute during the stay period. In addition to an operational restructuring, the Applicants intend to implement a SISP. The business needs time, however, to properly expose the assets to market on a going concern basis.
- [14] In addition, public policy weighs in favour of a going-concern restructuring. Springer is a significant local employer. It is also operating in a critical sector that is vital to the fly-in and Indigenous communities in Northern Ontario.

The Charges

The DIP

- [15] Section 11.2(4) of the CCAA establishes a non-exhaustive list of criteria that the court must consider in deciding whether to grant a DIP lender's charge: the period during which the Applicants are expected to be subject to CCAA proceedings, how the Applicants' business and financial affairs are to be managed during the proceedings, whether the Applicants' management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants, the nature and value of the Applicants' property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the monitor supports the charge. DIP financing may be approved even if it potentially prejudices some creditors, as long as the prejudice is outweighed by the benefit to all stakeholders.
- [16] While management no longer enjoys the confidence of Desjardins, I am satisfied, at this stage of the application for an initial order, that the factors, considered as a whole, favour the grant of the relief sought. In particular, where the funding is sought on an interim basis, the Court must consider if the terms of the loan are limited to what is reasonably necessary for the continued operations of the company.
- [17] The initial proposed DIP loan and charge is \$600,000. The Applicants need liquidity to continue their operations during the restructuring period. According to the cash flows, the Applicants need to draw on the DIP loan to meet their payroll obligations this week. The proposed amount is roughly tailored to the initial 10 days. A first charge is a condition of advancing the DIP loan. The terms of the DIP loan term sheet are typical for such facilities approved in similar matters before the Commercial List. The DIP lender's charge will not secure any obligations existing before the initial order is made, satisfying the terms set out in s. 11.2(1) of the CCAA. The Monitor supports the approval of the DIP loan and the DIP lenders charge in the circumstances.

Administration Charge

- [18] The Court has jurisdiction to grant an administration charge under s. 11.52 of the CCAA. I am to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor.
- [19] The success of the Applicants' restructuring is dependent on the involvement of the Monitor and legal counsel. Those roles are not duplicative. While estimating the quantum of an administration charge is "an inexact exercise", the quantum of the administration charge sought is commensurate with the complexity of the Applicants' business and anticipated restructuring. The Applicants have incurred fees leading to this Application and are forecast to incur further fees in connection with the restructuring, including to prepare for the comeback hearing, communicating with employees and stakeholders following the

initial filing, and complying with statutory notices, mailings and communications. It is appropriate for the Court to grant the initial administration charge sought of \$80,000.

The Directors' Charge

- [20] The Applicants currently have no director and officer liability insurance. Obtaining director and officer insurance at this stage is unlikely to be within the realm of reasonable possibility.
- [21] To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors and officers, who have considerable institutional knowledge and specialized expertise. The proposed directors' charge is for the maximum amount of \$165,000, which is equivalent to approximately two weeks of the Applicants' payroll, including source deductions. That is the only reasonably anticipated potential exposure of directors and officers for the initial 10-day period of these CCAA proceedings. The proposed directors' charge provides assurance to employees that directors' liability for unpaid wages and vacation pay will be satisfied.
- [22] The directors' charge does not prime Desjardins' security and Desjardins suffers no prejudice. The proposed directors' charge secures only obligations and liabilities incurred after the commencement of the proceedings and does not apply to liability incurred as a result of gross negligence or wilful misconduct, which satisfies the requirements of s. 11.51(1) and 11.51(4) of the CCAA.
- [23] Finally, the Monitor supports the Applicants' request for the directors' charge.
- [24] The directors' charge is approved in the amount of \$165,000.

Pre-filing Amounts Owed to Key Suppliers

- [25] Courts have often granted orders under s. 11 of the CCAA allowing applicants to pay pre-filing amounts to critical suppliers with the consent of the monitor. In doing so, courts have considered: whether the goods and services concerned are integral to the business, the applicants' need for the uninterrupted supply of the goods or services, the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate, and the effect on the applicants' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.
- [26] Given Springer's location in Northern Ontario and the specialized nature of the aerospace business, Springer has limited vendors who are able to supply the specific products and services that Springer requires. Any interruption of supply would have a material adverse effect on the business. Springer is particularly vulnerable to interruptions as it does not stockpile significant inventory of parts and supplies in the ordinary course.
- [27] It is appropriate that the Applicants be entitled but not required to pay, with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the

date of the initial order, if these payments are necessary to avoid disruption to the operations of the Applicants' business during these proceedings.

Appointment of MNP as Monitor

[28] The Applicants propose to have MNP appointed as the Monitor. MNP is a "trustee" within the meaning of subsection 2(1) of the BIA, is established and qualified, and has consented to act as Monitor. The involvement of MNP as the court-appointed Monitor will lend stability and assurance to Springer's stakeholders. MNP is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.

The Sealing Order

[29] The confidential affidavit filed in this application contains appraisals of the Applicants' property appended as exhibits. This is sensitive information, the confidentiality of which must be preserved until a plan of compromise or other restructuring is completed. This is to preserve the ability of the Applicants and the Monitor to maximize value during the restructuring process.

[30] This court has jurisdiction to make the sealing orders sought under s. 137(2) of the *Courts of Justice Act*. There is a public interest in maximizing recovery in an insolvency that goes beyond each individual case. The relief sought meets the test in *Sherman Estate* and is appropriate in the circumstances.

Comeback Hearing

[31] The comeback hearing shall take place on December 2, 2022 at 11:00 AM


Penny, J.

Date: November 24, 2022