



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-21-661436-00CL DATE: 7 October 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: 26553996 ONTARIO INC

BEFORE JUSTICE: OSBORNE J

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Proposal Trustee of the Company, 1776690 Ontario Inc. [“1776” COB as Country Way Health Food Store in Sault Ste. Marie, Ontario] seeks an order approving an arrangement [the “Arrangement”] pursuant to Ernest 182(5) of the OBCA, all as part of a proposal made by the company to its unsecured creditors pursuant to Part III of the BIA [with particular reliance on section 66(1.4)]. Defined terms in this Endorsement have the meaning given to them in the motion materials.
2. 1776 filed a proposal pursuant to section 50.2 of the BIA on May 1, 2021.
3. On January 27, 2022, this Court made an interim order pursuant to section 182(5) of the OBCA amending the title of proceedings in the proposal proceeding to include the Arrangement, deeming the Arrangement to be approved if accepted by the unsecured creditors of 1776, and ordering that the approval of the Arrangement be addressed by the Court at the same time as approval of the Proposal pursuant to section 59 of the BIA. The interim order is attached to the Third Report as Appendix B.
4. The proposal was amended on January 29, 2022. At a meeting of unsecured creditors on February 1, 2022, this Amended Proposal was accepted by the requisite majorities of unsecured creditors as required by section 54(2) of the BIA, all as confirmed at paragraph 11 of the Third Report.
5. The Amended Proposal was approved by the Bankruptcy Court on April 13, 2022. It was unopposed. It was the approval order granted that day that authorized the Proposal Trustee to apply at a later date for an order approving the Arrangement, which is sought today. Implementation of the Amended Proposal was conditional on issuance of that interim order, acceptance by the unsecured creditors, and the making of the Approval Order and Final Order [as defined in the materials] and the expiry of all applicable appeal periods.
6. The Director under the OBCA confirmed to the Proposal Trustee on September 27, 2022 that it was taking no position with respect to the approval sought in respect of the Arrangement. That letter is in the materials at CaseLines Master E829.
7. However, the Director did request that the Arrangement be amended to remove the reference to the name of the corporation, 2655396 Ontario Inc. [2655], that will result from the amalgamation of the two entities pursuant to the Arrangement [1776 and 2655] since that number will not be known unless and until the Arrangement is approved in the amalgamation takes place.
8. That amendment [the Amended Arrangement] is proposed to be effected as per Schedule A to the order sought on this motion. There are no other amendments to the Proposal.
9. The Proposal Trustee relies in support of this motion on the Third Report of the Proposal Trustee dated October 5, 2022. It is filed at CaseLines Master E767. I observe that it includes as appendices the First Report, the Second Report, the interim order and other materials.
10. Information regarding the Proposal Proceedings has been posted on the Proposal Trustee’s website [MNP].
11. The motion today is unopposed. No one secured creditor or indeed any other stakeholder or potential stakeholder appears.
12. Section 182 of the OBCA gives the Court the power to make any order it thinks appropriate in connection with an application for advice and directions in connection with an arrangement, including an order approving the arrangement pursuant to section 182(5)(f).
13. In making such an order, the Court must be satisfied that: a) the statutory procedures and any court-ordered requirements have been met; b) the application has been put forward in good faith; and c) the arrangement is fair and reasonable. [See *Re Magna International Inc.* 2010 ONSC 4123 at paras 99-105, aff’d 2010

ONSC 4685 at paras. 31-41, *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 137 and *Steel Canada Inc. (Re)* 2014 ONSC 4285 at para. 85].

14. I will address each of these requirements in turn although in so doing I note that all of these requirements were considered and found to have been satisfied when the interim order was granted and there has been no material change since that time that would lead to a different conclusion for the purposes of the final approval order sought today.
15. The Amended Arrangement is an "Arrangement" within the meaning of section 182 of the OBCA [i.e., subsection (1)(f): an exchange of securities of a corporation for property, money or other securities of the corporation or property, money or other securities of another body corporate].
16. The statutory procedures and any court-ordered requirements have been met. In particular here, the terms of the interim order have been complied with.
17. The Amended Arrangement is put forward in good faith. There is no evidence otherwise.
18. In my view, the Arrangement is fair and reasonable. There is clearly a valid business purpose.
19. The factors identified by the Supreme Court of Canada that may be relevant to the test for the assessment of the fairness and reasonableness of a proposed arrangement include those set out by the Supreme Court. [See *BCE* at paras. 138-143 and 150-152].
20. As observed by Blair, J. in *Re St. Lawrence & Hudson Railway Co.*, 1998 O.J. 3934 at para. 27, what better litmus test then, for assessing whether [a shareholder or creditor] might reasonably approve of the plan, than the votes of those whose interests are actually at stake. Such votes are not conclusive but are an important indicator of fairness. While the Arrangement does not provide for dissent rights, its terms are arguably more favourable to those affected in that creditors with provable claims will recover 100%.
21. The Supreme Court of Canada has recognized that although no single factor is conclusive, the outcome of the shareholder vote is an "important indicator of whether a plan is fair reasonable", which can be given "considerable weight", particularly if the margin is large. See *BCE Inc., (Re)*, at paras. 141 and 150.
22. As noted above, no affected party delivered a notice of appearance in respect of the motion for the interim order and none appears today.
23. In the aggregate, all of these factors suggest that the rights of interested parties have been fairly and reasonably balanced.
24. Having considered all of the foregoing factors, the Court is satisfied that the Arrangement is fair and reasonable.
25. The Arrangement is approved pursuant to section 182(5) of the OBCA. Order to go as signed by me today, which is effective from today's date and is enforceable without the necessity of issuing and entering.

Osawa, J.