

QBG No. 1076 of 2021

In the Matter of the Proposals of Canadian Development Strategies Inc., Lori Runzer, Dean Runzer, et al.

March 3, 2023

M. Russel for MNP Ltd.

Marie Dussault for Creditors – Mr. and Mrs. Haverstocks (780) 224-4920 - by phone

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The present applications before the Court arise in the context of the proposal of the FireSong Group which carried on the business of financing, developing, marketing and operating a four season luxury resort village property at Fowler Lake, Saskatchewan. The FireSong Group is comprised of a number of corporations, individuals and limited partnerships, namely:

- (a) Living Water Limited Partnership (Living Water): the investment vehicle for raising capital for the project;
- (b) Canadian Development Strategies Inc. (CDSI): the general partner of the partnership;
- (c) 1143402 Alberta Ltd. (114): the company which owned the real property comprising the resort and which was responsible for the construction and development of the resort;
- (d) Crossroads One Inc. (Crossroads): the corporation which operates and maintains the resort;
- (e) 1216699 Alberta Ltd. (121): the company which owned the construction equipment for the project
- (f) Dean and Lori Runzer (the Runzers): directors of the companies of FireSong and the primary operators of the FireSong Group.

The project fell into financial distress and a number of efforts were made to try and restructure the operation, which efforts included the potential sale of farmland by the Runzers family farming corporations, Oak and Ash Farm Ltd. (Oak and Ash) and 2061778 Alberta Ltd. (206), neither of which were involved in the project directly.

CDSI, 114, Crossroads, 121, Oak and Ash, and 206 as well as the Runzers, in their capacity as Management all filed Notices of Intention to Make a Proposal and MNP Ltd. ("MNP") was appointed to act as proposal trustee.

The Court is now faced with two applications arising from the meeting of creditors that was held.

The first application is set out in an Amended Notice of Application filed by Arbor Vista Landscaping Ltd. ("Arbor Vista"), Darcy Garbutt ("Darcy"), Timothy Garbutt ("Tim"), Jayne Shipka ("Jayne"), 1620780 Alberta Ltd., ("780"), Marlene Krokosh ("Marlene") and Orest Krokosh ("Orest") (collectively "Applicants") who are seeking to challenge the decision of MNP who determined that the claims made by Lori Runzer, on behalf of the Applicants, had not been sufficiently proven in accordance with section 124(4) of the BIA to allow the Applicants to vote at the meeting of creditors. The Applicants are asking that a trial de novo be held to determine the validity of their individual claims as creditors, which if successful, would allow them to vote on the proposal. Briefly stated, those claims are summarized as follows:

- (a) Arbor Vista claims it was to be provided with fractional use rights in certain cabins in exchange for payments and services in kind (landscaping) which it provided;
- (b) Jayne claims that she entered into a lease with 114 which 114 has defaulted on and that 114 owes her \$155,779.79;
- (c) Tim and Darcy say that they loaned \$150,000 to CDSI and entered into a purchase and membership agreement with 114 to reserve fractional use rights in a cabin which 114 subsequently breached;
- (d) Marlene and Orest contend that they have a claim against 114 in relation to a deposit of \$125,000 which they paid;
- (e) 780 alleges that it entered into a purchase and membership agreement with CDSI which was based on misrepresentations made by the Runzers.

MNP is not opposed to a process to determine these claims but wants a timeline set which if breached would result in the claims being dismissed. Counsel for MNP indicates that he has spoken with counsel for the Applicants and they have reached agreement in terms of a timeline for this application, the only question being whether it should be heard as an appeal on the record or a de novo hearing. The Applicants ask for a de novo hearing.

MNP's counsel acknowledges that in the circumstances a do novo hearing is likely required given that the Applicant's claims were filed by Ms. Runzer and in the absence of a de novo hearing, the evidence which MNP found inadequate will be no better.

Nancy and Tim Haverstock (a creditor who voted 114 into bankruptcy) was represented at the hearing. Their counsel was of the view that it should not be a de novo hearing but that in the interests of moving the matter forward and not getting into a debate over procedure, they were prepared to proceed on the basis that the Applicants would get a de novo hearing.

I agree that the Applicants deserve the opportunity to put their best foot forward and therefore, a de novo hearing is appropriate.

Counsel for MNP indicates that he expects to be in a position to file a consent order dealing with the process to determine the Applicants claims. I will wait for that consent order and if the Court has concerns with what is being proposed a call will be convened between MNP counsel and the Applicants counsel.

The question of approval of the fees and administrative charges sought by MNP and its counsel remains a live issue. Counsel for MNP have indicated that the Runzers are opposing the fees claimed. The Runzers did not appear today but their position was conveyed by MNP's counsel. The Runzers were short served with this application and so they will have until March 20, 2023 to file material opposing the request for the fees/costs claimed after which a call will be held to determine the issue or determine the process by which such question will be decided.

The second application is brought by MNP and seeks approval of the amended proposal made by the Runzers to creditors and voted on by creditors. That application is opposed by the Haverstocks who say that if the proposal is approved, it will have approximately a \$10,000 impact on the ultimate recovery.

More concerning is that the requirements of section 59(3) of the BIA do not appear to be met. That section is mandatory and requires the Runzers, as previous bankrupts, provide security. The section reads:

(3) Where any of the facts mentioned in section 173 are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

The supplementary proposal contemplated security in the form of a charge on certain real property but that property has been sold and so there is no security. The Haverstocks counsel is entirely correct in their reading of the legislation. In its current form, the proposal cannot be approved. However, as the application of MNP was short served, procedural fairness requires that the Runzer's be given the opportunity to address this issue, should they so choose. They will have until March 20, 2023 to address this concern by way of the filing of an affidavit after which, a call will be convened to determine whether I ought to exercise discretion under section 59(4) to amend the proposal or not.

The bottom line is this. On the first application respecting a challenge to the decision of MNP to disallow the claim of the Applicants, MNP and the Applicants counsel will file a consent order to be reviewed by me. Issues pertaining to fees and administrative charges will be adjourned to be decided on a date to be scheduled by the Registrar after March 20, 2023, so that the Runzers can, should they so choose, put their position before the Court.

As for the application to approve the proposal, that application is adjourned to a date after March 20, 2023 to give the Runzers an opportunity to file an affidavit dealing with the concern over security. MNP may also file any material they so choose by that date.

This fiat will be served by MNP's counsel by email on all parties and an affidavit of service will be filed with the Court.

If nothing is filed by March 20, 2023 by the Runzers, a call will be convened by the Registrar in any event so that the matter can move forward one way or another.

I seize myself of these applications. Parties have leave to appear by phone so as to minimize costs of future appearances, though they may appear in person if they so choose.

Bardai J.