

Court File No. 08-CL-7503 Applicants

21 JULY 2008

ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST

Proceeding commenced at TORONTO

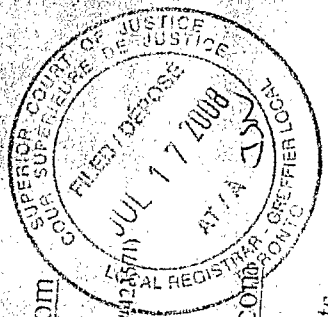
MOTION RECORD OF THE APPLICANTS
 (returnable July 21, 2008)

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Solicitors for the Applicants



- July 21/08
- R.M. Slattery } for the applicants
- D.T. Ullmann }
- I. Wallace for BDO, Monitor
- S. Weisz }
- K. MacEachern } for CFSL
- H-Charbon for GIE Canada Equipment Financing
- C. Hill. } for Encoretec Co. of N.A., bonding insurer
- S. Popprai }
- G. Kufopung for GICNA, directors; officers liability insurer
- A. Hestrey for Labovars Local 837; Operating Engineers Local 793
- D. Hayer for Brennan Parry
- S. Jeffrey for Waterford

The GIE entities seek an order that the vending orders not extend to other title in the leased equipment. The relief is claimed for the reasons set out in the attached.

The stay in the Interim Order shall be further extended to August 15, 2008.
 P.T.O.

~~Funds equal in amount to 1/2~~

The Applicants shall maintain the amounts of \$75,219.17 and \$223,536.84 in ~~separate~~ ^a trust accounts in respect of trade claimants of the Thorold and Fort Erie projects, respectively, pending further order of this Court.

The Applicants are authorized to pay to CFSL out of the net proceeds of sale of the sale transactions authorized by order dated July 9, 2008 the principal amount outstanding in respect of the two DIP loans made by CFSL. Interest and costs in respect of such DIP loans shall be payable upon further order of this Court. This order shall not prejudice any right that Guarantee Company of North America may have to trace such proceeds to the extent of any claim of assets for breach of the undebating respecting bonding matters.

The standstill in paragraph 6 of the order dated July 9, 2008 shall be lifted pending ~~for~~ ^{any} further order of this Court.

The conduct of the Monitor set forth in the Monitor's Fourth Report is hereby approved.

Mr. Hatney expressed certain concerns on behalf of his clients with respect to the identity of one of the purchasers receiving the assets in the sales transactions. The requested relief that the Court direct that the assets

be acquired by Brennan Parry's Construction Limited is denied as this requires a trial of the issue and such trial is more appropriately conducted by the Ontario Labour Relations Tribunal. ~~Mr. Hatrey's~~ The ~~client's~~ ~~remain~~ orders granted herein do not affect the right of Mr. Hatrey's clients to raise their concerns in another forum if they so choose after the date hereof.

July 22/08.

W. Non-INT.

R.M. Slotky } for Applicants
D. Ullman }

H. Charton for GB

J. Hager for Brennan Parry

A. Hatrey for the labourers local 837 and Operating Engineers local 793

Mr. Slotky advises that the amount in the ~~For Erie Trust Fund~~ ~~is~~ referred to in the first paragraph of the endorsement of July 21 is currently \$227,376.28. Accordingly, the endorsement is varied to maintain ~~such~~ ~~amount~~ this amount in the Trust Fund in respect of the For Erie Trade claimants.

Orders to go approving the vesting ~~of the~~ ~~attached~~ ~~under~~ assets subject to the inter-tram actions approved by order dated July 9, 2008, such vesting orders to be in the forms attached. GB Canada Equipment has objected to such vesting orders in respect of the equipment subject to its leases. I have not accepted such objection for the

written reasons attached.

GIB has indicated that it intends to seek leave to appeal the issuance of the vesting orders but will not seek a stay or injunction against completion of the sales transactions. ~~CFSL has indicated that, in~~ ^{GIB has, however,} indicated that it intends to argue that, if successful in its appeal, the distribution of the net proceeds of the sales transactions should proceed on the basis that GIB is entitled to the full amount owing under its leases. CFSL has indicated that, in these circumstances, it seeks a stay or injunction against completion of the sales transactions pending the hearing of the appeal.

The Court cannot predict whether leave will be granted to GIB or, if so, what the outcome of GIB's appeal may be. ~~It would observe that the court~~ However, I am of the view that, even if successful on its appeal, GIB's entitlement to the proceeds of distribution will be limited to the value of the leased equipment under the GIB leases unless and until the Court of Appeal orders otherwise. Accordingly, the request of CFSL for a stay or injunction is denied on the basis that the fact that GIB is

proceeding with its appeal does not affect its entitlement ~~under~~ ⁱⁿ this proceeding.

The purchasers in the sales transactions have agreed to make the leased equipment subject to the GE leases and the CFSL leases or other security available for viewing by the appraisers selected by these creditors.

Further orders to go in the form attached giving effect to the repayment to CFSL of the principal amount of the DIP loan as contemplated by the second paragraph of the endorsement of July 21, 2008.

W. Hon. J. T.