

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF THE HARD-ROCK PAVING COMPANY LIMITED
AND THE COMPANIES LISTED ON SCHEDULE "A"
(collectively the "Applicants")

**SUPPLEMENTAL AFFIDAVIT OF DAVID R. SEMLEY
(sworn June 9th, 2008)**

I, DAVID R. SEMLEY, of the City of Port Colborne, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. This Affidavit is sworn in furtherance to my Affidavit of June 9, 2008 in these proceedings.
2. At a meeting held on June 5, 2008, Caterpillar Financial Services Limited ("**CAT**") indicated that it might be willing to provide a short term debtor in possession loan in the amount of \$990,000 in addition to the loan they had previously provided to support the Applicants.
3. CAT also consented at that meeting to the 90 day extension as proposed by the Applicants.

4. CAT was to respond by June 6, 2008 as to whether or not they were to provide the requested facility. They did not do so. In fact there was no communication from CAT of any kind from the close of the meeting at approximately 4 pm on June 5th, until Sunday June 8, 2008.
5. On the afternoon of Sunday June 8, 2008, CAT advised that they required further time to consider their position. Attached as **Exhibit "A"** to this Affidavit is a copy of the email sent by counsel to CAT. That email did not provide any warning of CAT's intent to proceed with their bankruptcy application.
6. I have reviewed the Affidavit of William Scarlett sworn June 9, 2008, which was served on me at 1:00 pm today. I am now advised that CAT is unwilling to provide any DIP facility and that they are contesting the motion to extend the Stay, favoring instead, a bankruptcy.
7. For all the reasons set out in each of my affidavits in this process, especially my affidavit of this morning, I do not believe a bankruptcy is in the best interest of anyone, not even CAT.
8. I am deeply troubled by the statements in paragraphs 70 and 71 of Mr. Scarlett's affidavit about the outcome of the sale process. I believe his description of the nature and character of the offers received is a breach of confidentiality. This was irresponsible and

may have damaged the process and the Applicants. At the very least, disclosing the nature of the interest held by some and not others in the assets or business of the Applicants negatively impacts the Applicants ability to play these offers against each other, which is an essential element of any closed bid sale process.

9. Despite Mr. Scarlett's statements, I continue to assert, as in my Affidavit earlier today, that several important players have indicated an interest in the business as a going concern. I have spoken with these players this afternoon and confirmed their interest is related to the going concern status of the Applicants' business.
10. At the meeting on June 5, 2008, CAT confirmed that it was necessary to proceed to renegotiate the offers, and that the Applicants would be the party doing so. The Affidavit from Mr. Scarlett, who was absent from the meeting on June 5, 2008, does not dispute this.
11. As to the litany of emails between CAT, KPMG, the Applicants and BDO, contained in Mr. Scarlett's affidavit, I believe they show only the extent to which CAT is inappropriately attempting to micro manage this process. This is a debtor run restructuring, not a receivership. I believe this recitation of emails clearly supports the Applicants' position that the reporting should go from weekly to monthly, so as to avoid time wasted in this fashion.

12. I have further reviewed the cash flows projections with the Monitor and the Applicants management in order to look forward past the end of September. Following that review, I can confirm that it is our projection that by the end of October, 2008, there will be sufficient cash to reduce the DIP to \$4,300,000. As of November, the DIP is projected to be reduced to \$4,000,000. By December, the DIP is expected to be reduced to \$2,650,000. By January 2009, the DIP is expected to be reduced to \$1,550,000 and to ultimately be repaid in full by February of 2009.
13. The above projections do not account for the receipt of any of the \$7,300,000 claim on the Henley Bridge project, which funds are certainly expected to be received well before the end of this period.
14. Despite repeated assurances and explanations provided to CAT from myself and others, it appears that CAT fundamentally fails to understand the arc of the business cycle of the Applicants. The fact that the Applicants are in a cash negative position at this time does not reflect the health or prospects of the Applicants. The Applicants must spend money now to make more money later. The Monitor, who is a Court officer experienced in these matters, understands this.
15. Given the position taken by CAT, the Applicants are forced to immediately seek additional financing from a third party.

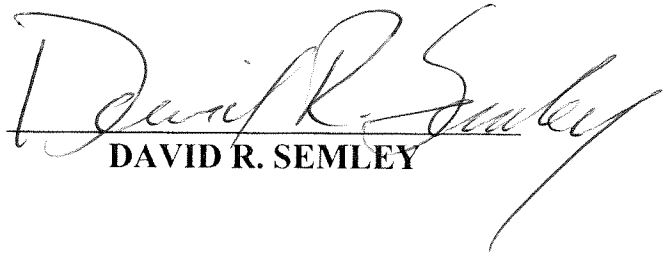
16. The Applicants have contacted McLennan Financing Limited, (“**McLennan**”) the entity who had previously offered to provide further DIP funding to the Applicants at the time of the May 12th, 2008 hearing.
17. I understand that McLennan is prepared to advance funds in the amounts required by the Applicants subject to the approval of the Court. Initially, the Applicants are seeking to only borrow \$1,000,000, with the intent to return to court to seek approval of further borrowings as needed. McLennan is available to provide such borrowings as the Applicants require.
18. Subject to finalizing the business terms, I expect that McLennan will provide a term sheet either later this evening or tomorrow morning, a copy of which will be provided to the Court at the hearing of the motion.
19. The term sheet to be provided by McLennan will be subject to Court approval.
20. It was clear from the position and statements made by the members of CAT in attendance at the meeting on June 5, 2008, that no one believed the course of action now being proposed by CAT in Mr. Scarlett’s affidavit was a good or reasonable idea.

21. I believe CAT's actions indicate a resistance on their part which is not based on financial reality but rather their exhaustion with this file and the frustration they are experiencing with the unfamiliar position in which they find themselves.
22. I also believe that the position taken in Mr. Scarlett's affidavit constitutes a bargaining position which they are taking against those parties who have, according to Mr. Scarlett's affidavit at paragraph 72 and 73, offered to buy CAT's debt, presumable at a discount which they are unwilling to accept. I believe that the Scarlett affidavit is presented at this juncture for the purpose of attempting to raise the price for the purchase of the CAT debt, and it is done in total disregard for the best interests of the Applicants and their other stakeholders, including their employees.
23. The Applicants require \$1,000,000 to the end of June to operate. McLennan is prepared to provide it. I believe it is in the interest of all the stakeholders, including CAT, that a DIP loan be provided to allow the Applicants the opportunity to complete this transaction.
24. I am advised that my counsel has discussed this matter with counsel for GE and that they have advised that they are in favour of a proposed DIP loan from McLennan.

25. I believe the offers provided in the sale process clearly demonstrate that a bankruptcy-style liquidation of the assets of the Applicants will produce values that are not in anyone's interest.
26. My counsel has also discussed this matter with the Unions. I am advised that the Unions support the granting of a DIP and the proposed extension and that they continue to oppose a bankruptcy of the Applicants at this time.
27. I make this Affidavit in support of the relief sought in my earlier affidavit of today, as well as an Order authorizing the Applicants to enter into a debtor in possession loan with McLennan, and for that DIP charge to rank *pari passu* with the existing DIP charge in favour of CAT, and for no other or improper purpose.

SWORN before me at Port Colborne, in)
the Province of Ontario, this 9th day of)
June, 2008.)

A Commissioner, etc.)


DAVID R. SEMLEY

This is Exhibit "A" referred to
in the Affidavit of David Semley
Sworn this 9th
day of June, 2008.

A Commissioner for Taking Affidavits

David Ullmann

From: WEISZ, STEVEN [STEVEN.WEISZ@blakes.com]
Sent: Sunday, June 08, 2008 1:31 PM
To: David Ullmann; Raymond M. Slattery
Cc: Hogan, Tim
Subject: The Hard Rock Paving Company Limited et al. ("Hard Rock")

David/Ray, Caterpillar Financial Services Limited ("CFSL") is very concerned that Hard Rock has not delivered any Court materials for the extension motion scheduled for Tuesday. The failure to provide the Court materials within 2 business days of the Court hearing is a default under the DIP term sheet with CFSL. CFSL will need time to review and consider the Court materials and respond. In addition, CFSL may want to cross-examine the affiant (we assume it will be David Semley). CFSL, with the assistance of KPMG, is continuing to analyse the cash flows and related schedules delivered Thursday evening and is not in a position to respond to the request for further DIP financing until the review and analysis of Hard Rock's court materials and the cash flows is completed.

As we discussed on Thursday(Weisz/Slattery), CFSL is in favour of Hard Rock completing the transaction to sell the crusher equipment to Walker Bros. for \$[REDACTED], on the condition that the proceeds are paid directly to GE and CFSL. CFSL has been advised by GE that GE also supports completing the transaction on that basis. Have you received a payout statement from GE? Please forward it to me when you receive it so that CFSL can confirm whether it agrees with the calculation. As we discussed and agreed, CFSL will receive all of the proceeds from the sale in excess of the indebtedness owed to GE for that equipment. Walker Bros. has now made Court approval a condition of the transaction. You advised that Hard Rock would seek that approval at the hearing on Tuesday. Please confirm whether Hard Rock still intends to request that the Court approve the sale of the crusher equipment to Walker Bros. on Tuesday.

We look forward to hearing from you at your earliest opportunity.

Regards,

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