



SUPERIOR COURT OF JUSTICE

Judges' Administration
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Date: November 9, 2009

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FROM:	
The Honourable Madam Justice:	
The Honourable Mr. Justice:	Newbould
Secretary's Name:	Yvonne C. Pawaroo

Re: Court File No.:	CV-09-8194-00CL
Matter:	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF W. C. WOOD CORPORATION LTD., W.C. WOOD HOLDINGS INC. and W.C. WOOD CORPORATION INC.
Justice Newbould's Judgment/ Endorsement is attached for your perusal.	

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COURT FILE NO.: CV-09-8194-00CL
DATE: 20091109

**SUPERIOR COURT OF JUSTICE - ONTARIO
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF W. C. WOOD CORPORATION LTD., W.C. WOOD
HOLDINGS INC. and W.C. WOOD CORPORATION INC.

Applicants

BEFORE: Justice Newbould

COUNSEL: D. Rob English and Sam Babe, for the Monitor
Kevin McElcheran, for the applicants
Elizabeth Pillon, for One Rock Capital Partners, LLC
Clifton P. Prophet, for Electrolux North America
Evan Cobb, for CIT Business Credit Canada Inc.
Aaron Rousseau, for Whirlpool Corporation

DATE HEARD: November 5, 2009

ENDORSEMENT

[1] The Monitor, BDO Dunwoody Ltd., moves for advice and directions with respect to the inclusion of Electrolux North America ("Electrolux") in a liquidation sales process being conducted pursuant to my order of October 26, 2009. The issue that has arisen is whether Electrolux should be permitted access to the applicants' premises prior to November 13, 2009, on which date One Rock Capital Partners, LLC ("One Rock") must decide whether to firm up its Asset Purchase Agreement ("APA").

[2] The order of October 26, 2009 was a compromise order made on consent as a result of an application brought by the lenders of the applicants to have a receiver of the applicants appointed and to have the assets of the applicants sold in a liquidation process. There had been marketing

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efforts for some time before that which had led to an offer from One Rock to buy the business of the applicants on a going concern basis. The lenders were not happy with the One Rock offer, including the fact that it did not provide for a deposit, contained many conditions and was subject to financing which the lenders thought would unlikely materialize. After negotiations, the consent order was made which provided for a two-track process.

[3] In substance, the consent order authorized the applicants to sign the APA with One Rock so long as the APA was firm, with all conditions satisfied or waived, and the deposit received by the monitor by November 13, 2009. The order also directs the Monitor to solicit liquidation proposals, subject to confidentiality considerations, by November 13, 2009 and directs the parties to attend at Court on November 16, 2009. At that time, if One Rock is ready to close by November 27, 2009 without condition, and if the APA provides for payment in full of the first priority DIP lenders, the APA is to be approved. If the conditions are not met, the Monitor is to be appointed a receiver and proceed to a liquidation sale proposal. The order further provides that if a liquidation proposal is accepted because it offers greater value than the One Rock purchase price, One Rock is entitled to a break fee of 4 percent of its purchase price so long as One Rock was ready and able to close.

[4] Prior to the order of October 26, 2009, the applicants had engaged in a process to attempt to sell the business on a going concern basis. During that going sales concern process, the Monitor was contacted by counsel to Electrolux, which is the leading North American manufacturer of freezers and a competitor to the applicants, who together were the only North American manufacturer of freezers. The Monitor was told, amongst other things, that if the going concern sales process did not succeed, Electrolux would be interested in participating in a liquidation sale of the assets and that Electrolux had a particular interest in the intellectual property of the applicants.

[5] Pursuant to the October 26, 2009 order, the Monitor has solicited liquidation proposals. Electrolux requested, and was provided by the Monitor, with copies of the information package and asset listings that have been provided to other potential bidders of the assets after signing a confidentiality agreement. Electrolux has requested access to the applicants' premises to conduct a due diligence on the assets that would be sold under a liquidation scenario, but to date

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has not been given access in light of concerns raised by a number of interested parties. The concerns relate to a perceived competitive advantage to Electrolux over the business of the applicants being sold to One Rock because of what Electrolux could learn on an inspection of the premises, with a resultant loss of the One Rock purchase under the APA.

[6] Mr. Angi, the president and chief executive officer of the applicants, has sworn in his affidavit dated November 4, 2009 as follows:

5. Electrolux is the only other freezer manufacturer with manufacturing facilities in North America.

6. The One Rock APA is the last remaining chance available to the Company to sell its business as a going concern. If that transaction is not closed, the Company's business will be liquidated.

8. As a competitor, Electrolux would benefit from the liquidation of W.C. Wood. In fact, it would be difficult for Electrolux to buy the Company's business as a going concern because of *Competition Act* restrictions.

10. A site visit by Electrolux could scuttle the current going concern agreement with One Rock for the following reasons:

- (a) One Rock has clearly stated they will not consummate the sale if Electrolux is allowed in the plants;
- (b) A site visit by Electrolux will inevitably compromise "trade secrets" relative to the plants and manufacturing processes of the Company, valuable Intellectual Property assets that are critical to the going concern sale;
- (c) It is not only the Company's trade secrets that are at risk but also licensed intellectual property belonging to Whirlpool and the continuing relationship with Whirlpool is a key condition of the One Rock APA;
- (d) Electrolux does not need to visit the plants to submit a liquidation bid as it has the pertinent information and can provide a preliminary bid that can be updated with a visit if the One Rock APA conditions are not met by Nov. 13th.

[7] Mr. Lee, the secretary of One Rock, has sworn in his affidavit of November 4, 2009 as follows:

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5. One Rock has serious concerns that access to the Premises by Electrolux would prejudice the ongoing value of their own bid. Many of the reasons for our concerns were previously outlined in the Angi Affidavit. In addition, an on-site visit would prejudice the One Rock bid, as this would permit Electrolux the opportunity to gain highly sensitive information, allowing it to potentially reverse engineer certain product costs based on its view of the Applicants' internal operations, which would in turn prejudice One Rock should they be the ultimate purchaser, competing in the market with Electrolux.

6. It is worth noting that Electrolux has more capacity than it requires and it is well known in the industry that Electrolux has recently closed plants and laid off employees in the US as a result of overcapacity in their operations, therefore, it likely has no good faith interest in the equipment or other assets of the Applicants. I believe that any offer by Electrolux would only be in respect of the Applicants' trademark and other intellectual property. Electrolux could easily obtain this information from a public search, without access to the Applicants' confidential information or access to its premises.

7. Should Electrolux be permitted access to the Premises, One Rock believes that the potential prejudice to their bid, and the value of any ongoing sale will have been adversely affected and as such they will be forced to withdraw from the APA and step away from purchasing the Applicants' assets. This would be an unfortunate consequence, and one we wish to avoid.

[8] Mr. Spina, a product line manager of Electrolux, has sworn in his affidavit of November 5, 2009 in response to the application brought by the Monitor that after the October 26, 2009 order was made, Electrolux requested physical access to the premises of the applicants to examine the equipment of the applicants "with a view to formulating a bid for some or all of the equipment and intellectual property of the applicants." He also stated:

[Electrolux] remains interested and engaged in the process of purchasing the equipment and intellectual property of the Applicants, after, and subject to, being afforded a reasonable opportunity to undertake meaningful due diligence on such assets.

[9] The competitive concerns expressed to the Monitor by the applicants and others and referred to in the Ninth Report of the Monitor, including the concerns raised in the affidavit of Mr. Angi of the applicants and Mr. Lee of One Rock, were not addressed by Mr. Spina in his affidavit.

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[10] Because of the concerns that One Rock will not proceed with the APA if Electrolux is given access to the premises of the applicants, the Monitor has proposed a process as follows:

- a) Electrolux will not be permitted access prior to noon on November 13, 2009, or thereafter if One Rock waives its conditions at that time;
- b) If One Rock fails to waive its conditions by 12:00 noon on November 13, 2009, access will be granted to Electrolux commencing no later than November 16, 2009;
- c) If the One Rock APA is terminated, the date for delivery of a liquidation proposal from Electrolux to the Monitor should be extended from November 16, 2009 to 12:00 noon on November 23, 2009 and other bidders who are required to submit their bids by November 13, 2009 shall be notified accordingly, such that any liquidation proposal that may be accepted by the Monitor by November 16, 2009 shall be subject to the Monitor's review of any subsequent Electrolux offer.

[11] The Monitor points out that one potential prejudice to this recommendation is that if Electrolux made a liquidation offer higher than the One Rock APA value, that offer could have been accepted and a break fee paid to the applicants creating additional recovery for other creditors. The Monitor points out that this potential prejudice is only theoretical as no indications of value have been received. The Monitor further states, however, that there are obvious benefits to a going concern sale, especially with regard to the interests of employee stakeholders. The Monitor concludes that his recommendation represents his best business judgment.

[12] Electrolux is opposed to the Monitor's proposal. It wishes to have access on a timely basis prior to November 13, 2009, the date when One Rock must decide whether or not to firm up its purchase under the APA, in order to be in a position to make an offer for one or more of the assets of the applicants, if it decides to do so, by November 13, 2009. It takes the position that the integrity of the liquidation sale process must be protected, which requires that Electrolux be given the same access to the premises as other potential bidders in the liquidation sale process. In that way, Electrolux might be in a position to make a sufficiently high offer greater

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than the One Rock APA value to cause the Monitor to terminate the One Rock APA in favour of the Electrolux offer and pay One Rock its 4 percent break fee.

[13] In my view, the proposal of the Monitor should be accepted. It is not a perfect world and the CCAA process is certainly no different. I have reached this conclusion for a number of reasons.

[14] I cannot say on the basis of the record before me that the competitive concerns of One Rock are not valid. While it is contended by Electrolux that the position of One Rock is just a self-serving position in order to preserve its contract, no evidence has been offered on behalf of Electrolux contradicting those concerns. Electrolux has filed no affidavit material stating that it would not gain a competitive advantage against the business of the applicants by having access to the applicants' premises and internal operations. The order of October 26, 2009, which directed the Monitor to solicit liquidation proposals, stated that it was subject to confidentiality considerations. The concern raised by One Rock objectively can be reasonably viewed as being such a confidentiality concern.

[15] The One Rock bid was the only going concern bid received and it was ultimately accepted pursuant to the October 26, 2009 order. The Monitor's confidential liquidation analysis provided to the court on October 26, 2009 compared the estimated realizations in the event of a sale to One Rock to the estimated realizations of a liquidation. This analysis indicated that the proceeds from the sale on a going concern basis to One Rock would exceed the estimated realizations of a liquidation. The prospects of Electrolux bidding a higher value than the One Rock APA value for one or more of the assets on a liquidation basis are unknown, but certainly one cannot say on this record that the prospects are sufficiently good to cause the One Rock APA to be lost.

[16] There is some doubt on the basis of the record before me that Electrolux requires access to the premises in order to make a bid for what it is interested in. Electrolux's counsel told the Monitor that Electrolux was particularly interested in the intellectual property, which is consistent with the evidence of Mr. Lec of One Rock that Electrolux has overcapacity and has been closing some plants and laying off employees and that it is the intellectual property which

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he believes Electrolux is interested in. Presumably access to the premises of the applicants would not be needed for information regarding trade marks or other intellectual property, which would be available from a public search.

[17] The One Rock purchase on a going concern basis, apart from its likely advantageous price, would also be advantageous to the stakeholders of the applicants, including its employees, suppliers and customers. Whirlpool is a supplier and customer of the applicants. It also licenses intellectual property to the applicants and is a DIP lender. Counsel for Whirlpool stated that although Whirlpool would stand to gain if a higher offer from a liquidation sale materialized, Whirlpool nevertheless supports the Monitor's position. Whirlpool does not expect Electrolux to make an offer in excess of or close to the going concern value to be paid by One Rock and sees a benefit to a continuing relationship with One Rock as a supplier and customer.

[18] CIT Business Credit Canada Inc., the agent for the secured lenders to the applicants, was the party that previously moved to have a receiver appointed and scuttle the One Rock offer. It too supports the position of the Monitor. This perhaps is understandable as the One Rock APA is anticipated to pay the lenders debt in full, which might not be the case in a liquidation scenario that would also undoubtedly take some considerable period of time. That uncertainty as to the amount that might be received on a liquidation, and the length of time that would be involved in obtaining it, is good reason not to cause the One Rock APA to be lost if it can be avoided.

[19] In the circumstances, the proposal of the Monitor is accepted and the stay under the Initial Order is extended until November 30, 2009. The draft order submitted by the Monitor appears reasonable.



NEWBOULD J.

DATE: November 9, 2009