

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 SERTAPAK INC.

Applicant

MOTION RECORD
RETURNABLE APRIL 15, 2009

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TAB 1

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Applicant

NOTICE OF MOTION

THE APPLICANT will make a motion to the Commercial Court on Wednesday, the 15TH day of April, 2009, at 10:00 a.m. in the forenoon, or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is (*insert one of*) on consent, unopposed *or* without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally;

THE MOTION IS FOR:

1. An order, if necessary, abridging or waiving the time for service, dispensing with service or validating the method of service, *nunc pro tunc* of this notice of motion, motion record;

2. An further extension of the stay period as described and set forth in the Initial Order issued by the Honourable Mr. Justice Campbell on Tuesday, the 20th day of January, 2009, and as extended by an Order issued by The Honourable Mr. Justice H.J. Wilton-Siegel dated the 18th day of February, 2009, until Friday, May 29, 2009.
3. The approval by this Court of the activities of the Monitor to date and its fees and disbursements and the fees and disbursements of its counsel, as described and set forth in the Monitor's Second Report to this Court dated the 8th day of April, 2009.
4. The granting of an Order in substantially the form of the draft Order at Tab 4 of this Motion Record.

THE GROUNDS FOR THE MOTION ARE :

1. The Honourable Mr. Justice Campbell issued an Initial (Short Form) Order pursuant to the provisions of the *Companies' Creditors Arrangement Act* ("CCAA") on Tuesday, the 20th day of January, 2009 in favour of the Applicant;
2. By Order of the Honourable Mr. Justice H.J. Wilton-Siegel dated Wednesday the 18th day of February, 2009, the stay was extended to April 15, 2009, and authority was given to the Applicant to file a plan of compromise or arrangement with the court between itself and one or more classes of its secured and/or unsecured creditors, and certain other rights with respect to restructuring and a sale process, and an enhancement of the Monitor's hours were authorized.
3. The Applicant seeks a further extension of the stay period based upon the material described and set forth in the Second Report of the Monitor to this Court, filed with this

Notice of Motion, and further seeks approval of the fees and disbursements of the Monitor and of its counsel to date;

4. It is just and convenient for such Order to be made inasmuch as the Applicant is moving forward with restructuring its business as outlined in the Second Report of the Monitor filed herewith;

5. Therefore circumstances exist that make the Order sought by the Applicant appropriate;

6. Such further and other grounds as arise from and out of the Second Report of the Monitor to the Court;

7. The provisions of the CCAA;

8. Rules 2.03, 3.02, 14.05 and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194; and

9. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Second Report of the Monitor, BDO Dunwoody Limited, to this Court.

2. Such further and other evidence or material as counsel may advise and this Honourable Court may permit.

Date April 8, 2009

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Court File No.: 09-CL-7952

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 SERTAPAK INC.

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED
AT TORONTO, ONTARIO

NOTICE OF MOTION

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TAB 3

ONTARIO
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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 SERTAPAK INC.

THE MONITOR'S SECOND REPORT

(April 8, 2009)

INTRODUCTION

1. On January 20, 2009, Sertapak Inc. ("**Sertapak**" or the "**Company**") filed for and obtained protection from its creditors by Order of the Honourable Mr. Justice Colin Campbell (the "**Initial Order**") made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). A copy of the Initial Order is attached as **Exhibit "A"**.
2. On February 18, 2009, an extension was granted by Mr. Justice Wilton-Siegel (the "**First Extension Order**"). A copy of the First Extension Order is attached as **Exhibit "B"**.
3. Pursuant to paragraph 18 of the Initial Order, BDO Dunwoody Limited was appointed monitor (the "**Monitor**").
4. The role and responsibilities of the Monitor are set out in the CCAA and further articulated in paragraph 19 of the Initial Order, which provides that the Monitor is directed and empowered to:

- (a) monitor Sertapak's receipts and disbursements;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
 - (c) have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
 - (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
 - (e) perform such other duties as are required by this Order or by this Court from time to time.
5. The purpose of this, the Monitor's Second Report (the "Second Report"), is to advise and update this Honourable Court as to:
- (a) the activities of the Monitor since the Monitor's First Report (which was filed in support of the First Extension Order);
 - (b) the activities of Sertapak since the Monitor's First Report;
 - (c) Sertapak's actual cash-flow for the period ending April 3, 2009;
 - (d) Sertapak's cash flow projections to June 26, 2009; and
 - (e) Sertapak's and the Monitor's planned activities should this Court grant the extension of the Stay Period that is being sought by Sertapak.

6. The information contained in this report has been obtained from the accounting records of Sertapak and is based on discussions with, and representations made by Sertapak's management, including in particular Messrs. David Nettleton, Peter Corbiere and Bruce Orr. The Monitor has not verified the accuracy of this information and expresses no opinion upon it. Further, given that the information is based on management's assumptions regarding future events, actual results may vary from forecast and such variations may be material.
7. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or decision made based on it, is the responsibility of such party.
8. Capitalized terms not defined herein are as defined in the Initial Order or the affidavit of Nettleton.
9. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

10. Sertapak is a privately held corporation incorporated under the laws of the Province of Ontario. The Company is a major supplier of custom packaging solutions for a variety of industries.
11. Sertapak operates a 140,000 sq ft production facility from leased premises at 1039 Dundas Street, in Woodstock, Ontario. At the time of the initial filing, 106 individuals were employed at this facility on a full-time basis, while 58 were employed on a temporary basis.
12. The Company also operates a much smaller sales and design office in Portland (Nashville), Tennessee, which currently employs three individuals. This office is

in the process of being shut down. The Company anticipates completing this process by the end of April, after which the remaining employees will work from their home offices.

13. The Company's operations and the cause of its current financial difficulties are described in the affidavit of Sertapak's President, Chief Executive Officer and director, David Nettleton, sworn January 15, 2009, in support of the Initial Order.

THE MONITOR'S ACTIVITIES SINCE THE MONITOR'S FIRST REPORT

14. The Monitor has posted the Initial Order, the First Extension Order and other documents filed with the Court to date in the within proceedings on a website maintained by the Monitor with the following URL: www.bdo.ca/sertapak.
15. The Monitor has been and continues to work closely with the Company's management, in particular Messrs. Nettleton, Corbiere and Orr. Sertapak's management is directing execution of the Company's restructuring plan with the support and guidance of the Monitor.
16. The Monitor has and continues to advise and assist Sertapak on a number of matters since the issuance of the Initial Order, including:
 - (i) the implementation of appropriate procedures for the daily monitoring of receipts and disbursements, along with the weekly review of Sertapak's cash flow and reporting to the Bank of Montreal ("BMO"); and
 - (ii) assisting Sertapak with its weekly cash-flow reporting obligations; its reporting obligations to the BMO; its dealings with Century Services Inc. ("Century"), a factoring company; communications with the Business Development Bank of Canada ("BDC"), a term lender; and various other creditor-related issues and reporting matters.

SERTAPAK'S OPERATIONS AND ACTIVITIES SINCE THE MONITOR'S FIRST REPORT

17. Sertapak has provided the Monitor with full co-operation and unrestricted access to the Company's premises, books and records.
18. Since the commencement of the within proceedings, and with the assistance of the Monitor, Sertapak has stabilized its operations.
19. The Company has, from the date of the Initial Order to March 27, 2009, operated in compliance with a forbearance agreement entered into prior to the commencement of the within proceedings with its major lender, BMO. Since then, the Company has been unable to meet all of the terms of the Forbearance Agreement. The Company, with the participation of the Monitor, has prepared a revised projected cash flow for the period to 26 June 2009 (the "**Second Updated Projected Cash Flow**"), advised BMO that it is unable to meet the terms of the Forbearance Agreement and initiated negotiations for an extension and amendment of the Forbearance Agreement.

Supplier Issues

20. Sertapak, with the assistance of the Monitor, continues to promptly address supplier concerns to ensure an orderly and cohesive communication strategy with suppliers.
21. Sertapak has been required to pay most suppliers on a COD or weekly basis to ensure continued supply.
22. Since the issuance of the Initial Order, the Company has, with the concurrence of the Monitor, made payment of pre-filing liabilities, to various suppliers, in the amounts of Cdn\$7,700 and US\$8,636. Further payments of Cdn\$15,484 may be required.

Customer Issues

23. Sertapak is in continuous communication with its key customers, including Toyota, its largest single customer.
24. To date, no customer has cancelled an existing order. However, due to the economic environment, some customers have postponed their programmes.

Employee Issues

25. Sertapak has reviewed its staffing levels at its principal location in Woodstock, Ontario. At the date of this report, 67 individuals were employed at this facility on a full-time basis.
26. The Company has also scaled back operations at its subsidiary facility located in Portland (Nashville), Tennessee. Production has been moved to the Woodstock location and the subsidiary is focused on sales. The three remaining employees will be working from their home offices.

ACTUAL CASH FLOWS FOR THE PERIOD ENDING APRIL 3, 2009

27. The Monitor has reviewed Sertapak's actual unaudited cash flow for the twelve week period from January 12, 2009 through April 3, 2009 and has compared it to management's forecast cash flow for the same period. Actual net cash flow for this period was \$2,358,121, which represents a 16% negative variance compared to the forecast of \$2,819,682. \$380,000 of this \$462,000 negative variance occurred in the week ending April 3, 2009 as a result of lower than projected cash inflows. The comparison of the actual cash flows to the forecast is attached hereto as Exhibit "C".
28. Receipts for the period were \$11,287,509. The shortfall from the projected receipts of \$14,075,500 is largely the result of the delay in various customer programmes, as described above, resulting in lower than projected sales.

29. To date, Sertapak's disbursements of \$8,929,388 are less than projected by some \$2,326,430. This positive variance is the result of lower than projected contingency and unforeseen expenses, lower materials purchases as a result of lower than projected production volumes and timing differences.
30. The negative variance in net cash flow means that the loan balance to BMO stands at \$1.3 million instead of the anticipated \$940,000.

CASH FLOW PROJECTIONS TO JUNE 26, 2009

31. Sertapak has updated and revised the initial projected cash flow for the twelve week period ending June 26, 2009 as the Second Updated Projected Cash Flow. A copy of the Second Updated Cash Flow is attached hereto as **Exhibit "D"**. The projection has also been extended eight weeks from the week ending May 1, 2009 to June 26, 2009. This period has been chosen as it is anticipated that the proposed transaction will be complete by that date. This document has been reviewed by the Monitor and submitted to BMO.
32. The Second Updated Projected Cash Flow reflects the Company's projected cash flow based on a detailed review of short-term sales projections and further cost cutting measures by the Company.
33. Management projects that the Company will remain cash flow positive for the projection period with net positive cash flow of some \$1.1 million. However, the Second Updated Projected Cash Flow is materially different from the projected cash flow filed with the application for the Initial Order and the Updated Projected Cash Flow filed with the Monitor's First Report.
34. Due largely to delays in certain orders from customers, partially offset by further cost cutting measures, the Company projects a positive cash flow of some \$1,090,490 for the twelve weeks ending June 26, 2009. This is significantly less

than the previously projected positive cash flow of some \$1,000,000 for the four weeks ended May 1, 2009.

35. BMO is currently the beneficiary of any positive net cash flow. Currently all available funds would be applied to paying down BMO and other secured creditors.

MARKETING AND SALES PROCESS

36. As contemplated in the affidavit of David Nettleton, sworn January 15, 2009, in support of the Initial Order (see e.g., para. 34), Sertapak is attempting to close a transaction with a strategic or financial investor.
37. This process is well underway. The previously reported timeline for a sales transaction is outlined in the table below:

PHASE	TIMING	ACTION
I	Completed	<ul style="list-style-type: none"> • Develop sales objectives, timeline, sales process and marketing strategy • BDO conduct site visits, review projections and other valuation data and compile preliminary potential purchaser's list. • Prepare a confidential information memorandum ("CIM").
II	Completed	<ul style="list-style-type: none"> • Finalize potential purchaser's list and sales strategy • Begin preparation of data room
III	Completed	<ul style="list-style-type: none"> • Advertisements will be placed in national newspapers and publications as the Monitor and Sertapak deem appropriate • Potential purchasers will be contacted and interested parties will be asked to execute a confidentiality agreement ("CA"). Parties that execute a CA will be provided with the CIM • A timeline will be given for interested purchasers to submit non-binding indications of interest (Friday March 6, 2009) and these interested parties will constitute the second round of potential purchasers
IV	March 6, 2009 to May 30, 2009	<ul style="list-style-type: none"> • Interested purchasers will be given access to the due diligence data room and site visits will be arranged • A draft purchase and sale agreement will be circulated and binding offers will be required to be submitted substantially in the form of the draft purchase and sale agreement • Negotiations with the top bidders/preferred parties will be entered into and a purchaser will be selected • A definitive purchase and sale agreement will be negotiated, executed and court approval of the sale will be sought

38. The Monitor has been actively assisting the Company in regards to this sale process, in particular in attempting to identify a possible purchaser of and/or

investor in the Company's business, obtaining Letters of Intent and preparing the Company for the due diligence process.

39. The process is now in Stage IV. The Company has received expressions of interest from several interested parties. The interested parties being considered for the next round have been invited to attend at the Sertapak premises for a Management Presentation, in which both Sertapak and the interested party each make a presentation to the other about themselves, and a site visit, prior to commencing due diligence.
40. Parties have been asked to submit binding offers by April 24, 2009. At that time, Management and the Monitor will evaluate the offers in order to determine which party, if any, will be chosen for negotiation of a definitive purchase and sale agreement, subject to the approval of this honourable court.

MONITOR'S RECOMMENDATION

41. Since the date of the Initial Order, Sertapak and its advisors have worked diligently in stabilizing Sertapak's operations and advancing the restructuring for the benefit of stakeholders. It is the Monitor's view that Sertapak has acted and continues to act in good faith and with due diligence.
42. In addition, based on the information currently available, including the cash flow results and projections discussed above, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period.
43. Therefore, the Monitor recommends that this Honourable Court:
 - (a) approve Sertapak's request for an extension of the Stay Period until May 29, 2009;
 - (b) approve the activities of the Monitor to date, as disclosed in this Second Report; and

- (c) grant an order substantially in the form of the draft order contained in the Motion Record filed by the Company in support of the motion returnable April 15, 2009.

All of which is respectfully submitted, this 9th day of April, 2009.

BDO DUNWOODY LIMITED,
In its capacity as Monitor in the Matter of a Plan
of Compromise or Arrangement of Sertapak Inc.

Per:

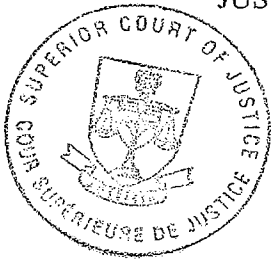


Christopher J. Porter, MBA, CA • CIRP
Vice-President

APPENDIX A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 20TH
)
JUSTICE CAMPBELL) DAY OF JANUARY, 2009



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 SERTAPAK INC. (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. J. David Nettleton sworn January 15, 2009 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, Bank of Montreal ("BMO"), BDO Dunwoody Limited and Century Services LP, no one appearing for Business Development Bank of Canada ("BDC") although duly served as appears from the affidavit of service of Tracey L. Baker sworn January 16, 2009 and on reading the consent of BDO Dunwoody Limited to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

FURTHER HEARING

3. THIS COURT ORDERS that a further hearing in this Application shall be held on February 18, 2009 or such alternate date as this Court may fix, at which time this Order may be supplemented or otherwise varied, and the Stay Period (as herein defined) extended or terminated. The Applicant and the Monitor shall serve their materials for this further hearing on all parties who serve a Notice of Appearance on the Applicant and the Monitor, such materials to be served by no later than five days prior to the date scheduled for the further hearing.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such

further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payment for goods or services actually supplied to the Applicant prior to the date of this Order in a maximum aggregate amount of \$600,000.00 provided such payments are critical to the Applicant's business and are made with the prior written consent of the Monitor and BMO.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date, except for payments to BMO made pursuant to a Forbearance Agreement entered into between the Applicant and BMO, payments to BDC and Century Services LP ("Century") and payments to Export Development Corporation ("EDC") in respect of all amounts owing to EDC whether

incurred prior to or after the date hereof, all of which the Applicant is hereby directed to pay;

- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property, except as set out in paragraphs 26, 27 and 28 hereof; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business, except as set out in paragraphs 26, 27 and 28 hereof.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

9. THIS COURT ORDERS that until and including February 18, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except by BMO, BDC, or Century, or except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, except BMO, BDC, or Century, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.