ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ENDORSEMENT

COURT FILE NOs.: **BK-24-03046358-0031, BK-24-03046342-0031 and BK-24-03046353-0031** **DATE:** **March 20, 2024**

NO. ON LIST: 2, 3 & 4

TITLE OF PROCEEDING: **IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF IGLOO INDUSTRIES GROUP LTD.**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

For the Debtor:

Name of Person Appearing	Name of Party	Contact Info
Brendan Bissell	Counsel for the Debtors, Igloo Industries Group Ltd.	bbissell@reconllp.com
Joel Turgeon		jturgeon@reconllp.com

For the Creditors:

Name of Person Appearing	Name of Party	Contact Info
Rachel Moses	Counsel for the Creditor, the Royal Bank of Canada	rmoses@foglers.com
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Rosemary Fisher	Counsel for the Creditor, Business Development Bank of Canada	fisherr@simpsonwigle.com

For the Trustee:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Simpson	Counsel for the Proposal Trustee, Albert Gelman Inc. (with Adam Zeldin of AGI in attendance)	jsimpson@torkin.com

ENDORSEMENT

[1] This endorsement concerns two hearings in this matter, on March 20, 2024 and March 22, 2024.The appointment on March 20, 2024 was originally booked for the debtor company Igloo Industries Group Ltd.

(the "Company")'s motion seeking administrative consolidation of the Company's notice of intention to make a proposal to creditors ("NOI") with those of Stanislaw Snieg and Maria Snieg, (together, the "Individuals") and authorizing and directing the Proposal Trustee to administer the NOI proceedings on a consolidated basis.

[2] The motion also seeks an order under section 50.4(9) of the Bankruptcy and Insolvency Act extending the time for the Company and the Individuals to make proposals to their respective creditors to May 6, 2024, and an administrative charge on the Company's assets in the amount of $150,000.00, as well as other ancillary and related relief.

[3] Unfortunately, while the Company intended and attempted to serve its motion materials on the Royal Bank of Canada ("RBC") and RBC's counsel (RBC is the senior secured creditor of the Company and has guarantees from the Individuals), counsel for the Company and the Proposal Trustee had an incorrect email address for RBC's counsel, and therefor inadvertently failed to serve the materials in a timely way.

[4] By the time the discrepancy was discovered, RBC (through its counsel) was "short-served" with the motion materials, effectively receiving them only two days before the return of the motion.

[5] In the circumstances, RBC, which advises that it anticipates bringing its own motion to terminate and lift the stay against the Company and the Individuals, sought an adjournment of the hearing on March 20 to allow it to prepare and serve its materials.

[6] Counsel for the Company and the Individuals fairly acknowledged that this would be appropriate in the circumstances, advised that he (and counsel for the Proposal Trustee) had engaged in preliminary discussions with counsel for RBC and (I believe) with counsel for the Business Development Bank of Canada ("BDC"), another significant secured creditor, about appropriate interim terms pending the return of the Company and Individuals' motion and the RBC motion. In particular, the Company seeks to access and use for its continued operation some portion of funds in the approximate amount of $300,000.00 recently raised by the Company by way of an auction of certain of its assets.

[7] It was suggested, and I agreed, that it would make sense to stand the matter down briefly to allow the parties to continue the discussion about interim terms, and hopefully to come to a mutually agreed landing in that regard. Before the parties embarked on that discussion, I was able to confirm that the motion(s) can proceed on April 8, 2024 for two hours.

[8] The discussion that ensued (for roughly an hour) proved to be productive. The parties advised me that, subject to one contentious point, they had reached an agreement about interim terms.

[9] The one item on which the parties reported being unable to agree was the question of whether or not, from the $250,000.00 portion of the auction proceeds, and/or from the Company's cash flow (the existence and extent of which is somewhat uncertain at this time) amounts should be earmarked for payment of professional fees (for the Company and (I understood) Individuals' counsel, for the Proposal Trustee, and for the Proposal Trustee's counsel).

[10] The request was relatively modest: it was suggested that up to $10,000.00 of the auction proceeds be available for these professional fees, and up to $75,000.00 of the Company's cash flow.

[11] In making the request for this dispensation, counsel for the Company and Individuals, joined (from a slightly different perspective) by the Proposal Trustee and its counsel, started with the proposition that professional assistance adds value to proceedings such as these, to the court and to all parties.

[12] He noted that it is in fact typical for funding to be earmarked and prioritized for payment of professional fees in various insolvency and bankruptcy scenarios, and that the professional assistance will be helpful to give the Company the best chance of surviving this process. He pointed out that this company has been in business for about 25 years, that it employs about 40 people, and that it is fair to describe the business of the Company as "worth pursuing."

[13] He submitted that RBC (and BDC) have substantial security, that there is no certainty that they will be out-of-pocket if the Company ultimately fails, and that no doubt the bank(s), in seeking to appoint their own receiver when these motions proceed on April 8, will propose that the professional fees required in that setting should enjoy priority over the distributions to the bank(s).

[14] Counsel for RBC, supported by counsel for BDC, noted that the evidence shows that the Company and the Individuals have not so far been fully transparent and responsive in answer to various requests for information that RBC has made.

[15] She also argued that the value of the banks' collateral is uncertain, and that therefore it is not at all clear that the banks will not be significantly out-of-pocket here. She said that the professionals could have obtained retainers up front, and that if they failed to do so, or failed to obtain sufficient retainers, that should not be the banks' problem.

[16] Having considered these submissions, I am prepared on balance to approve the suggested amounts to be allocated for professional fees, i.e., up to $10,000.00 from the auction proceeds and up to $75,000.00 from the Company's cash flow, between now and April 8, 2024.

[17] The professionals in question have considerable experience in these matters, and I have no trouble in concluding that their participation will add value to the process for all concerned, including for the court.

[18] In relative terms, without diminishing the significance to creditors of all available funds, the amounts sought are reasonably modest. The dispensation sought for the professionals is therefore not a "blank cheque" but rather an amount reasonably required to assist the Company, the Individuals and the Proposal Trustee to get from here to the return of these matters on April 8, 2024.

[19] Unfortunately the parties did not, as expected, get back to me by the end of March 20, 2024 with details of their agreement.

[20] I did not hear anything until I learned, late on Thursday March 21, that the parties now sought an urgent case conference on the afternoon of Friday March 22, 2024 (at that stage the earliest I could accommodate them).

[21] I have dealt in a separate endorsement, which I was concerned to get out before close of business on Friday March 22, 2024 for reasons that are described in that separate endorsement, with the position of RBC relative to the extension of time for NOIs for the Individuals.

[22] I gather that it was that position, namely that the Individuals were technically out of time (or about to be out of time) to seek an extension of the time for their NOIs, that led to the breakdown of discussions between the parties. Those discussions were in fact underway up to the point that RBC discovered and sought to take advantage of what I have found – as set out in my other endorsement arising from the case conference on March 22, 2024 – to be a procedural irregularity.

[23] Indeed, the Company filed materials on March 22, 2024, showing that as of March 20, 2024, and indeed up to the point that RBC discovered and sought to take advantage of that irregularity, the parties had essentially agreed on interim terms pending the April 8, 2024 hearing of the motion and cross-motion. It was clear that RBC was prepared to agree to extend the time for the Company and the Individuals to remain under NOI protection until the April 8, 2024 hearing date. The parties had also agreed on the use, by the Company, in that interim period, of certain proceeds of an auction that the Company had held on February 22, 2024.

[24] Attached as Tab B to an Aide Memoire filed by the Company for purposes of the case conference on March 22, 2024 are draft terms for the adjournment (from March 20, 2024 to April 8, 2024) prepared by RBC and including comments from the Company.

[25] At Tab C, the Company has filed a revised draft Order that it prepared, including comments from RBC on that draft.

[26] The documents at both tabs show that the essential terms for the adjournment and for the interim period pending the return of the motions on April 8, 2024 were agreed, and it is only in light of RBC discovering the (I believe) inadvertent omission of the Individuals to file their own independent materials seeking an extension of time for their NOIs, that RBC now seeks to resile from these agreements.

[27] As set out in my other endorsement in relation to the March 22, 2024 case conference, I find that in taking this position, RBC is being inappropriately opportunistic, and seeking to orchestrate or at least take advantage of a scenario in which the key principal(s) of the company will be bankrupt, and in which their role(s) at the Company and their participation in these matters will be compromised.

[28] As the Company aptly put it in its Aide Memoire, “RBC’s materials are naked in their desire to achieve a “gotcha” in immediately bankrupting Stan and Maria Snieg.” It also notes, and I agree, that “RBC cannot seriously be said to have been prejudiced by the materials filed on the March 20, 2024 motion [the Company’s motion to consolidate and extend]. They were clear as to what was requested and why.”

[29] The Company goes on to say, and again I agree, “What is happening here is that RBC has taken the time intended to settle the terms of an adjournment (which are not disputed) and a revised draft order to now raise a new issue. That is improper.”

[30] I think the Company’s characterization is fair.

[31] What I understood and expected would happen when we concluded the hearing on March 20, 2024, was that the parties would finalize their agreement – which I was told on March 20 was basically a fait accompli – and provide that agreement to the court so that I could include the agreement and its terms in my endorsement and issue an order to that end.

[32] Instead, for the next couple of days, I heard nothing from the parties.

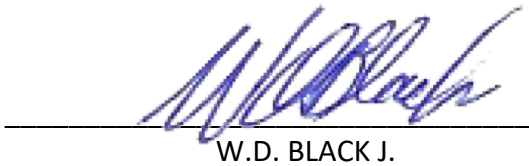
[33] Then, in the setting of an urgent case conference on the afternoon of the day at the end of which the time for the Individuals to seek the extension of NOI protection would expire, RBC purported to disregard the issue on which I understood it was working and in respect of which I expected an answer, and instead to focus on the opportunity it perceived to undermine the Individuals, and to a large extent thereby the Company, in reliance on what the Company aptly describes as a “gotcha.”

[34] For the reasons described in my separate endorsement, and to some extent above, I am not prepared to allow that to happen. I have already extended the time for the Individuals to file materials to extend the NOI protection (which I expect they understood had already been done on their behalf).

[35] I am also ordering an adjournment of all matters to April 8, 2024, on the terms set out in Tab B of the Company's Aide Memoire, and that an Order be issued in the terms of the proposed Order at Tab C of the Company's Aide Memoire, save and except that in my other endorsement arising from today's case conference I have extended the time for the Individuals to file materials for an extension of NOI protection until April 2, 2024, in anticipation that they will then seek to participate in the April 8 hearing.

[36] I also find that in the circumstances as I have found them it is appropriate for RBC to pay costs for both the hearing on Wednesday March 20, and the urgent case conference today (March 22, 2024). I have found RBC's conduct to be opportunistic, and it risked wasting, and to some extent did waste, the time of the parties and the court. In my view, although no costs outlines have been filed, a costs order in the amount of $20,000.00 is appropriate. RBC is to pay those costs by the return of the motions on April 8, 2024.

[37] The Company has suggested that I also make an order precluding RBC from claiming any costs in connection with the hearing under its security for the indebtedness of the Company "as a way of illustrating the inappropriateness of this behaviour". I decline to make this order. I believe that the costs order that I have made above reflects my views about RBC's behaviour in the last few days. In my view, it is appropriate for the judge hearing the motions on April 8, 2024 to make a determination about costs for the motions at that time.



W.D. BLACK J.

DATE: March 22, 2024