



No. S-120712
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985,
c. C-44**

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

**IN THE MATTER OF CATALYST PAPER CORPORATION AND THE
PETITIONERS LISTED IN SCHEDULE "A"**

PETITIONERS

AMENDED NOTICE OF APPLICATION

Name of Applicants: Ronald Gary McCaig, Jeff Whittaker, Janice Young, Peter Flynn, Patricia Dwornik, and Francesca Pomeroy, acting on their own behalf and on behalf of the Catalyst Salaried Employees & Pensioners Group.

To: The Service List

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on Thursday, September 27, 2012 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order directing the Petitioners to pay:
 - (a) The reasonable costs, taxes and disbursements of legal counsel to the Catalyst Salaried Employees & Pensioners (the "CSEP") in this proceeding, in the amount of \$155,000.00; and,

- (b) The costs incurred by the CSEP in retaining its financial advisor in this proceeding, in the amount of \$88,668.31.
2. Such further and other relief as counsel may advise and this Honourable Court may accept.

Part 2: FACTUAL BASIS

i. Initiation of these proceedings and Appointment of Koskie Minsky LLP as an Assistant

1. On January 31, 2012, the Petitioners obtained an order pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") staying all proceedings and claims against them (the "Stay Order").
2. On February 22, 2012, certain current and former employees of the Petitioners brought an application before the Court, seeking an Order appointing Ronald Gary McCaig, Jeff Whittaker, Janice young, Peter Flynn, Patricia Dwornik and Francesca Pomeroy, members of the Steering Committee of the Catalyst Salaried Employees & Pensioners Group (the "CSEP") as representatives of current and former non-unionized employees of the Petitioners, and Koskie Minsky LLP ("KM") as representative counsel of all current and former non-unionized employees of the Petitioners.
3. On March 5, 2012, for reasons to follow, this application was rejected.
4. Leave to appeal the March 5, 2012 decision was sought. In addition to seeking leave to appeal the March 5, 2012 decision, leave to appeal certain provisions of the Amended and Restated Order dated February 14, 2012, which granted certain priorities to a number of parties to this proceeding, was sought.
5. Following negotiations between KM and legal counsel to the Petitioners, an agreement was reached, pursuant to which the leave application in respect of the Representation Order was withdrawn, as well as certain aspects of the appeal of the February 14, 2012 Order. In exchange, the Petitioners agreed to pay some of the legal fees incurred by KM.

6. By Order of the Court dated March 8, 2012 (the "Order"), KM was appointed as an Assistant within the meaning of paragraph 8 of the Amended Initial and Restated Order.

7. Pursuant to paragraph 1(b) of the Order, KM was granted the right to reimbursement of legal fees in the amount of \$30,000, plus taxes and reasonable disbursements, per month, such amount to be a rolling amount such that if less than \$30,000 was incurred in any given month the shortfall could be credited to another month including a prior month. In addition, KM was to receive payment of \$25,000 on account of work performed for the CSEP up to that time.

ii. Challenge to the SISP and The Failed Plan of Compromise

8. On March 23, 2012, Catalyst filed a Plan of Compromise (the "First Plan").

9. In furtherance of the First Plan, and in advance of its filing, Catalyst brought an application to the court on March 21 and 22, 2012, seeking, among other things, the approval of a Meeting Order, the approval of a Claims Procedure Order, and the approval of a Sale and Investor Solicitation Process ("SISP") Order.

10. Under the terms of the SISP, in the event that the First Plan did not receive the approval of Catalyst's creditors, Catalyst would automatically proceed to a stalking horse sales process, pursuant to which Catalyst would be sold, which would likely lead to the wind-up of the Salaried Plan in an underfunded state.

11. The CESP opposed part of the relief sought on March 21 and 22, and opposed that part of the order permitting the SISP and the wind up of the underfunded pension plan. The CESP was the only employee/pension group that expressed such concerns to the Court.

12. On May 23, 2012, a vote of creditors was held on a proposed Plan of Compromise. As of that date, the CSEP was the only pensioner representative group who had perfected a claim on behalf of the pension fund in relation to the First Amended Plan; however, pensioners were not provided the right to compromise their claims or vote on this Plan.

13. The First Amended Plan was defeated by a narrow margin, with 95% of the unsecured creditors holding 51% of the value of unsecured claims voting in favour of the Plan. Had the

CSEP's disputed claim been allowed, the results would have been 95% of the unsecured creditors, holding 64% of the unsecured claims, voting in favour of the First Amended Plan.

iii. Deemed Trust Application

14. On April 13, 2012, KM filed an Application with the Court for a declaration that the assets of the Petitioners were subject to a deemed trust for the benefit of the beneficiaries of the Catalyst Paper Corporation Retirement Plan for Salaried Employees (the "Salaried Plan") pursuant to the terms of the Salaried Plan, or in the alternative, pursuant to section 43.1 of the *Pension Benefits Standards Act*, R.S.B.C. 1996 (the "PBSA") in respect of any deficiencies owing to the Salaried Plan.

15. Catalyst subsequently supported the CSEP's deemed trust application.

iv. Negotiations and Second Plan of Compromise

16. Subsequent to the failure of the First Amended Plan of Compromise to achieve the requisite level of support of unsecured creditors, a frenetic period of negotiations ensued.

17. The CSEP and KM engaged in negotiations with counsel to the Petitioners, as well as the other stakeholders, including counsel to the 2016 Noteholders, both sets of counsel to the 2014 Noteholders, the Monitor, the Government of British Columbia, and the trade unions representing certain active employees of the Petitioners.

18. These negotiations, coupled with the lobbying efforts and other activities undertaken by the CSEP, were instrumental in creating a Second Amended Plan of Compromise, which was eventually approved by the Petitioners' creditors.

v. Lobbying and Other Activities Undertaken by Koskie Minsky LLP

19. In addition to the foregoing negotiations, throughout the period from the failure of the First Amended Plan of Compromise and the finalization of the Second Amended Plan of Compromise, the CSEP and KM took undertook various steps, both inside and out of Court, to ensure the survival of Catalyst, which included, *inter alia*, the following:

- (a) Communicating with and engaging in discussions and negotiations with the Government of British Columbia; and,
- (b) Communicating with and engaging in discussions with municipal leaders.

vi. Legal Fees and Disbursements Incurred to Date, and Fundraising Attempts Undertaken by CSEP and KM

20. Although the agreement between KM and the petitioners for payment of up to \$30,000 in fees per month resulted in a certain level of indemnification of the CSEP for their legal fees, this amount is inadequate to fully indemnify pensioners for the costs incurred in this proceeding to date.

Part 3: LEGAL BASIS

21. ~~Rule 57 of the Supreme Court Rules, B.C. Reg. 221/90.~~

22. Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

23. The inherent jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

24. The Affidavit of Ronald Gary McCaig ~~to be sworn~~ September 20, 2012, with exhibits thereto;

25. The Affidavit of Andrew J. Hatnay sworn September 20, 2012, with exhibits thereto;

26. The pleadings herein; and,

27. Such further and other material as counsel may advise and this Honourable Court accept.

The applicants estimate that the application will take: **2.5 hours**.

☐ This matter is within the jurisdiction of the master.

☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: September ~~2024~~ 2012:

Signature of Anthony Gurdin, Barrister & Solicitor

per Mr. N. Kaplan

[] Applicant [X] Lawyer for applicant

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part I of this notice of application

<input type="checkbox"/> with the following variations and additional terms	
Date: _____	
[dd/mm/yyyy]	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect]

THIS APPLICATION INVOLVES THE FOLLOWING: *[Specify the application type(s) included in this application.]*

☐ discovery: comply with demand for documents

☐ discovery: production of additional documents

☐ other matters concerning document discovery

☐ extend oral discovery

☐ other matter concerning oral discovery

☐ amend pleadings

☐ add/change parties

☐ summary judgment

☐ summary trial

☐ service

☐ mediation

☐ adjournments

☐ proceedings at trial

☐ case plan orders: amend

☒ case plan order: other

☐ expert

Schedule "A"

LIST OF ADDITIONAL PETITIONERS

Catalyst Pulp Operations Limited

Catalyst Pulp Sales Inc.

Pacifica Poplars Ltd.

Catalyst Pulp and Paper Sales Inc.

Elk Falls Pulp and Paper Limited

Catalyst Paper Energy Holdings Inc.

0606890 B.C. Ltd.

Catalyst Paper Recycling Inc.

Catalyst Paper (Snowflake) Inc.

Catalyst Paper Holdings Inc.

Pacifica Papers U.S. Inc.

Pacifica Poplars Inc.

Pacifica Papers Sales Inc.

Catalyst Paper (USA) Inc.

The Apache Railway Company