

**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
POPE & TALBOT LTD. AND THE PETITIONERS LISTED IN SCHEDULE "A".**

**APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED**

Petitioners

Oral Reasons for Judgment (February 20, 2008)

Document #3

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20080220
Docket: S077839
Registry: Vancouver

Between:

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

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**APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED**

Before: The Honourable Chief Justice Brenner

Oral Reasons for Judgment

In Chambers
February 20, 2008

Counsel for the Petitioners	S. Dunphy M. Poliak
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Counsel for PT Pindo Deli	N. Hughes
Counsel for Ableco Finance LLC	W. Kaplan, Q.C.
Counsel for Wells Fargo Financial Corporation Canada	S. Golick W. Riley
Counsel for the Monitor, PricewaterhouseCoopers Inc.	J. Grieve

Pope & Talbot Ltd. (re)***Page 2***

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Counsel for the Interior Logging Association

J. Drayton

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** Pending before the court is an application for approval of a sale of one of the mills in this case. It was put up for bid pursuant to a bidding process approved by both, this Court and the US Bankruptcy Court on December the 6th. The evidence discloses that an open auction process was held in New York, at the conclusion of which Pindo Deli was the successful bidder. Following that hearing, the unsuccessful bidder, K&D Logging, applied to the court last week for an adjournment of the approval motion so that it could provide evidence to the court of the flaws in the bidding process, and that matter came on for hearing today.

[2] Before the court today is an application by K&D for approval of an offer, which on its face appears to be some \$250,000 higher than the Pindo Deli offer. There are some other features of it which indicate it might be somewhat higher than that as well, and K&D seeks to have the court approve that offer as opposed to the Pindo Deli offer. Alternatively, K&D says that the court should follow the customary BC practice of inviting sealed bids for this asset, setting a deadline, opening the sealed bids and then awarding it to the successful bidder.

[3] This case is a cross-border case. It is subject to a cross-border protocol which has been agreed between the US bankruptcy court and this court. Given the fact that there are two main proceedings in this case, both under the Canadian **CCAA** statute and the US bankruptcy code, both courts received submissions on a bidding procedure that would be appropriate in this case, and both courts approved the bidding procedure. With respect to this particular asset, the mill in Fort St. James, that is the bidding procedure that was conducted. The evidence from that open auction procedure, based on the transcript that I have reviewed, might suggest

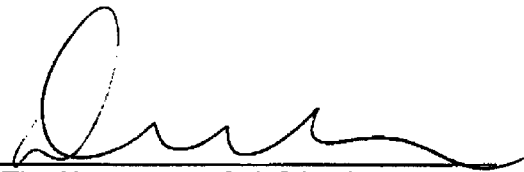
that K&D perhaps was not clear in its understanding of that process. It may also be that it was inadvertently misled by some of the events that took place, but at any rate at the end of that bidding procedure which was conducted in New York on February 5th, 2008, and based on what it was told, K&D chose not to increase its offer and PT Pindo Deli was declared the winner of the auction process.

[4] Subsequently K&D learned more and decided that either the process was not appropriate from its perspective and/or alternatively that it wanted to advance a higher offer. The hearing last week was adjourned on application by K&D. At that hearing I asked the monitor to examine both bids and to assist this court by advising it as to which of the two bids was superior. The monitor's February 19 report, the ninth report, concludes that as of the end of the day February 18, that the monitor had not been provided with any support for the position that K&D's final offer at the auction of February 5th was economically superior to the offer from Pindo Deli. What happened since then of course was that K&D has tabled a new offer somewhat higher than the Pindo Deli offer.

[5] Now, the question before the court is whether the K&D offer should be approved or alternatively whether the court should direct sealed bids or perhaps some other process to see whether this asset can be sold for a higher figure. As I said at the outset, this is a cross-border process. Two courts are involved, and more significantly in my view, the bidding procedure that was put in place was a procedure that was the subject of consideration by both courts and was approved by both courts. This perhaps distinguishes this case from some of the cases in which sales processes take place and are then at the conclusion brought to the court for

approval. In this case the process was approved in advance. On the evidence before me the parties appear to have followed that process. At the joint hearing last week the view of my counterpart in the US, Judge Sontchi, was that the bidding process that was followed insofar as he was concerned conformed to the bidding procedure which was approved by both courts.

[6] The application by K&D today is opposed by Pope & Talbot. It is opposed by the secured lenders, and the monitor's recommendation is that the Pindo Deli offer ought to be approved on the basis that the additional or incremental benefit that appears to be available in the K&D offer is not sufficient to set the bidding process aside and embark on a new process. In my view given these facts and circumstances, it is appropriate that this court approve the Pindo Deli offer as presented, and the application of K&D will be dismissed.



The Honourable Chief Justice Brenner