



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-682153-CL

DATE: 28 September 2022

NO. ON LIST: 1

TITLE OF PROCEEDINGS: ARMSTRONG FLOORING, INC. ET AL

BEFORE:
JUSTICE
CAVANAGH

PARTICIPANT INFORMATION

Applicants:

Name of Person Appearing	Name of Party	Contact Info
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Respondent:

Name of Person Appearing	Name of Party	Contact Info
STUART BROTMAN	GORDON BROTHERS	sbrotman@fasken.com 416-865-5419

Other:

Name of Person Appearing	Name of Party	Contact Info
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	ARMSTRONG FLOORING CANADA LTD.	
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MATTHEW GOTTLIEB	INFORMATION OFFICER, GRANT THORNTON LIMITED	mgottlieb@lolg.ca 416-644-5353

ENDORSEMENT OF JUSTICE CAVANAGH:

Today, I heard a motion by Armstrong Flooring Canada Ltd. ("Armstrong Canada") for relief set out in its Notice of Motion and summarized in its factum at para. 8.

The motion by Armstrong Canada is in its capacity as foreign representative of itself as well as other entities defined as the "U.S. Debtors" in Armstrong Canada's factum. The U.S. Debtors, together with Armstrong Canada, are referred to as the "Debtors".

Recognition of U.S. Sale Order

Armstrong Canada seeks an order providing that, effective upon the filing of the Information Officer's Certificate, recognizing and enforcing in Canada an order of the U.S. Court dated July 13, 2022, among other things, (i) approving the sale of certain of the Debtors' assets free and clear of all liens, claims, encumbrances and other interests, (ii) approving the assumption and assignment of certain executory contracts and unexpired leases relating thereto, and (iii) granting related relief (the "U.S. Sale Order").

I am satisfied that an order should be made recognizing the U.S. Sale Order. In this respect, I accept the submissions by Armstrong Canada at paras. 11-28 of Armstrong Canada's factum.

Approval of Settlement Agreement

Armstrong Canada seeks an order approving a settlement agreement between Armstrong Canada and the U.S. Debtors in accordance with the terms of the Settlement Agreement dated September 23, 2022 (the "Settlement Agreement") between Armstrong Canada and the U.S. Debtors.

Section 11 of the CCAA provides the Court with broad powers to make any order that it considers appropriate. Settlement agreements that facilitate a successful restructuring and resolve issues between stakeholders without recourse to the court are to be encouraged in CCAA proceedings. See *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773 at para. 15.

When approving the settlement under the CCAA, the Court must be satisfied that: (i) the transaction is fair and reasonable; (ii) the transaction will be beneficial to the debtor and its stakeholders generally; and (iii) the settlement is consistent with the purpose and spirit of the CCAA.

I am satisfied that the Settlement Agreement represents a reasonable compromise in all of the circumstances and should be approved. In this respect, I accept the submissions made in Armstrong Canada's factum at para. 34.

Discharge of PPSA Registration

Armstrong Canada seeks an order declaring that Element Fleet Management Inc. ("Element") is not a secured creditor of Armstrong Canada and directing the registrar of personal property security in Ontario to fully discharge and delete the registrations made by element pursuant to the provisions of the *PPSA* on March 27, 2017 from the personal property registry.

The *PPSA* contemplates that the secured party, not the debtor, bears the responsibility for the preparation and registration of financing chain statements in connection with the discharge of a *PPSA* registration once the obligations under a security agreement which the registration relates have been performed. Accordingly, element is responsible for discharging the element *PPSA* registration pursuant to section 56 (1) of the *PPSA*.

Section 56 (1) of the *PPSA* provides that any person having interest in the collateral covered by the security agreement may make a demand upon the secured party to register a financing chain statement or a certificate of discharge, or both, in order to discharge its *PPSA* registration. Pursuant to section 56 (3) of the *PPSA*, the secured party has the obligation to register such financing chain statement or certificate of discharge within 10 days.

The records of Armstrong Canada do not contain any documentation evidencing any obligations to Element on account of the Element *PPSA* registration. By letter dated August 17, 2022 from counsel for Armstrong Canada to Element, Armstrong Canada requested that Element register a discharge of its *PPSA* registration. No response was received from Element. Element was served with the materials in connection with the application by Armstrong Canada for the Initial Recognition Order and the Supplemental Order on June 8, 2022 and did not serve any responding materials or appear at the hearing of the application, or otherwise provide any response thereto or any response to the August 17, 2022 letter. Element was served with the Motion Record of Armstrong Canada in respect of the relief sought by Armstrong Canada as against Element.

I am satisfied that the requested relief should be granted. In this respect, I accept the submissions made by Armstrong Canada at paragraphs 37-48 of its factum.

Expansion of the Administration Charge

Armstrong Canada seeks an order amending para. 9 of my Supplemental Order dated June 8, 2022 to provide that the Information Officer, counsel to the Information Officer and Borden Ladner Gervais LLP ("BLG"), which has represented Armstrong Canada and other Debtors as Canadian counsel in these proceedings, shall be entitled to the benefit of and are granted a charge (the "Administration Charge") on the property in Canada which charge shall not exceed an aggregate amount of \$600,000, as security for their professional fees and disbursements in respect of these proceedings.

The Supplemental Order dated June 8, 2022 provides for the sole Court-order charge in the within Part IV CCAA proceedings, which is the Administration Charge for the benefit of the Information Officer and its counsel in the aggregate amount of \$300,000.

Section 11.52 of the CCAA provides that this Court has the jurisdiction to grant to the administration charge to secure the fees and expenses of financial, legal and other advisors and experts.

In considering whether to grant such charges, the Court considers a number of factors including (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of role; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the monitor.

I am satisfied that the requested order should be made. In this respect, I accept the submissions made by Armstrong Canada at paragraphs 49-58 of its factum.

Assignment in Bankruptcy of Armstrong Canada

Armstrong Canada seeks an order authorizing the Information Officer to file an assignment in bankruptcy on behalf of Armstrong Canada under the *Bankruptcy and Insolvency Act* and authorizing Grant Thornton to act as trustee in bankruptcy on behalf of Armstrong Canada.

I am satisfied that the requested order should be made. In this respect, I accept the submissions made by Armstrong Canada at paragraphs 59-61 of its factum.

I am satisfied that the other related relief should be granted.

Orders to issue in form of Orders signed by me today.