CITATION: First Leaside Wealth Management, 2012 ONSC 3961
COURT FILE NO.: CV-12-9627-00CL
DATE: 20120705

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1995, c. C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRST LEASIDE WEALTH MANAGEMENT INC., *et al.*, Applicants

AND:

GILBERT STEEL LTD., Defendants

BEFORE: C. Campbell J.

COUNSEL: *John N. Birch*, for the Applicants

Fay Sulley and *Jeff Simpson*, for Trustees of First Leaside Fund, Wimberly Fund and First Leaside Mortgages Fund

J. Dietrich, for Investors

J.H. Grant, for OSC

Bruce Toole, for Dr. A. Phillips

Parisima Zandi, for Aquanorth Contracting Ltd.

G. Sidlofsky, for H.&S. Equip.

A. Garbe, for Structform

Chris Burr, for Grant Thornton Limited as Monitor

HEARD: June 28, 2012

ENDORSEMENT

[1] Three issues arose on the motion by the applicant for extension of the Stay.

[2] The first, a motion by Structform sought payment of its claim out of funds other than the Administration Charge and or the Directors Charge. Counsel were, during the course of the hearing, able to agree on wording to the Stay Extension Order to accommodate the concern.

[3] Second, Structform objected to assistance by Representative Counsel to investors with claims to the Canadian Investor Protection Fund. Having heard submissions wording in respect of a reservation of rights was added to the order to deal with the issue.

[4] Thirdly, H. & S. sought in its motion a lifting of the Stay under the CCAA and for recognition of a trust or constructive trust in respecter all a $100,000 payment for security for performance which performance was completed prior to the CC AA filing.

[5] After hearing submissions particularly from Mr. Sidlofsky for H. & S. the motion was adjourned as being premature at this time. The reasons for the adjournment are briefly as follows:

a) I am not satisfied on the record before the Court at this time that it is possible to do term and whether or not there is a trust either red, law or a constructive trust. Further and more complete evidence would be required.

b) there are other trust claims to the same sums sought by H. & S. to be paid to get which claims have not been assessed.

c) to the extent that in the thing turns on the timing of the H. & S. motion it can be protected by this endorsement which will have any claim adjudged as if it were heard on this date.

d) a determination now may prejudice other claims the extent of which are unknown to date.

[6] Counsel for the Applicant sought costs of the H. & S. motion. Those costs are adjourned as is the motion to the claims process under the CCAA.

C. CAMPBELL J.

Date: July 5, 2012