

No. S-124409
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 BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LEMARE HOLDINGS LTD., LEMARE LAKE LOGGING LTD., LONE TREE LOGGING
LTD., C. & E. ROADBUILDERS LTD., COAST DRYLAND SERVICES LTD.,
DOMINION LOG SORT LTD. AND CENTRAL COAST INDUSTRIES LTD.

PETITIONERS

AND

CONCENTRA FINANCIAL SERVICES ASSOCIATION

RESPONDENT

APPLICATION RESPONSE

Application response of: CONCENTRA FINANCIAL SERVICES ASSOCIATION
(the "Application Respondent")

THIS IS A RESPONSE TO the Notice of Application of the Petitioners,
Lemare Holdings Ltd., Lemare Lake Logging Ltd., Lone Tree Logging Ltd., C. & E.
Roadbuilders Ltd., Coast Dryland Services Ltd., Dominion Log Sort Ltd. and Central Coast
Industries Ltd. dated May 1, 2014.

Part 1: ORDER CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms:

The Application Respondent consents to none of the orders sought in Part 1 of the Notice of Application.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of all of the orders set out Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Not applicable.

Part 4: FACTUAL BASIS

1. The Application Respondent is an unsecured creditor of the Petitioners, as an assignee of a promissory note (the Opco Note) executed by the Petitioners, among others.
2. The unsecured debt of \$10 million, evidenced by the Opco Note, and as set out in Master Claims Register, is due and outstanding.
3. The said proposed Consolidated Plan of Arrangement purports to affect and impair the contractual rights of the Application Respondent under the Opco Note, while excluding the Application Respondent from the Plan and giving the Application Respondent no right to vote.

4. The Petitioners seek to do so by binding the Application Respondent through a Declaratory Order, as a pre-condition to the Plan implementation.

5. The compromise offered in the Plan is only made to the Trade Creditors, as defined in the Plan. The Trade Creditors are also unsecured creditors.

6. The Declaration would restrain the Application Respondent from enforcing the Opco Note as against the Petitioners and bar the Application Respondent from receiving any payment under the Opco Note, until all creditors of the Petitioners, present and future, secured and unsecured, including the Trade Creditors, are paid in full.

Part 5: LEGAL BASIS

7. The Lemare Plan affects the rights of Concentra Financial through the Declaration, while not allowing Concentra Financial a vote. As such, the Plan, as presented is not appropriate and the court could not later sanction the Plan. Accordingly, the application by the Lemare Group for a section 4 Order directing that a meeting of the Trade Creditors be held to vote on the Plan, should be dismissed.

8. Further, the Declaration, as a pre-condition to the implementation of the Lemare Plan, is not the kind of post plan restraint that is appropriate within the meaning of the CCAA and therefore should not be granted.

9. Alternatively, assuming the Declaration is an appropriate kind of post plan restraint, the court should not exercise its discretion to grant the Declaration because:

- (a) the terms of the Declaration will become binding contractual terms in the Opco Note, contrary to the existing terms of the Note;
- (b) with respect to the Trade Creditors and voting, the Declaration effectively creates two classes of unsecured creditors, without any court scrutiny as to

why there should be two classes of unsecured creditors. After creating two classes of unsecured creditors, the Lemare Plan unfairly gives the vote to only the Trade Creditors;

- (c) the Trade Creditors, Proven Secured Creditors, Intercompany Claimants, Toronto-Dominion Bank, T-D Equipment Finance, and any other debtors, present and future, secured or unsecured, of the Lemare Group, will have been given enforceable rights against Concentra Financial when none of them were party to the Opco Note;
- (d) with respect to payment, Concentra Financial and Concentra Trust, will have become a class of creditor by themselves, with all other creditors of the Lemare Group, present and future, secured or unsecured, as a second class;
- (e) the relationship of the Concentra Financial and Concentra Trust, as one class, vis-à-vis:
 - (i) the Trade Creditors, respecting the right to vote on the Plan; and
 - (ii) all other Lemare Group creditors, including the Trade Creditors, respecting the right of payment;will have been altered. To alter the relationship between creditors is not the purpose of the CCAA;
- (f) to grant the Declaration unilaterally confiscates the vested contractual rights of Concentra Financial; and
- (g) the Declaration will create rights based on a subordination clause in the Opco Note that has not had the benefit of a full hearing to determine its meaning.

10. The Application Respondent relies on the cases of:

- (a) *Re Doman Industries Ltd.*, 2003 BCSC 376, 41 CBR (4th);
- (b) *Olympia & York Developments Ltd v Royal Trust Co.* (1993), 17 CBR (3d) 1, 12 OR (3d) 500;
- (c) *Re Crystallex International Corp.*, 2013 ONSC 823, 3 CBR (6th) 307;

- (d) *Québec (Sous-ministre du revenu) c. Wynden Canada Inc.*, (1982), 47 CBR (N.S.) 76, [1983] C.S. 194;
- (e) *Re Ted Leroy Trucking [Century Services] Ltd.*, 2010 SCC 60;
- (f) *Re Wellington Building Corp.*, [1934] OR 653 (SC);
- (g) *Re Stelco Inc.*, (2005) 15 CBR (5th) 297 (Ont. SCJ); affirmed by the Ont. CA at 15 CBR (5th) 307.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit of Glen Ferguson, made May 5, 2014.

The Application Respondent estimates that the application will take 3 hours.

The Application Respondent has not filed in this proceeding a document that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

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Lawyer in Charge of File: Diana K. Lee

Date: May 5, 2014

KANUKA THURINGER LLP

Per: 

Lawyer for Application Respondent