



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE
NO.:

CV-22-00683820-00CL

DATE: 25 May 2023

3
NO. ON LIST: _____

TITLE OF PROCEEDING: **VOYAGER DIGITAL LTD.**

BEFORE JUSTICE: **Madam Justice Steele**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Daniel Richer	Voyager Digital Ltd	dricher@fasken.com
Stuart Brotman	Voyager Digital Ltd	sbrotman@fasken.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Francine De Sousa	mspence@airdberlis.com
Steven Graff	Francine De Sousa	sgraff@airdberlis.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Caitlin McIntyre	Information Officer	caitlin.mcintyre@blakes.com
Natalie Levine	UCC and the Plan Administrator	nlevine@cassels.com
Steve Ferguson	Information Officer	sferguson@alvarezandmarsal.com
Linc Rogers	Information Officer	Linc.rogers@blakes.com
Shayne Kukulowicz	UCC and the Plan Administrator	skukulowicz@cassels.com

ENDORSEMENT OF JUSTICE STEELE:

1. This is a motion by Voyager Digital Ltd. ("TopCo") as the foreign representative of TopCo (the "Foreign Representative") in respect of the case (the "TopCo Chapter 11 Case") under chapter 11 of title 11 of the United States Code commenced by TopCo in the United States Bankruptcy court, for relief pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), including
 - a. an order recognizing and enforcing in Canada certain orders made in the TopCo Chapter 11 Case;
 - b. an order amending the articles of TopCo in accordance with the provisions of, and as required to implement, the Third Amended Plan, and providing that all issued and outstanding shares of TopCo shall be redeemed for cancellation and cancelled and a single common share shall thereafter be issued to the Plan Administrator;
 - c. an order declaring that the releases, discharges, injunctions and exculpations contained and referenced in the Third Amended Plan and approved in the Confirmation Order, are valid and effective on the Effective Date, and that all such releases, discharges, injunctions and exculpations are sanctioned, approved, recognized and given full force and effect in all provinces and territories of Canada; provided that such relief is subject to the Stay Pending Appeal and the Government Stipulation;
 - d. an order authorizing TopCo to pay to the Information Officer in respect of the Canadian CCAA proceedings, the sum required to increase the retainer held by the Information Officer from \$150,000 to \$450,000;
 - e. an order authorizing the Information Officer to pay from the retainer the professional fees and disbursements owing to the Information Officer and its legal counsel in respect of the Canadian proceedings.
2. The TopCo Chapter 11 Case was recognized by this Court as a foreign main proceeding on August 4, 2022.
3. Initially the applicant sought to have the business purchased pursuant to a sales process that was approved. Two separate transactions fell through.
4. On or about May 19, 2023, the US Bankruptcy Court entered a notice that the Third Amended Plan had gone effective on May 19, 2023 ("Effective Date"). At the Effective Date, the Debtors began pursuing a self-liquidation transaction, referred to in the materials as the Toggle Transaction, as contemplated in the Third Amended Plan.
5. The proposed orders sought were generally unopposed. Counsel for Francine DeSousa did raise a concern regarding the declaratory relief sought in section 6 of the draft order. Specifically, why this language was required in light of the language in paragraph 5 of the draft order, as it may be

duplicative. In addition, counsel for Ms. DeSousa stated that the applicant had selected the US to be the primary jurisdiction for this matter and accordingly, this request should not be made of the Court in Canada.

6. The Foreign Representative stated that the language in paragraph 6 is appropriate and within this Court's jurisdiction to grant.
7. As discussed below, I have determined that the Confirmation Order ought to be recognized notwithstanding the pending appeal, given that the Exculpation Provisions are carved out and have accepted the proposed terms of the draft order.

The Additional US Orders, including the orders required to implement the Third Amended Plan

8. Section 44 of the CCAA provides that the purpose of Part IV of the CCAA is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote:
 - a. Cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
 - b. Greater legal certainty for trade and investment;
 - c. The fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
 - d. The protection and the maximization of the value of debtor company's property; and
 - e. The rescue of financially troubled businesses to protect investment and preserve employment.
9. The Foreign Representative states that the recognition of each of the Additional US Orders (other than the Final Cash Management Order) is necessary or desirable to allow the Third Amended Plan to be implemented in Canada.
10. In considering whether it is appropriate to recognize and enforce a plan of arrangement in the context of a cross-border insolvency proceeding, Canadian courts have considered the following factors, among others:
 - a. The promotion of comity and cooperation between the courts;
 - b. Respect of the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless it diverges radically from the process in Canada;
 - c. The equitable and, to the extent reasonably possible, equal treatment of common or like stakeholders regardless of their location;
 - d. Permitting the enterprise to reorganize as a global entity, including allowing for one jurisdiction to take charge of the principal administration of the enterprise's reorganization; and
 - e. The notice given to creditors:

Re Babcock & Wilcox Canada Ltd (2000), 18 CBR (4th) 157 (Ont. Sup. Ct. J.) at para. 21, *Re Xerium Technologies Inc.*, 2010 ONSC 3974, at paras. 26-27.
11. Comity is the guiding principle for the Court. The primacy of this principle in cross-border insolvency proceedings is clear from s. 52(1) of the CCAA: "If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding."

12. As noted above, the TopCo Chapter 11 Case has been recognized by this Court as a foreign main proceeding. As such, this Court is required to cooperate to the maximum extent possible. This Court may make any order that it considers appropriate on such terms and conditions as the Court considers appropriate, provided that the requested relief may not be inconsistent with the CCAA or raise concerns regarding public policy: CCAA, ss 49(1), 50 and 61(2).
13. The Court routinely recognizes plans confirmed by the US Bankruptcy Court, including liquidating plans, as noted in para. 51 of the applicant's factum.
14. The Foreign Representative states that it is not aware of any elements of the requested additional US orders or the Third Amended Plan that are contrary to public policy.
15. The Information Officer, in its Fourth Report, states that the Information Officer and its legal counsel have reviewed the Third Amended Plan, Confirmation Order, the Final Cash Management Order, the Compliance Order and Liquidation Procedures Order and states that granting recognition of these orders is reasonable and appropriate in the circumstances. Further, the Information Officer has considered the Share Transaction and determined that it is also reasonable in the circumstances. The Information Officer recommends that the Court grant the requested relief.
16. I am satisfied that this Court should recognize and enforce in Canada the additional US Orders, including the orders necessary to implement the Third Amended Plan.


Enforcement of Confirmation Order

17. The Exculpation Provisions approved by the Confirmation Order have been stayed further to the Stay Pending Appeal, as limited by the Government Stipulation pending a determination on appeal. The Recognition Order excludes recognition of the Exculpation Provisions.
18. Further to the Government Stipulation, approved by the US Court, a settlement was reached such that the Third Amended Plan is effective despite the pending appeal.
19. The Foreign Representative asks the Court to recognize the Confirmation Order notwithstanding the pending appeal, given that the Exculpation Provisions are carved out.
20. This Court has previously recognized an order of the US Bankruptcy court confirming a plan under the US Bankruptcy Code notwithstanding an outstanding appeal (see para. 67 of applicant's factum).
21. I am satisfied that it is appropriate to grant this order.

Canadian Restructuring

22. In order to give effect to elements of the Third Amended Plan, the applicant seeks Court approval of the Canadian restructuring pursuant to which all existing shares of TopCo will be redeemed for cancellation. In order to do this, TopCo's articles must be amended.

23. The Court has jurisdiction to order that the debtor's constating instrument be amended in accordance with the plan to reflect a change that may lawfully be made under federal or provincial law: CCAA, s. 6(2). This jurisdiction is also applicable to proceedings under Part IV of the CCAA: *Re Probe Resources Ltd.*, 2011 BCSC 552, at para. 33 and 39-40. This has also been done by this Court where the company was incorporated under the BCBCA (see para. 73 of factum).
24. I am satisfied that the relief necessary to effect the Canadian Restructuring is appropriate and ought to be granted.
25. As noted above, the Information Officer recommends the Court grant the requested relief.
26. Order to go in the form signed by me today with immediate effect and without the necessity of formal issuance or entry.

A handwritten signature in blue ink, appearing to be "J. [unclear]", is written on a light blue grid background.