



No. S197744
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**

BETWEEN:

**MINISO INTERNATIONAL HONG KONG LIMITED, MINISO INTERNATIONAL
(GUANGZHOU) CO. LIMITED, MINISO LIFESTYLE CANADA INC., MIHK
MANAGEMENT INC., MINISO TRADING CANADA INC., MINISO
CORPORATION and GUANGDONG SAIMAN INVESTMENT DO. LIMITED**

PETITIONERS

AND:

**MIGU INVESTMENTS INC., BRAELOCH HOLDING FORTY-ONE INC.,
BRAELOCH HOLDING INC., BRAELOCH HOLDING ONE INC., BRAELOCH
HOLDING TWO INC., BRAELOCH HOLDING THREE INC., BRAELOCH
HOLDING FOUR INC., BRAELOCH HOLDING FIVE INC., BRAELOCH HOLDING
SIX INC., BRAELOCH HOLDING SEVEN INC., BRAELOCH HOLDING EIGHT
INC., BRAELOCH HOLDING NINE INC., BRAELOCH HOLDING TEN INC.,
BRAELOCH HOLDING ELEVEN INC., BRAELOCH HOLDING TWELVE INC.,
BRAELOCH HOLDING THIRTEEN INC., BRAELOCH HOLDING FOURTEEN
INC., BRAELOCH HOLDING FIFTEEN INC., BRAELOCH HOLDING SIXTEEN
INC., BRAELOCH HOLDING SEVENTEEN INC., BRAELOCH HOLDING
EIGHTEEN INC., BRAELOCH HOLDING NINETEEN INC., BRAELOCH
HOLDING TWENTY INC., BRAELOCH HOLDING TWENTY-ONE INC.,
BRAELOCH HOLDING TWENTY-TWO INC., 1120701 B.C. LTD.
and BRIGHT MIGU INTERNATIONAL LTD.**

RESPONDENTS

APPLICATION RESPONSE

**Application response of: Various JV Investors (the "JV Investors") as set forth in
Schedule "A"**

**THIS IS A RESPONSE to the Notice of Application of Alvarez & Marsal Canada Inc., in
its capacity as court appointed Monitor of the Respondents (the "Monitor"), filed April 27,
2022.**

PART 1: ORDERS CONSENTED TO

The JV Investors consent to the granting of the orders set out in paragraphs 2 and 8 to 12 inclusive of Schedule "B" to the Notice of Application.

PART 2: ORDERS OPPOSED TO

The JV Investors oppose the granting of the orders set out in paragraphs 1 and 7 of Schedule "B" to the Notice of Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The JV Investors take no position in paragraphs 3, 4, 5 and 6 of Schedule "B" to the Notice of Application.

PART 4: FACTUAL BASIS***Opening Statement***

1. It is the position of the creditors listed on Schedule "A" to this Response that the Aggregate Chile Payments should indeed be distributed, essentially, to the JV Investor creditors of 112 and Miniso International, but not to all of them.
2. Apart from the Petitioners and the SA Purchaser, as the Notice of Application says, the creditors the Monitor seeks to pay are those JV Investors who advanced funds to Miniso International, as directed by various officers or employees of Miniso Canada Investments Inc. ("MCI"), although their Investor Agreements were in the name of MCI. Certain of those funds ultimately made their way to 112, such that those investors are creditors of both 112 and MCI.

Additional Facts

3. A settlement has been reached amongst the Petitioners, the JV Investors listed on Schedule "A" and the SA Purchaser.
4. Under the Settlement Agreement, the Petitioners waived any interest in the 112/ Miniso International funds and the SA Purchaser has executed a Release and Disclaimer attached as **Exhibit "A"** to the Affidavit of Darlene Purdy. As a result of the Settlement Agreement, the only parties with potential claims to the Aggregate Chile Payment are JV Investors, including these Respondents.
5. The involvement of 112 in some of the events giving rise to these proceedings which led to the Aggregate Chile Payments was known from early days in this proceeding, although its role was not clear.

First report of the Monitor, page 10

6. By the time of the Monitor's second report, in August of 2019, the Monitor recommended adding 112 as a Respondent in these proceedings, on the basis it was affiliated with Migu Investments, its sole shareholder.

Second report of the Monitor, pages 8 and 15

7. It was added as a Respondent by Order dated August 22, 2019.
8. Also by the time of the second report, it was known that the general scheme of how these proceedings would unfold was that the Petitioners (speaking loosely) had determined that certain of the stores were and would be profitable, and others were not and would not be so. Those stores were identified by the time of the Monitor's second report. Those two groups became known as the Continuing Stores and the Closing Stores.
9. The second report of the Monitor also outlines the basic concept that the Continuing Store JV Investors would continue in their investment by way of receiving dividends from the stores in which they had invested, to be issued by a new company, incorporated to operate those stores. There were 23 investors involved in the Closing Stores, and there were 12 Continuing Stores.

Second report of the Monitor, paragraphs 5.1 to 5.7.

10. The scheme was described in considerably more detail in the Monitor's fifth report. In that report the Continuing Stores were clearly identified and named, as were the Closing Stores. The terms of the Acquisition Agreement were also known by then, and it was known that a portion of the purchase price under the Acquisition Agreement, was a Cash Payment in the amount of \$550,000, to be contributed to a plan to be presented for approval to certain landlords and trade creditors. The Closing Store investors who had invested approximately \$12,900,000, were not to share in that payment either.

Fifth report of the Monitor, paragraphs 8.1 to 8.5

11. By the time of the sixth report, it had become clear that in fact no plan was intended to be presented to the Closing Store investors at all. The Monitor sought to adjourn the adjudication process which was being applied to them. It also noted that all JV Investors who had made claims against MCI had filed claims for monies had and received against 112.

Sixth report of the Monitor, paragraphs 12.15 and 13.0 to 13.14

12. In an application filed January 20, 2020, the Monitor sought an order, amongst others, to join Miniso International as a Respondent in the CCAA proceedings, and sought an order providing for a claims process with respect to that entity. It did so on the basis that Miniso International was an affiliated company, and advanced the following facts in support of that conclusion:

12.11 The Monitor notes as follows in respect of adding Miniso International to the CCAA Proceedings, and conducting a claims process:

- (a) The Monitor has been unable to obtain the share registry for Miniso International Ltd. to determine whether this identity is related to Miniso Canada. However, based on the corporate search results as of January 27, 2020 (attached hereto as **Appendix D**), the registered and records office of Miniso International is 13600 Maycrest Way, Richmond BC, which is the same registered and records office as many of the Respondents;
- (b) The corporate search confirms that the directors of Miniso International are Dan Lin and Ling Lin, who are also directors of many of the Respondents;
- (c) Miniso International appears to be involved in the inter-company transactions within Miniso Canada;

...

Seventh report of the Monitor, pages 15 and 16

13. The Monitor also had, by then, been able to trace the investor funds. The Monitor discussed its findings that although all JV contracts were with MCI, some JV investment funds had been directed to Miniso International, and from there, a smaller amount had been sent to 112. The Monitor laid out its thoughts and proposals in paragraph 12.9 of the seventh report, page 15, as follows:

12.9 Based on the Monitor's discussions with its counsel and the Petitioner's counsel, the Monitor is of the view that a second plan of arrangement (or a distribution to the creditors of MC Investments and potentially to all the Non-Migu Plan Companies), including to all of the JV Investors who did not invest in stores that are continuing to operate (the "JV-No Investors") could be formulated, if the 1120 Funds are paid to MC Investments. While the Petitioners are the first-ranking secured creditor of MC Investments, they have indicated their willingness to waive their claims if the 1120 Funds are paid to MC Investments in order to allow those funds to be distributed to the remaining creditors of the Non-Migu Plan Companies, provided that the MV-No Investors can participate in the plan of arrangement or distribution.

14. It is the position of these Respondents that that estimable purpose has not come forward on this Application. Included in those the Monitor seeks to pay are a number of Continuing Store investors.

15. Miniso International, now known as Bright Migu International, was added as a Respondent on January 31, 2020, and a claims process was ordered and

conducted with respect to it. The Monitor allowed 43 claims, 42 of which were from JV Investors with contracts with MCI, totalling \$6,800,000.

Thirteenth report of the Monitor, paras. 8.1 to 8.5, pages 9 to 10

16. In paragraph 8.9 of the thirteenth report, the Monitor identifies those to whom it wishes to make a distribution. These Respondents say that of those, the following are investors in Continuing Stores:
 - (a) 1994993 Ontario Inc.;
 - (b) 2633772 Ontario Inc.;
 - (c) 9360-3876 Quebec Inc.;
 - (d) Enlight Max Enterprise Inc.; and
 - (e) SAMHF005.
17. The claim of Qian Peng was received past the Claims Bar Date.
18. The Continuing Stores with the exception of Quebec Inc. signed a number of documents pursuant to the Acquisition Agreement. Included in those documents was a General Release, which included this clause:

The Investor, on its own behalf and for and on behalf of its respective directors, officers, employees, representatives, agents, trustees, beneficiaries, contractors, insurers, successors, assigns, affiliates and principals, and each of them as applicable (collectively, the "Investor Releasors"), hereby releases, remises and forever discharges the Migu Partner and its respective non-executive employees (excluding directors and officers), representatives, agents, trustees, beneficiaries, contractors, insurers, successors, assigns, and affiliates, and each of them as applicable (collectively the "Migu Releasees"), of and from any and all Claims, whether past, present or future, that an Investor Releasor has, may have or have had against a Migu Releasee in relation to the Partnership, the Store or the Store Assets or pursuant to the Partnership Agreement or any other agreements between them or their respective affiliates or principals respecting the Partnership including the Dissolution Agreement.

19. Copies of all the documents signed by those that these Respondents say are Continuing Stores have not yet been obtained by these Respondents, nor have those signed by Quebec Inc. The Monitor cooperatively is making efforts to produce them.

PART 5: LEGAL BASIS

1. Two grounds are advanced as the legal basis for the disallowance for the JV Investor claims from Continuing Stores.

2. Those two grounds are the wording of the Release executed by Continuing Store investors pursuant to the Acquisition Agreement, and, in the alternative, the general principles applicable to a release of joint debtors.
3. The Release executed by the Continuing Stores defines Miniso Canada Investments Inc. as the "Migu Partner".
4. The operative portion of the Release releases the "Migu Partner" and the customary list of those associated with the "Migu Partner", including "affiliates" and releases those "Releasees" from any and all claims in relation to "the partnership, the store or the store assets or pursuant to the partnership agreement or any other agreements between them or their respective affiliates or principles respecting the partnership".
5. It has been held that the Court, pursuant to its inherent jurisdiction, can order a stay pursuant to Section 11, with respect to a company which is not, strictly, an affiliated company.

Re Lehndorff General Partner Inc., 1993 O.J. 14

6. However, to join a company as a respondent, and apply the substantive provisions of the Act to it and its creditors, it is necessary for the court to conclude that it is affiliated with others of the respondents.
7. Both 112 and Miniso International were joined in these proceedings on the basis of being affiliated companies. That issue has, therefore, been determined by the court, and it is *res judicata*. The wording of the Release, therefore, operates to directly bar any claims against both 1120 and Miniso International.

8640025 Canada Ltd. (Re), 2017 BCCA 303

8. Although the funds of the Continuing Stores were, like the funds of the Closing Store investors, identified as being advanced to 1120, it is also the case that those Continuing Stores investors, in exchange for releasing claims to the monies they had advanced and received the ongoing benefits of the advance of those monies by being involved in the Continuing Stores.
9. That concept applies to 9360-3876 Quebec Inc., and when produced, its transaction documents must be carefully scrutinized. It may be that, at the very least, its claim should be eliminated or reduced by that benefit.
10. Quite apart from that issue, the effect of the release of the Migu Partner (MCI) is to release both Bright Migu International and 112 by operation of law.
11. It is a rule of some antiquity, described some years ago by Lord Denning as a trap for the unwary, that where A and B are jointly and severally liable on an obligation to C, and B is released by C, that release operates also to release A from liability for the obligation.

12. The reason for the rule was stated, in 1797, as follows:

In fact there is but one duty extending to both obligators; and it was therefore pointedly put that a discharge of one, or satisfaction made by one, is a discharge of both. This puts an end to the argument that the action is not necessarily suspended as to both: for it is the effect of the suspension as to one that releases, discharges, and distinguishes the action as to both. [at 633]

Shoker v. Vollans, 1998 CanLII 6447 (BC CA), para. 2

13. Although the rule has been the subject of some criticism, it remains today, and is behind such concepts as covenants not to sue and BC Ferries releases.
14. Our Court of Appeal discussed the rule at some length in *Shoker v. Vollans*, 1998 CanLII, 6447. In that case, Madam Justice Newberry, while acknowledging the long existence of the rule, held that the rationale for the rule was that co-obligants are entitled to seek contribution and indemnity from each other.

Shoker, supra, para. 6

15. In circumstances therefore, for example in which one of two obligants has obtained a release by paying one-half of the obligation, the rationale for the rule disappears, and, according to the Court of Appeal, it should not be applied.

Shoker, supra, para. 7

16. In the case at bar, however, no such payment was made by MCI to obtain the release from the Continuing Store investors. Rather, the release was granted MCI in exchange for the privilege of those investors in essence retaining their investment through the Acquisition Agreement transaction.
17. MCI, Bright Migu International, and 112 are all liable to the investors for the same debt. The legal basis of their obligation is different, but each, and all three of them are liable for the amount invested by any particular investor.
18. The release of the joint obligant MCI has the effect of releasing the joint obligants Bright Migu International and 112.

PART 6: MATERIALS TO BE RELIED UPON

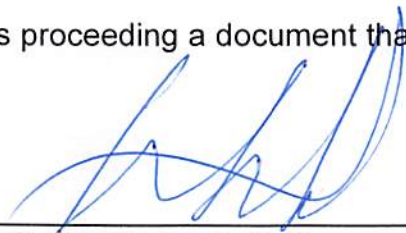
1. Affidavit of Darlene Purdy, sworn May 5, 2022.

The Application Respondents estimate that the application will take **one hour**.

The Application Respondents have filed in this proceeding a document that contains the application respondent's address for service.

Date:

May 5, 2022



H.C. Ritchie Clark, Q.C.

Lawyer for these Application Respondents

SCHEDULE "A"

- 10287865 Canada Inc.
- 10287881 Canada Inc.
- 10306541 Canada Inc.
- 10725951 Canada Inc.
- 1162138 B.C. Ltd.
- 1182193 B.C. Ltd.
- 2121335 Alberta Ltd.
- 2130680 Alberta Ltd.
- 2592256 Ontario Corp.
- 2623211 Ontario Inc.
- 2627413 Ontario Inc.
- 2633134 Ontario Inc.
- 9361-2208 Quebec Inc.
- 9374-8762 Quebec Inc.
- 9374-9828 Quebec Inc.
- 9375-0883 Quebec Inc.
- 9375-1642 Quebec Inc.
- 9376-6319 Quebec Inc.
- A&J Ontario Corp.
- Echo and Alex Management Consulting Ltd.
- JKW Canada Inc.
- KHY & SPS