

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:**           **IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

**BEFORE:**   Chief Justice G.B. Morawetz

**COUNSEL:** *Robert J. Chadwick, Caroline Descours, and Trish Barrett* for the Applicant

*Sean Zweig and Joshua Foster*, for the Monitor

*Virginie Gauthier*, for The Cadillac Fairview Corporation Limited

*Catherine Francis and Kenneth L. Kallish*, Counsel for Royal Bank of Canada

*Steven L. Graff and Jeremy Nemers*, for First Capital Holdings (Ontario)  
Corporation

**HEARD:**     October 7, 2021

**ENDORSEMENT**

[1]     McEwan Enterprises Inc. ("MEI") commenced these proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA") on September 28, 2021 and an Initial Order was granted on that date.

[2]     At this comeback hearing, MEI seeks an Amended and Restated Initial Order to, among other things:

- (a) extend the Stay Period until November 1, 2021;
- (b) increase the Administration Charge from \$225,000 to a maximum amount of \$350,000;
- (c) increase the Directors' Charge to a maximum amount of \$1.45 million; and
- (d) provide that the Administration Charge and the Directors' Charge shall rank ahead of all Encumbrances (as defined in the Initial Order) other than those secured creditors of MEI that do not receive notice of this motion and the Encumbrances granted in favour of RBC.

[3] The Monitor is in support of the relief requested by MEI.

[4] Cadillac Fairview supports the requested relief with respect to the extension of the Stay Period and does not oppose the other forms of requested relief.

[5] First Capital Holdings (Ontario) Corporation (“First Capital”) opposes the motion – unless certain changes are made to the requested form of order.

[6] First Capital submits that the primary disputed issue is whether MEI should be allowed to continue this CCAA proceeding without proposing and then implementing a satisfactory court approved marketing and sale process for MEI’s assets or business, with the input of the Monitor and stakeholders, for the purpose of testing the market prior to seeking court approval for any sale transaction. First Capital also questions whether appropriate disclosure has been made by MEI.

[7] First Capital submits that the court is statutorily prohibited from granting an order extending the Stay Period unless MEI satisfies the court that: (i) circumstances exist that make the order appropriate; and (ii) MEI has acted, and is acting, in good faith and with due diligence.

[8] First Capital submits that it is not opposed to the continuation of the CCAA proceedings or the extension of the Stay Period, provided that the foundational terms are not so egregious that they compromise the integrity of what is to come. First Capital points out that MEI has been very clear that MEI will be back before the court on October 15, 2021 to seek approval of a transaction and has already served a motion record in that regard.

[9] First Capital also takes the position that the proposed transaction, in its current form, can never receive court approval as it does not comply with the provisions of s. 36(4) of the CCAA and that the shortcomings of the proposed transaction should be addressed at this time. Consequently, First Capital submits that there is no point in waiting until the hearing scheduled on October 15, 2021.

[10] In my view, First Capital has identified arguable issues, but it is premature to determine these issues on this comeback hearing. The issues and concerns are more properly addressed at the upcoming motion on October 15, 2021.

[11] There is clearly a difference of opinion with respect to the positions being put forth by MEI and First Capital. I referenced this as a “business dispute”. If this dispute remains unresolved, the parties will have a full opportunity to present their arguments on the return of the motion to approve the proposed transaction.

[12] For the purposes of today’s motion, MEI is insolvent and in order to continue its business operations, it is necessary to extend the Stay Period to November 1, 2021 and to grant the requested relief with respect to the Administration Charge and the Directors’ Charge. The required cash-flow statement has been filed.

[13] I am satisfied that it is appropriate, in the circumstances, to grant the requested relief. In arriving at this conclusion, I have been satisfied that, without granting the requested relief, MEI would likely not be able to continue in operation. Further, since the commencement of these proceedings, I am satisfied that MEI has acted and is acting, in good faith and with due diligence.

I am mindful that First Capital, in its factum, raised concerns with respect to the conduct of MEI in the period leading up to the filing of these proceedings. These concerns can be addressed during the hearing scheduled for October 15, 2021.

[14] MEI's motion is granted in an order has been signed in the form presented.



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Chief Justice G.B. Morawetz

**Date:** October 7, 2021