Court of King's Bench of Alberta

Citation: Energera Inc (Re), 2026 ABKB 200

Date:
Docket: 2603 02889
Registry: Edmonton

Between:

Royal Bank of Canada, As Agent

Applicant

- and -

Energera Inc. (Formerly Known As Frac Shack Inc.), Energera International Inc. (Formerly Known As Frac Shack International Inc.), Energera America Inc. (Formerly Known As Frac Shack American Inc., and Sandtinel LLC

Respondents

Reasons for Decision
of the
Honourable Justice Colin C.J. Feasby

I. Introduction

[1] This is a case of battling applications. Royal Bank of Canada ("RBC") as agent for a syndicate of lenders (the "Syndicate") seeks a receivership order over Enegera Inc. and related companies (together "Energera") pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("*BIA*"). Energera opposes the receivership application and instead asks the Court for an initial

order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("*CCAA*"). There is no doubt that the result of these applications is that Energera will be subject to an insolvency process. The question to be decided is which process is most appropriate.

[2] Energera submits that the *CCAA* is the preferable process because the company has strong cash flow and there is no imminent risk to the Syndicate's security. Energera argues that it should be given an opportunity to run a sales and investment solicitation process ("SISP") and that it is best that such a process be administered by the current management of Energera.

[3] The Syndicate submits that it has been patient with Energera, having entered into a Forbearance Agreement that was amended multiple times and stretched over a year to facilitate the company running a SISP. The Syndicate's position is that the forbearance period SISP revealed that there is insufficient value in the business to pay out the debt to the Syndicate and that there is no reason to believe that management will be any more successful running a SISP under the *CCAA* than it was during the forbearance period. The Syndicate wants to install a receiver to run the SISP.

II. Background

[4] Energera is an oilfield services company headquartered in Spruce Grove, Alberta. Energera operates in several Canadian provinces and US states as well as in South America through a majority owned subsidiary based in Argentina. Energera employs over 130 people with approximately half of those employees based in Alberta.

[5] Energera has had a relationship with the Syndicate for many years. Over that time, membership in the Syndicate varied. The most notable change occurred with RBC's acquisition of HSBC Bank Canada which was the lead arranger and administrative agent under the original credit agreement.

[6] Energera and the Syndicate entered into an amended and restated credit agreement on June 28, 2024 (the "Credit Agreement"). Pursuant to the Credit Agreement, the Syndicate made available a non-revolving credit facility in the maximum principal amount of $49,700,000 and RBC made available an operating facility in the maximum principal amount of $7,500,000. The current indebtedness is over $39 million.

[7] As part of the Credit Agreement, Energera gave several financial covenants (the "Covenants") and to secure the credit facilities, Energera granted various security interests in its property (the "Security").

[8] Energera breached several of the Covenants thereby committing acts of default under the Credit Agreement. Energera breached, amongst others, a covenant concerning the ratio it was required to maintain between EBITDA and debt. The Syndicate and Energera entered a Forbearance Agreement on February 14, 2025 (the "Forbearance Agreement"). The Forbearance Agreement was amended five times in 2025. The key terms of the Forbearance Agreement were:

(a) Energera acknowledged the events of default under the Credit Agreement and the Security; and

(b) the Syndicate agreed to forbear in relation to the events of default until the earlier of January 31, 2026 or the occurrence of additional defaults.

[9] The Forbearance Agreement was amended to relieve Energera of the obligation to make principal payments. Energera has not made a principal payment since September 30, 2025, though it has continued to make interest payments. As part of one of the amendments to the Forbearance Agreement, Energera signed a Consent Receivership Order and agreed not to oppose a receivership application.

[10] The Forbearance Agreement also required Energera to run a SISP. Energera hired a financial advisory firm to assist with the SISP. Energera's position is that the SISP was constrained by the Syndicate which insisted on only considering offers that would result in repayment of the whole debt. The Syndicate disputes this assertion pointing out that even if such a restriction existed it was never communicated to the market.

[11] Energera's SISP was promoted to 187 parties, several of which engaged in preliminary diligence and attended management presentations. The only expressions of interest resulting from the SISP proposed terms that would have fallen far short of paying out the Syndicate. Energera management also made a proposal to the Syndicate that would have resulted in an extension of the Credit Agreement for 48 months on revised terms.

[12] On February 6, 2026, the Syndicate demanded repayment and issued Notices of Intention to Enforce Security under s 244(1) of the *BIA*. RBC as agent for the Syndicate filed a receivership application on February 17, 2026 returnable on February 24, 2026.

[13] When the receivership application was before me on February 24, 2026, Energera requested that the application be adjourned to permit the company to engage in discussions with a potential "White Knight." I granted the adjournment because, in my estimation, the risk to the Syndicate from a two-week adjournment was low and Energera management should be given a chance to explore a potential transaction with the "White Knight."

[14] The White Knight made an offer to Energera on March 5, 2026. The offer was significantly below the amount required to repay the Syndicate. The offer also contemplated a large no-fault termination fee in favour of White Knight if the transaction did not proceed. The White Knight offer was not acceptable to the Syndicate.

[15] Energera advised the Court that in the day or so prior to appearing at this application, Energera had received another "formal expression of interest from an additional, sophisticated third party." Energera submits that this is evidence of a robust market for the company or its assets.

III. Receivership or *CCAA*?

[16] The choice between a *BIA* receivership and a *CCAA* process is, in most cases, a question of who should be "driving the bus" – management or a professional insolvency firm.[1] This is sometimes a question of trust or confidence. Which group do stakeholders and the Court trust to obtain the best result for stakeholders? And sometimes it is a question of economic interests. For example, where there are dominant senior secured creditors who are unlikely to be paid out, their preferences must be given appropriate weight. Of course, there are times when both considerations are relevant.

[1] For the sake of this discussion, I leave aside the exceptional *CCAA* cases where a "strong monitor" is appointed.

[17] Emma Newbery, Liam Byrne, and Valerie Cross in their article "Should I *CCAA* Stay or Should I *BIA* Go: A Review and Analysis of Judicial Treatment of Competing *CCAA* and *BIA* Applications" (2023) 21 Annual Review of Insolvency Law surveyed the case law and identified factors used by Courts when considering competing *CCAA* and *BIA* receivership applications. From this, the authors propose the following framework for analyzing whether a *CCAA* or *BIA* receivership is the most appropriate process:

1. Does the relationship between the debtor and the creditors support granting a *CCAA* order, or has the relationship broken down such that a receivership is the most appropriate way forward?
2. Would relief under the *CCAA* or a receivership proceeding maximize the value of a debtor's assets?
3. Has the debtor established that there is a possibility of refinancing and continuing as a going concern, such that liquidation under a receivership would be inappropriate?
4. Would relief under the *CCAA* or receivership proceeding be more beneficial to the stakeholders?
5. Does the behaviour of the debtor and the creditors favour either relief under the *CCAA* or a receivership proceeding?
6. Are there any specific tools available under the *CCAA* or the *BIA* that favour one statute over the other?

[18] This framework is a useful tool for structuring analysis of whether the *CCAA* or *BIA* is the appropriate statutory process in the present case. However, I add two factors:

1. Has management already had a sufficient opportunity to restructure or sell the company or its assets?
2. Has the company executed a consent receivership order?

I. Does the relationship between the debtor and the creditors support granting a CCAA order, or has the relationship broken down such that a receivership is the most appropriate way forward?

[19] The relationship between Energera and the Syndicate has deteriorated, but I do not consider it to be irreparably damaged such that a receivership is the only option. The Syndicate's position is that Energera management demonstrated during the forbearance period that it was incapable of generating an attractive offer for the business or assets of Energera. Accordingly, the Syndicate submits that a professional receiver should take charge of the SISP process to maximize value. This is a case of the Syndicate having more trust or confidence in the proposed receiver than Energera management rather than the relationship being broken. The Syndicate's preference for a receiver-led SISP is, in my opinion, supported by the facts.

II. Would relief under the CCAA or a receivership proceeding maximize the value of a debtor's assets?

[20] Both parties contemplate running a SISP and I assume for present purposes that management and the proposed receiver are both capable of running a SISP. So, there is not much to choose between the two strategies to maximize the value of the debtor's assets.

[21] Where there is a difference in terms of value available to creditors is in the cost of the process. *CCAA* processes are typically more expensive than receivership processes: ***BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc***, 2020 ONSC 1953 at para 93. The proposed *CCAA* initial order in this case provides for a Directors and Officers Charge and an Administration Charge that would have priority over the existing Security. The Syndicate posits that interim lending and a corresponding interim lending charge with priority to the existing Security is likely in an extended *CCAA* scenario. The Administration Charge covers the costs of the proposed Monitor, the proposed Monitor's counsel, and counsel to Energera. The Syndicate says given that a SISP is unlikely to result in the Syndicate being paid out, the Syndicate will effectively be paying for everything secured by the charges: ***Affinity Credit Union v Vortex Drilling Ltd***, 2017 SKQB 228 at para 37. While the Syndicate will also effectively be paying for the receiver under a receivership scenario, it is reasonable to expect that the expenses will be less than under the *CCAA* where the court process is more exacting and directors and officers and more insolvency professionals are involved.

[22] A trade-off when a matter goes by way of receivership is the loss of transparency that comes with the *CCAA* process. The *CCAA* requires a comeback hearing, regular reporting by the Monitor, and stay extensions which give stakeholders the opportunity to learn about how the matter is progressing which provides opportunities for creditor objections to be advanced. Transparency is more important where multiple stakeholders have a genuine interest in the proceedings. Where, as here, there is good reason to believe that the Syndicate is the only party with an economic interest in the proceedings, transparency is less important. Though the *CCAA* provides for more transparency, it is important to note that a *BIA* receivership is subject to court supervision and receivers are accountable for their actions.

III. Has the debtor established that there is a possibility of refinancing and continuing as a going concern, such that liquidation under a receivership would be inappropriate?

[23] Energera has not established that there is any chance of refinancing. The evidence over the approximately one-year forbearance period is that new financing sufficient to replace the existing financing is unlikely to materialize. However, both Energera and the Syndicate contemplate a SISP that could see Energera sold as a going concern though it is likely that any such transaction would be structured as an asset sale. Both parties agreed in oral submissions that it appears that sale as a going concern is the best scenario for maximizing value.

[24] Sale as a going concern only favours a *CCAA* process if current management are required to run the business prior to its sale. Even then, it is possible for a receiver to retain some or all of the current management team on mutually agreeable terms. Of course, current management see themselves as indispensable to the business of Energera. When asked if current management would stay on if asked by a receiver, counsel for Energera was unable to answer.

[25] Sale as a going concern is possible in a receivership, but more typically seen under the *CCAA*: ***JBT Transport Inc (Re)***, 2025 ONSC 1436 at para 44. Likewise, liquidation is possible under the *CCAA,* though it is more common in a receivership: ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10. I am not persuaded that this factor is of any assistance on the facts of the present case.

IV. Would relief under the CCAA or receivership proceeding be more beneficial to the stakeholders?

[26] A *CCAA* process is more appropriate than a receivership where there is a reasonable prospect of recovery for multiple stakeholder groups. The *CCAA* provides a transparent process and a framework for the interests of all stakeholders to be considered. Where, as in this case, it appears that the senior secured lenders are the only stakeholders who will see any recovery, the *CCAA* process is contrary to the interests of the senior secured lenders because of the additional expense and because it offers no practical benefit to other stakeholders: ***Shire International Real Estate Investments Ltd (Re)***, 2010 ABQB 84 at para 9.

V. Does the behaviour of the debtor and the creditors favour either relief under the CCAA or a receivership proceeding?

[27] Both parties have acted in good faith. The behaviour of the parties does not favour one process or the other.

VI. Are there any specific tools available under the CCAA or the BIA that favour one statute over the other?

[28] The *CCAA* and *BIA* can both accommodate whatever steps need to be taken pursuant to the contemplated SISP and distribute proceeds to creditors.

VII. Has management already had a sufficient opportunity to restructure or sell the company or its assets?

[29] The Syndicate could have brought its receivership application when the defaults under the Credit Agreement occurred in early 2025. Instead, pursuant to the Forbearance Agreement, the Syndicate gave Energera the opportunity to save itself. Had Energera not agreed to the Forbearance Agreement and sought *CCAA* protection, it might have been given an opportunity to run a SISP under the supervision of a Court-appointed Monitor. But that did not happen. Energera ran a SISP on its own and failed.

[30] Energera blames the failure of the SISP on the Syndicate. Energera says that the Syndicate insisted on offers that would pay out the debt in full and that this prevented the SISP from succeeding. This position is belied by the fact that several expressions of interest were received at less than the full debt amount and were provided to the Syndicate.

[31] Energera's management team had their shot at selling or restructuring the company or its assets and failed. There is no reason to think that they would achieve a better result in the context of a *CCAA* process. The Syndicate's position that this time the SISP should be run by a professional receiver makes sense.

VIII. Has the company executed a consent receivership order?

[32] Energera submits that it executed the Consent Receivership Order under duress. I take this to mean duress in a colloquial sense rather than an invocation of the legal concept of duress. Energera was a sophisticated entity represented by counsel in a difficult financial situation that agreed to the terms of a Forbearance Agreement including a Consent Receivership Order. Energera could have refused and sought *CCAA* protection. But Energera decided that trying to salvage its business under the terms offered by the Syndicate was preferable. That is not duress.

[33] This Court has recognized that the use of Forbearance Agreements and Consent Receivership Orders are important tools for insolvency practice: ***ATB Financial v Mayfield Investments Ltd***, 2024 ABKB 635 at para 40. A Forbearance Agreement with a Consent Receivership Order provides a secured lender the comfort necessary to give a company one last shot at righting the ship. Absent abusive terms, this is something that should be encouraged. Justice Mew's statement in ***Ashcroft Urban Developments Inc (Re)***, 2024 ONSC 7192 at para 113 applies to the present case:

> The receivership remedy gives effect to the bargain made between the secured lenders and the applicants, and transfers control of the process from debtors in whom confidence has been lost to creditors who should be entitled to make good on their security while there are still good prospects of them being made whole.

[34] The existence of a Consent Receivership Order does not take away the Court's discretion. The Court must still determine that a receivership is just or convenient in the circumstances. The existence of a Consent Receivership Order, however, undermines protests by management that it should be given another opportunity to drive the bus when the Consent Receivership Order was part of the consideration for management already having a chance to salvage the business. Had it appeared that there was more value in the business of Energera and there was another group of stakeholders who potentially had an economic interest in the outcome of the insolvency proceedings, the argument against honouring the Consent Receivership Order might have carried more weight. But as the facts stand, there is no compelling argument against enforcing the bargain made by Energera that a receiver would be the appropriate remedy if the forbearance period expired without a successful sale or restructuring transaction.

IV. Conclusion

[35] The question to be decided was whether a management-led *CCAA* process or a *BIA* receivership process administered by a professional insolvency firm was more appropriate in the circumstances. I am satisfied both that the *BIA* receivership process is more appropriate in the circumstances than the *CCAA* process and that it is just and convenient to appoint a receiver.

Heard on the 12th day of March, 2026.
Dated at the City of Calgary, Alberta this 17th day of March, 2026.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Gunnar Benediktsson, Aaron Stephenson, and Meghan L. Parker
for the Applicant

David W. Mann, KC and Scott Chimuk
for the Respondents