CITATION: Northstar Aerospace, Inc. (Re), 2012 ONSC 4423
COURT FILE NO.: CV-12-9761-00CL
DATE: 20120730

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

2012 ONSC 4423 (CanLII)

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

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTHSTAR AEROSPACE, INC., NORTHSTAR AEROSPACE (CANADA) INC., 2007775 ONTARIO INC. AND 3024308 NOVA SCOTIA COMPANY, Applicants**

BEFORE: **MORAWETZ J.**

COUNSEL: **A. J. Taylor and K. Esaw, for the Applicants**

Craig J. Hill, for Ernst & Young Inc., Court-Appointed Monitor

D. S. Grieve, for Heligear Canada

A. Dale, for CAW-Canada

G. Moffat, for Chief Restructuring Officer

J. L. Wall, for Her Majesty The Queen in Right of Ontario as Represented by the Ministry of the Environment

R. Brookes, for the Region of Waterloo

S. Weisz, L. Rogers and J. Willis, for Fifth Third Bank as Pre-filing Agent and DIP Lender

W. P. Meagher, for the Corporation of the City of Cambridge

R. M. Slattery, for 180 Market Portfolio

M. Jilesen, for General Electric Canada

C. Prophet, for Boeing Capital Loan Corporation

S. Pickens – U.S. Counsel for Fifth Third Bank, by phone

HEARD: JULY 24, 2012

ENDORSEMENT

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OVERVIEW

[1] Northstar Aerospace, Inc. ("Northstar Inc."), Northstar Aerospace (Canada) Inc. ("Northstar Canada"), 2007775 Ontario Inc. and 3024308 Nova Scotia Company (collectively, the "CCAA Entities") brought this motion for:

(a) approval of an agreement dated June 14, 2012 (the "Heligear Agreement") between Northstar Inc. and Northstar Canada (together, the "Canadian Vendors"), Northstar Aerospace (U.S.A.) Inc. ("Northstar USA") and other Northstar U.S. entities, (collectively, the U.S. Vendors", and together with the Canadian Vendors, the "Vendors") and Heligear Acquisition Co. (the "U.S. Purchaser") and Heligear Canada Acquisition Corporation (the "Canadian Purchaser" and, together with the U.S. Purchaser, "Heligear") for the sale of the Purchased Assets (the "Heligear Transaction");

(b) a vesting order of all of the Canadian Purchased Assets in the Canadian Purchaser free and clear of all encumbrances and interests, other than Canadian permitted encumbrances;

(c) if necessary, assigning the rights and obligations of the Canadian Vendors under the Canadian Assumed Contracts to the Canadian Purchasers; and

(d) authorization and directions to the Monitor, on closing of the Heligear Transaction, to distribute cash or cash equivalents from the proceeds of the Heligear Transaction in an amount equal to the outstanding DIP obligations owing under the DIP Agreement to the DIP Agent for the DIP Lenders (defined below).

[2] The CCAA Entities applied for and were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Initial Order of this court dated June 14, 2012 (the "Initial Order"). Ernst & Young Inc. was appointed as Monitor (the "Monitor") of the CCAA Entities and FTI Consulting Canada Inc. ("FTI Consulting") was appointed Chief Restructuring Officer ("CRO") of the CCAA Entities.

[3] Certain of Northstar Canada's direct and indirect U.S. subsidiaries (the "Chapter 11 Entities") commenced insolvency proceedings (the "Chapter 11 Proceedings") pursuant to Chapter 11 of the United States Bankruptcy Code on June 14, 2012 in the United States Bankruptcy Court for the District of Delaware (the "U.S. Court"). The CCAA Entities and the Chapter 11 Entities are sometimes collectively referred to herein as "Northstar".

[4] Argument on the motion was heard in two parts. In the morning, argument was heard on Canadian only issues. In the afternoon, argument was heard on Northstar issues in a cross-border hearing with the United States Bankruptcy Court for the District of Delaware. The cross-border hearing was held in accordance with the provisions of the previously approved Cross-Border Protocol between the U.S. Court and this court.

[5] The motion for approval of the Heligear Transaction was opposed by the Ministry of the Environment ("MOE"), GE Canada, the Region of Waterloo and the City of Cambridge.

[6] At the conclusion of argument, a brief oral endorsement was issued approving the Heligear Transaction, with reasons to follow. These are the reasons.

FACTS

[7] Northstar supplies components and assemblies for the commercial and military aerospace markets, and provides related services. Northstar provides goods and services to customers all over the world, including military defence suppliers Boeing, Sikorsky Aircraft Corporation and AgustaWestland Ltd., as well as the U.S. army. Northstar's products are used in the Boeing CH-47 Chinook helicopters, Boeing AH-64 Apache helicopters, Sikorsky UH-60 Blackhawk helicopters, AgustaWestland Links/Wildcat helicopters, the Boeing F-22 Raptor Fighter aircraft and various other helicopters and aircraft.

[8] Northstar owns and leases operating facilities in the United States and Canada. In addition, Northstar owns a dormant facility located at 695 Bishop Street North in Cambridge, Ontario (the "Cambridge Facility").

[9] The Cambridge Facility has been non-operational since April 2010, when Northstar Canada closed it to focus on its core business of manufacturing aerospace gears and transmissions.

[10] Operations at the Cambridge Facility historically involved the use of industrial solvents, including trichloroethylene ("TCE").

[11] In 2004, Northstar Canada notified the MOE of potential environmental contamination at the Cambridge Facility including TCE. Additional investigations determined that the contamination had migrated from beneath the Cambridge Facility to beneath nearby homes. In response, Northstar Canada has spent in excess of $20 million for environmental testing and remediation at and near the Cambridge Facility through April 2012.

[12] A separate contamination source, not attributable to Northstar Canada or its operations, has also been identified near the Cambridge Facility. This second source is known as the Borg-Warner Site. GE Canada is the corporate successor to Borg-Warner Canada Inc.

[13] Since the discovery of the environmental condition at the Cambridge Facility in 2004, Northstar has conducted remediation activities, on a voluntary basis, including after the granting of the Initial Order, with the consent of the DIP Lenders.

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[14] On March 15, 2012, an Ontario MOE director (the "Director"), pursuant to powers under the *Environmental Protection Act*, issued Order Number 6076-8RJRUP (the "March 15 Order") to Northstar Inc. and Northstar Canada. The March 15 Order was issued as a direct result of the MOE's concerns regarding Northstar Canada's solvency.

[15] The purpose of the March 15 Order was stated as "to ensure the potential adverse effects from TCE and hexavalent chromium impacted groundwater to human health and the environment continues to be monitored, mitigated and remediated where necessary".

[16] The March 15 Order requires Northstar to undertake the following activities, among others:

(a) the operation of a laboratory and retention of a professional engineer to supervise the laboratory, which will operate to prepare, complete and/or supervise the work set out in the March 15 Order;

(b) the creation and implementation of an indoor air monitoring protocol, with annual assessment reports submitted to the MOE;

(c) continued:

(i) operation and monitoring of the indoor air mitigation systems ("IAMS") voluntarily installed by Northstar Canada prior to the issuance of the March 15 Order;

(ii) operation and monitoring of the soil vapour extraction systems ("SVES") voluntarily installed by Northstar prior to the issuance of the March 15 Order;

(iii) operation and maintenance of a pump and treat system;

(iv) groundwater remediation on or around the Cambridge Facility;

(v) groundwater and surface water monitoring;

(d) the submission of detailed annual assessment reports regarding the measures described above and, on the direction of the MOE, installation of such additional systems and adoption of such additional reporting requirements as may be required by the MOE; and

(e) submission of an updated interim remedial action plan to the MOE and, upon approval, implementation of same, with bi-annual updated plans unless otherwise advised by the MOE.

[17] These obligations and others are fully set out at pages 8-19 of the March 15 Order.

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[18] On May 31, 2012, the Director issued a further order, Order Number 2066-8UQP82, (the "May 31 Order", and together with the March 15 Order, the "Director's Orders") ordering Northstar Inc. and Northstar Canada to provide financial assurance in the amount of $10,352,906 by certified cheque payable to the Ontario Ministry of Finance or irrevocable Letter of Credit issued by a Canadian chartered bank by June 6, 2012 to fund the measures contemplated by the March 15 Order.

[19] Northstar has continued to perform monitoring, mitigation and remediation activities contemplated by the March 15 Order to the extent it was permitted to do so under the Initial Order. In addition, the CCAA Entities, with the consent of the DIP Lenders, have sought and obtained authorization to pay the utility payments associated with the IAMS. The CCAA Entities, however, advised the MOE that any payment of utility payments by the CCAA Entities was without prejudice to their position that the Director's Orders were stayed by the Initial Order and did not constitute an admission that the CCAA Entities were obligated to make or continue to make such payments – and further that they were not committed to continue making such payments.

[20] The concerns raised by the MOE, the Region of Waterloo and the City of Cambridge are significant. TCE is a carcinogen. The effects of TCE were described in the affidavit filed by Dr. Liana Nolan, the Medical Officer of Health ("MOH") for the Regional Municipality of Waterloo. Chronic effects of exposure to TCE, other than cancer, are less well understood but potential effects include those to the central nervous system, kidney, liver, respiratory, developmental and reproductive systems.

[21] TCE vapour has migrated into the basements of many homes from the groundwater beneath those homes.

[22] To reduce TCE vapour intrusion to more acceptable levels, there are 59 homes that have subslab depressurization systems and 93 homes that are serviced by soil vapour extraction units. These systems were installed and are operated by Northstar. In addition, Northstar has attempted to reduce the extent and concentration of the TCE contamination in the groundwater beneath the Bishop Street community through the installation and operation of a groundwater pump and treat system.

[23] Dr. Nolan is of the opinion that Northstar's remediation plan should continue in order to protect the health of residents of the Bishop Street community. It is also her opinion that discontinuing the current pump and treat system will result in increased levels and concentrations of TCE contamination. It is also her belief that discontinuing the operation and maintenance of the indoor air mitigation systems (soil vapour extraction units and subslab depressurization systems) will result in increased levels of TCE vapours in affected homes and will expose residents to undue and increased health risks.

[24] The materials filed by the MOE describe a number of other environmental issues, which to date have been monitored:

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- Ongoing groundwater monitoring by Northstar Canada
- Continued indoor air monitoring and mitigation
- Ongoing surface water monitoring – the Grand River
- Ongoing drinking water monitoring

[25] The MOE is justifiably concerned about the future of the remediation efforts as Northstar Canada has made no provision for the continuation of its investigation, monitoring, mitigation and remediation of TCE contamination after the close of the Heligear Transaction.

[26] Essentially, if the monitoring, mitigation and remediation of TCE contamination is discontinued as a result of the Heligear Transaction, there will be, according to the MOE and Dr. Nolan, the City of Cambridge and the Region of Waterloo, a significant public health issue.

[27] The CCAA Entities take the position that the March 15 Order requires extensive further remediation steps and they estimate that fully responding to it would require a minimum expenditure of $25 million over the next 20 years.

[28] As detailed in the affidavit filed on the initial application, the CCAA Entities have been facing severe liquidity issues for many months and are unable to meet various financial and other covenants with their secured lenders and do not have the liquidity to meet their ongoing pre-filing obligations.

[29] Since late 2011, Northstar has issued press releases discussing, among things, concerns about its ability to continue as a going concern.

[30] After a comprehensive marketing process conducted with the assistance of Harris Williams Inc. ("Harris Williams"), on June 14, 2012, the Canadian Vendors and Heligear entered into the Heligear Agreement for the sale of substantially all of Northstar's assets (the "Heligear Transaction").

[31] The assets to be purchased by Heligear do not include the Cambridge Facility and related assets. It is apparent that during the Sales Process, no bidder that expressed an interest in the assets of Northstar was willing to purchase or expressed any interest in purchasing the non-operating Cambridge Facility, either on its own or together with the other assets of Northstar.

[32] Two significant credit facilities have security over the property of the CCAA Entities.

[33] In 2010, the CCAA Entities entered into a $66 million secured credit agreement (the "Credit Facility") between certain of the CCAA and Chapter 11 Entities and Fifth Third Bank ("Fifth Third") and other lenders (collectively, the "Lenders").

[34] The Monitor has found the security related to the Credit Facility to be valid, perfected and enforceable.

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[35] In the Initial Order, the court approved a Debtor-in-Possession Facility (the "DIP Facility") under which Fifth Third, as the DIP Agent, and other lenders (together, the "DIP Lenders"), agreed to provide up to a principal amount of $3 million to finance the CCAA Entities' working capital requirements and other general corporate purposes and capital expenditures. A court-ordered charge over the CCAA Entities' property in favour of the DIP Lenders (the "DIP Lenders' Charge") was also granted and was given super priority status by court order dated June 27, 2012.

[36] As of August 3, 2012, the proposed closing date for the proposed Heligear Transaction, the aggregate amount owing under the DIP Facility, the U.S. Dip Facilities (to which the CCAA Entities are guarantors) and the Credit Facility will be approximately $75 million. Net proceeds from the Heligear Transaction are expected to be less than $65 million after transaction costs, payment of outstanding post-filing obligations and prior ranking claims. As a result, if the Transaction is approved, Northstar's secured creditors are expected to realize a shortfall.

[37] Notwithstanding this shortfall, the secured creditors support approval of the Heligear Transaction.

[38] The DIP Lenders have advised Northstar that they will not fund the continued voluntary remediation efforts after closing of the proposed Heligear Transaction, which is scheduled for August 3, 2012.

ANALYSIS

[39] The MOE takes the position and has served a motion for a declaration that the March 15 Order is a "regulatory order" pursuant to s. 11.1(2) of the CCAA and is not subject to the stay of proceedings provided by the Initial Order; or, in the alternative, the MOE seeks an order lifting the stay.

[40] The MOE also seeks an order that the Heligear Transaction not be approved.

[41] Alternatively, if the Heligear Transaction is approved, the MOE seeks an order that no proceeds be distributed pending the release of the decision on this motion and the hearing of further submissions on the allocation of proceeds.

[42] The issues on this motion, from the standpoint of the MOE, are:

(a) is the March 15 Order subject to the stay of proceedings granted in the Initial Order?

(b) should the court declare, pursuant to s. 11.1(4) of the CCAA that the MOE is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed?

[43] In addition, the MOE takes the position that the court should not approve the sale where the effect of such an order would so seriously prejudice the public interest.

[44] The MOE also takes the position that:

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(i) the March 15 Order is regulatory in nature and not subject to the stay;

(ii) the Order is not a "claim" within the meaning of ss. 11.8(8) and 11.8(9) of the CCAA; and

(iii) any other interpretation of these provisions upsets the balance between the federal power over bankruptcy and insolvency in s. 91(21) of the *Constitution Act, 1867* and provincial regulatory authority over the environment, founded on s. 92(13) and s. 92(16).

[45] Alternatively, the MOE requests an order lifting the stay of the March 15 Order in order to permit continued enforcement of the March 15 Order as against Northstar.

[46] Turning first to the constitutional argument, the MOE acknowledged that it was not until July 23, 2012, the day before the scheduled hearing, that notice of a constitutional question was provided to the Attorney General of Canada as required by s. 109 of the *Courts of Justice Act*.

[47] Counsel to the MOE advised that the Attorney General of Canada was not in a position to respond on such a short time frame. Counsel to the MOE requested an adjournment of this aspect of the motion. This request was opposed by the CCAA Entities and those supporting the CCAA Entities.

[48] After hearing argument on the adjournment request, I denied the request for several reasons: the environmental issue raised by the MOE has been known about since the outset of the CCAA Proceedings and, in fact, since before the issuance of the CCAA Proceedings; a similar issue was litigated in *Nortel Networks Corporation (Re)*, 2012 ONSC 1213 ("*Nortel*"); and, the proposed Heligear Transaction is scheduled to close August 3, 2012 and it is not feasible to adjourn this aspect of the motion and still comply with commercial requirements. In addition, I also accept the arguments of both counsel to the CCAA Entities and Fifth Third that the MOE should not be permitted to bifurcate its case.

[49] The first substantive issue raised by the submissions of the MOE is whether the March 15 Order is subject to the stay of proceedings granted in the Initial Order.

[50] The Initial Order grants a broad stay of proceedings in favour of the CCAA Entities, subject to certain limitations, including investigations, acts, suits or proceedings by a regulatory body that are permitted by s. 11.1 of the CCAA.

[51] Exceptions to the stay should be narrowly interpreted so as to accord with the objectives of the CCAA: *Nortel Networks Corporation (Re)*, 2009 ONCA 833 at para. 17; *Nortel*, *supra*, at para. 55.

[52] Subsection 11.1(2) of the CCAA provides that, subject to subsection 11.1(3), a stay of proceedings shall not affect an action, suit or proceeding that is taken by a regulatory body, other than the enforcement of a payment ordered by the regulatory body.

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[53] I recently considered this issue in *Nortel*. Counsel to the CCAA Entities submits that the facts in this case are virtually identical to those in *Nortel*. He cites as an example the fact that the March 15 Order requires, among other things, the continued pumping and treatment of groundwater, the submission of an action plan to be reviewed and amended by the MOE, if necessary, and additional remediation work. Counsel submits that these requirements significantly overlap with the obligations set forth by the MOE in the orders at issue in *Nortel*.

[54] In *Nortel*, at para. 104, I stated that: "[t]he Ministry has the discretion under the legislation and, if the Minister is solely acting in is regulatory capacity, it can do so unimpeded by the stay. This is the effect of section 11.1(2) of the CCAA".

[55] However, at para. 105 I stated that:

> [w]hen the entity that is the subject of the MOE's attention is insolvent and not carrying on operations at the property in question, it is necessary to consider the substance of the MOE's actions. If the result of the issuance of the MOE Orders is that [the debtor] is required to react in a certain way, it follows, in the present circumstances, that [the debtor] will be required to incur a financial obligation to comply. It is not a question of altering its operational activities in order to comply with the EPA on a going forward basis. There is no going forward business. [The debtor] is in a position where it has no real option but to pay money to comply with any environmental issue. In my view, if the MOE moves from draft orders to issued orders, the result is clear. The MOE would be, in reality, enforcing a payment obligation, which step is prohibited by the Stay.

[56] Counsel to the CCAA Entities pointed out one distinction between *Nortel* and the present scenario. In *Nortel*, the MOE had not issued draft orders against *Nortel* until after the CCAA proceedings had already commenced, whereas in this case, the March 15 Order was issued pre-filing as a result of concern about the CCAA Entities' financial situation. As stated in the conclusion to the provincial officer's report issued in connection with the March 15 Order:

[57] While Northstar has undertaken all needed investigation, mitigation and remediation programs on a voluntary basis without the need for a director's order, recent financial disclosures made by Northstar have revealed there is significant doubt regarding the corporation's ability to continue as a going concern which could impact on the environmental remediation programs.

[58] The record in this case is clear. The CCAA Entities are insolvent. The Cambridge Facility was shut down in 2010 and no operations (other than environmental remediation activities) have been conducted there since that time. The CCAA Entities have conducted a court approved Sales Process. During the Sales Process, no bidder expressed any interest in purchasing the Cambridge Facility or was willing to assume the obligations associated with it.

[59] I agree with the submission of counsel to the CCAA Entities that the purpose of the March 15 Order and the MOE's motion is to attempt to require the CCAA Entities to continue to comply with the March 15 Order and all of the financial obligations associated therewith in perpetuity and in conflict with the priorities enjoyed by other creditors.

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[60] At paragraph 127 in *Nortel*, I stated that, "the moment that [the debtor] is "required" to undertake such an activity, it is "required" to expend monies in response to actions being taken by the MOE. In my view, any financial activity that [the debtor] is required to undertake is stayed by the provisions of the Initial Order".

[61] In this case, it seems to me quite clear that the March 15 Order seeks to enforce a payment obligation and it is therefore stayed by the Initial Order: see also *Abitibi Bowater Inc. (Re)* 2010 QCCS 1261 ("*Abitibi*") at para. 160.

[62] Counsel to the CCAA Entities submits that the MOE is attempting to create a priority claim through the issuance of the March 15 Order that does not exist at law and contrary to the priority scheme provided in the CCAA.

[63] Counsel to the CCAA Entities cites *Harbert Distressed Investment Fund, LP v. General Chemical Canada Ltd.*, 2007 ONCA 600 ("*General Chemical*") at para. 46, for the proposition that federal insolvency statutes were amended to delineate the priority for the MOE in insolvency scenarios and, thus, "giving effect to provincial environmental legislation in the face of these amendments... would impermissibly affect the scheme of priorities in the federal legislation".

[64] The scope of the MOE's security is set out in the CCAA at s. 11.8(8) which provides:

> 11.8(8) Any claim by Her Majesty in right of Canada or a province against a debtor company in respect of which proceedings have been commenced under this Act for costs of remediating any environmental condition or environmental damage affecting real property of the company is secured by a charge on the real property and on any other real property of the company that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage, and the charge
>
> > (a) is enforceable in accordance with the law of the jurisdiction in which the real property is located, in the same way as a mortgage, hypothec or other security on real property; and
> >
> > (b) ranks above any other claim, right or charge against the property, notwithstanding any other provision of this Act or anything in any other federal or provincial law.

[65] Subsection 11.8(9) of the CCAA provides:

> 11.8(9) A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.

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[66] In my view, the MOE is entitled to file a claim against Northstar for any costs of remedying the environmental condition at the Cambridge Facility. However, the MOE is not entitled to attempt to use the March 15 Order to create a priority that it otherwise does not have access to under the legislation.

[67] This conclusion is consistent with the views that I expressed in *Nortel* at paras. 107 and 116 and is in accordance with the reasoning of *Abitibi* at paras. 132 and 148, as well as *General Chemical* at para. 46.

[68] With respect to the Heligear Transaction, full details are contained in the affidavit filed in support of the motion.

[69] I have considered the factors listed under s. 36(3) of the CCAA. I am satisfied that the record establishes that the Heligear Agreement was the result of a broad and comprehensive marketing process conducted with the assistance of Harris Williams. The Sales Process Order approved key elements of the Sales Process, including (a) the execution of the Heligear Agreement, *nunc pro tunc*, for the purpose of establishing a stalking horse bid and (b) the Bidding Procedures which governed the determination of the successful bid.

[70] I am satisfied that the CCAA Entities complied with the terms of the Sales Process Order.

[71] I am also satisfied that while Northstar conducted a broad and comprehensive marketing process prior to the commencement of these proceedings, the Monitor has reviewed and supported the approval of the execution of the Heligear Agreement *nunc pro tunc* and the approval of the Bidding Procedures as granted in the Sales Process Order.

[72] The CCAA Entities take the position that the Heligear Transaction is in the best interests of Northstar's stakeholders, including its employees, suppliers and customers.

[73] I am satisfied that the record establishes that the creditors were adequately consulted and the effects of the Heligear Transaction are positive. I am also satisfied that the consideration to be received for the Canadian Purchased Assets is reasonable and fair in the circumstances.

[74] In making these statements, I do not in any way wish to diminish the arguments put forth by the MOE and supported by the Region of Waterloo, the City of Cambridge and GE Canada. The concerns raised by the MOE are real and serious. However, the reality of the situation is that during the Sales Process, no bidder was willing to purchase – or expressed any interest in purchasing – the Cambridge Facility, either alone or together with the other assets of Northstar.

[75] The reality of the situation was also expressed by counsel to Fifth Third. Counsel submitted that the record is clear that, if the Heligear Transaction is not approved, Fifth Third will proceed to enforce its rights. As a result of ss. 11.8(8) and (9) of the CCAA, Fifth Third Bank has a superior priority position to the MOE and would be in a position to commence proceedings to enforce its rights as such.

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[76] The practical result at that point would be that Northstar would have no assets available and no ability to comply with the MOE Order.

[77] The reality of the situation is that, regardless of whether the Heligear Transaction is approved, Northstar will not have the practical ability to comply with the MOE Order. In this respect, the sale of the Canadian Purchased Assets to the Canadian Purchaser has no real effect on the MOE or any other party with an interest in the Cambridge Facility.

[78] The Heligear Transaction is supported by the Monitor, the CRO, Fifth Third Bank (both as DIP Agent and as Agent for the Lenders under Northstar's existing secured facility), Boeing, Boeing Capital and the CAW.

[79] In addition to the factors set out in s. 36(3), discussed above, s. 36(7) of the CCAA sets out the following restrictions on the disposition of assets within CCAA proceedings:

> 36(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(*a*) and (5)(*a*) if the court had sanctioned the compromise or arrangement.

[80] The CCAA Entities have advised that they intend to make the payments of the amounts described in subsections 6(4)(*a*) and (5)(*a*) of the CCAA on their normal due dates from the proceeds of the Heligear Transaction.

[81] Counsel to the CAW made reference to issues of successor liability. These issues are not directly before the court today and do not factor into this endorsement.

DISPOSITION

[82] In conclusion, I am satisfied that the Heligear Transaction is in the best interests of Northstar's stakeholders, including its employees, suppliers and customers. The proceeds of the Transaction will be available for distribution to the CCAA Entities' creditors in accordance with their legal priorities. The Lenders have asserted a claim against the proceeds of the Heligear Transaction. Independent counsel to the Monitor has reviewed the Lenders' security and concluded that the security granted under the Credit Facility is valid, perfected and enforceable.

[83] In the result, I am satisfied that the Heligear Transaction should be approved.

[84] An order is also made declaring that the MOE is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

[85] Further, MOE's request to lift the stay is denied on the basis that the MOE is seeking to create a super priority claim by way of the March 15 Order. Such a priority is not recognized at law and, consequently, it is appropriate that the MOE's enforcement of its rights as a creditor should be stayed.

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[86] An order is also granted vesting all of the Canadian Purchased Assets in the Canadian Purchaser free and clear of all restrictions.

[87] Finally, the Monitor is authorized and directed, on closing of the Heligear Transaction, to make distributions to the DIP Agent for the DIP Lenders and to the Lenders in accordance with their legal priorities.

[88] I thank counsel for their comprehensive submissions and argument in connection with this matter.

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MORAWETZ J.

Date: July 30, 2012