Estate No. 31-2008366
Court File No. 31-2008366

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ONE KENTON ALZHEIMER CENTER FOR EXCELLENCE (NON-PROFIT) INC.

BOOK OF AUTHORITIES
(Returnable September 2, 2015)

August 24, 2015

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LIST OF AUTHORITIES

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1. *Re Cantrail Coach Lines Ltd.* (2005), 10 CBR (5th)164 (B.C. Master)
2. *Re Cosgrove-Moore Bindery Services Ltd.* (2000), 17 C.B.R. (4th) 203
3. *Re H&H Fisheries Ltd.* (2005), 2005 NSSC 346 (N.S.S.C.)
4. *Re Baldwin Valley Investors* (1994), 23 C.B.R. (3d) 219 (Ont. Gen. Div. [Commercial List])
5. *Scotia Rainbow Inc. v. Bank of Montreal* (2000), 18 C.B.R. (4th) 114 (N.S.S.C.)
6. *Goldman Hotels v. Power Workers' Union* (2007), 34 C.B.R.(5th) 25 (Ont. S.C.J)

TAB 1

2005 BCSC 351
British Columbia Master

Cantrail Coach Lines Ltd., Re

2005 CarswellBC 581, 2005 BCSC 351, [2005] B.C.W.L.D. 2533, [2005] B.C.J. No. 552, 10 C.B.R. (5th) 164, 138 A.C.W.S. (3d) 1010

IN THE MATTER OF THE PROPOSAL OF CANTRAIL COACH LINES LTD.

Master Groves

Heard: March 1, 2005
Judgment: March 1, 2005
Docket: Vancouver B050363

Counsel: H. Ferris for Petitioner
R. Finlay for Creditor (Volvo)

Subject: Insolvency

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Bankruptcy and insolvency --- Proposal — Time period to file — Extension of time

Petitioner company was tour bus operation with 25 years experience — Petitioner suffered serious drop-off in business in recent years — Petitioner missed payment to secured creditor in January 2005 — Petitioner filed notice of intention to make bankruptcy proposal — Petitioner brought application for extension of time in filing proposal — Secured creditor opposed application — Application granted — Extension of time would allow petitioner to make viable proposal — It was disingenuous for secured creditor to oppose proposal even before proposal was made — No evidence existed that extension would substantially prejudice secured creditor — Although circumstances of petitioner clearly prejudiced secured creditor to some degree, minor prejudice did not jeopardize their security.

Table of Authorities

Cases considered by *Master Groves*:

N.T.W. Management Group Ltd., Re (1993), 19 C.B.R. (3d) 162, 1993 CarswellOnt 208 (Ont. Bktcy.) — considered

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

s. 50.4(9) [en. 1992, c. 27, s. 19] — considered

s. 50.4(11) [en. 1992, c. 27, s. 19] — considered

APPLICATION for extension of time for filing bankruptcy proposal.

***Master Groves*:**

1 This is my decision on the matter of the proposal of Cantrail Coach Lines Ltd. who I will refer to as Cantrail.

2 Cantrail applies to the Court pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act* for extension of time for filing a proposal.

3 VFS Canada Inc., who I will refer to as Volvo, a secured creditor of Cantrail, opposes the application and cross-applies for a termination of the proposal period and for an order to substitute the current trustee for a trustee of their choosing, though the substance of the substitution of the trustee application was not argued before me.

4 The facts are that Cantrail is a tour bus operation, a family-owned business, operating in the Lower Mainland of British Columbia, on Vancouver Island and into Washington State. They are a company of some 25 years standing. They have 26 employees and they have 22 buses in their operations and two headquarters, one in Delta, British Columbia and one in Port Alberni.

5 Over one half of their buses, 13 in total, are secured by the secured creditor Volvo. Cantrail appears to have been facing some financial difficulties recently which a number of companies in the travel industry are facing. It is certainly true in this part of the world that there has been a general decline in the travel industry related to what are now historical factors such as September 11th and SARS. More recently, and more significantly, the decline in the US dollar has made the travel industry generally and the travel industry specifically for Cantrail difficult. It appears to have caused a significant challenge for Cantrail to continue to operate profitably.

6 Cantrail was apparently able to meet its obligations up until the 16th of January 2005. On that date it missed a payment to its secured creditor Volvo. Demand was made by Volvo on the 20th of January 2005 and perhaps in response to that, but in any event, on the 1st of February, 2005 Cantrail issued a Notice of Intention to make a Proposal. There are, I am advised, 81

creditors of Cantrail who have been notified of this application and only Volvo objects.

7 I am satisfied that under the proposal thus far, and this is not contested in the affidavit, Cantrail has been able to meet its obligations to its employees as well as the obligations to statutory authorities. The suggestion in the materials is that Cantrail has been operating within the initial budget set by the trustee under the proposal.

8 As indicated, Cantrail is applying purport to s. 50.4(9) of the *Bankruptcy and Insolvency Act.* That reads and I will take out some of the language that is not necessary:

> The insolvent person may, before the expiration of a 30-day period mentioned in subsection (8), apply to the Court for an extension of that period and the Court may grant such extensions not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiration of the 30-day period mentioned in subsection (8), if satisfied on each application that:
>
> (a) the insolvent person has acted and is acting in good faith and with due diligence;
>
> (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
>
> (c) no creditor would be materially prejudiced if the extension being applied for were granted.

9 Volvo applies under s. 50.4(11), the section relating to termination of proposals. That section reads, and again I am taking out some unnecessary language:

> The Court may, on application by a creditor, declare terminated before it actually expires the 30-day period mentioned subsection (8) or any extension thereof granted under subsection (9) if the Court is satisfied that:
>
> (a) the insolvent person has not acted or is not acting in good faith and with due diligence,
>
> (b) the insolvent person will not likely be able to make a viable proposal before the expiry of the period in question,
>
> (c) the insolvent person will not likely be able to make a proposal before the expiry of the period in question that will be accepted by the creditors, or
>
> (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected.

Essentially, s. 50.4(11) is the mirror of s.50.4(9).

10 The test that Cantrail has to meet is essentially threefold. The first consideration is, are they acting in good faith? I would say on this point it was not argued nor does it appear to be disputed that they are. Secondly, would they likely make a viable proposal if the extension were granted. Thirdly, they must show no creditor would be materially prejudiced by the extension.

11 I am satisfied on reading the case law provided by counsel that in considering this type of application an objective standard must be applied. In other words, what would a reasonable person or creditor do in the circumstances. The case of *N.T.W. Management Group Ltd., Re*, [1993] O.J. No. 621 (Ont. Bktcy.), a decision of the Ontario Court of Justice, is authority for the proposition that the intent of the *Act* and these specific sections is rehabilitation, and that matters considered under these sections are to be judged on a rehabilitation basis rather than on a liquidation basis.

12 I am also satisfied that it would be important in considering the various applications before me to take a broad approach and look at a number of interested and potentially affected parties, including employees, unsecured creditors, as well as the secured creditor that is present before the Court.

13 Considering those factors and considering the remaining two steps of the test under s. 50.4(9), the second aspect of the test is would Cantrail likely be able to make a viable proposal. On this point Volvo says that it has lost faith in Cantrail and intends to vote against the proposal, any proposal, that would be generated.

14 If that was simply the test to be applied then one wonders why Parliament would have gone to the trouble, and creativity perhaps, of setting out proposals as an option in the *Bankruptcy and Insolvency Act*. Secured creditors or major creditors not uncommonly, in light of general security agreements and other type of security available, are in a position to claim to be over 50 percent of the indebtedness. Thus they will be the determining creditor or, I should say, are likely to be the determining creditor in any vote on any proposal.

15 If a creditor with over 50 percent of the indebtedness could take the position that it would vote no, prior to seeing any proposal, and thus terminate all efforts under the proposal provisions, one wonders why Parliament would not simply set up the legislation that way. One wonders what the point would be of the proposal sections in the *Bankruptcy and Insolvency Act* if that were the case.

16 If the test to be applied was simply one of majority rules then in my view Parliament would not have set the test as it did in s. 50.4(9). They would simply set a test that if 50 percent of the creditors object at any point the proposal would be over. That is not the test that has been set.

17 Here, as indicated, there are 81 creditors. There is no proposal as of yet. The trustee has set out in a lengthy affidavit and letter attached to it the possibility of a buyout of this operation, or a merger, and even the possibility of a refinancing. There is a possibility, though as of yet uncertain, that Volvo could be paid out in full. It is in my view somewhat disingenuous for the secured creditor to say that they would vote no to any proposal under any circumstances when on the facts here there is no evidence of bad faith and there is no determination at this stage as to what the proposal will actually be. It may be a proposal which gets them out of the picture completely by some form of payout — a proposal which if they voted against they would probably be viewed as irrational businesspeople.

18 In my view, the current attitude of the secured creditor is not determinative of this issue especially in light of the fact that the proposal has not yet been formulated.

19 I note the words in the legislation are "a viable proposal". According to the *Concise Oxford Dictionary* viable means

feasible. Viable also means practicable from an economic standpoint.

20 I am impressed thus far with the efforts of Cantrail and with the efforts of the trustee, Patty Wood, in trying to get this matter resolved. I am satisfied that the insolvent company, in my view, would likely be able to make a viable proposal, a proposal that is at least feasible, a proposal that would be practicable from an economic standpoint, if the extension being applied for were granted.

21 Under the third aspect of the test, I must be satisfied that no creditor would be materially prejudiced if extension being applied for were granted. That aspect of the test uses the term "materially prejudiced." There is a difference, in my view, between being prejudiced and being materially prejudiced. Again, consulting the *Concise Oxford Dictionary* materially means substantially or considerably. The creditor here must be substantially or considerably prejudiced if the extension being applied for is granted.

22 There is no doubt that Volvo has been prejudiced by the circumstances which have befallen Cantrail and befallen Volvo as a secured creditor. The *Act* in and of itself, and the possibility of a proposal, does create simple prejudice by staying the obligations of a person attempting to make a proposal during the period of time in which the proposal is being formulated. There is no evidence before me of anything other than normal or perhaps average prejudice to Volvo. There is no evidence of substantial prejudice or considerable prejudice. There is no evidence that in not being allowed to realize their security at this time that there is, for example reduced security or, for example, that there are buyers out there for these assets they wish to seize under their security who will not be around once the proposal has had its opportunity to succeed or fail, once it has been completely formulated and presented to creditors. There is no worse case scenario for Volvo if the proposal is allowed to run a reasonable course. In my view, there is no evidence on which Volvo can rely to show that it has been materially prejudiced.

23 That being said, I am satisfied that Cantrail has met the test of applying for an extension of time for filing a proposal and I am granting the extension for a further 45 days from the 3rd of March 2004.

24 It stands to reason from this analysis that the applications of Volvo are dismissed.

Application granted.

End of Document

TAB 2

2000 CarswellOnt 1625
Ontario Court of Appeal

Cosgrove-Moore Bindery Services Ltd., Re

2000 CarswellOnt 1625, 17 C.B.R. (4th) 203

The Matter of the Proposal of Cosgrove-Moore Bindery Services Limited

Lane J.

Judgment: March 31, 2000
Docket: Toronto 31-372219

Counsel: *Harvey G. Chaiton,* for Applicant.

Subject: Insolvency

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Bankruptcy --- Proposal — Practice and procedure

Trustee brought motion to extend time for filing proposal under Bankruptcy and Insolvency Act for 45 days — Time was required to obtain commitment for financing — Motion granted — Debtor's financial situation had improved over recent months and production had increased — Bank, which held security over receivables, could be prejudiced by erosion of security but new production was generating new receivables — Extension did not materially prejudice creditors — Debtor acted in good faith in developing proposal — Debtor's alleged bad faith actions prior to notice were not material in decision to grant extension — It was likely that viable proposal could be made — Debtor's refusal to consent to receivership was act of bad faith but was not sufficient to exclude debtor from benefiting from Act's proposals — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 50.4(9).

Table of Authorities

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

s. 50.4(9) [en. 1992, c. 27, s. 19] — referred to

MOTION by trustee to extend time for filing proposal in bankruptcy.

Endorsement. ***Lane J.*:**

1 The Trustee of the Proposal money to extend the time for filing the Proposal for 45 days. There is a commitment for part of the financing required and time is asked to enable a letter of intent from another financier to the firmed up to a commitment. There is also some evidence that problems with certain new equipment which contributed to the Company's problems have been overcome and the Company is able to produce at a better rate. It is clear that the Company is still in financial trouble but the picture is not as bleak as some months ago. Several creditors oppose. The Bank is the holder of security over receivables and argues it will be prejudiced by erosion of the security. On the other hand, new production is generating new receivables. The Bank's position in effect requires a company seeking such an extension to have a positive cash flow so that there is no erosion of security. With respect, that cannot be regarded as a practical definition of material prejudice as referred to in s. 50.4(9). It is rare indeed that debtors in this situation present with positive cash flow. It is the prejudice caused by the extension itself that is to be measured and I do not find that any of the creditors is materially prejudiced. The objections of the landlord as to the rent on an occupation basis from March 4th can be brought forward by motion to resolve the legal issue. There seems to be no doubt it is entitled to rent for April and onwards. The problem about March exists; it will not be made worse by the extension. Similarly, Westcoast's position will not be worsened by the extension.

2 So far as the good faith of the debtor is concerned, think the primary focus is on whether it is proceeding in good faith towards developing a proposal and not on whether it acted in good faith during its pre-notice dealings. There is evidence, in the form of the commitment and the letter of intent that there is progress. I can see no lack of good faith or of diligence since the Notice. I am also satisfied that, given the resolution of the production problems, the commitment and letter of intent and the long history of profitable operation, it is likely that a viable proposal can be made.

3 There is one matter raised that I should address. It was submitted that the Company's refusal to consent to the receivership even though it has agreed to consent, was an act of bad faith. No doubt it was a breach of contract, but in my view it is not such an act as ought to disqualify the Company from taking advantage of the B1A provisions for Proposals. They are remedial in nature and often have the beneficial effect of keeping a business alive for the benefit not only of creditors, but of employees, shareholders and the community generally. Given the prevalence in security documents of consent to receivership clauses, it would gut the BIA proposal provisions to hold that refusal to consent was an act of such bad faith as to prevent any extension of time.

4 The motion to extend for 45 days is allowed.

5 No costs are sought.

Motion granted.

End of Document

TAB 3

2005 NSSC 346
Nova Scotia Supreme Court

H & H Fisheries Ltd., Re

2005 CarswellNS 541, 2005 NSSC 346, [2005] N.S.J. No. 513, 144 A.C.W.S. (3d) 407, 18 C.B.R. (5th) 293, 239 N.S.R. (2d) 229, 760 A.P.R. 229

In the Matter of H & H Fisheries Limited

Goodfellow J.

Heard: December 14, 2005
Judgment: December 19, 2005
Docket: SH B259148

Counsel: Victor J. Goldberg, Martha L. Mann for H & H Fisheries Limited
Stephen J. Kingston, Bob Mann (articled clerk) for Bank of Nova Scotia

Subject: Insolvency

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Bankruptcy and insolvency --- Proposal — Time period to file — Extension of time

Debtor agreed to maintain all operating accounts with bank as condition of financing — Debtor breached agreement by depositing funds with other bank — Debtor had net loss of nearly $600,000 for fiscal year ending June 30, 2005 — Debtor applied for 45-day extension to file proposal — Application granted — Debtor met requirements of s. 50.4(9) of Bankruptcy and Insolvency Act — Debtor acted in good faith notwithstanding breach of agreement — Debtor acted to stay in operation as bank would have used funds to pay down debt — Debtor's good faith was supported by respected trustee — Debtor was likely to make viable proposal in sense of reasonable one to reasonable creditor — Bank as largest secured creditor should not be able to veto proposal at this early stage — Bank would not be unduly prejudiced by extension given debtor's current receivables of nearly $1 million were double its indebtedness to bank.

Table of Authorities

Cases considered by *Goodfellow J.*:

Baldwin Valley Investors Inc., Re (1994), 23 C.B.R. (3d) 219, 1994 CarswellOnt 253 (Ont. Gen. Div. [Commercial List]) — referred to

Cumberland Trading Inc., Re (1994), 23 C.B.R. (3d) 225, 1994 CarswellOnt 255 (Ont. Gen. Div. [Commercial List]) — considered

St. Isidore Meats Inc. / Viandes St. Isidore Inc. v. Paquette Fine Foods Inc. (1997), 1997 CarswellOnt 1524, 46 C.B.R. (3d) 280, 36 O.T.C. 76 (Ont. Bktcy.) — considered

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

s. 1 [rep. & sub. 1992, c. 27, s. 2] — referred to

s. 50.4(1) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(9) [en. 1992, c. 27, s. 19] — considered

s. 50.4(9)(b) [en. 1992, c. 27, s. 19] — considered

s. 54(2.2) [en. 1992, c. 27, s. 22] — considered

s. 54(3) — considered

s. 62(1.2) [en. 1992, c. 12, s. 39] — considered

s. 62(2) — considered

Interpretation Act, R.S.C. 1985, c. I-21
Generally — referred to

s. 10 — considered

s. 12 — considered

APPLICATION by debtor for extension of time for filing proposal under Bankruptcy and Insolvency Act.

***Goodfellow J.*:**

Backgound

1 H & H Fisheries Limited (HHFL) owns and operates a fish processing plant at Eastern Passage, Halifax, Nova Scotia, which is a somewhat seasonal operation and it presently employs seventy-five people which diminishes to approximately twelve people off-season.

2 Reginald P. Hartlen is the president, a founding shareholder and director of HHFL and the company became a customer of the Bank of Nova Scotia (BNS) in May of 2003.

3 HHFL and BNS secured a commitment letter December 2, 2004 with the stated purpose of BNS "to finance trade receivables and inventory". It provided that BNS would have a first charge over accounts receivable and inventory and set out the terms and conditions of their agreement including "for ongoing credit risk management purposes, all operating accounts of the borrower shall be maintained with the Bank as long as the borrower has any operating line facilities with the Bank". There were several additional terms and conditions dealing with reporting ratios of current assets to current liabilities, ratio of debt to tangible net worth, etc. The letter of commitment contained a clear outline of the general borrower reporting conditions. The letter of commitment made reference to two specific receivables outstanding; Emporio and Simone, upon which I will comment further.

4 In November 2004 HHFL applied to increase its limit on its operating credit line from $400,000 to $1,100,000 and this increase was approved subject to confirmation as to the collection of the Emporio and Simone accounts.

5 In December 2004 the Simone account was paid in full but Emporio remained outstanding. Because the lobster season was approaching, HHFL requested BNS to waive the condition relating to the Emporio account. BNS did not waive the requirement in relation to that account but did allow access to the full operating line of $1,100,000 to January 31, 2005 when the limit was reduced to $750,000.

6 In February 2005, HHFL again requested access to the $1,100,000 credit limit to February 28, 2005 when again it would be reduced to $750,000 and this was agreed upon by the parties. HHFL provided BNS with an update on the status of the Emporio account which continued to remain outstanding. BNS became increasingly concerned with respect to the impact of the potential write-off of the Emporio account and as a result in March 2005 conversations took place between BNS and Reginald Hartlen, who undertook April 7, 2005 to inject equity of $200,000 into HHFL by April 22, 2005. Mr. Hartlen did come up with $100,000 and endeavoured to obtain additional funds in relation to mortgaging his residence but unfortunately there was a lien/judgment against his property and his financing has not been possible.

7 In June 2005 HHFL advised that as part of its 2005 fiscal year ending June 30, 2005, the company would write off the Emporio account which would give it an operating loss of $300,000 which would be partially set off by an SR&ED refund of $200,000, leaving a net loss of $100,000 for the fiscal year 2005.

8 In September 2005 BNS received a copy of HHFL's unaudited financial statement for the year ending June 30, 2005 which showed a net loss of $596,043. This compared with a net loss of $21,003 for the year ending June 30, 2004.

9 HHFL had problems with cash flow and operating and contrary to the letter of commitment started to deposit funds to its accounts with CIBC and this was acknowledged by the director of finance of the company in September 2005. There followed innumerable meetings, correspondence between the parties and Mark S. Rosen, a licensed trustee in bankruptcy, who has consented to act as trustee for any proposal in this matter.

Legislation

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 1; 1992, c. 27, s. 2.

Ss. 50.4(9)

Extension of Time for Filing Proposal

In order to obtain an extension, the debtor must establish the following three items

(a) that it is acting in good faith and with due diligence;

(b) that it would likely be able to make a viable proposal if an extension were granted; and

(c) that no creditor would be materially prejudiced.

S. 54(2.2)(3)

Related creditor — A creditor who is related to the debtor may vote against but not for the acceptance of the proposal.

62(1.2)(2)

On whom approval binding — A proposal accepted by the creditors and approved by the court is binding on creditors in respect of

(a) All unsecured claims, and

(b) the secured claims in respect of which the proposal was made and that were in classes in which the secured creditors voted for the acceptance of the proposal by a majority in number and two thirds in value of the secured creditors present, personally or by proxy, at the meeting and voting on the resolution to accept the proposal.

but does not release the insolvent person from the debts and liabilities referred to in section 178, unless the creditor assents thereto. (S.C. 1992, c. 27, s. 26).

Interpretation Act, R.C.C. 1985, c. I-21

Law Always Speaking

Law always speaking

10. The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.

Enactments Remedial

Enactments deemed remedial

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Application

10 HHFL filed a Notice of Intention dated November 3, 2005 under ss. 50.4(1) to make a Proposal of H & H Fisheries Limited. An order was granted extending the time to file a proposal November 29, 2005 to December 8, 2005. Unfortunately, the Chambers' docket was so heavy that the Justice presiding on December 8, 2005 was unable to address the matter and I was asked to deal with it and it was put over by consent to December 14, 2005. The application is comprised of several affidavits and both parties declined cross-examination of the other sides' supporting affidavits. On December 14th I heard almost four hours of argument and reserved my decision in order to thoroughly review the extensive material filed by both parties and arrive at a determination.

Onus

11 The court, as directed by s. 50.4(9) above, must be satisfied on each application that:

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

12 The onus is upon the applicant, in this case HHFL), to satisfy the court on a balance of probabilities that all three prerequisites of s. 50.4(9) have been established on the application.

13 This is so because of the use of the "semi-colon" and the use of the word "and" in (b), rendering the requirements conjunctive. This requires the court to consider each of the subsections as to whether the applicant has established the prerequisite contained in the subsection on a balance of probabilities. For the application to be successful the court must be satisfied that all three prerequisites of the application have been established on a balance of probabilities before extending the time for filing a proposal. It is, in essence, a three part test and if the applicant fails on any part the court would not then be satisfied, requiring the application to be dismissed.

14 **Has HHFL satisfied the court that it has acted in good faith and exercised due diligence?**

15 There is some merit to the arguments advanced by BNS and the court is particularly concerned about a party HHFL signing a commitment letter with the clear undertaking noted above that all its operating accounts were to be maintained with BNS. This is for the obvious purpose of providing BNS with an opportunity to monitor and protects its interests as a creditor and clearly HHFL in moving all its trading, operating business to its CIBC accounts has committed a breach of contract, a breach of the commitment it made in the original committal letter executed by both parties December 2, 2004.

16 Does a breach of contract automatically constitute bad faith? The answer is, "not necessarily", but it is evidence that must be weighed very carefully and the evidence here does show a deliberate failure to notify BNS of this redirection of operating funds and at one point a signed invoice or record which was somewhat misleading with respect to the possibility of some relatively minor accounts having been directed to the CIBC in error.

17 The converse of good faith is bad faith and bad faith requires a motivation and conduct that is unacceptable. If, for example, the diversion of operating/trading proceeds had been diverted to the CIBC for the purposes of personal gain for any officer, director or shareholder of HHFL, an example of which would be payment to ones family or a pay-down on a mortgage or judgment on ones home, etc., or to enhance the third level of a secured creditor being Mr. Hartlen's company, R. Hartlen Investments Inc., then clearly such would amount to bad faith and quite possibly fraud. It is clear that the motivation for moving the funds to the CIBC account was, in one word, for the purpose of "survival". Funds were essential in that I accept the view expressed by HHFL that had it continued to direct its operating/trading funds to BNS the probability is almost a certainty that BNS would have utilized such funds to pay-down its advances precluding the company from having any operating funds and the door to the plant would have been shut. This result would not have been, and is not at this time, in the best interest of either party and coincidentally the seventy-five employees who are at the moment gainfully employed by HHFL. I make it clear that it is not necessary that there be fraud for the conduct to fall short of good faith. HHFL have also fallen behind in many other aspects of the original commitment letter but they have responded and provided documentation, bank records, reconciliation of invoices with cash withdrawals. Its recent conduct probably directed by the trustee entirely mitigates against any suggestion of the diversion being for personal gain other than as I have said, a course of conduct taken for the benefit of both parties some other ninety-six outstanding creditors and the seventy-five employees. In some cases a breach of contract may be such of itself that it precludes acceptance on a balance of probabilities that the overall conduct meets the good faith requirement.

18 It is argued by HHFL that only its conduct since the filing of the Notice of intention November 3, 2005 should be considered and with respect, I am inclined to disagree. The manner in which a party conducts itself in the past, particularly the immediate past, is often an indicator of likely conduct in the immediate future. In addition, what you have here is a breach of the contract/commitment letter which occurred before November 3, 2005 and continued and overlapped the date of the filing of the Notice of intention.

19 The court does have the opinion of a respected trustee whose sworn testimony by affidavit has not been challenged and Mark S. Rosen, LLB, FCIRP, has been involved for some time and very active in endeavouring to come to grips with the challenge and has met with and communicated with officials of BNS, BDC and many of the unsecured creditors. After reciting in detail the extent of such activity he deposes in paragraph 14 of his affidavit of December 1, 2005 as follows:

> 14. I have been working with and receiving information from Messrs. Hartlen and Limpert as well as Harley Hiltz, the director of marketing and production for the Company, who at all times have been fully co-operative. From my experience and dealings with the Company, I believe that the Company has acted and is acting in good faith and with due diligence in working towards formulating a viable proposal. I believe that the Company would likely be able to make a viable proposal if the extension is granted.

My finding on this prerequisite is that by a relatively small margin HHFL has satisfied the court on a balance of probabilities that it has been and is likely to act in good faith. In reaching this conclusion I have not taken into account the representation made in oral argument that Mr. Hartlen has probably advanced $90,000 to $95,000 to HHFL recently because I do not recall seeing anything in the evidence, particularly documentation confirming this infusion and therefore I am unable to give it any weight.

20 The second wing of subparagraph (a) is in relation to due diligence and while the company has not acted in quite the timely manner it ought to have acted its deficiency in this regard is not severe and the cumulative evidence before me including the summary contained in Mr. Rosen's affidavit of December 1, 2005 and the volume of response which has been made to the BNS's requests and entitlement for documentation, combined with the efforts being made by the trustee in bankruptcy, Mark S. Rosen, to address a resolution constitutes satisfaction on a balance of probabilities of due diligence to this date.

21 **Would HHFL likely to be able to make a viable proposal if the extension being applied for were granted?**

22 "Viable" in this context means a proposal which seems reasonable on its face to a reasonable creditor (*Baldwin Valley Investors Inc., Re* (1994), 23 C.B.R. (3d) 219 (Ont. Gen. Div. [Commercial List])). Again, the court must be satisfied on a balance of probabilities that HHFL **would likely**. This at the very least means that a reasonable level of effort dictated by the circumstances must have been made that gives some indication of the likelihood a viable proposal will be advanced within the time frame of the extension applied for.

23 Lack of detail and assurance of this kind was considered in *St. Isidore Meats Inc. / Viandes St. Isidore Inc. v. Paquette Fine Foods Inc.*, [1997] O.J. No. 1863 (Ont. Bktcy.). In dismissing an application for an extension of time, Justice Chadwick stated (at para. 16):

> ...[T]he debtors have not been able to put forth any meaningful financial plan which would support a proposal. There is a vague reference in the affidavit material that they have approached at least two prospective purchasers, however there is no evidence that any of these parties are interested in assisting the debtor either now or in the future.

24 The BNS points to a number of specifics of what it considers a lack of effort that should result in a finding that there is little likelihood of HHFL making a viable proposal. BNS notes the fact that it has stated clearly that it no longer has any interest of being involved in the affairs of HHFL which will necessitate, in all probability, an alternate financial institution and to date no inquiries have been made by HHFL or the Trustee of any financial institution. The absence of this step will take on weight depending upon the totality of the circumstances that exist at the time of the Notice of intention and that have developed since the Notice of intention was filed.

25 There has been a considerable degree of activity before and since the Notice of intention was filed November 3, 2005. It seems in the total evidence available to the court through the affidavits filed that it is a reasonable inference to draw that it is highly unlikely that any financial institution would show any interest in filling the shoes of BNS until a determination is made with respect to this application for an extension of time to January 30, 2006. Since the Notice of intention has been filed the evidence is that HHFL has made a profit for November 2005 greater than that was anticipated. It had been anticipated that the profit would have been $7,000 and it appears to be approximately $19,600. There is an indication that the company is operating a new business model as a processing facility and there is evidence of the projected sales. In addition, there is evidence of a company, Pesca Pronta, having entered into a contract which by now would have had two substantial deliveries of lobster and in response to my inquiry during argument it appears that the first delivery has been paid for. HHFL advances the affidavit of Francesco Amoruso of Rome, Italy as to a possible solution and substitution by financial injection from that company, however, at this stage all that affidavit establishes is that an effort is being made by HHFL to address their situation. It further confirms that this is a busy, crucial period for HHFL but it does not at this point provide any comfort

to be BNS or the court as to being a probable element of a viable proposal.

26 Paragraph 5 of Francesco Amoruso's affidavit merely states:

> I have had discussions with Mr. Hartlen with respect to a potential share investment in H & H by Pesca Pronta in the approximate amount of $400,000.00 Cdn. I am very interested in pursuing the investment opportunity but will require 30 days to discuss the situation with my brothers/partners. I am hopeful that the transaction can be finalized. In the meantime, my company will continue to deal with H & H.

27 To this point the court has not been advised nor has BNS of any further developments, inquiries or progress with respect to Amoruso's affidavit which can only be classified as a statement of interest.

28 HHFL has made a concerted effort to secure government financing by way of a grant. The company has spent $6,000 for the services of a consultant in the preparation of its grant application and on December 9, 2005 a science officer who is preforming the due diligence for the grant indicated her satisfaction with the scientific basis of the claim and that she would be making a positive recommendation. The only weight that can be given at this stage to the grant application is that it is another example of the efforts being made by HHFL and its proposed trustee but until the grant reaches the stage of being a balance sheet item it can be given no further weight.

29 BNS raises an objection to a determination that HHFL can satisfy the requirement pointing out that BNS and BDC as one class of secured creditor represent a substantial majority position of the secured claims. R. Hartlen Investments Inc. is bound by s. 54.2.2(3) as noted above.

30 BNS takes the position that it has a clear veto over any proposal that may be advanced and that it will not be supporting any proposal to secured creditors that might be filed by HHFL.

31 In *Cumberland Trading Inc., Re*, [1994] O.J. No. 132 (Ont. Gen. Div. [Commercial List]), wherein Farley J. stated at para. 4:

> Cumberland's Notice of Intention to File a Proposal acknowledges that Skyview is owed $750,000. On that basis, Skyview has 95% in value of Cumberland's admitted secured creditors' claims and 67% of all creditors' claims of whatever nature. No matter what, Skyview's claim is so large that Skyview cannot be swamped in any class in which it could be put. Clearly, Skyview would have a veto on any vote as to a proposal, at least so far as the secured class, assuming the secureds are treated as a separate class. This leaves the interesting aspect that under BIA regime, one could have a proposal turned down by the secured creditor class but approved by the unsecured creditor class and effective vis-a-vis this latter class, but with the secured class being able to enforce their security. One may question the practicality of a proposal affecting only unsecured creditors becoming effective in similar circumstances to this situation.

32 In that case Farley, J. held that Skyview's position was satisfactory proof that the company would not likely be able to make a proposal that would be accepted by the creditors. In that case Skyview had 95% in value of Cumberland's admitted

secured creditors and here the math appears to give BNS a virtual veto. HHFL counters that when you look at the funds in the company's bank accounts at the end of November 2005 of approximately $170,000 that such reduces the debt outstanding of BNS and again reiterates that BNS has since the Notice of intention being filed received approximately $90,000 U.S. on its account. BNS is correct in that the mere presence of money in a debtor's bank account does not reduce indebtedness unless it is applied to the indebtedness. Since the notice of intention was filed HHFL has paid the required interest to BNS for November 2005. In this case, it is clear from the evidence before me and particularly the affidavit of the Trustee that there is a recognition of the proposal providing either alternate financing, such as speculated in Mr. Amoruso's affidavit or approaching alternate financial institutions. It would seem reasonable to assume that the proposal that will be advanced *if* it has a means of essentially paying out by substitution injection of capital of BNS indebtedness then the proposal presumably would be acceptable. It is inconceivable that if the BNS indebtedness were satisfied that BNS should retain the right to apply a guillotine effect to the extreme prejudice of itself and all other interested parties including the probable closure of the plant. The second largest secured creditor is the Business Development Corporation and they are in agreement to the granting of an extension to HHFL.

33 In these circumstances, again by the a fairly narrow margin, I conclude that HHFL has met this prerequisite on a balance of probabilities. In doing so, I am not overlooking the considerable debt of HHFL that, while the projections for the next couple of months are favourable, clearly, the proposal will require addressing BNS.

34 The third step is: **Will any creditor be materially prejudiced if the extension being applied for were granted?** As noted, there has been some improvement in the position of BNS since the Notice of intention was filed in that it has received approximately $95,000 U.S. which the Bank's solicitor points out came direct to it and not through any exercise of direction by HHFL. BNS has also received the November 2005 interest. In this case there are only two significant unrelated secured creditors, BNS and BDC. BDC consents to the extension of time but I am mindful of the fact that its security is a first charge over the fixed assets which are by themselves not likely to significantly decrease in value but on the other hand would probably have some measure of increased value by virtue of an operating going concern and also there is an indication of additional land being acquired from government by HHFL. I do agree with BNS that additional land, even if the obtaining of it is imminent, does not by itself provide any comfort to the Bank which has as its security a first charge on trade receivables and inventory. What does come through from the totality of the evidence is that this is a busy and likely profitable time for the industry and Mr. Rosen, in his affidavit, deposes at paragraphs 11 and 12:

> 11. I believe that the forty five day extension for filing the proposal is critical to the operations of the Company. It is my opinion that no creditor would be materially prejudiced if the extension is granted. The security of BNS would actually be enhanced during the extension period because of the profitable time of year and increase in inventory and receivables. BDC would have an opportunity to add to their security the land which I understand is to be conveyed to the Company by the government.
>
> 12. In the event the Company were to become bankrupt, it is my opinion that both BDC and R. Hartlen Investments Inc., which has a third charge on the assets would be severely prejudiced. It is also my opinion that the unsecured creditors would lose any opportunity of recovery.

35 I struggle with what constitutes material prejudice and there is some guidance in *Cumberland Trading Inc., Re* above. In that case the creditor under the BIA applied to have a stay, etc. In paragraph 11 Justice Farley stated:

> Is Skyview entitled to the benefit of s. 69.4(a) BIA? I am of the view that the material prejudice referred to therein is an objective prejudice as opposed to a subjective one — ie., it refers to the degree of the prejudice suffered vis-a-vis the indebtedness and the attendant security and not to the extent that such prejudice may affect the creditor *quo* person, organization or entity. If it were otherwise then a "big creditor" may be so financially strong that it could never have the benefit of this clause. ...

36 In the case before the court, the accounts receivables as of November 31, 2005 amounted to $956,532.16, almost double the indebtedness outstanding to BNS. HHFL certainly has as great if not greater motive in pursuing and collecting receivables as does BNS and I do not think there need be any concern as to the attempts in the short run for collection. Arguably, if an accounts receivable is uncollectible now its position cannot be any worse a few weeks from now. Extending the time period obviously creates some risk and some possibility of benefit. Provided a proper monitoring scheme is in effect, what normally should follow an extension is a flowing of proceeds from existing accounts receivables, new sales and new accounts receivables into the operating costs in an operation where in the immediate future a degree of profitability is projected.

37 This section of the *Act* contemplates some prejudice to creditors and I am of the view that the prejudice must be of a degree that raises significant concern to a level that it would be unreasonable for a creditor or creditors to accept. Overall, I am satisfied that HHFL has met the requirement of establishing on the balance of probabilities that the granting of an extension will not materially prejudice any of the creditors and in particular BNS.

Conditions

38 During the course of argument I indicated if an extension was granted that BNS at the very least was entitled to have timely full disclosure of the utilization of funds for the continued operation of the company. This could be achieved by requiring HHFL to return to the commitment of having all operating funds passed through its accounts with BNS but it will also require a direction that other than interest entitlement, if not paid, BNS would not be able in the intervening period to encroach upon the trading funds which are absolutely necessary for the continued operation and survival chances of the business. The direction would probably also require any outstanding documentation, possibly requiring HHFL to produce the invoices in the reconciliation it provided for cash withdrawals for cash purchases from Pacmar Norway, etc. There would be a requirement of timely disclosure. There are a number of other possible conditions that come to mind. However, as both counsel indicated if the extension was granted they requested the opportunity to address possible conditions, I readily accede to their offer of assistance. Counsel, if they agree, may take some time to consult with each other and put their views in writing or alternatively address the matter orally and, in any event, I will, as scheduled be available at 2:00 p.m. this afternoon unless both counsel agree on the appropriate terms and conditions of the order of extension.

Application granted.

TAB 4

1994 CarswellOnt 253
Ontario Court of Justice (General Division [Commercial List]), In Bankruptcy

Baldwin Valley Investors Inc., Re

1994 CarswellOnt 253, [1994] O.J. No. 271, 23 C.B.R. (3d) 219

Re proposal of BALDWIN VALLEY INVESTORS INC. and of VARION INCORPORATED

Farley J.

Judgment: February 3, 1994*
Docket: Doc. 32-65038

Counsel: *Frank Bennett* , for debtor companies.
Larry Crozier , for secured creditor, Royal Bank of Canada.

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Bankruptcy --- Proposal — General

Proposals — Notice of intention — Extension of time — Debtor companies applying for extension of time to file proposal and failing to file within extended time — Companies again applying for extension — Registrar dismissing application upon finding that companies would not be able to make viable proposal — Companies' appeal from registrar's decision dismissed.

Two related debtor companies defaulted on their obligations to their bank. The bank demanded payment from the companies and served notice of intention to enforce its security. The companies filed a notice of intention to file proposals, and each subsequently received an extension to file a proposal. When they failed to file a proposal by the extended time, the companies again applied for an extension of time to file.

The Registrar in Bankruptcy dismissed the applications, upon a finding that the bank, which held about 92 per cent of one company's debt and almost 100 per cent of the other, had lost all confidence in the companies and wanted only to enforce its security. As a result, a viable proposal was not possible. The companies were, therefore, unable to satisfy the statutory burden imposed upon them by s. 50.4(9) of the *Bankruptcy and Insolvency Act* .

The companies appealed.

Held:

The appeal was dismissed.

The registrar did not err in finding that the companies had not satisfied the onus imposed on them by s. 50.4(9).

Table of Authorities

Cases considered:

Cumberland Trading Inc., Re (1994), 23 C.B.R. (2d) 225 (Ont. Gen. Div. [Commercial List]) — *referred to*

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 —

s. 50.4(9)

s. 50.4(11)

Appeal from decision of Registrar in Bankruptcy [reported at 23 C.B.R. (3d) 219 at 223] dismissing second application for extension of time to file proposal under *Bankruptcy and Insolvency Act* .

***Farley J.*:**

1 Baldwin Valley Investors Inc. ("Baldwin") and Varion Incorporated ("Varion"), the debtor companies appealed the dismissal of their extension of time to file proposals requests heard January 27, 1994 by Registrar Ferron. The Registrar indicated that he had refused extensions that day with reasons to follow shortly [reported at 23 C.B.R. (3d) 219 at 223]. The matter came before me on January 28th and on consent was adjourned to be heard today when it was expected that reasons would be available, as they in fact were. The Registrar was of the view that the debtor companies had failed to meet all three tests under s. 50.4(9) of the *Bankruptcy and Insolvency Act* , R.S.C. 1985, c. B-3 as amended ("BIA"). That section provides that:

> (9) The insolvent person may, before the expiration of the thirty day period mentioned in subsection (8) or any extension thereof granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty day period mentioned in subsection (8), if satisfied on each application that
>
> (*a*) the insolvent person has acted, and is acting, in good faith and with due diligence;
>
> (*b*) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted;

and

(*c*) no creditor would be materially prejudiced if the extension being applied for were granted.

This should be contrasted with the termination provisions of s. 50.4(11) which provide that:

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

(*a*) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

(*b*) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,

(*c*) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

(*d*) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(*a*) to (*c*) thereupon apply as if that period expired.

2 The facts are as set out in the Registrar's reasons released today. Counsel were agreed that the standard of review was that I had to be satisfied that the Registrar either erred in law or in principle.

3 Let me deal with the middle test of s. 50.4(9)(*b*) that the debtor companies must show that they "would likely be able to make a viable proposal if the extension being applied for were granted". The Registrar appeared to focus on the fact that the Bank, as the 92% creditor of Baldwin and almost 100% creditor of Varion, had lost all confidence in the debtor companies and would not vote for any proposal put forth. However, in my view this is not the test of s. 50.4(9)(*b*). This becomes clear when one examines s. 50.4(11)(*b*) and (*c*); it appears that Parliament wished to distinguish between a situation of a viable proposal (s. 50.4(9)(*b*) and (11)(*b*)) versus a situation in which it is likely that the creditors will not vote for this proposal, no matter how viable that proposal (s. 50.4(11)(*c*) but with no corresponding clause in s. 50.4(9)).

4 It seems to me that "viable proposal" should have to take on some meaning akin to one that seems reasonable on its face to the "reasonable creditor"; this ignores the possible idiosyncrasies of any specific creditor. However, it does appear to me that the draft proposal being floated by the debtor companies is one which proposes making the Bank (which has lost faith with the management of the debtor companies) a partner with the owners of the debtor companies, failing which (a likely certainty in these circumstances) the debtor companies propose that third parties become equity participants instead of the Bank; yet there is no indication of the names and substance of these fallback partners. It does not appear to me that the debtor companies have shown that they are likely to be able to make a viable proposal. While that need not be a certainty: see my views at pp. 10-11 in *Re Cumberland Trading Inc.* released January 24, 1994 [now reported at 23 C.B.R. (3d) 225 , at p. 231]. "Likely" as defined in *The Concise Oxford Dictionary of Current English* , 7th ed. (1987; Oxford, The Claredon Press) means:

likely 1. such as *might well happen* , or turn out to be the thing specified; *probable* . 2. to be *reasonably expected* . [emphasis added]

I do not see the conjecture of the debtor companies' rough submission as being "*likely* ".

5 While one may well fault the Bank for its approach to this situation, one has to recognize that the onus is on the debtor companies to show that they have acted in good faith and with due diligence. I am satisfied that the Registrar correctly assessed the situation in that regard that the debtor companies could have and should have proceeded with laying the foundation for their proposal and in fact building on that foundation rather than relying on anything that may be forthcoming from the Bank. In particular, see Cohn, *Good Faith and the Single Asset Debtor* (1988) 62 Am. Bankr. L.J. 131 on which it appears the Registrar relied. However, it is noted that there was no examination of the jurisprudential principles therein.

6 I discussed the question of material prejudice in *Cumberland, supra* , at pp. 11-13 [pp. 231-232]. The debtor companies have provided no information in that regard for the 45 day extension period from February 28, 1994. The only information close to this is the cash-flow statement of the previous extension granted December 16, 1993. However, for this extension there was no information. It appears therefore, that the debtor companies did not even attempt to meet this condition.

7 I am therefore, of the view that on all three tests (one failure of a test being sufficient to disqualify a debtor company from being able to ask for an extension) the debtor companies have failed to overcome the onus on them. The Registrar was correct in the result on all counts, although I feel that he inadvertently used the wrong test in s. 50.4(9)(*b*), a quite understandable situation given the terminology used in the legislation.

8 I would also point out that it was clear that if the debtor companies had won a victory in this appeal, it would have been a Pyhrric victory. The Bank would have been able to come right back in with a motion based on s. 50.4(11)(*c*).

9 The appeal is dismissed. Costs were agreed at $2,500 and are payable by the debtor companies jointly and severally to the Bank forthwith.

Appeal dismissed.

Footnotes
* This judgment is an appeal from the decision reported at 23 C.B.R. (3d) 219 at 223 .

TAB 5

2000 CarswellNS 216
Nova Scotia Supreme Court

Scotia Rainbow Inc. v. Bank of Montreal

2000 CarswellNS 216, 186 N.S.R. (2d) 153, 18 C.B.R. (4th) 114, 581 A.P.R. 153, 98 A.C.W.S. (3d) 1156

Bankruptcy of Scotia Rain Bow Incorporated, Escasoni Fisheries Ltd., Saddle Island Fisheries, Liscot Enterprises Inc., Madam Isle Sea Farms Ltd., Loch Bras D'or Farms Ltd., Applicants and Bank of Montreal, Respondent

Kennedy C.J.S.C.

Heard: May 17 and 18, 2000
Judgment: May 19, 2000
Docket: B2257, B22611, B22610, B22602, B22603, B22604

Counsel: *Stephen Kingston* and *R. Cluney*, for Applicant, Deloitte Touche.
Gregory Cooper, for Trout Lodge.
R. Carmichael and *Craig McCrea*, for Ernst & Young.
Tom Boyne, for Farm Canadian Commercial.
George Khattar, for Scotia Group of Companies.
Joe Wild, for E.C.B.C.
Kevin Zych, for Shur Gain.
A. Douglas Tupper and *Anthony Tam*, for Respondent, Bank of Montreal.

Subject: Insolvency

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Bankruptcy --- Proposal — Practice and procedure

S.R. Inc. and affiliated companies carried on business in aquaculture industry, primarily in growing and selling trout and salmon — Interim receivership order was made against S.R. Inc., which then filed notice of intention to make proposal — Applicants hoped federal government agencies would provide substantial equity injection but government agencies decided not to do so — Applicants then pursued investment from private sources and sought extension of time to file proposal — Application for extension was supported by all of applicants' primary secured creditors except respondent bank — Bank claimed it would be materially prejudiced by extention since main asset was 8 million fish costing $200,000 per week to feed — Bank claimed such loss would continue to escalate as long as it was prevented from realizing on security — Application for extension granted — Given quality, experience and expertise of supporting creditors, it was likely reorganization would be successful — Also, time frame given by bank for marketing security was

greater than extension sought by applicants — Order granting extension was to permit bank to commence marketing security immediately — Order would allow applicants one further effort to save S.R. Inc. and permit such extension without material prejudice to bank — Extension to be granted until June 30, 2000.

Table of Authorities

Cases considered by *Kennedy C.J.S.C.*:

Baldwin Valley Investors Inc., Re (1994), 23 C.B.R. (3d) 219 (Ont. Gen. Div. [Commercial List]) — applied

Cumberland Trading Inc., Re (1994), 23 C.B.R. (3d) 225 (Ont. Gen. Div. [Commercial List]) — referred to

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
s. 47(1) [rep. & sub. 1992, c. 27, s. 16(1)] — referred to

s. 50.4(9) [en. 1992, c. 27, s. 19] — considered

s. 50.4(9)(a) [en. 1992, c. 27, s. 19] — considered

s. 50.4(9)(b) [en. 1992, c. 27, s. 19] — considered

s. 50.4(9)(c) [en. 1992, c. 27, s. 19] — referred to

Words and phrases considered

viable proposal

. . . the phrase a viable proposal as set out in subsection (b) of s. 50.4(9) [of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3] . . . should take on a meaning akin to one that seems reasonable, a proposal that seems reasonable on its face to the reasonable creditor. Reasonable on its face to the reasonable creditor. . . . this ignores the possible idiosyncrasies of any specific creditor.

APPLICATION by trustee for order for further extension of time for filing proposals.

***Kennedy C.J.S.C.*:**

1 This is an oral decision, I would ask counsel to bear with me. It is somewhat convoluted. I reserve the opportunity to add to, but not subtract from this decision, should I consider it to be necessary. I do that because of the time constraints that I have had to deal with in trying to get this decision done, so that a matter that needs to be addressed is addressed as quickly as possible.

2 This is an application brought on behalf of Scotia Rainbow and its affiliated companies. It is brought by its Trustee in bankruptcy, Deloitte Touche, seeking a further extension of time for filing proposals pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S., 1985, c. B-3, s. 1; 1992, c. 27, s. 2 that further extension that they now wish is until June 30th, 2000.

3 The applicants are supported by the primary secured creditors of the company, with the notable exception of the Bank of Montreal (the Bank), which strongly opposes the application. I will review some of the facts that are not contested.

4 Scotia Rainbow is based in Arichat, Cape Breton. It and its five wholly owned subsidiary companies carry on business in the aquiculture industry. They are primarily active in growing and selling trout and salmon.

5 On March 2nd, 2000, Justice Moir of this Court issued an interim receivership order regarding Scotia Rainbow Incorporated, pursuant to s. 47(1) of the *Act*. The application was brought by the Bank. Ernst and Young was appointed Interim Receiver. Further orders were issued by the court on March 10th and 14th, 2000, extending the interim receivership to the subsidiary companies of Scotia Rainbow. The interim receivership continues in place and Scotia Rainbow continues to operate under it.

6 Scotia Rainbow filed a notice of intention to make a proposal under the *Act* on March 9th, 2000. Its subsidiary companies filed similar notices on March 17th, 2000, and Deloitte Touche was Trustee under these notices.

7 On April 10, 2000, I issued an order extending the time for Scotia Rainbow to file its proposal by 18 days to April 28th, 2000. Similar orders were issued with respect to the subsidiary companies on April 10th, 2000, extending the time for filing proposals in those cases by 11 days and to the same date, April 28th, 2000. The Bank did not oppose any of these applications to extend time. The Bank did not oppose any of the applications at that time.

8 On April 26th, 2000, pleadings were filed with this Court for an application to be heard on April 28th, 2000, for a further extension of time for filing proposals. The company sought to extend the time to May 29th, 2000.

9 The Bank, through its solicitors, advised that it now would be opposed to the application. Justice Goodfellow of this Court, who was to preside on April 28th, 2000, determined that the application should be adjourned to May 10, 2000, and ordered that such adjournment were deemed to be extensions pursuant to the *Act*.

10 On May 10th, 2000, Justice Stewart of this Court, adjourned the applications and extended the time until May 15th, when with the consent of all parties, I adjourned and extended the matter until May 17th, so that the consent in the case of the bank was only to extend it from May 15th to May 17th.

11 At the commencement of this hearing on May 17th, Scotia Rainbow indicated that because of recently changed circumstances, which I will speak of later, it was now asking the Court to extend the time for filing proposals to June 30th, 2000. In response, the Bank argued that they couldn't change that date from May 29th until June 30th, 2000, without notice, sufficient notice, the Bank suggested that they did not receive sufficient notice. I am satisfied that I have discretion in circumstances such as these, to allow such a change to be made and in the circumstances that it was requested, I am going to exercise my discretion and allow that to take place.

12 The creditors who are in support of the application have agreed to a memorandum of understanding, a copy of that memorandum is attached as schedule "A" to the supplementary affidavit of Karen Cram. The memorandum sets out the arrangements by which these primary secured creditors are prepared to work towards the reorganization of the principal secured debt of Scotia Rainbow and the finalization of the Scotia Rainbow proposal. If you will bear with me I will read s. 50.4(9) for the record, it provides as follows:

> The insolvent person may, before the expiration of the thirty day period mentioned in subsection (8) or any extension thereof granted under the subsection, apply to the court for an extension, or further extension as the case may be, of that period, and the court may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding the aggregate of five months after the expiration of the thirty day period mentioned in subsection (8), if satisfied on each application that
>
> (a) the insolvent person has acted and is acting, in good faith and with due diligence;
>
> (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
>
> (c) no creditor will be materially prejudiced if the extension being applied for were granted.

13 The burden lies on the applicant, Scotia Rainbow to show that the three requirements set out in s. 50.4(9) are satisfied, if it is to succeed on this application. It is acknowledged that this burden is on the balance of probabilities.

14 As to subsection (a), that requirement, the requirement that the insolvent person has acted and is acting in good faith and with due diligence, this is a non issue in this matter.

15 The Bank, the creditor opposing, has not questioned the evidence that the applicant has been so acting and I find on sub (a) that the requirement is addressed and satisfied on the balance of probabilities.

16 There remain then, two main issues to be determined by this Court. Those being whether the applicant can satisfy the requirements of sub (b) and (c) on the balance of probabilities.

17 As to s. 50.4(9)(b), that the insolvent person would likely be able to make a viable proposal of the extension being applied for were granted. Counsel for the primary creditor Shur Gain, in support of the applicant, has brought to this Court's attention the case of *Baldwin Valley Investors Inc., Re* (1994), 23 C.B.R. (3d) 219 (Ont. Gen. Div. [Commercial List]). In that matter Justice Farley of the Ontario Court of Justice (General Division) (which it then was), Justice Farley considers the

phrase a viable proposal as set out in subsection (b) of s. 50.4(9). He says that that phrase should take on a meaning akin to one that seems reasonable, a proposal that seems reasonable on its face to the reasonable creditor. Reasonable on its face to the reasonable creditor. Justice Farley says this ignores the possible idiosyncrasies of any specific creditor. Justice Farley also examines the meaning of the word 'likely', and refers to the Concise Oxford Dictionary of current English where likely is defined, and I quote:

> Might well happen or turn out to be the thing specified.

18 Might well happen or turn out to be the thing specified...I am in agreement with Justice Farley's determinations as to the meaning of these words, and I adopt his findings as to their meanings for our purposes. When I make reference to those words for our purposes, I am adopting Justice Farley's definitions.

19 The applicant argues that it is likely to be able to make a viable proposal if the extension is granted. It does so, notwithstanding that one of its key suggestions in its brief, and then the memorandum of agreement, that is, that there was going to be support from federal agencies, no longer is going to happen.

20 Prior to the March 17th application date, the applicant expected that the federal government agencies would provide a substantial equity injection into Scotia Rainbow, in return for a majority of shares. The applicant has indicated, disclosed at the start of this hearing, that after more recent negotiation with the agencies involved, it now concludes that this is not going to happen, or at least it will not be a component of a proposal to the creditors, and it was this changed circumstance that caused the applicant to change the request with respect to the length of the extension.

21 Scotia Rainbow now says it is pursuing investment from private sources, but does so with the assistance of the secured creditors who are in support of the application. Ms. Karen Cramn, the senior vice-president of the Trustee, Deloitte Touche is able to tell this Court that she is "cautiously optimistic", that such funding from private sources will be available. Notwithstanding the changed circumstances, counsel for the applicant submits that the memorandum of agreement shows that the primary creditors are prepared to work with Scotia Rainbow to make significant monetary commitments as part of the accepted proposal, including the provision of a line-of-credit and the delay of the repayment of loans. This, says the applicant, is evidence that Scotia Rainbow is likely to be able to make a viable proposal if the extension is granted.

22 The Bank of Montreal, though, argues otherwise. It says that the applicant's submission is wishful thinking: For instance, the Bank of Montreal argues that the suggested proposal, the memorandum, understanding of agreement, refers to a new bank that will provide funds to pay out the Bank of Montreal's line-of-credit and obtain a release of the Bank of Montreal's security.

23 Counsel for the Bank of Montreal asks this Court the question, what new bank? Where is the bank that is prepared to go where the Bank of Montreal has been? The applicant has produced a letter from a bank, that at this time constitutes I guess what might be described as an expression of interest, but no more than that.

24 The Bank of Montreal says, where is the private source of money likely to come from when federal agencies mandated to support Cape Breton Industry won't commit to the proposal. If you can't get the feds involved, what is the likelihood of

getting private money?

25 The Bank of Montreal says the applicant has had both the time permitted by the *Act* and a number of extensions to put together a viable proposal and has not been able to do so. The Bank argues that there comes a time when reality must be faced and the Bank says that time is now and the reality is that no proposal of this nature is going to make it. The Bank says the time is now, that this is the time to face that reality because the Bank claims that it is materially prejudiced to the delay in realizing against its security. Which brings us to s. 50.4(9)(c), the requirement that the applicant show that no creditor would be materially prejudice if the extension being applied for is granted.

26 This issue of material prejudice, in this case is characterized by the unique nature of the Bank's security. Fish, 8 million fish, fish that have to be fed, fish that are subject to disease, fish that have been known at least in the Province of Alberta they tell me, to escape, fish that eventually have to be sold in a fluctuating market.

27 The Bank points out that, to protect and maintain this perishable and fragile asset, the Interim Receiver, on behalf of the Bank, has incurred substantial costs. The Interim Receiver has estimated the costs to continue to operate and protect the asset to be approximately $200,000.00 a week. $200,000.00 a week that the Bank covers and will be forced to continue to cover during any extension.

28 The Bank says that had the realization process been able to be commenced as early as April 13th of this year, the Interim Receiver has estimated that even back then the Bank had already lost approximately $800,000.00. A loss that the Bank says will continue to escalate as long as it is prevented from realizing on that security.

29 The Bank has argued that to allow the stay, the extension sought by the applicant, would increase the Bank's risk by approximately, approximately being the operative word, 2 million dollars.

30 I have listened to two days of hard numbers, of past and present fact, speculations, projections and counter projections. I do not intend to try to reconcile the contradictions or to recap or summarize that evidence at this time. I heard it all. It is the nature of this type of application that this Court is being asked to consider, both what will happen, what could happen. Also what is not ever likely to happen. The Court is asked to predict the future. Let me say that after having considered all of the evidence, and please understand that I mean all of the evidence, all of the arguments, it is the balance of probabilities that I attempt to get at, that I attempt to establish, that I attempt to discover. And I repeat, the onus is on the applicant.

31 I will address then, the requirement under s. 50.4(9) of the *Act* that the applicant show on the balance of probabilities that Scotia Rainbow would likely be able to make a viable proposal if the extension applied for was granted. I find that the applicant has met this requirement. I do so, mindful of the Bank's insistence that the applicant's predictions are unrealistic given Scotia Rainbow's inability to put together a viable proposal, despite the best efforts of these people for 11 weeks since the filing of the notice of intention. I am aware of that argument. I was though, impressed by the evidence of Karen Cramn on behalf of the Trustee and I find that her "cautious optimism" was a sincere statement of her belief, that were the process to be allowed to continue, the applicant and its supporting creditors would be able to reorganize the principle secured debt of the companies.

32 These creditors, in support have been described as sophisticated companies, understanding the reality of the task required to be accomplished over limited time. This is the essence. It is relevant and proper for this Court to consider the quality, the experience and the expertise of the people attempting to accomplish the proposal. It is proper for me to look at who is trying to do this, who are these people. And having done so, considering all of the various factors, I conclude that it is likely that they will, based on the framework of the memorandum of understanding, memorandum of agreement, succeed. I so find.

33 The Bank has argued that despite the best efforts of the applicant, it is in a position to veto any proposal made under the *Act*. The Bank cites *Cumberland Trading Inc., Re* (1994), 23 C.B.R. (3d) 225 (Ont. Gen. Div. [Commercial List]). which is another decision of Justice Farley of the Ontario Court of Justice (General Division). I am satisfied, however, that such claim to a veto is not established before me, because it is dependant upon an estimate of total Scotia Rainbow indebtedness to the Bank which includes a third party guarantee of 2.2 million referred to as the Viramair Guarantee. The viability of this guarantee is uncertain at this time. I am told by the applicant counsel, specifically Shur Gain, I remember counsel for Shur Gain and also Mr. Kingston, on behalf of Scotia, I am told by those counsel that the enforce ability of this guarantee is presently a live issue and they have explained why, and I believe it is a live issue. It would have to be established, the enforce- ability of that guarantee would have to be established to put the Bank in a veto position. It is not for this Court, on the evidence before me, to determine the quality of that guarantee. I cannot find that the Bank then, is in a position to veto at this time. I do not so find.

34 Let's then move on to the requirement that the applicant show that on the balance of probabilities, no creditor will be materially prejudice if the extension sought is granted, subsection (c). It is, of course, material prejudice that we speak of, not simple prejudice. While acknowledging the Interim Receiver's expenditures during the stay period, the applicant asks this Court to consider that the bulk of these expenditures actually do benefit the Bank, because they are directed to the maintenance and growth of the fish inventory over which the Bank claims first charge. The expenditures say the applicant not only keeps the company operating, which is a good thing, according to the applicant, but those expenditures increase the market value of the fish, and as a result, the quality of the Bank's security.

35 Central to the debate on this issue therefore, was the disagreement as to the effect that a further stay would have on the Bank and that was the issue that took much of the day and a half of the argument that was made before this Court. There is disagreement as to the effect that the stay has on the Bank. There is disagreement as to what the costs feeding the fish amounts to in the sense that who gets the benefit, what is the extent of the benefit to the various parties, there was debate as to the nature of the contract with the American/Japanese company, with respect to additional monies that might be forthcoming from that company, and how that situation was affected by the potential stay. There was the issue raised in relation to the Bank's agreement with C.C.C., the federal agency that is involved with supporting Canadian Exports. How a stay would affect the Bank's relationship with that agency, given the contract, the arrangement between the two, with respect to guarantees made by the agency, specific to the Bank.

36 A very significant question raised by the Bank was that, should the extension be accomplished, it would further set back the Bank's ability to realize on and market its security and that this delay, this further delay cause the Bank material prejudice.

37 The Bank estimated that it would take, should a proposal not succeed, it would take 10 to 12 weeks to realize on its assets from the date the extension had ended. It is, of course, a given that during that period of time the fish would continue to eat, cost would continue to rise.

38 The applicant offered a response to this suggestion of prejudice and I find that that response not only addresses the issue of delay in the commencement of the marketing process, but it addresses the entire suggestion of material prejudice to the Bank.

39 The applicant has pointed out that the time frame for marketing the security, that the Bank suggests, and that I repeat was 10 to 12 weeks from commencement, is greater than the extension sought by the applicant.

40 The applicant has suggested, I think it was initially counsel for Shur Gain and certainly joined in and further argued by Mr. Kingston on behalf of the applicant, has suggested that this Court draft an order for extension that allows the receiver to commence the marketing of the Bank's security immediately. An order that would allow both the applicant's effort to develop a viable proposal and the Bank's effort to market its security to be carried on simultaneously. Thus allowing the applicant one further effort to save this company, and at the same time addressing the Bank's suggestion of prejudice caused by a further stay, which prejudice of course the applicant does not admit.

41 The Bank countered by asking how the Interim Receiver could be expected to organize a sale of this nature when it had no authority to sell until such time as this process had ended; until the stay had expired. The Bank asked the question, who is going to deal with the Receiver who has no authority to sell? The response to that counsel, again on behalf of Shur Gain, said that just such orders, orders of this nature, have been crafted in other jurisdictions and it was his suggestion at least, that there are indeed people who would negotiate given that contingency, given that situation. Common sense tells me that there is likely to be. Frankly, notwithstanding the obvious compromise that has to be acknowledged in relation to the process, given the time frames involved, I am satisfied that it is possible that there would be people interested in negotiating under those circumstances. Possible purchaser. Although this marketing process would be imperfect, until the proposal possibility was exhausted, I am satisfied that the suggestion has merit and significantly, I am further satisfied that an order that allows the marketing process to take place during the term of the extension period, would permit such extension to be accomplished without material prejudice to the Bank.

42 The suggestion made by the applicant, therefore, in combination with all of the evidence, has satisfied this Court that an extension that allows the Bank this option would not materially prejudice the Bank on the balance of probabilities. Being satisfied that all of the prerequisite requirements as set out by s. 50.4(9) have now been shown to be true to be so on the balance of probabilities, I will grant the order sought, extending the period for the filing of proposal pursuant to s. 50.4(9) of the *Act* until June 30th, 2000. It will be a term of that order that the Interim Receiver will be permitted, at the request of the Bank, to market the Bank's security during that period of extension, seeking purchasers should the sale of that security become available to the Bank. I will review an order when drafted. Should there be costs requested I will receive briefs.

Application granted.

TAB 6

2007 CarswellOnt 3907
Ontario Superior Court of Justice

Goldman Hotels v. Power Workers' Union

2007 CarswellOnt 3907, 34 C.B.R. (5th) 25

GOLDMAN HOTELS (Applicant) and POWER WORKERS UNION (Defendant) and BUSINESS DEVELOPMENT BANK OF CANADA (3rd Party)

C. Campbell J.

Judgment: June 11, 2007
Docket: 31-454965

Counsel: Harvey Chaiton for Goldman Hotels
Massimo (Max) Starnino for Power Workers Union
Stephanie Fraser for Business Development Bank of Canada

Subject: Insolvency

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Bankruptcy and insolvency --- Proposal — Time period to file — Extension of time

Hotel filed notice of intention to make proposal to creditors pursuant to Bankruptcy and Insolvency Act ("BIA") — Notice of intention was filed on May 14, 2007, and period for filing proposal was to expire on June 13, 2007 — Proposed purchaser made offer to interim receiver for hotel property — Court was advised that signing of agreement with proposed purchaser was imminent, and that conditions to agreement would require 45 days to complete — Union representing hotel workers opposed extending time for filing proposal — Hotel brought application for extension — Application granted — Extension was granted to July 26, 2007 — Criteria for extension under s. 50.4(9) of BIA were met — Hotel's proposal met definition of "viable" from leading case, which is proposal that seems reasonable on its face to reasonable creditors — There was no doubt that indebtedness owed to hotel's secured creditors absent viable proposal would leave no return for unsecured creditors — To deny extension would very likely condemn hotel into bankruptcy for no good purpose — Many issues raised by union were associated with labour relations rather than insolvency — Labour issues should not prevent reasonable unsecured creditor being in receipt of proposal which is only way such creditor would likely see any recovery.

Table of Authorities

Cases considered by *C. Campbell J.*:

Baldwin Valley Investors Inc., Re (1994), 1994 CarswellOnt 253, 23 C.B.R. (3d) 219 (Ont. Gen. Div. [Commercial List]) — followed

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

s. 50.4(9) [en. 1992, c. 27, s. 19] — considered

Words and phrases considered

viable proposal

The leading case [on whether a proposal is "viable" for the purposes of granting an extension under s. 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3] remains the decision of Farley J. in *Baldwin Valley Investors Inc., Re* (1994), 23 C.B.R. (3d) (Ont. Gen. Div. [Commercial List]) 219. At paragraph 4 he said as follows:

It seems to me that "viable proposal" should have to take on some meaning akin to one that seems reasonable on its face to the "reasonable creditors."

[Counsel] on behalf of the debtor company recognizes that to be viable, it is most likely that the unsecured creditors, including the union members, will have to receive the prospect of recovering something. This is more than is likely in a bankruptcy.

APPLICATION by debtor company for extension of time to file proposal under *Bankruptcy and Insolvency Act*.

***C. Campbell J.*:**

1 On May 14, 2007 Goldman Hotels ("Hotels") filed a Notice of Intention to make a Proposal ("NOI") to its creditors pursuant to the BIA. The time period for filing a proposal currently expires on Wednesday, June 13/2007. This is the first request for extension, which is opposed by Power Workers Union Local 1000. The request for extension is supported by the Business Development Bank.

2 The issue is whether or not the applicant has met the criteria and the Court is satisfied pursuant to s.50.43(9) of the BIA that:

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were

granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

3 There is no issue that Hotels is insolvent. The Union takes the position that the actions of Hotels in the period leading up to and since the filing of the NOI demonstrate that it is unlikely that there will be a proposal forthcoming that will meet the approval of unsecured creditors in general and the Union members in particular.

4 The position of the company is that the Interim Receiver has received an unsolicited offer to purchase the Property, which is comprised of a Conference Centre located on approximately 200 acres of land in the hills of Hockley Valley, east of Orangeville. The Conference Centre has ceased to operate as a going concern. There is space on the property operated by a private school until June 22, 2007.

5 The employees were laid off on May 18, 2007 and the evidence is that several management personnel and employees have been retained on a contract basis to assist with the closure of the centre. There is no doubt that the indebtedness owed to secured creditors absent a viable proposal will leave no return for unsecured creditors.

6 The Court has been apprised that the signing of an agreement with the proposed purchaser is imminent and that the conditions attached to that agreement will require 45 days to complete and allow for a proposal to be put before the Court.

7 Counsel for the Union urges that on the material before the Court, there is nothing before the Court to suggest that there will be any benefit for his clients, and if there is to be, that can be contained in a proposal placed before the Court before Wed. June 13, 2007.

8 The Union submits that the material before the Court does not meet any of the requirements of s. 50.4(9) of the BIA.

9 The leading case in this area remains the decision of Farley J. in *Baldwin Valley Investors Inc., Re* (1994), 23 C.B.R. (3d) 219 (Ont. Gen. Div. [Commercial List]). At paragraph 4 he said as follows:

> It seems to me that "viable proposal" should have to take on some meaning akin to one that seems reasonable on its face to the "reasonable creditors."

10 Mr. Chaiton on behalf of the debtor company recognizes that to be viable, it is most likely that the unsecured creditors, including the union members, will have to receive the prospect of recovering something. This is more than is likely in a bankruptcy.

11 It is urged that with this recognition the s. 50.4(9) criteria are met and that anything less than the 45 day period requested would materially interfere with the process of what is hoped be a viable proposal.

12 Having carefully considered the matter, I accept the submissions made on behalf of the debtor company. To do otherwise would, in my view, very likely condemn the debtor company into bankruptcy likely for no good purpose.

13 The s.50.4(9) criteria are met for extending purposes. I recognize that granting an extension does have some cost and expense associated therewith. In my view in this case it is justified. Many of the issues raised by Mr. Starnino on behalf of his clients are those associated with labour relations, not insolvency. To allow the use of labour issues to put undue pressure on the debtor should not prevent the "reasonable" unsecured creditor being in receipt of a proposal which is the only way they would likely see any recovery. For the above reasons an extension of the proposal of Goldman Hotels is granted to July 26, 1007.

Application granted.

Estate No.: 31-2008366
Court File No.: 31-2008366

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF ONE KENTON ALZHEIMER CENTER FOR EXCELLENCE (NON-PROFIT) INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

BOOK OF AUTHORITIES

(Returnable September 2, 2015)

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