CITATION: Growthworks Canadian Fund Ltd. (Re), 2014 ONSC 2990
COURT FILE NO.: CV-13-10279-00CL
DATE: 20140514

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO Growthworks Canadian Fund Ltd., Applicant

BEFORE: D. M. Brown J.

COUNSEL: K. McElcheran, for the Applicant, Growthworks Canadian Fund Ltd.

C. Fell, for the Monitor, FTI Consulting Canada Inc.

I. MacLeod, for Allen-Vanguard Corporation

D. Bell, for the Offeree Shareholders in Ottawa Court Files Nos. 08-CV-43188 and 08-CV-43544

T. Reyes, for Roseway Capital S.a.r.l.

HEARD: May 14, 2014

REASONS FOR DECISION

Extend stay period, advisory agreement approval and Monitor's fees approval motions in a *CCAA* proceeding

[1] Growthworks Canadian Fund Ltd. ("Growthworks" or the "Fund"), moved to extend the Stay Period set out in paragraph 14 of the Initial Order of Newbould J. made October 1, 2013 under the *Companies' Creditors Arrangement Act*[1] from May 16, 2014 until November 30, 2014. The history of these proceedings was set out at length in my prior reasons: 2014 ONSC 1856 and 2014 ONSC 2253.

[2] Growthworks seeks approval of an Investment Advisory Agreement with Roseway Capital S.a.r.l dated as of May 9, 2014. The Monitor, in its Tenth Report, expressed the view that the terms of the IAA were fair and reasonable and the implementation of the IAA should substantially reduce the costs incurred by the Fund in these proceedings. No person opposed approval of the IAA. Having reviewed the evidence concerning the IAA, I am satisfied that the

---

[1] R.S.C.1985, c. C-36.

proposed agreement is fair and reasonable, and I approve it. As well, I grant the Monitor the enhanced powers sought in respect of the tasks it must perform concerning the IAA as set out in the proposed Monitoring Enhancement Order.

[3] As to the extension of the stay period until November 30, 2014, the Monitor supports the extension and no person opposes. The evidence disclosed that circumstances existed which made the order appropriate and that the applicant had satisfied the criteria set out in *CCAA* s. 11.02(3)(b). I grant the extension of the stay period until November 30, 2014. In addition, as contemplated by paragraph 45(vii) of my Reasons dated April 10, 2014, I continue the partial lifting of the stay of proceedings therein granted in respect of the Allen-Vanguard Corporation action ("AVC Action") until November 30, 2014.

[4] Let me make two comments about the AVC Action. First, the cash-flow contained in the Monitor's Tenth Report showed that legal fees in respect of the AVC Action, together with restructuring costs, are projected to constitute the biggest expenses of the Fund through until November 30, 2014, with the result that by that date the Fund would be close to exhausting its present cash balance. That re-inforces, in my mind, the need to see the AVC Action come to trial on the timelines I ordered in my April 10 Reasons.

[5] Second, I was concerned that portions of the Monitor's Tenth Report dealing with the AVC Action could be read as suggesting that the parties to the action were already positioning themselves to fail to meet the trial preparation timelines ordered in my April 10 Reasons. Specifically, paragraphs 23 and 26 of the Tenth Report raised concerns that the parties to the AVC Action might be unable to meet those timelines because of the difficulty they contended they were encountering in obtaining case management dates in Ottawa. I cannot express any view on the process of scheduling of a case management conference in Ottawa, but I would observe that case management is not intended as a substitute for litigation counsel exercising their skills and judgment in moving a case to trial. Most issues which arise during the course of trial preparation can most certainly be resolved by counsel without the assistance of the Court. In reading the Monitor's report I was concerned that the parties were regarding case management as some sort of "nanny service", resort to which was required before taking a next step forward; that is not the function of case management.

[6] Perhaps I misread those portions of the Monitor's report, and I observe the Monitor did report that counsel in the AVC Action were consulting in the absence of a case conference to work out problems, which is a good thing. At the hearing counsel in the AVC Action informed me that a case conference would take place before Master McLeod on May 27, 2014, the parties would be seeking approval of a March, 2015 trial date and the parties were considering retaining a retired judge to arbitrate certain discovery disputes. All of that is fine. I simply wish to emphasize to counsel that I regard the timelines I set in my April 10 Reasons as quite achievable given the already lengthy history of the AVC Action, and the parties should not expect a sympathetic hearing from the Court if, when they appear on the November stay/lift stay continuation hearing, they do not report that they will be going to trial in the first part of 2015. I think it important to communicate that expectation clearly to the parties to the AVC Action at this point of time.

[7] The Monitor moved for approval of its activities and fees and disbursements. No person opposed. I regard the activities and fees as reasonable and grant the order sought by the Monitor.

[8] I have signed the draft orders filed by the applicant and the Monitor.

D. M. Brown J.

Date: May 14, 2014