TAB 16

Case Name:
Boutique Euphoria inc. (Arrangement relatif à)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT AND OF THE BANKRUPTCY OF: BOUTIQUE EUPHORIA INC., Debtor
c.
LINGERIE STUDIO INC., Mise en cause
and
RAYMOND CHABOT INC., Trustee
and
MARGARET KORDAS, ÉRIC GRÉGOIRE, MARTIN CREW-GEE, Petitioners

[2008] Q.J. No. 14592

2008 QCCS 4718

J.E. 2008-1971

EYB 2008-149738

No.: 500-11-032000-073

Quebec Superior Court
District of Montreal

The Honourable Clément Gascon, J.S.C.

Heard: February 12, 13, 14 and 19, 2008.
Judgment: July 29, 2008.

(95 paras.)

Insolvency -- Claims -- Disallowance of -- Priorities -- Wages -- Even though looking at the words used in the clauses of the offer in isolation may lead to a different opinion, when one considers the common intent of the parties to the offer and the subsequent behaviour of those involved, one must concludes that the common intent of the parties was not to cover the severance payments of the LSI's employees in the event of the exclusion of the LSI equipment and inventory -- Motion rejected.

Motion presented by Gregoire and Crew-Gee seeking payment of proceeds held by Raymond Chabot Inc., (the Monitor) -- Gregoire and Crew-Gee assert that their severance payment claims should be paid out of the liquidation proceeds of the assets of Euphoria Boutique Inc. (EBI) and Lingerie Studio Inc. (LSI) that took place during the Companies' Creditors Arrangement Act (CCAA) restructuring -- According to the Monitor, EBI was never the employer of Gregoire or Crew-Gee, while none of the LSI employees ever received payment of any severance during the CCAA process -- Gregoire and Crew-Gee argue that the offer accepted by the Monitor during the asset sale process conducted as part of the CCAA restructuring is clear and it stipulates that the vendor shall terminate the employees at the

warehouse location and pay any required severance owed to them -- In their view, the offer defines the vendor as including both EBI and LSI -- Gregoire and Crew-Gee contend that as the amount of their severance should have been set aside, it therefore does not form part of the bankruptcy assets -- HELD : Motion rejected -- Gregoire and Crew-Gee were not employees of EBI -- Consequently, they had no claims as creditors in the context of EBI's bankruptcy -- If any amounts should have been set aside for LSI's employees as a result of the offer and of the sale judgment, then a remedy does exist for Gregoire and Crew-Gee -- EBI's subsequent bankruptcy and the change of the Monitor's role to that of a Trustee in relation to the amounts of the liquidation process held in trust should not and could not affect that -- Even if such a remedy does exist, Gregoire and Crew-Gee must nevertheless establish that they had a right to the severance payments sought as former LSI's employees -- The right to exclude the equipment and inventory of LSI from the purchased assets was exercised by EBI and LSI, thereby excluding such assets from the contemplated sale -- Accordingly, even though looking at the words used in the clauses of the offer in isolation may lead to a different opinion, when one considers the common intent of the parties to the offer and the subsequent behaviour of those involved, one must concludes that the common intent of the parties was not to cover the severance payments of the LSI's employees in the event of the exclusion of the LSI equipment and inventory.

Statutes, Regulations and Rules Cited:

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

Civil Code of Québec, s. 1425, s. 1426

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 4, s. 11

Counsel:

Me Michael Heller, attorney for Margaret Kordas, Eric Gregoire and Martin Crew-Gee.

Me Alain Tardif and Me Melanie Béland, attorneys for Raymond Chabot Inc.

JUGEMENT
ON A MOTION OF EX-EMPLOYEES
SEEKING PAYMENT OF PROCEEDS HELD BY THE MONITOR

INTRODUCTION

1 This judgment deals with an issue that flows from an asset sale process conducted during a failed CCAA[1] restructuring involving two debtors, Euphoria Boutique Inc. ("EBI') and Lingerie Studio Inc. ("LSI").

2 The issue relates to the severance payment claims of two former employees of LSI, Eric Gregoire and Martin Crew-Gee[2]. They assert that their severance should be paid out of the liquidation proceeds of the assets of EBI and LSI that took place during the CCAA restructuring.

3 Raymond Chabot Inc., the Monitor appointed during the CCAA restructuring and, afterwards, the Trustee designated in the bankruptcy of EBI, replies that nothing is owed to them.

4 According to the Monitor, EBI was never the employer of Mr. Gregoire or Mr. Crew-Gee, while

none of the LSI employees ever received payment of any severance during the CCAA process. The latter has now ceased operations and has no assets.

5 From a factual standpoint, the matter raises a question of interpretation of an offer accepted by the Monitor during the asset sale process conducted as part of the CCAA restructuring, notably with respect to its impact upon terminated employees.

6 From a legal standpoint, assuming that Mr. Gregoire and Mr. Crew-Gee are correct in fact, the matter raises the question of the means available to enforce the orders of the Court in the context of a failed CCAA restructuring.

THE RELEVANT FACTS

7 On June 18, 2007, the Court issued an Initial Order pursuant to Sections 4, Sand 11 of the CCAA with respect EBI and LSI, two entities involved in the lingerie field.

8 EBI was a retailer of lingerie, operating fifteen stores under the trade name Moments Intimes and two stores under the trade name Victoire Delage. LSI was a wholesaler of lingerie.

9 The sole shareholder of both companies was Ace Style International Ltd ("Ace'), a company incorporated under the laws of the British Virgin Islands, with a place of business in Hong Kong. Although separate legal entities, EBI and LSI essentially operated as a single business, fully vertically integrated.

10 The Initial Order was issued for a period of thirty days. It has been renewed on numerous occasions, the last time until November 29, 2007.

11 While under the protection of the CCAA, EBI and LSI both liquidated all of their business assets and, eventually, simply ceased operations.

12 On August 29, 2007, the Court rendered a judgment (the Sale Judgment) approving the sale of most of the assets of EBI and LSI[3]. More precisely, the Court issued the following orders :

> [133] ACCUEILLE la requête du Contrôleur, Raymond Chabot Inc., afin d'obtenir l'approbation de la Cour pour la vente d'éléments d'actifs des Débitrices libres de toute charge aux termes de la Loi sur les arrangements avec les créanciers des compagnies;
>
> [134] APPROUVE l'offre d'achat (l'"Offre Lilianne amendée") faite solidairement par 168662 Canada Inc, 111764 Canada Ltée et Boutique La Vie en Rose Inc. (collectivement "Lilianne/BLVR") le 9 août 2007, telle que modifiée le 10 août 2007;
>
> [135] AUTORISE le Contrôleur à procéder à la vente des éléments d'actifs visés par l'Offre Lilianne amendée, à l'exception des éléments d'actifs visés par le paragraphe 2.7 de l'Offre Lilianne amendée (les éléments d'actifs visés par l'Offre Lilianne amendée, à l'exclusion des éléments d'actifs visés par le paragraphe 2.7 de celle-ci, sont ci-après désignés les "Actifs visés") et a accomplir tout acte et à signer toute convention ou document, de quelque nature que ce soit, afin de donner pleinement effet à l'Offre Lilianne amendée;
>
> [136] ORDONNE que la vente des Actifs visés conformément à l'Offre Lilianne

amendée soit effectuée libre de toute priorité, charge ou hypothèque;

13 The Amended Lilianne's Offer[4] (the "Offer") referred to in the Sale Judgment included the following clause:

6.1 Employees

On or prior to the Closing Date, the Vendor shall terminate the employment of all persons employed at the Warehouse Location (including the persons employed at the head office of the Vendor located within the Warehouse Location ("the Head Office")) and any district supervisor and any area supervisor of the Vendor and the Vendor shall pay any required severance payable to these employees. On or prior to the Closing Date, each of the Purchasers shall offer employment to the persons employed by the Vendor at the Retail Store Locations acquired by it other than Locations relating to any Excluded Lease (such persons, to the extent they have not left their employment on or prior to the closing Date and have accepted such offer, the "Hired Employees") identified in Schedule D. hereto (excluding, for greater clarity, all district and area supervisors), and the terms and conditions of employment of all such Hired Employees are set out in Schedule D. The allocation of the Hired Employees among the Purchasers is set out in Schedule E.

(Emphasis added)

14 The Offer defined the Vendor as referring to both EBI and LSI. Ultimately, the sale covered all of the assets of EBI other than inventory, as well as the assets of LSI other than inventory and equipment.

15 On the date of the Sale Judgment, Messrs. Gregoire and Crew-Gee were employed at the head office of the Vendor located within the warehouse location. Each had signed an employment agreement with LSI[5]. Pursuant to the terms of these agreements, they were entitled to severance packages, the amounts of which have been admitted at $54,000 and $27,000 respectively.

16 As a result of the Sale Judgment, the only assets remaining for the CCAA restructuring were the net proceeds of the liquidation, which ended up being held by the Monitor appointed by the Court. These proceeds barely exceeded $1.1 million in total.

17 After August 29, 2007, no amounts were paid to Messrs. Gregoire and Crew- Gee, or for that matter, to any employee of LSI.

18 On November 8, 2007, EBI and LSI filed their Plan of Arrangement. The only purpose of the Plan was to distribute the proceeds of liquidation. It included no reference to the payment of severance to any of the terminated employees of LSI.

19 On November 19, 2007, Messrs. Gregoire and Crew-Gee thus served a Motion seeking payment from the proceeds of the liquidation held by the Monitor in the amounts of $54,000 and $270,000[6].

20 However, in view of the opposition of a secured creditor, Cirex Group in EBI and LSI came to the conclusion that their creditors would never accept the Plan. Consequently, they did not seek any further protection of the Court pursuant to the CCAA process after November 29, 2007.

21 Rather, on that day, EBI filed for bankruptcy under the BIA[7]. As LSI had no assets to distribute, it

did not do anything.

22 Following the bankruptcy of EBI, the role of the Monitor under the CCAA process changed to that of a Trustee under the BIA inasmuch as EBI was concerned[8].

23 In an effort to avoid unnecessary duplication, the parties agreed to consider Messrs. Gregoire and Crew-Gee's Motion as the filing of Proofs of Claim in the bankruptcy of EBI[9], against which the Trustee afterwards filed a Contestation[10].

THE POSITIONS OF THE PARTIES

24 Messrs. Gregoire and Crew-Gee argue that clause 6.1 of the Offer is clear. It stipulates that the Vendor shall terminate the employees at the warehouse location and pay any required severance owed to them. In their view, the Offer defines the Vendor as including both EBI and LSI. In fact, they say that the Offer covers precisely the assets of LSI.

25 They add that the exact same clause (namely clause 5.1) appears in the final Asset Purchase Agreement eventually signed among EBI, LSI and the buyers. It refers this time to the Interveners instead of the Vendor, but the term is still defined as consisting of EBI and LSI.

26 Therefore, Messrs. Gregoire and Crew-Gee contend that the money required to be set aside for the purpose of their severance, be it in the Offer or in the Asset Purchase Agreement, belongs to them.

27 They maintain that neither EBI and LSI, nor the Monitor, can be authorized to sell their assets by the Sale Judgment, disregard the Court's order, and simply go away with the money that is theirs without paying the required severance.

28 They submit that the authorization given by the Court in the Sale Judgment entails the corollary obligation of the Vendor and the Monitor to abide by the terms of what they agreed to.

29 As the amount of their severance should have been set aside, it therefore does not form part of the bankruptcy assets to which the Trustee is otherwise entitled.

30 Only the Trustee in bankruptcy of EBI contests the Motion. Even though LSI is a party to the proceedings, no one appeared or made representations on its behalf. LSI has ceased operations and does not seem to have any assets upon which to execute any judgment.

31 First, the Trustee considers that the Proofs of Claim filed by Messrs. Gregoire and Crew-Gee should be dismissed since they were never employees of EBI.

32 Second, the Trustee objects that Messrs. Gregoire and Crew-Gee cannot claim any proprietary interest or right in the money held in trust from the liquidation proceeds of the now bankrupt EBI. At best, the employees are merely unsecured creditors.

33 Third, the Trustee pleads that clauses 6.1 of the Offer and 5.1 of the Asset Purchase Agreement were included at the request of the buyers, simply in order to protect their position as potential successor employer of either EBI or LSI. As the purchase of any inventory belonging to LSI was subsequently excluded from the safe pursuant to clause 27 of the Offer, the Trustee claims that neither one of clauses 6.1 or 5.1 had any application whatsoever with respect to the LSI employees.

34 When acting as Monitor in the CCAA restructuring, this is exactly what the Trustee explained to the Court in his report of August 16, 2007[11]. According to him, the Court relied heavily on this report in

rendering the Sale Judgment.

35 Therefore, the Trustee is of the view that the positions taken following the approval of the Offer must remain the same, especially because the Court gave its blessing to the sale process with these considerations in mind.

36 To do otherwise would indirectly penalize the creditors of EBI or LSI as the Court may well have reached a different conclusion in the Sale Judgment if the analysis of the Offer made by the Monitor had factored into account any monetary responsibility for the severance payments of the LSI employees.

QUESTIONS AT ISSUE

37 Under the circumstances, three questions are at issue:

1) Were Messrs. Gregoire and Crew-Gee employees of EBI or LSI?
2) If Messrs. Gregoire or Crew-Gee were not employees of EBI, do they still have a claim as a result of the Sale Judgment rendered in the CCAA restructuring process?
3) If so, did either one of EBI, LSI or the Monitor have any obligation to pay the severance of Messrs. Gregoire or Crew-Gee pursuant to the asset sale process conducted during the CCAA restructuring?

ANALYSIS AND DISCUSSION

1. The Status of Messrs. Gregoire and Crew-Gee

38 The uncontradicted evidence indicates that, while all EBI's employees received their severance payment following the acceptance of the Offer and the Sale Judgment, none of the LSI employees did.

39 From that perspective, considering that the Monitor concluded that Messrs. Gregoire and Crew-Gee were employees of LSI, they were not treated differently than the others.

40 It is the Court's view that neither Mr. Gregoire nor Mr. Crew-Gee was an employee of EBI. They were rather, at all relevant times, employees of LSI solely.

41 With respect to Mr. Gregoire, his employment contract was only with LSI, not EBI[12]. The evidence at trial also indicates that the employees working under his supervision were from LSI.

42 Furthermore, in the organizational charts[13] prepared in March 2007 for both EBI and LSI, Mr. Gregoire was listed as Vice-President of LSI only. He had no role whatsoever in EBI.

43 Mr. Gregoire was involved in the preparation of these charts. They were done well before the CCAA process or the occurrence of any litigation. They support the conclusion that at no time was Mr. Gregoire considered an employee of EBI.

44 With respect to Mr. Crew-Gee, similarly to Mr. Gregoire, his employment contract was with LSI, not EBI[14].

45 In the same manner, in the organizational charts of EBI and LSI, he was listed as Vice-President of the latter, with no role whatsoever in the former[15].

46 Save for his acting as mentor to Mrs. Kordas and for his role in helping some of the representatives

of EBI, he was not involved in that company.

47 He was indeed a director of LSI, with no similar status in EBI[16].

48 Even though both entities were working closely together, they remained separate legal entities. No evidence suggests that there would be a basis to consider either one of Messrs. Gregoire and Crew-Gee as being an employee of EBI at any point in time.

49 Consequently, they had no claims as creditors in the context of EBI's bankruptcy. Their only recourse, if any, would be against either entities or the Monitor as a result of the CCAA restructuring process.

2. The Claims as a Result of the CCAA Process

50 Since November 29, 2007, the CCAA restructuring process of EBI and LSI has not moved forward. The Initial Order has not been renewed beyond that date. EBI has now declared bankruptcy. LSI has no assets and no activities.

51 As stated, not being employees of EBI, Messrs. Gregoire and Crew-Gee have no status as creditors in the letter's bankruptcy.

52 This notwithstanding, they submit that they still have a claim, be it against the Monitor, EBI or LSI, as a result of the asset sale process conducted during the CCAA restructuring. Notably, so they say, because of the Offer and the Sale Judgment that enforced its acceptance.

53 Their Motion of November 19, 2007 was indeed served while this restructuring was pending and prior to EBI filing for bankruptcy. At that time, the Monitor held the net liquidation proceeds of the sale process in a trust account. Apparently, this is still the case, even though the quality of the Monitor changed to that of a Trustee.

54 With due respect to the different view expressed by the Monitor and Counsel, the Court considers that neither the bankruptcy of EBI, nor the fact that LSI has no assets, could deny creditors, such as Messrs. Gregoire and Crew-Gee, the right to claim an entitlement to severance payment if, as they allege, such is based on the asset safe process that the Court authorized and condoned as part of the CCAA restructuring.

55 If, as they suggest, this process ended up giving them rights as terminated employees, they are entitled to find a manner by which these rights could be enforced.

56 To rule otherwise would pay scant respect to the integrity of the CCAA process and the protection it is seeking to afford.

57 In the context of any CCAA restructuring, the Court's actions are based on well- known governing principles. Assuming the authority to do so exists and the exercise of judicial discretion warrants it, the Court will normally strive to do what makes sense commercially in the context of what is the fairest and most equitable under the circumstances.

58 In the orders that the Court issues as part of such restructuring, it tries to balance the interest of all involved, weighing the advantages and inconveniences flowing from any request and trying to provide consistency and certainty for those involved or affected.

59 Of course, when the Court issues an order to assist the parties in a CCAA restructuring, it expects

it will be abided by, failing which the affected parties should be entitled to seek redress.

60 These principles certainly apply in any asset sale process that the Court is asked to approve and sanction, as it was the case in this restructuring.

61 In assessing whether or not to approve an asset sale process, the Court is no doubt mindful of its role to extend protection to the debtor companies while they are attempting to negotiate and conclude a plan of arrangement to enable them to emerge and potentially continue as viable entities, be it only in part.

62 However, in such a situation, beside the potential benefits for the debtor companies, the Court's assessment also considers the advantages, if any, for the stakeholder, including the creditors and the employees.

63 Accordingly, if, in the context of a CCAA restructuring, debtor companies and their monitor seek the Court's approval of a given process, they should not be allowed to disregard lightly the commitments they made and for which they received the blessing of the Court.

64 At the very least, the Court's inherent jurisdiction certainly permits it to maintain its authority and prevent its process from being obstructed or abused. If Section 11 of the CCAA confers upon the Court vast powers in terms of Initial Orders and restructuring, it goes without saying that this includes the power to enforce these orders and, if necessary, create the remedies to do so.

65 To that end, it is in fact the responsibility of the Court to ensure that the language of its orders is not put into pieces and that some sense is made out of it.

66 That being so, Messrs. Gregoire and Crew-Gee are right in saying that if the Offer approved by the Sale Judgment has created rights for the LSI's employees, the Court's blessing of the asset sale process cannot allow EBI, LSI or the Monitor to proceed with the sale, take the money received as a result, and refuse to honour the obligations allegedly set forth in the Offer approved by the Court.

67 Any other solution would deprive the Court's orders of much meaning in the context of a CCAA restructuring.

68 Therefore, if any amounts should have been set aside for LSI's employees as a result of the Offer and of the Sale Judgment, then a remedy does exist for Messrs. Gregoire and Crew-Gee.

69 EBI's subsequent bankruptcy and the change of the Monitor's role to that of a Trustee in relation to the amounts of the liquidation process held in trust should not and could not affect that.

3. LSI's Employees' Rights under the Offer and the Asset Purchase Agreement

70 That said, even if such a remedy does exist, Messrs. Gregoire and Crew-Gee must nevertheless establish that they had a right to the severance payments sought as former LSI's employees.

71 On one hand, they rely for that purpose upon the wording of clause 6.1 of the Offer cited before. On the other hand, they argue that the meaning of that clause is reinforced by clause 5.1 of the Asset Purchase Agreement[17] that was signed afterwards:

> 5.1 Employees
>
> On or prior to the Closing Date, the Interveners shall terminate the employment of all

> persons employed at the Warehouse Location (including the persons employed at the head office of the Interveners located within the Warehouse Location (the "Head Office)) and any district supervisor and any area supervisor of the Interveners and the interveners shall pay any required severance payable to these employees. On or prior to the Closing Date, each of the Purchasers shall offer employment to the persons employed by the interveners at the Retail Store Locations acquired by it other than Retail Store Locations relating to any Excluded Lease (such persons, to the extent they have not left their employment on or prior to the Closing Date and have accepted such offer, the "Hired Employee") identified in Schedule D. hereto (excluding, for greater clarity, all district and area supervisors), and the terms and conditions of employment of all such Hired Employees are set out in Schedule E. The Interveners and Ace Style International Limited undertake to indemnify the Purchasers and their respective directors, officers and employees (each an "Indemnitee") and hold them harmless from any claim, loss, damage, expense and liability of whatsoever nature or kind and all applicable costs and taxes to which any Indemnitee may become subject, arising out of or in connection with the termination of the employment, prior to or as the Closing Date, of the persons employed at the Warehouse Location (including the persons employed at the Head Office) and any district supervisor and any area supervisor of the Interveners.

(Emphasis added)

72 From a reading of these two clauses, it appears that the Vendor or the Interveners assumed an obligation to pay any severance owed to the employees of the warehouse location. This apparently covered the employees of the head office such as Messrs. Gregoire and Crew-Gee. In both agreements, the Vendor or the Interveners were defined as including EBI and LSI.

73 In any exercise of interpretation of a given clause, the words used are important. However, they do not constitute the sole mean of interpretation. What a Court must try to find is the common intent of the parties rather than strict adherence to the literal meaning of the words used[18].

74 In this respect, the circumstances in which an agreement was reached and the interpretation given by the parties to a given clause are important factors to consider[19].

75 In this case, beyond the words used in the two clauses, the sole evidence heard on the common intent of the parties is that of the Monitor, Mr. Bourque. In the testimony that he gave without objection, and which remained uncontradicted, he explained the precise purpose of the clauses.

76 He said they were included to protect the position of the buyers with respect to any successor employer status that may be raised against them. The buyers wanted to be sure that no severance would remain unpaid in order to prevent any successor employer claim being made by anyone.

77 Inasmuch as LSI was concerned, such a possibility only made sense if its inventory and equipment were part of the deal. However, under clause 2.7 of the Offer, it could be excluded at the initiative of the Vendor.

78 The Monitor explained that the right to exclude the equipment and inventory of LSI from the purchased assets was indeed exercised by EBI and LSI, thereby excluding such assets from the contemplated sale.

79 According to the Monitor, this had the impact of eliminating any potential impact of clause 6.1 on any of the employees of LSI, as the tatter's assets were no longer the object of any agreement between the parties.

80 In what was submitted to the Court for approval in August 2007, the Monitor indeed prepared an analysis of the competing offers then received, wherein he quantified the value of each.

81 In the report of August 16, 2007 that he filed in the Court record in this respect[20], the Monitor presented the detailed analysis that he had submitted to the Creditors' Committee concerning these offers[21].

82 In that report, the Monitor discussed the understanding of the parties with respect to the exclusions of the stock and equipment covered by clause 2.7. At paragraph 3.1.2, he emphasized the fact that the LSI employees' severance liabilities were, as a result of these exclusions, no longer to be assumed by the Vendor.

83 In the Sale Judgment, the Court relied upon this analysis of the Monitor in concluding that the process was appropriate and that the acceptance of the Offer by the Monitor was proper and reasonable.

84 The Court took note of the satisfactory analysis made by the Monitor to that end and referred specifically to this paragraph of his report.

85 Subsequently, EBI, LSI, the Monitor and the buyers also acted in accordance with this understanding. None of the employees of LSI received a severance payment pursuant to the Asset Purchase Agreement. They rather remained unsecured creditors in the ongoing process of the CCAA restructuring.

86 No evidence suggests that the interpretation of this common intention given by the Monitor was incorrect.

87 Accordingly, even though looking at the words used in clauses 6.1 and 5.1 in isolation may lead to a different opinion, when one considers the common intent of the parties to the Offer, the analysis thereof made by the Monitor during the asset sale process, and the subsequent behaviour of those involved, the Court concludes that the common intent of the parties at clauses 6.1 and 5.1 was not to cover the severance payments of the LSI's employees in the event of the exclusion of the LSI equipment and inventory pursuant to clause 2.7 of the Offer.

88 It is by assuming that this analysis was correct that the Court accepted the Monitor's recommendation in the Sale Judgment of August 29, 2007.

89 Having done so, it would be rather awkward for the Court to reach a different conclusion at a different time in regard to the same clause.

90 To that extent, one cannot qualify the position of the Monitor as opportunistic or unfair. All LSI's employees were treated in the same fashion. To provide Messrs. Gregoire and Crew-Gee with a different treatment would be rather inequitable for all the others.

91 The only manner in which Messrs. Gregoire and Crew-Gee could avail themselves of clauses 6.1 and 5.1 would be through the status of EBI's employees. Unfortunately, based on the evidence heard, they clearly did not have such a standing.

92 As a result, their rights as employees under the terms of the Offer were not ignored nor set aside by the Monitor. There is no reason for this Court to intervene in the manner in which the Monitor abided by his role or by the terms of the Sale Judgment rendered.

93 In closing, considering that the Motion of the ex-employees was settled in part, after the hearing, inasmuch as Mrs. Kordas was concerned, that the Offer raised legitimate interpretation issues, and that the LSI's employees ended up receiving no severance payment despite their contractual entitlements, this is not a matter where costs should be awarded against them.

FOR THESE REASONS, THE COURT:

94 DISMISSES the Motion of Eric Gregoire and Martin Crew-Gee Seeking Payment of the Proceeds held by the Monitor;

95 WITHOUT COSTS.

CLEMENT GASCON, J.S.C.

cp/s/qlcys

1 Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

2 By a letter dated February 28, 2008 that followed the four days hearing, the Court was advised that a settlement had been reached between Margaret Kordas and Raymond Chabot Inc., the Trustee in Bankruptcy of EBI.

3 Exhibit P-2.

4 Exhibits P-3 and P-4.

5 Exhibit P-1.

6 Motion of Ex-Employees Seeking Payment of the Proceeds Held by the Monitor dated November 19, 2007.

7 Bankruptcy and Insolvency Act (BIA), R.S.C. 1985, c. B-3.

8 Exhibit D-1.

9 Exhibits D-12 and D-13.

10 Contestation du Syndic à la "Motion of Ex-Employees Seeking Payment of the Proceeds Held by the Monitor" dated January 23, 2008.

11 Exhibit D-2.

12 Exhibit P-1.

13 Exhibit D-3B4.

14 Exhibit P-1.

15 Exhibit D-3B4.

16 Exhibit D-6.

17 Exhibit D-14.

18 Article 1425 C.C.Q.

19 Article 1426 C.C.Q.

20 Exhibit D-2.

21 Exhibit D-2H.