

TAB 2

Affidavit of Keith Cooper

Court File No. CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
of INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA
INC. and NOVAR INC.

(the "Applicants")

AFFIDAVIT OF KEITH COOPER

(Sworn August __, 2009)

I, Keith Cooper, of the City of Atlanta, in the State of Georgia, United States of America, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Senior Managing Director with FTI Consulting Inc. On March 19, 2009, I was appointed as Chief Restructuring Officer of each of the Applicants' U.S. based affiliates, Indalex Holdings Finance, Inc., Indalex Holding Corp. ("Indalex Holding"), Indalex Inc., Caradon Lebanon, Inc., and Dolton Aluminium Company, Inc. (collectively "Indalex US" and together with the Applicants, "Indalex").
2. Indalex is an interdependent enterprise. Although I did not engage in the day to day management of the Applicants, throughout the course of these proceedings, I have worked closely and cooperatively with the Applicants and the Monitor, in order to achieve a going concern solution for Indalex's business. Accordingly, I have knowledge of the matters deposed to in this affidavit. Where this affidavit is

not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

3. This affidavit is sworn in support of the Applicants' motion for an order lifting the stay of proceedings for the purposes of allowing the Applicants to file a voluntary assignment in bankruptcy. It is also sworn supplementary to the affidavit of Bob Kavanaugh sworn August 12, 2009 and in response to the motion of the Retired Executives and the USW (as both terms are defined herein) in connection with their motion requesting, *inter alia*, a declaration that the proceeds from the sale of the Applicants' business is subject to a deemed trust for the benefit of beneficiaries to certain pension plans administered by the Applicants.

BACKGROUND

4. On March 20, 2009, Indalex US commenced reorganization proceedings under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Cases") before the United States Bankruptcy Court for the District of Delaware.
5. On April 3, 2009, the Applicants commenced parallel proceedings and filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to an order (the "Initial Order") of the Honourable Mr. Justice Morawetz.
6. Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants.
7. On April 8, 2009, the Initial Order was amended and restated (the "Amended and Restated Initial Order") to, *inter alia*, authorize the Applicants to exercise certain restructuring powers and authorize Indalex Limited to borrow funds (the "DIP Borrowings") pursuant to a debtor-in-possession credit agreement (as amended, the "DIP Credit Agreement") among Indalex US, the Applicants and a syndicate of lenders (the "DIP Lenders") for which JPMorgan Chase Bank, N.A. is administrative agent (the "DIP Agent").

8. Pursuant to the terms of the Amended and Restated Initial Order, the Applicants' obligation to repay the DIP Borrowings were secured by a Court-ordered charge in priority to all liens and encumbrances, including deemed trusts and statutory liens, other than the "Administration Charge" and the "Directors' Charge".
9. DIP Borrowings were used to fund the working capital needs of the Applicants, including payment of employee wages and benefits, payment of post-filing goods and services and payment of regular course contributions to the Applicants' registered pension plans, among other cost and expenses necessary for the preservation of the Applicants' business and assets. The DIP Credit Agreement contemplated that the DIP Borrowings would be repaid from the proceeds derived from a going concern sale of Indalex's assets, on or before August 1, 2009.
10. The Applicants obligation to repay the DIP Borrowings was guaranteed by Indalex US. The guarantee by Indalex US was a condition to the extension of credit by the DIP Lenders to the Applicants. The DIP Credit Agreement providing for this guarantee was approved by the Court.
11. On April 22, 2009, the Court granted an order which, *inter alia*, extended the stay of proceedings to June 26, 2009, and approved a marketing process (the "Marketing Process") to identify a stalking horse bidder for the assets of the Applicants'. Indalex's assets were marketed in a single, consolidated process.
12. By order dated May 12, 2009, the Court further amended the Amended and Restated Initial Order (now the "Amended Amended and Restated Initial Order"). The Amended Amended and Restated Initial Order is attached hereto as **Exhibit "A"**.
13. By Order dated July 2, 2009, (the "Stalking Horse Order") SAPA Holding AB (including any assignees, "SAPA") was designated as the stalking horse bidder in accordance with the Marketing Process. The Stalking Horse Order also approved bidding procedures to solicit higher and better offers for the Applicants' assets (the "Bidding Procedures"). The asset purchase agreement (the "APA") between

Indalex and SAPA was also designated as a “Qualifying Bid” pursuant to the terms of the Bidding Procedures.

14. The Stalking Horse Order was issued over the objection of a group of eight former executives of Indalex Limited (collectively, the “Former Executives”). The endorsement of Mr. Justice Morawetz issued in connection with the granting of the Stalking Horse Order and the dismissal of the Former Executives’ objection is attached hereto as **Exhibit “B”**.
15. The same day of the hearing of the motion seeking the issuance of the Approval and Vesting Order, the Former Executives brought a motion seeking the reinstatement of payments owing to them by Indalex Limited pursuant to a Supplemental Executive Retirement Plan (“SERP”), which payments were suspended by the Applicants immediately following the commencement of the CCAA proceedings. The Former Executives’ motion was dismissed by the Court. The endorsement of Mr. Justice Morawetz issued in connection with the dismissal of the Former Executives’ motion is attached hereto as **Exhibit “C”**. The Former Executives have sought leave to appeal this decision.
16. As no “Qualifying Bids” were received in accordance with the Bidding Procedures, by Order dated July 20, 2009 (the “Approval and Vesting Order”), the Court approved the sale of the Applicants’ assets as a going concern to SAPA, and ordered that upon closing of the SAPA transaction, the proceeds of sale (the “Canadian Sale Proceeds”) were to be paid to the Monitor.
17. The Former Executives objected to the granting of the Approval and Vesting Order. The objection was dismissed by the Court.
18. Pursuant to the Approval and Vesting Order, the Monitor was ordered and directed to make a distribution to the DIP Lenders, from the Canadian Sale Proceeds, in satisfaction of the Applicants’ obligations to the DIP Lenders, subject to a reserve that the Monitor considered to be appropriate in the circumstances (the “Undistributed Proceeds”).

19. At the hearing, the Former Executives, through counsel, advised that they intended to bring a motion before the Court to assert a deemed trust claim over the Canadian Sale Proceeds in respect of the underfunded deficiency owing by Indalex Limited to the Executive Pension Plan, from which the Former Executives receive benefits. The Former Executives requested that an amount of \$3.25 million representing their estimate of the underfunded deficiency be included in the amount retained by the Monitor as Undistributed Proceeds. The Monitor agreed to include such amount, in addition to the other amounts retained.
20. The Executive Plan was not at the time of the issuance of the Approval and Vesting Order wound up and it has not been wound up as of the date hereof.
21. The United Steel Workers (“USW”), which represented the Applicants unionized workforce supported the Approval and Vesting Order. The SAPA transaction provided for the assumption of the USW collective agreements by SAPA and the continuation of employment with SAPA of all USW members employed by the Applicants. The USW, however, through counsel, reserved its rights with respect to any deemed trust claim it may have with respect to the Salaried Plan, in which certain USW members participate. I am advised by Bob Kavanaugh, the former Vice-President, Corporate Controller of Indalex Limited, that the Salaried Plan is in the process of being fully wound up with an effective date of December 31, 2006.
22. As a result of the USW’s reservation of rights, the Monitor also retained the amount of \$3.5 million as part of the Undistributed Proceeds, in addition to other amounts reserved by the Monitor. The total amount retained by the Monitor includes not only amounts relating to the asserted deemed trust claims, but also for amounts relating to the payment of cure costs (provided for under the APA), other costs associated with the completion of the SAPA transaction, legal and professional fees and amounts owing under the DIP Lenders Charge. Of this, \$6.75 million represents the amount related to the deemed trust claims. Pursuant to the endorsement of the Honourable Mr. Justice Campbell dated July 20, 2009,

there is no obligation for the Monitor to hold this amount in a separate account, and accordingly, the Monitor has advised that this amount is being held in a general account, commingled with other funds of the estate. The funds in the account will be distributed in accordance with existing and future orders of the Court.

23. The DIP Agent advised Indalex US that to the extent the effect of the Monitor retaining the Undistributed Proceeds was that the Applicants could not repay the DIP Borrowings in full at the closing of the SAPA transaction, the DIP Agent would call on the guarantee granted by Indalex US to satisfy the deficiency.
24. On July 31, 2009, the sale of Indalex's assets to SAPA closed. A total payment of US\$17,041,391.80 was made from the Canadian Sale Proceeds by the Monitor, on behalf of the Applicants, to the DIP Agent. As this resulted in a deficiency of US\$10,751,247.22, the DIP Agent called on the guarantee granted to the DIP Lenders by Indalex US for the amount of the deficiency (the "Guarantee Payment") and Indalex US has satisfied the obligation of the Applicants.
25. Pursuant to paragraph 14 of the Approval and Vesting Order, Indalex US is fully subrogated to the rights of the DIP Lenders under the DIP Lenders Charge for the amount of the Guarantee Payment.
26. By Order dated July 30, 2009, the Court implemented a claims procedure (the "Claims Procedure") that called for claims against the Applicants and directors of the Applicants, in order to facilitate a determination of entitlement to the Canadian Sale Proceeds.

DEEMED TRUST CLAIM

27. August 28, 2009 was scheduled for the hearing of the deemed trust motion and the Former Executives served and filed their motion record on August 5, 2009, asserting a deemed trust claim over the underfunded deficiency of the Executive Plan.

28. On or about August 5, 2009, the USW filed its motion seeking a deemed trust over the underfunded deficiency of the Salaried Plan.
29. Indalex US has considered its options in light of the allegations and positions set out in the motion records filed by these parties.

VOLUNTARY ASSIGNMENT IN BANKRUPTCY

30. The Applicants and Indalex US strongly dispute the validity of the deemed trust claim, and are of the view that the wind-up liability is an unsecured claim, and any deemed trust, even if it were valid, does not rank in priority to the DIP Lenders Charge.
31. I understand that any purported priority claimed by the USW and the Former Executives (which priority is disputed by the Applicants) is extinguished on bankruptcy. In order to provide conclusive certainty that any purported deemed trust claim does not rank in priority to the DIP Lenders Charge, pursuant to a unanimous shareholder declaration executed by Indalex Limited's immediate parent, Indalex Holding, dated as of July 31, 2009, Indalex Holding has instructed the Applicants to seek approval of the Court to file a voluntary assignment in bankruptcy to ensure that the priority regime set out in the *Bankruptcy and Insolvency Act* (Canada) applies to the distribution of the Canadian Sale Proceeds.
32. While the Claims Procedure was commenced in the within proceedings, at no point in time did the Applicants rule out an eventual filing of a voluntary assignment in bankruptcy.

CORPORATE GOVERNANCE

33. The Applicants are no longer carrying on business, have no active employees and no tangible assets, other than cash (including sale proceeds) and certain tax refunds. The board of directors of the Applicants has resigned and the former directors are all currently employed by SAPA. The Applicants are insolvent shells.

- 34. The only material obligation remaining by Indalex under the APA is the completion of the post-closing working capital adjustment. \$2.75 million is currently being held in escrow by the Monitor, to ensure any adjustment in favour of SAPA will be satisfied with any balance to ultimately be made available to the Applicants' creditors, in accordance with their entitlement and priority.

- 35. For the reasons set out above, including that the Applicants are insolvent shells and no longer carrying on business, an assignment in bankruptcy is appropriate in the circumstances.

SWORN BEFORE ME at the City of _____)
 _____, in the State of _____)
 this __ day of August, 2009)
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 A NOTARY PUBLIC

 KEITH COOPER

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INDALEX LIMITED et al.

Applicants

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COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF KEITH COOPER
(Sworn August __, 2009)

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