File Number: 35541

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

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 Sino-Forest Corporation

B E T W E E N:

INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC., MATRIX ASSET MANAGEMENT INC., GESTION FÉRIQUE and MONTRUSCO BOLTON INVESTMENTS INC.

Applicants
(Moving Parties)

- and -

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

Respondents
(Plaintiffs)

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, KAI KIT POON, DAVID J. HORSLEY, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC) and PÖYRY (BEIJING) CONSULTING COMPANY LIMITED

Respondents
(Defendants)

Proceeding under the *Class Proceedings Act, 1992*

REPLY OF THE APPLICANTS INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC., MATRIX ASSET MANAGEMENT INC., GESTION FÉRIQUE, AND MONTRUSCO BOLTON INVESTMENTS INC. FOR APPLICATION FOR LEAVE TO APPEAL

Section 40 of the *Supreme Court Act,* R.S.C. 1995, c. S-26
Rules 25(1) of the *Rules of the Supreme Court of Canada*, SOR/2002-156

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TAB 1

REPLY MEMORANDUM OF ARGUMENT

1. The Respondents have failed to give a direct response to the only question presently before this Court: Whether the discretionary abrogation of the Applicants' provincially legislated opt-out rights is a matter of public importance meriting this Court's review.

2. The Respondents have not provided any reason for why the provincial statutory rights at issue – opt-out rights in class proceedings – can be overridden by the federal statute they rely on (the *Companies' Creditors Arrangement Act* ("*CCAA*")). The Respondents have not identified any conflict between upholding the Applicants' opt-out rights, on the one hand, and shepherding successful reorganizations of insolvent companies under the *CCAA*, on the other hand. Indeed, there is no such conflict. This Court has recently confirmed the applicability of provincial statutory rights while *CCAA* proceedings are ongoing.[1]

3. The Respondents have not contended that opt-out rights of absent class members are not really at issue in this matter, or are not of public importance. The Applicants' demonstration in their memorandum in support of their leave application ("leave memorandum") that opt-out rights are a fundamental and important feature of class actions is unopposed. Failure to protect opt-out rights would deprive absent class members of statutory protections and would upset the balance among class members, class counsel, and defendants in class proceedings.

4. Nor is there any dispute that the Applicants have, in fact, been prevented from opting out of the settlement with the major auditor defendant, Ernst & Young (E&Y), to pursue their claims individually.

5. Instead of addressing these issues -- which provide a strong and *prima facie* basis for the public importance of this proposed appeal -- the Respondents argue on the merits that opt-out rights can be dispensed with (abrogated) in a settlement run through a *CCAA* proceeding, even for claims asserted by equity investors (who are not voting creditors in the *CCAA* proceeding) against a non-applicant, solvent, third party defendant such as E&Y.

6. The Respondents have not cited a single case in which the issue of using the *CCAA* to abrogate opt-out rights has been raised and adjudicated. It is of public importance to determine whether the procedure used by the parties and sanctioned by the courts below can properly be

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[1] *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, [2012] 3 SCR 443, Reply Record Tab 5, at para. 2,; *Sun Indalex Finance, LLC v. United Steelworkers* , 2013 SCC 6, Reply Record Tab 6, at para. 52.

used as a template for future efforts by solvent, non-applicant defendants to avoid opt-outs and other normal rules of class proceedings.

7. The Respondents' use of the *CCAA* to deny opt-out rights should be rejected for three broad reasons: (a) opt-out rights are of fundamental importance in class actions; (b) as a matter of federalism, there is no conflict or inconsistency between reorganizations under the *CCAA* and the opt-out rights at issue here, which means that provincially legislated opt-out rights can and do co-exist harmoniously with the *CCAA*; and (c) in any event, as described in the Applicants' leave memorandum, the Respondents lack any colorable argument that it was necessary or proper to bargain away opt-out rights in order to implement Sino-Forest's reorganization plan. The settling parties' desire to avoid dealing with possible opt-outs cannot justify the discretionary abrogation of provincially legislated rights. The Applicants also address the Respondents' factual assertions and mootness arguments below.

A. There Is No Tension or Conflict Between the *CCAA* and Protection of the Opt-Out Rights Granted in Provincial Class Proceeding Statutes

8. As noted in the Applicants' leave memorandum, the Ontario and Quebec Courts of Appeal have reached different conclusions on whether releases of non-applicant third party defendants are proper under the *CCAA*. However, no court has considered this issue in the context of the settling parties having bargained away opt-out rights as part of the releases.

9. This Court has described the general standard for evaluating the interaction of federal insolvency proceedings and provincial rights as follows:

> ¶43. . . . In any event, so long as the doctrine of paramountcy is not triggered, federally regulated bankruptcy and insolvency proceedings cannot be used to subvert provincially regulated property and civil rights . . . .[2]

10. There was no hint of a provincial/federal law conflict requiring resort to paramountcy in the proceedings below. The general rule is that, under our cooperative model of federalism, provincial statutes should be allowed to operate whenever possible within the confines of federal statutes.[3] In the present case, there has never been a showing by any of the parties below, nor could there be, that preserving class members' opt-out rights was incompatible with achieving a successful reorganization of Sino-Forest. The sole reason opt-out rights were abrogated was

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[2] *Crystalline Investments Ltd. v. Domgroup Ltd.*, 2004 SCC 3, [2004] 1 SCR 60, Reply Record Tab 3, at para. 43.
[3] *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, Reply Record Tab 4, at para. 76, 78 and 79.

E&Y insisted on it, the Class Plaintiffs acquiesced, and the Court approved. *There was never a showing by any party to the reorganiziation that the no-opt-out provision itself was necessary to the reorganization.* The fact that a settlement with another solvent non-applicant third party defendant (the expert Pöyry) went forward and was approved on a normal opt-out basis proves this fact.

11. Allowing opt-outs to be abrogated at the behest of parties in this context would be harmful both to class proceedings and to federalism generally. The Respondents argue at length about the alleged nexus between the E&Y settlement (and other defendants' possible "framework" settlements) and Sino-Forest's reorganization, without once describing why opt-outs had to be denied. No plausible explanation exists for such intrusion into the provincial sphere. What the Respondents are really proposing is an open-ended ability by a settling defendant and class counsel to bargain away class members' opt-out rights, and an open-ended grant of discretion to a *CCAA* court to abrogate those provincial rights. In the present case, there were no reasons articulated as to why opt-out rights needed to be denied. Such a precedent opens the door to no-opt-out class action settlements on demand, in defiance of provincial statutory law.

B. The *CCAA* Does Not Support the Result Below

12. Even apart from the no-conflict and paramountcy issue discussed in the preceding section, the *CCAA* itself does not support or permit the E&Y settlement and release to proceed on a non-opt-out basis.

13. The Respondents urge that the result below is a matter of routine application of *CCAA* law and principles, particularly in light of the "flexible" interpretation afforded to the *CCAA*. But flexibility does not mean there are no standards. Since the statute itself explicitly allows for releases only of the insolvent applicant and some directors[4], it would follow as a natural and intuitive matter of statutory interpretation that other categories of releases are not allowed or at best are highly suspect. As described in the Applicants' leave memorandum, the notion that the settlement with E&Y was "necessary" for Sino-Forest's restructuring is untenable on any objective view of the facts -- and significantly, Sino-Forest has never argued that abrogating opt-out rights was necessary for the success of its reorganization.

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[4] *CCAA*, section 5.1(1), Application Record, Volume II, Tab 1A.

C. The Notoriety of Sino-Forest's Collapse Confirms Public Importance

14. There cannot be any genuine dispute about the public importance of ensuring a fair and principled resolution of the securities violations allegedly arising from Sino-Forest's demise. Sino-Forest is widely known to the public as a spectacular failure in the Canadian securities market, the largest in the last 20 years at least. The settlement with E&Y is for $117 million, which seems large until it is compared to investors' losses of at least $6 billion. While notoriety does not necessarily imply public importance, surely it is one consideration.

D. The Applicants Cannot Be Faulted for *Not* Participating in the Insolvency Proceedings Prior to the Announcement that the E&Y Settlement Was on a No-Opt-Out Basis

15. The Respondents fault the Applicants for not actively participating in the insolvency proceedings (prior to the announcement of the E&Y settlement). This issue is a red herring.

16. Throughout the insolvency proceedings, Class Counsel purported to represent the interests of class members in all respects. The Applicants had the same interests as the other class members and appropriately sheltered under the class proof of claim. The Applicants relied on Class Counsel to represent their interests. It would have been a duplicative waste of time, and contrary to the basic purpose of class actions, for individual class members to get involved in that process. If the mediations and discussions had led to a settlement that preserved opt-out rights, the Applicants would not be here.

17. The announcement that opt-out rights had been bargained away in the E&Y settlement, and in any "framework" settlements with other defendants in the class action, marked the first time that the Applicants had any reason to become involved. Until that moment, the draft Sino-Forest reorganization plans had all contained provisions stating that claims against third party defendants were *not* affected. The Applicants, who are serious institutional investors in Ontario and Quebec, opposed the no-opt-out feature of the new settlement as a matter of principle and concern for the integrity of Canadian financial markets and class proceedings.

18. Similarly, the fact that most creditors approved the settlement and "framework" is irrelevant to the opt-out issue. Voting (non-equity) creditors were receiving distributions of plan assets and thus predictably voted to approve the plan. They had no interest in the opt-out issue.

In any event, for the reasons described above, abrogation of opt-out rights with respect to claims against third party defendants is not within the scope of matters that can legitimately be sanctioned by a *CCAA* court or included in a reorganization plan, even one overwhelmingly approved by creditors.[5]

E. This Dispute Is Not Moot

19. Some Respondents suggest that the Applicants' objections became moot when the Applicants allowed the Sino-Forest reorganization plan to be implemented without seeking and obtaining a stay.

20. This is also a red-herring issue. The E&Y settlement itself includes a built-in condition requiring that all court approvals and orders pertaining to it be final and non-appealable before it is implemented, and contains an alternative reference to an "opt-out threshold agreeable to E&Y" if opt-outs are required.[6] In fact, the settlement was not approved by the commercial court until after the Sino-Forest reorganization plan was implemented, proving beyond doubt that the two are not connected in the way suggested by the Respondents. Just as Justice Morawetz could have disapproved the E&Y settlement before or after Sino-Forest's reorganization plan had been implemented, so can this Court render a decision that would require E&Y to give up its insistence on a no-opt-out settlement, and either to amend the settlement to provide opt-out rights (and the ability of opt outs to pursue their claims individually), or to go back to the *status quo ante* -- a risk any class action defendant must assume if its settlement is not approved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 1, 2013

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[5] It should also be noted that the third party defendants, including E&Y, did not have anywhere near enough votes as creditors to have changed the outcome of the creditors' vote approving the reorganization plan.

[6] Minutes of Settlement between the Ontario Plaintiffs and Ernst & Young LLP, para. 7 & Schedule B, section I.(B)(ii)(a)(iii), Application Record, Volume III, Tab 2A, p 51.

TABLE OF AUTHORITIES

A. LEGISLATION AND REGULATIONS

B. CASES AND TEXTS

STATUTORY AUTHORITIES

CANADA

A. COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c C-36, s. 5.1(1)

Claims against directors – compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

TAB 2

Domgroup Ltd. *Appellant*

v.

Crystalline Investments Ltd. and Burnac Leaseholds Ltd. *Respondents*

INDEXED AS: CRYSTALLINE INVESTMENTS LTD. *v.* DOMGROUP LTD.

Neutral citation: 2004 SCC 3.

File No.: 29196.

2003: November 7; 2004: January 29.

Present: McLachlin C.J. and Iacobucci, Major, Binnie, LeBel, Deschamps and Fish JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Bankruptcy — Proposals — Disclaimer of commercial leases — Tenant validly assigning leases and assignee subsequently becoming insolvent — Assignee giving landlords notice of intention to repudiate leases pursuant to s. 65.2 of Bankruptcy and Insolvency Act — Whether repudiation of leases under s. 65.2 relieved first tenant of its obligations as original lessee — Whether post-disclaimer, assignors and guarantors must be treated in same manner with respect to liability — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 65.2.

Landlord and tenant — Commercial leases — Assignment clause — Insolvent commercial tenant — Tenant validly assigning leases and assignee subsequently becoming insolvent — Assignee giving landlords notice of intention to repudiate leases pursuant to s. 65.2 of Bankruptcy and Insolvency Act — Whether rights between landlords and original tenant affected by proceedings under s. 65.2 — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 65.2.

The appellant was the respondents' original tenant. Ultimately, F held the validly assigned leases. F later became insolvent and attempted reorganization under the *Bankruptcy and Insolvency Act*. F, through its trustee, repudiated the leases. Pursuant to s. 65.2(3) of the Act, the respondents received compensation payments equivalent to six months rent upon approval of the proposal. The respondents informed the appellant that F had repudiated

Domgroup Ltd. *Appelante*

c.

Crystalline Investments Ltd. et Burnac Leaseholds Ltd. *Intimées*

RÉPERTORIÉ : CRYSTALLINE INVESTMENTS LTD. *c.* DOMGROUP LTD.

Référence neutre : 2004 CSC 3.

N° du greffe : 29196.

2003 : 7 novembre; 2004 : 29 janvier.

Présents : La juge en chef McLachlin et les juges Iacobucci, Major, Binnie, LeBel, Deschamps et Fish.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Faillite — Propositions — Résiliation de baux commerciaux — Baux cédés validement par le locataire à un cessionnaire devenu subséquemment insolvable — Avis du cessionnaire aux locateurs les informant de son intention de résilier les baux conformément à l'art. 65.2 de la Loi sur la faillite et l'insolvabilité — La résiliation des baux effectuée en vertu de l'art. 65.2 a-t-elle libéré le premier locataire de ses obligations en tant que cessionnaire initial? — Après la résiliation d'un bail, les cédants et les garants devraient-ils être assujettis à la même responsabilité? — Loi sur la faillite et l'insolvabilité, L.R.C. 1985, ch. B-3, art. 65.2.

Locataires et locateurs — Baux commerciaux — Clause de cession — Locataire commercial insolvable — Baux cédés validement par le locataire à un cessionnaire devenu subséquemment insolvable — Avis du cessionnaire aux locateurs les informant de son intention de résilier les baux conformément à l'art. 65.2 de la Loi sur la faillite et l'insolvabilité — Les droits des locateurs et du locataire initial ont-ils été touchés par les procédures engagées en vertu de l'art. 65.2? — Loi sur la faillite et l'insolvabilité, L.R.C. 1985, ch. B-3, art. 65.2.

L'appelante était le locataire initial des intimées. Au moment pertinent, F était titulaire des baux, qui lui avaient été cédés validement. Devenue insolvable après la cession, F a tenté une réorganisation en vertu de la *Loi sur la faillite et l'insolvabilité*. Par l'intermédiaire de son syndic, F a résilié les baux. Par suite de l'approbation de la proposition, les intimées ont reçu, conformément au par. 65.2(3) de la Loi, des indemnités équivalant à six

the leases and asserted their right to be paid the outstanding rent under the assignment clause in the leases. The appellant declined to pay. The respondents filed suit and the appellant applied for summary judgment in both cases. Holding that the notices of repudiation given under s. 65.2 terminated the leases for all purposes, the motions judge granted summary judgment and dismissed the respondents' claims. The Court of Appeal reversed the judgment, finding that the rights between the respondents and the appellant were unaffected by proceedings under s. 65.2.

Held: The appeal should be dismissed.

The repudiation of the leases under s. 65.2 of the Act did not affect the appellant's obligations as the original lessee. Section 65.2 should be read narrowly. The plain purposes of the section are to free an insolvent from obligations under a commercial lease that have become too onerous, to compensate the landlord for the early determination of the lease, and to allow the insolvent to resume viable operations as best it can. Repudiation benefits only the insolvent. Nothing in the Act protects third parties, including assignors, from the consequences of an insolvent's repudiation of a commercial lease. From the time a lease is completed, the original tenant is bound by all the conditions of the lease, including the term. The covenant is fully enforceable even if it has been assigned. Explicit statutory language is required to divest persons of rights they otherwise enjoy at law. So long as the doctrine of paramountcy is not triggered, federally regulated bankruptcy and insolvency proceedings cannot be used to subvert provincially regulated property and civil rights.

The mere possibility that the original tenant may have a right of indemnity against his insolvent assignee and is able to make a claim to participate in the proposal proceedings as an unsecured creditor is not inconsistent with the Act. On the contrary, it is consistent with the circumstances applicable to other alternative debtors, and does not affect or alter the nature of the original tenant's contractual relationship and obligations. More importantly, it does not require that the original tenant be discharged from liability.

In distinguishing between a guarantor and an assignor post-disclaimer, *Cummer-Yonge Investments Ltd. v.*

mois de loyer. Les intimées ont avisé l'appelante que F avait résilié les baux et elles ont fait valoir leur droit aux loyers impayés conformément à la clause de cession figurant dans les baux. L'appelante a refusé de payer. Les intimées ont chacune poursuivi cette dernière, qui a demandé et obtenu un jugement sommaire dans les deux instances. Concluant que les avis de résiliation donnés en vertu de l'art. 65.2 avaient mis fin aux baux à tous égards, le juge des motions a prononcé les jugements sommaires demandés et rejeté les actions des intimées. La Cour d'appel a infirmé la décision du juge de première instance et conclu que les droits des locateurs et du locataire initial n'étaient pas touchés par les procédures engagées en vertu de l'art. 65.2.

Arrêt : Le pourvoi est rejeté.

La résiliation des baux effectuée en vertu de l'art. 65.2 de la Loi n'a eu aucune incidence sur les obligations incombant à l'appelante en tant que locataire initial. L'article 65.2 doit être interprété restrictivement et les objectifs manifestes de cet article sont de libérer une personne insolvable des obligations découlant d'un bail commercial qui sont devenues trop lourdes, d'indemniser le locateur pour la fin prématurée du bail et de permettre à la personne insolvable de reprendre autant que possible des activités viables. La résiliation ne bénéficie qu'à la personne insolvable. La Loi ne protège pas les tiers, notamment les cédants, des conséquences de la résiliation d'un bail commercial par une personne insolvable. À compter du moment où un bail est formé, le locataire initial est lié par toutes ses conditions, y compris sa durée. La convention en question est pleinement exécutoire, même si elle a fait l'objet d'une cession. Il faut une disposition législative explicite pour priver une personne de droits dont elle jouit par ailleurs en droit. Tant que la doctrine de la primauté des lois fédérales n'entre pas en jeu, on ne saurait utiliser des procédures en matière de faillite et d'insolvabilité régies par le droit fédéral pour écarter des droits de propriété et autres droits civils régis par le droit provincial.

La simple possibilité que le locataire initial dispose d'un droit d'indemnisation opposable à son cessionnaire insolvable et qu'il puisse présenter une réclamation afin de participer aux procédures de proposition en tant que créancier non garanti n'est pas incompatible avec le régime établi par la Loi. Au contraire, cette possibilité demeure pertinente dans les circonstances applicables aux autres débiteurs subsidiaires et ne modifie en rien la nature des obligations et relations contractuelles du locataire initial. Facteur plus important, elle ne commande pas que le locataire initial soit libéré de ses obligations.

L'affaire *Cummer-Yonge Investments Ltd. c. Fagot*, [1965] 2 O.R. 152, a engendré de l'incertitude dans

Fagot, [1965] 2 O.R. 152, has created uncertainty in leasing and bankruptcy and should be overruled. Post-disclaimer, assignors and guarantors ought to be treated the same with respect to liability.

Cases Cited

Overruled: *Cummer-Yonge Investments Ltd. v. Fagot*, [1965] 2 O.R. 152, aff'd [1965] 2 O.R. 157*n*; **referred to:** *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423; *McNeil v. Train* (1848), 5 U.C.Q.B. 91; *Wotherspoon v. Canadian Pacific Ltd.* (1979), 22 O.R. (2d) 385; *Francini v. Canuck Properties Ltd.* (1982), 35 O.R. (2d) 321; *Transco Mills Ltd. v. Percan Enterprises Ltd.* (1993), 100 D.L.R. (4th) 359; *Warnford Investments Ltd. v. Duckworth*, [1978] 2 All E.R. 517; *Peterborough Hydraulic Power Co. v. McAllister* (1908), 17 O.L.R. 145; *Stacey v. Hill*, [1901] 1 Q.B. 660; *Hindcastle Ltd. v. Barbara Attenborough Associates Ltd.*, [1996] 1 All E.R. 737; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453; *Giffen (Re)*, [1998] 1 S.C.R. 91.

Statutes and Regulations Cited

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Part III, ss. 62(3), 65.2 [ad. 1992, c. 27, s. 30], 179.
Landlord and Tenant (Covenants) Act 1995 (U.K.), 1995, c. 30.
Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 20.04(2).

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Lem, Jeffrey W., and Stefan T. Proniuk. "Goodbye '*Cummer-Yonge*': A Review of Modern Developments in the Law Relating to the Liability of Guarantors of Bankrupt Tenants" (1993), 1 *D.R.P.L.* 419.

APPEAL from a judgment of the Ontario Court of Appeal (2002), 58 O.R. (3d) 549, 210 D.L.R. (4th) 659, 156 O.A.C. 392, 27 B.L.R. (3d) 102, 49 R.P.R. (3d) 171, 31 C.B.R. (4th) 225, [2002] O.J. No. 883 (QL), reversing a judgment of the Superior Court of Justice (2001), 39 R.P.R. (3d) 49, 31

le domaine de la location et de la faillite du fait que le tribunal a considéré qu'il existe, après la résiliation, une distinction entre les garants d'une part et l'auteur d'une cession d'autre part. Cette décision doit être écartée. Après la résiliation, cédants et garants devraient être assujettis à la même responsabilité.

Jurisprudence

Arrêt renversé : *Cummer-Yonge Investments Ltd. c. Fagot*, [1965] 2 O.R. 152, conf. par [1965] 2 O.R. 157*n*; **arrêts mentionnés :** *Guarantee Co. of North America c. Gordon Capital Corp.*, [1999] 3 R.C.S. 423; *McNeil c. Train* (1848), 5 U.C.Q.B. 91; *Wotherspoon c. Canadian Pacific Ltd.* (1979), 22 O.R. (2d) 385; *Francini c. Canuck Properties Ltd.* (1982), 35 O.R. (2d) 321; *Transco Mills Ltd. c. Percan Enterprises Ltd.* (1993), 100 D.L.R. (4th) 359; *Warnford Investments Ltd. c. Duckworth*, [1978] 2 All E.R. 517; *Peterborough Hydraulic Power Co. c. McAllister* (1908), 17 O.L.R. 145; *Stacey c. Hill*, [1901] 1 Q.B. 660; *Hindcastle Ltd. c. Barbara Attenborough Associates Ltd.*, [1996] 1 All E.R. 737; *Husky Oil Operations Ltd. c. Ministre du Revenu national*, [1995] 3 R.C.S. 453; *Giffen (Re)*, [1998] 1 R.C.S. 91.

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Loi sur la faillite et l'insolvavilité, L.R.C. 1985, ch. B-3, Partie III, art. 62(3), 65.2 [aj. 1992, ch. 27, art. 30], 179.
Règles de procédure civile, R.R.O. 1990, Règl. 194, r. 20.04(2).

Doctrine citée

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Lem, Jeffrey W., and Stefan T. Proniuk. « Goodbye "*Cummer-Yonge*" : A Review of Modern Developments in the Law Relating to the Liability of Guarantors of Bankrupt Tenants » (1993), 1 *D.R.P.L.* 419.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (2002), 58 O.R. (3d) 549, 210 D.L.R. (4th) 659, 156 O.A.C. 392, 27 B.L.R. (3d) 102, 49 R.P.R. (3d) 171, 31 C.B.R. (4th) 225, [2002] O.J. No. 883 (QL), qui a infirmé un jugement de la Cour supérieure de justice (2001), 39 R.P.R. (3d) 49, 31

C.B.R. (4th) 216, [2001] O.J. No. 736 (QL). Appeal dismissed.

Fred D. Cass, *Lawrence J. Crozier* and *David Stevens*, for the appellant.

Peter-Paul E. DuVernet, for the respondents.

The judgment of the Court was delivered by

MAJOR J. —

I. Introduction

This appeal arises from a motion for summary judgment. The facts are undisputed. The respondents, Crystalline Investments Limited ("Crystalline") and Burnac Leaseholds Limited ("Burnac"), while owners of different properties, are referred to collectively as the "landlords".

Dominion Stores Limited was the original tenant of the landlords. It is not clear from the record nor is it relevant whether Dominion Stores Limited became Domgroup Limited ("Domgroup") by reorganization or by a change of name. For purposes of this appeal, the appellant Domgroup can be viewed as the original tenant.

Domgroup assigned the leases to Coastal Foods Limited ("Coastal Foods"), a wholly owned subsidiary. The consent of the landlords was not required under the leases for the assignments. Domgroup subsequently sold Coastal Foods which amalgamated to form Food Group Inc. ("Food Group"). Food Group later became insolvent and attempted a reorganization under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "Act"), as amended to 1994.

The question is whether the terms of the reorganization by the insolvent assignee through its trustee where it purported to repudiate the leases under s. 65.2 of the Act affect the obligations between the landlords and the original tenant.

C.B.R. (4th) 216, [2001] O.J. No. 736 (QL). Pourvoi rejeté.

Fred D. Cass, *Lawrence J. Crozier* et *David Stevens*, pour l'appelante.

Peter-Paul E. DuVernet, pour les intimées.

Version française du jugement de la Cour rendu par

LE JUGE MAJOR —

I. Introduction

Le présent pourvoi découle d'une motion sollicitant un jugement sommaire. Les faits ne sont pas contestés. Bien qu'elles soient propriétaires de biens différents, les intimées, Crystalline Investments Limited (« Crystalline ») et Burnac Leaseholds Limited (« Burnac »), sont appelées collectivement ci-après les « locateurs ». 1

Dominion Stores Limited était le locataire initial des locateurs. Le dossier n'indique pas clairement — information qui n'est d'ailleurs pas pertinente — si Dominion Stores Limited est devenue Domgroup Limited (« Domgroup ») à la suite d'une réorganisation ou d'un changement de dénomination. Pour les besoins du présent pourvoi, l'appelante Domgroup peut être considérée comme le locataire initial. 2

Domgroup a cédé les baux à Coastal Foods Limited (« Coastal Foods »), une filiale en propriété exclusive. Cette cession pouvait intervenir sans le consentement des locateurs. Domgroup a par la suite vendu Coastal Foods, qui s'est fusionnée pour former Food Group Inc. (« Food Group »). La société Food Group est plus tard devenue insolvable et a tenté une réorganisation en vertu de la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3 (la « Loi »), dans sa version en vigueur en 1994. 3

Il s'agit de décider si les conditions de la réorganisation qu'a effectuée la cessionnaire insolvable par l'intermédiaire de son syndic et au moyen de laquelle elle entendait résilier les baux en vertu de l'art. 65.2 de la Loi ont une incidence sur les obligations convenues entre les locateurs et le locataire initial. 4

the Law Relating to the Liability of Guarantors of Bankrupt Tenants" (1993), 1 *D.R.P.L.* 419, at p. 436.

40 Despite the division over *Cummer-Yonge*, the distinction between guarantors as having secondary obligations that disappear when a lease is disclaimed by a trustee in bankruptcy, and assignors as having primary obligations that survive a disclaimer, thrives in Canadian case law.

41 Not surprisingly, *Stacey v. Hill*, *supra*, led to a similar situation in England. In *Hindcastle Ltd. v. Barbara Attenborough Associates Ltd.*, [1996] 1 All E.R. 737 (H.L.), Lord Nicholls, faced with facts involving a guarantor of an assignor of a lease, gave a convincing illustration of the absurdity of maintaining this distinction, at p. 754:

> This would make no sort of legal or commercial sense. This would mean that directors who guarantee their company's obligations would *not* be liable if their *own* company became insolvent whilst tenant, but they *would* be liable if an *assignee* from their company encountered financial difficulties whilst tenant. Mr. Whitten, as guarantor of CIT's obligations, remains liable to the landlord. According to *Stacey v. Hill*, had he been a guarantor of Prest's liabilities [the assignee who became bankrupt], the disclaimer would have released him. What sort of a law would this be? [Emphasis in original.]

42 The House of Lords went on to overrule *Stacey v. Hill*. In my opinion, *Cummer-Yonge* should meet the same fate. Post-disclaimer, assignors and guarantors ought to be treated the same with respect to liability. The disclaimer alone should not relieve either from their contractual obligations.

43 The appellant submits that the English bankruptcy statute that was applied in *Hindcastle* clearly stated that disclaimer will not "affect the rights or liabilities of any other person", and that s. 65.2 of the Act has no similar wording. I agree with

et S. T. Proniuk, « Goodbye "Cummer-Yonge" : A Review of Modern Developments in the Law Relating to the Liability of Guarantors of Bankrupt Tenants » (1993), 1 *D.R.P.L.* 419, p. 436.

Malgré les désaccords qui sont survenus à propos de l'arrêt *Cummer-Yonge*, demeure toujours bien vivante dans la jurisprudence canadienne la distinction voulant que les garants soient tenus à une obligation secondaire qui disparaît en cas de résiliation du bail par le syndic de faillite et que les cédants soient tenus à une obligation principale qui survit à cette résiliation.

Il n'est pas étonnant que l'arrêt *Stacey c. Hill*, précité, ait conduit à une situation similaire en Angleterre. Dans l'affaire *Hindcastle Ltd. c. Barbara Attenborough Associates Ltd.*, [1996] 1 All E.R. 737 (H.L.), p. 754, en présence d'un litige concernant la caution du cédant d'un bail, lord Nicholls a illustré de manière convaincante l'absurdité du maintien de cette distinction :

> [TRADUCTION] Un tel résultat n'aurait absolument aucun sens, ni sur le plan juridique ni sur le plan commercial. Il impliquerait que les administrateurs qui se portent garants des obligations de leur société *ne* seraient *pas* responsables si leur *propre* société devenait insolvable pendant qu'elle est locataire, mais qu'ils *seraient* responsables si un cessionnaire de leur société éprouvait des difficultés financières pendant qu'il est locataire. À titre de garant des obligations de CIT, M. Whitten demeure responsable envers le locateur. Suivant l'arrêt *Stacey c. Hill*, s'il avait été garant des obligations de Prest [le cessionnaire en faillite], la résiliation l'aurait libéré. Quelle sorte de règle de droit serait-ce donc? [En italique dans l'original.]

La Chambre des lords a par la suite infirmé l'arrêt *Stacey c. Hill*. À mon avis, l'arrêt *Cummer-Yonge* devrait subir le même sort. Après la résiliation d'un bail, cédants et garants devraient être assujettis à la même responsabilité. Le seul fait de la résiliation ne devrait libérer ni les uns ni les autres de leurs obligations contractuelles.

L'appelante a plaidé que la loi anglaise sur la faillite appliquée dans l'arrêt *Hindcastle* énonçait clairement que la résiliation [TRADUCTION] « n'a aucune incidence sur les droits ou obligations de toute autre personne », puis elle a ajouté que

the respondents' rebuttal to this argument that the English wording affirms the ordinary construction of the statute. In other words, explicit statutory language is required to divest persons of rights they otherwise enjoy at law. As Carthy J.A. observed in the Court of Appeal, at paras. 11-12, the lease may have real value to the original tenant and, on the wording of s. 65.2, cannot be eliminated in the absence of the original tenant's agreement. In any event, so long as the doctrine of paramountcy is not triggered, federally regulated bankruptcy and insolvency proceedings cannot be used to subvert provincially regulated property and civil rights. See *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453; *Giffen (Re)*, [1998] 1 S.C.R. 91.

As previously noted, the appellant sought to argue surrender in this Court despite not having pleaded surrender in either action as a defence, and not raising the issue before the motions judge or the Court of Appeal. Like the other defences, surrender represents an issue for trial. The decision whether to allow amendments to the pleadings, and on what terms if any, should be left to the trial judge.

VI. Disposition

I would dismiss the appeal and award the respondents their costs in this Court and below.

Appeal dismissed with costs.

Solicitors for the appellant: Aird & Berlis, Toronto.

Solicitors for the respondents: Glaholt & Associates, Toronto.

l'art. 65.2 ne comporte pas ces mots. Je suis d'accord avec la réponse des intimées à cet argument, à savoir que ce passage du texte de loi anglais exprime l'interprétation normale de cette loi. En d'autres mots, il faut une disposition législative explicite pour priver une personne de droits dont elle jouit par ailleurs en droit. Comme l'a fait observer le juge Carthy de la Cour d'appel, aux par. 11 et 12, le bail peut avoir une valeur réelle pour le locataire initial et le libellé de l'art. 65.2 ne permet pas d'éliminer le bail sans son accord. Quoi qu'il en soit, tant que la doctrine de la primauté des lois fédérales n'entre pas en jeu, on ne saurait utiliser des procédures en matière de faillite et d'insolvabilité régies par le droit fédéral pour écarter des droits de propriété et autres droits civils régis par le droit provincial. Voir *Husky Oil Operations Ltd. c. Ministre du Revenu national*, [1995] 3 R.C.S. 453; *Giffen (Re)*, [1998] 1 R.C.S. 91.

44 Comme il a été dit précédemment, l'appelante a voulu invoquer devant la Cour la défense d'abandon, bien qu'elle n'ait pas plaidé ce moyen dans ses actes de procédure dans l'une ou l'autre action ni soulevé cette question devant le juge des motions ou la Cour d'appel. Comme les autres moyens de défense, l'abandon est une question qui doit être débattue en première instance. La décision d'autoriser ou non la modification des actes de procédure et, dans l'affirmative, de dire à quelles conditions cela doit être fait, devrait être laissée au juge de première instance.

VI. Dispositif

45 Je suis d'avis de rejeter le pourvoi et d'accorder aux intimées leurs dépens tant devant notre Cour que devant les juridictions inférieures.

Pourvoi rejeté avec dépens.

Procureurs de l'appelante : Aird & Berlis, Toronto.

Procureurs des intimées : Glaholt & Associates, Toronto.

TAB 3

SUPREME COURT OF CANADA

CITATION: **Marine Services International Ltd.** *v.* Ryan Estate, 2013 SCC 44

DATE: 20130802
DOCKET: 34429

BETWEEN:

Marine Services International Limited and David Porter

Appellants

and

Estate of Joseph Ryan, by its Administratrix, Yvonne Ryan, Yvonne Ryan, in her own right, Stephen Ryan, a Minor, by his Guardian *ad litem*, Yvonne Ryan, Jennifer Ryan, a Minor, by her Guardian *ad litem*, Yvonne Ryan, Estate of David Ryan, by its Administratrix, Marilyn Ryan, Marilyn Ryan, in her own right, David Michael Ryan, a Minor, by his Guardian *ad litem*, Marilyn Ryan, J and Y Fisheries Inc. and D and M Fisheries Inc., bodies corporate, trading and operating as Ryan's Fisheries Partnership, Universal Marine Limited and Attorney General of Canada

Respondents

- and -

Attorney General of Ontario, Attorney General of Nova Scotia, Attorney General of British Columbia, Attorney General of Newfoundland and Labrador, Workplace Health, Safety and Compensation Commission and Workers' Compensation Board of British Columbia

Interveners

CORAM: McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

REASONS FOR JUDGMENT: (paras. 1 to 86) — LeBel and Karakatsanis JJ. (McLachlin C.J. and Fish, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ. concurring)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

[75] Read together with s. 5 of the *MLA*, it is clear that s. 6(2) provides a cause of action to the dependants of a person who dies by the fault or negligence of others in a maritime context that is to be adjudicated under Canadian maritime law. However, we conclude that s. 6(2) of the *MLA*, read in light of the broader statutory context, makes room for the operation of provincial workers' compensation schemes.

[76] In our view, the *WHSCA* and the *MLA* can operate side by side without conflict. Indeed, s. 6(2) of the *MLA* provides that a dependant may bring a claim "under circumstances that would have entitled the person, if not deceased, to recover damages". We agree with Welsh J.A. at the Court of Appeal that this language suggests that there are situations where a dependant is not allowed to bring an action pursuant to s. 6(2) of the *MLA*. Such a situation occurs where a statutory provision — such as s. 44 of the *WHSCA* — prohibits litigation because compensation has already been awarded under a workers' compensation scheme.

[77] Under the modern approach to statutory interpretation, "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26. Taking this approach, the text of s. 6(2) accommodates the statutory bar in s. 44 of the *WHSCA*. The Ryan brothers' death occurred "under circumstances" that would have *disentitled* them from recovering damages "if not deceased" because, had

they lived, s. 44 of the *WHSCA* would have applied. The Ryan Estates received compensation — and therefore became subject to the statutory bar in s. 44 — because the Ryan brothers succumbed to an injury for which they would have received compensation had they lived: s. 43(1) of the *WHSCA*. If the Ryan brothers had received compensation, the statutory bar in s. 44 would have applied to them for the same reasons that the Commission concluded it applied to the Ryan Estates. The application of s. 44 to the Ryan brothers, had they lived, means that their dependants have no recourse to s. 6(2) of the *MLA*. On this reading, there is no conflict between the two statutes.

[78] Had the Ryan brothers survived, neither interjurisdictional immunity nor federal paramountcy would apply so as to render the statutory bar in s. 44 of the *WHSCA* constitutionally inapplicable or inoperative. Interjurisdictional immunity would not apply for the same reasons that it does not apply to the circumstances of this appeal. As discussed earlier, federal paramountcy only applies where there is an inconsistency between two valid legislative enactments — one federal and one provincial. It does not apply to an inconsistency between the common law and a valid provincial legislative enactment. Accordingly, if the Ryan brothers had survived and sought damages in tort, federal paramountcy would not have applied to render the statutory bar in s. 44 inoperative.

[79] An interpretation recognizing the absence of conflict between the statutes is borne out by the broader context, the scheme and object of the *MLA* and

Parliament's intent. Although it is evident that Parliament enacted the *MLA* to expand the maritime tort regime, two additional factors demonstrate that the *MLA* and workers' compensation schemes — federal and provincial — are meant to operate harmoniously.

[80] First, an interpretation of s. 6(2) of the *MLA* that makes room for s. 44 of the *WHSCA* ensures consistency with the two federal workers' compensation schemes described earlier: the *GECA* and the *MSCA*. The dependants of a deceased employee covered by the *GECA* could not sue Her Majesty under s. 6(2) of the *MLA* if the employee's death occurred in a maritime context. Indeed, s. 12 of the *GECA* bars any claim against Her Majesty. Likewise, the dependants of a deceased employee that falls under the *MSCA* and are therefore entitled to compensation under that Act could not bring a claim under s. 6(2) of the *MLA* due to the statutory bar in s. 13 of the *MSCA*.

[81] There is a presumption that Parliament does not enact related statutes that are inconsistent with one another: *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489, at paras. 38 and 61; *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 7. It would be inconsistent for Parliament to enact statutory bars in the *GECA* and the *MSCA* that do not preclude a negligence action under s. 6(2) of the *MLA*. These provisions must be interpreted harmoniously. Section 6(2) of the *MLA*, which allows dependants of a deceased person to sue if the death occurred

TAB 4

000018

SUPREME COURT OF CANADA

CITATION: Newfoundland and Labrador *v.* AbitibiBowater Inc., 2012 SCC 67, [2012] 3 S.C.R. 443

DATE: 20121207
DOCKET: 33797

BETWEEN:

Her Majesty the Queen in Right of the Province of Newfoundland and Labrador

Appellant

and

AbitibiBowater Inc., Abitibi-Consolidated Inc., Bowater Canadian Holdings Inc., Ad Hoc Committee of Bondholders, Ad Hoc Committee of Senior Secured Noteholders and U.S. Bank National Association (Indenture Trustee for the Senior Secured Noteholders)

Respondents

- and -

Attorney General of Canada, Attorney General of Ontario, Attorney General of British Columbia, Attorney General of Alberta, Her Majesty the Queen in Right of British Columbia, Ernst & Young Inc., as Monitor, and Friends of the Earth Canada

Interveners

CORAM: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

REASONS FOR JUDGMENT: (paras. 1 to 63)	Deschamps J. (Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ. concurring)
DISSENTING REASONS: (paras. 64 to 97)	McLachlin C.J.
DISSENTING REASONS: (paras. 98 to 102)	LeBel J.

[1] DESCHAMPS J. — The question in this appeal is whether orders issued by a regulatory body with respect to environmental remediation work can be treated as monetary claims under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*").

[2] Regulatory bodies may become involved in reorganization proceedings when they order the debtor to comply with statutory rules. As a matter of principle, reorganization does not amount to a licence to disregard rules. Yet there are circumstances in which valid and enforceable orders will be subject to an arrangement under the *CCAA*. One such circumstance is where a regulatory body makes an environmental order that explicitly asserts a monetary claim.

[3] In other circumstances, it is less clear whether an order can be treated as a monetary claim. The appellant and a number of interveners posit that an order issued by an environmental body is not a claim under the *CCAA* if the order does not require the debtor to make a payment. I agree that not all orders issued by regulatory bodies are monetary in nature and thus provable claims in an insolvency proceeding, but some may be, even if the amounts involved are not quantified at the outset of the proceeding. In the environmental context, the *CCAA* court must determine whether there are sufficient facts indicating the existence of an environmental duty that will ripen into a financial liability owed to the regulatory body that issued the order. In such a case, the relevant question is not simply whether the body has formally exercised its power to claim a debt. A *CCAA* court does not assess claims — or orders

TAB 5

SUPREME COURT OF CANADA

CITATION: Sun Indalex Finance, LLC *v.* United Steelworkers, 2013 SCC 6

DATE: 20130201
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BETWEEN:

Sun Indalex Finance, LLC
Appellant
and
United Steelworkers, Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith, Robert Leckie and Fred Granville
Respondents

AND BETWEEN:

George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the U.S. Indalex Debtors
Appellant
and
United Steelworkers, Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith, Robert Leckie and Fred Granville
Respondents

AND BETWEEN:

FTI Consulting Canada ULC, in its capacity as court-appointed monitor of Indalex Limited, on behalf of Indalex Limited
Appellant
and
United Steelworkers, Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith, Robert Leckie and Fred Granville
Respondents

AND BETWEEN:

United Steelworkers
Appellant
and
Morneau Shepell Ltd. (formerly known as Morneau Sobeco Limited Partnership) and Superintendent of Financial Services
Respondents
- and -

Superintendent of Financial Services, Insolvency Institute of Canada, Canadian Labour Congress, Canadian Federation of Pensioners, Canadian Association of Insolvency and Restructuring Professionals and Canadian Bankers Association
Interveners

CORAM: McLachlin C.J. and LeBel, Deschamps, Abella, Rothstein, Cromwell and Moldaver JJ.

REASONS FOR JUDGMENT: (paras. 1 to 84)	Deschamps J. (Moldaver J. concurring)
REASONS CONCURRING IN RESULT WITH THOSE OF DESCHAMPS J.: (paras. 85 to 262)	Cromwell J. (McLachlin C.J. and Rothstein J. concurring)
DISSENTING REASONS: (paras. 263 to 280)	LeBel J. (Abella J. concurring)

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creditors of a corporation that is attempting to reorganize may bargain in the shadow of their bankruptcy entitlements, those entitlements remain only shadows until bankruptcy occurs. At the outset of the insolvency proceedings, Indalex opted for a process governed by the *CCAA*, leaving no doubt that although it wanted to protect its employees' jobs, it would not survive as their employer. This was not a case in which a failed arrangement forced a company into liquidation under the *BIA*. Indalex achieved the goal it was pursuing. It chose to sell its assets under the *CCAA*, not the *BIA*.

[52] The provincial deemed trust under the *PBA* continues to apply in *CCAA* proceedings, subject to the doctrine of federal paramountcy (*Crystalline Investments Ltd. v. Domgroup Ltd.*, 2004 SCC 3, [2004] 1 S.C.R. 60, at para. 43). The Court of Appeal therefore did not err in finding that at the end of a *CCAA* liquidation proceeding, priorities may be determined by the *PPSA*'s scheme rather than the federal scheme set out in the *BIA*.

[53] The Appellants' second argument is that an order granting priority to the plan's members on the basis of the deemed trust provided for by the Ontario legislature would be unconstitutional in that it would conflict with the order granting priority to the DIP lenders that was made under the *CCAA*. They argue that the doctrine of paramountcy resolves this conflict, as it would render the provincial law inoperative to the extent that it is incompatible with the federal law.