MAY 8, 2020

Canada's Top Court Provides Crucial Guidance on the Conduct of Insolvency Proceedings

Authors: Christian Lachance, Gabriel Lavery Lepage and Jean-Philippe Groleau

The Supreme Court of Canada delivered its reasons today in *9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10, after having unanimously allowed the appeals from the bench on January 9, 2020. Davies represented the principal – and successful – appellants in this matter.[1]

In its reasons, which were delivered by Chief Justice Wagner and Justice Moldaver, the Supreme Court laid out key principles for the conduct of insolvency proceedings (including proceedings under the *Companies' Creditors Arrangement Act* [CCAA]):

- Parties in insolvency proceedings must always be mindful of the requirement to act diligently, in good faith and in furtherance of the insolvency statute's objectives, lest they lose rights. This means that pursuing aggressive strategies that fail to meet this threshold is risky.
- Judges supervising CCAA proceedings have broad discretion to make a variety of orders that respond to the circumstances of each case. A high degree of deference is owed by appellate courts to the discretionary decisions of supervisory judges.
- The CCAA does not, as a general rule, prevent a creditor from voting on the plan of arrangement it sponsors. However, the supervising judge may exercise discretion to bar a creditor from voting when this creditor is acting for an improper purpose.
- The CCAA may properly be used to effect a liquidation of the debtor company's assets.
- A plan of arrangement requires at least some form of compromise of creditors' rights. Therefore, a third-party litigation funding agreement may or may not constitute a plan of arrangement, depending on the circumstances of that case.
- Interim financing is not limited to providing debtor companies with immediate operating capital. It may also be used to realize the value of a debtor's assets, including litigation assets, and may therefore take the form of third-party litigation funding.

This decision is important for the legal community because it clarifies a number of significant elements regarding the conduct of insolvency proceedings.

[1] Our team comprised Jean-Philippe Groleau, Christian Lachance, Gabriel Lavery Lepage and Hannah Toledano.

Key Contacts: Christian Lachance, Denis Ferland, Robin B. Schwill and Natasha MacParland

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.

© 2020 DAVIES WARD PHILLIPS & VINEBERG LLP