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Litigation - Canada

Pension Jurisdiction Found to Exist Notwithstanding CCAA

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In *British Columbia (Superintendent of Pensions) v Western Forest Products Inc* ((2006) Carswell BC 1536 (BCSC)) the superintendent of pensions applied to the court for an order compelling the debtor to comply with the reporting provisions of the provincial pensions legislation. The debtor took the position that because certain orders were made pursuant to the Companies' Creditors Arrangements Act (CCAA), which fixed the way the pension was to be dealt with, the CCAA order left the superintendent with no authority.

Facts

The debtor entered into a transaction with PASC Inc while the debtor was under CCAA protection. This transaction contemplated the sale of part of the debtor's business, including employees and their pension entitlements, to PASC. The transaction was presented to the court for approval in the debtor's CCAA proceedings and was approved with the proviso that if PASC failed to complete the transaction, any claims of employees against the debtor (or its related group of companies) arising out of the pension plan had to be prosecuted as a claim in the debtor's CCAA proceedings. Based on the wording of this order, the debtor took the position that the CCAA order closed the door to any claims prosecuted outside the CCAA process for payment of money in excess of the amount required to be transferred to PASC in support of pension obligations. Unfortunately, the business purchased by PASC was not successful and its operations ceased. The employees transferred from the debtor to PASC lost their jobs and PASC had not set up a pension plan for these employees.

Decisions

The superintendent determined that the portion of the pension plan relating to these employees was no longer being funded and issued a notice to the debtor (which was the registered pension administrator at the time) that the superintendent considered that the plan was terminated. The sending of the notice by the superintendent triggered a requirement that the debtor issue notice of the termination to the affected plan members. The debtor objected on the basis that the CCAA order approving the transaction with PASC terminated the debtor's obligations to affected plan members; thus the debtor would not send out the notice in question. This objection launched the appeal provisions of the provincial pension legislation. However, notwithstanding the appeal, the superintendent

confirmed its earlier decision that the plan had been partially terminated in respect of those employees. The superintendent issued a second direction to the debtor, which was ignored by the debtor. The superintendent then applied to the British Columbia Supreme Court to seek an order directing the debtor to comply with the superintendent's directions.

The court quickly concluded that the superintendent had established all the facts necessary to obtain the relief it sought in its application under the provincial pension legislation. The court then turned to consider the effect of the CCAA order and whether this order limited the superintendent's recourse. The court ultimately concluded that the CCAA order did not prevent the superintendent from performing his statutory duties as was argued by the debtor. On the contrary, the court found that the CCAA order specifically contemplated the superintendent's jurisdiction over the pension plan in question. In addition, nothing in the CCAA order negated the superintendent's authority over the pension plan in the event that the PASC transaction failed, as it did. In order to strip the superintendent of that authority, the CCAA order would have to have expressly done so, and it did not.

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