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Insolvency Law

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FRASER MILNER CASGRAIN LLP

CORN PRODUCERS NOT ABLE TO RELY ON THEIR SUPPLIER RIGHTS UNDER THE BIA

In *Meunerie B.L. inc., Re* (2007), EYB 2007-126274, 2007 QCCA 1601 (Que. C.A.) affirming (2006), EYB 2006-109274, 2006 QCCS 4914 (Que. S.C.) Meunerie B.L. Inc. (“Meunerie”) made an assignment in accordance with the *Bankruptcy and Insolvency Act* (“BIA”). At the time of bankruptcy Meunerie was a mill which processed corn purchased from corn producers. Corn that was delivered to Meunerie was stored on site in silos.

Corn producers who had delivered corn to Meunerie and had not been paid filed proofs of claim with the trustee pursuant to section 81.1(1) of the BIA. Section 81.1(1), in part, reads as follows:

81.1(1) Right of unpaid supplier to repossess goods

Subject to this section, where a person (in this section referred to as the “supplier”) has sold and delivered goods to another person (in this section referred to as the “purchaser”) for use in relation to the purchaser’s business, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the supplier’s own expense, and the purchaser, trustee or receiver shall release the goods, if ...

Aside from the other requirements set out in section 81.1, the producers were required to identify the goods they had delivered in order to have a valid claim. In this case, the trustee disputed the producers claim in accordance with section 81(2) of the BIA in that the goods were not identifiable.

The trustee’s decision was upheld on appeal to the Superior Court and affirmed by the Quebec Court of Appeal. The Court found that the corn stocks, from roughly twenty corn producers, stored in the silos at the time of bankruptcy were blended together in such a way that it was impossible to figure out whose stock it was. The producers were denied a claim under section 81.1 as their corn could not be regarded as identifiable property. In the end, unless the corn producers had arranged security for their delivered goods, they would be left with an unsecured claim in the bankruptcy.

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