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on

Insolvency Law

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The logo for Fraser Milner Casgrain LLP, consisting of the letters 'FMC' in white on a dark blue square background.

FRASER MILNER CASGRAIN LLP

DIP FINANCING IN A CCAA

In *Stomp Pork Farm Ltd., Re*, (“Stomp Park Farm”) the Saskatchewan Court of Appeal partially overturned orders granted from the Saskatchewan Court of Queen’s Bench which approved debtor in possession financing (“DIP Financing”).

In this case, the debtor owed its first lender \$20.5 million, secured against the debtor’s current assets. The lender had priority over the current assets to the extent of \$18 million and thereafter shared priority with the debtor’s second lender.

When the debtor obtained its initial order under the *Companies Creditors’ Arrangement Act (Canada)*, (the “CCAA”) the order directed the second ranking lender to provide the DIP Financing. The primary secured lender subsequently applied for an order substituting it as the DIP lender and allocating the DIP financing equally between current and fixed assets of Stomp Pork Farm. After the Court requested the monitor to analyze the situation and provide its recommendations, the Court confirmed its original decision to grant a super priority charge with respect to the DIP Financing in favour of the second lender, secured 75% against current assets and 25% on fixed assets.

The primary lender appealed the decision, which was allowed in part.

First, the Saskatchewan Court of Appeal refused to allow leave in respect of the existing DIP Financing commenting that it was a significant commercial arrangement, already in place, and completed under circumstances of urgency. As a result, the Court of Appeal declined to intervene and allowed this arrangement to continue. The Court of Appeal did, however, overturn the CCAA Court’s decision insofar as it related to how future debtor in possession financings would be structured and secured in the proceedings. In this regard, the Court of Appeal found that the current declarations were speculative, were not made under any pressures of urgency, and were best addressed under the circumstances that existed when the financing was required.

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