

CANADA / JUDGMENT

Mountain Equipment Co-Operative (Re)

2020 BCSC 2037

COURT

Supreme Court of British Columbia

DECIDED

21 December 2020

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2020 BCSC 2037 Mountain Equipment Co-Operative (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mountain Equipment Co-Operative (Re),

2020 BCSC 2037

Date: 20201221

Docket: S209201

Registry: Vancouver

In the Matter of the COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, as amended

- AND -

In the Matter of 1077 HOLDINGS CO-OPERATIVE and 1314625 ONTARIO LIMITED

Petitioners

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

(Representative Counsel / Charge)

Counsel for the Petitioners, 1077 Holdings Co-Operative and 1314625 Ontario Limited:

H. Gorman, Q.C.

S. Boucher

Counsel for the Monitor, Alvarez & Marsal Canada Inc.:

M.I.A. Buttery, Q.C.

H.L. Williams

Counsel for Lorne Hoover, on his own behalf and on behalf of former MEC employees:

C. Gusikowski

Place and Date of Hearing:

Vancouver, B.C.

November 24 and 27, 2020

Place and Date of Decision:

Vancouver, B.C.

December 21, 2020

INTRODUCTION

- [1] Lorne Hoover is a former employee of the petitioner, Mountain Equipment Co-operative ("MEC"). MEC has since changed its name to 1077 Holdings Co-operative.
- [2] Mr. Hoover seeks an order appointing Victory Square Law Office ("VSLO") as representative counsel for all of MEC's former employees in relation to claims that will be advanced by them in this Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 ("CCAA") proceeding.
- [3] In addition, Mr. Hoover seeks a court ordered charge in the amount of \$85,000 against MEC's assets to secure that representation, with priority over all claims, save for certain court ordered charges that have already been court approved (such as the Administrative Charge, the D&O Charge and the KERP).
- [4] MEC opposes this relief as unnecessary and unwarranted. The Monitor has raised similar concerns, also stating that the relief may be redundant and unnecessary in the circumstances.

BACKGROUND FACTS

- [5] On October 2, 2020, I granted the Sale Approval and Vesting Order (SAVO) by which the Court approved a sale of substantially all of MEC's assets: Mountain Equipment Co-Operative (Re), 2020 BCSC 1586.
- [6] On October 30, 2020, the sale transaction closed. Fortunately, the purchaser took over more retail locations than initially forecast, such that 21 of the 22 retail stores are to continue. In addition, the purchaser retained over 90% of MEC's active employees who worked in those locations across Canada.

- [7] MEC received net sale proceeds of approximately \$22.9 million. Further amounts (approximately \$7.5 million) remain held in escrow pending final accounting adjustments to be completed under the sale.
- [8] In November 2020, Mr. Hoover's application was filed. His application was heard with MEC's own applications toward addressing the next steps in this proceeding.
- [9] On November 27, 2020, I granted a Claims Process Order (the "CPO") and a further order to enhance the Monitor's powers in relation to these proceedings (the "Enhanced Powers Order"). The Enhanced Powers Order was necessary because of steps taken by MEC following the sale. MEC terminated all of its management personnel effective November 30, 2020. In addition, MEC's board of directors intended to resign and those resignations were to become effective immediately after the granting of this order.
- [10] The Enhanced Powers Order allows the Monitor to assume responsibility for the administration of the remainder of MEC's assets and importantly, the administration of a Claims Process.

THE CLAIMS PROCESS

- [11] Under the Enhanced Powers Order, the Monitor was authorized to initiate and administer the Claims Process. The Monitor anticipates that the Claims Process will involve a determination of a variety of claims, including the substantial claims of landlords whose leases were disclaimed and employees' claims arising from their termination.
- [12] The features of the Claims Process, as established by the CPO, are:
 - a) Claims affected by the CPO will be all Pre-filing Claims, Restructuring Period Claims, Employee Claims and D&O Claims. The Claims Process will not affect certain claims not relevant to this application;
 - b) By December 11, 2020, the Monitor will deliver Claims Packages and Employee Claims Packages to all known Claimants and Employee Claimants, respectively;
 - c) The Employee Claims Packages will include MEC's calculations of each Employee Claim and, if available in MEC's records, any relevant employment contract. A negative process will be in place such that an affected employee will only be required to file any materials if they dispute MEC's proposed assessment of their claim;
 - d) In the usual fashion, the Claims Process will be widely advertised in national papers and on the Monitor's Website;
 - e) Claimants with Pre-filing Claims and D&O Claims, and Employee Claimants who dispute their assessed Employee Claims, will have until February 10, 2021 (the "Claims Bar Date") to file Proofs of Claim or D&O Proofs of Claim with the Monitor;

- f) Claimants with Restructuring Period Claims will have until the later of (i) 45 days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date;
 - g) The Monitor shall review all Proofs of Claim and D&O Claims in consultation with MEC and the Directors and Officers named in respect of any D&O Claim, and shall accept, revise or reject each Claim;
 - h) If the Monitor intends to revise or reject a Claim, the Monitor shall send a Notice of Revision or Disallowance (NORD) to the Claimant or Employee Claimant by no later than March 22, 2021, unless otherwise ordered by this Court on application by the Monitor;
 - i) Any Claimant or Employee Claimant who intends to dispute a NORD shall deliver a Notice of Dispute of Revision or Disallowance to the Monitor within 30 days of receiving the NORD;
 - j) The Monitor may refer any Claims to Herman Van Ommen, Q.C., the Claims Officer, or the Court, for adjudication at its election by sending written notice to the Claimant or Employee Claimant; and
 - k) For any Claims adjudicated by a Claims Officer, the Claimant, Employee Claimant, Monitor or Petitioners may file a notice of appeal of the Claims Officer's determination within ten days of receiving notice of the same. Appeals will be conducted as true appeals and not as hearings de novo.
- [13] Approximately 210 of MEC's employees were terminated after the commencement of these CCAA proceedings. This group included 103 head office staff and 107 retail staff, all of whom received outstanding wages, vacation pay and benefits to the date of termination. Certain former MEC employees were terminated prior to the commencement of these CCAA proceedings but were on salary continuance. MEC and the Monitor expect that most of these employees will have claims for unpaid severance.
- [14] In its Fourth Report dated November 23, 2020 (the "Fourth Report"), the Monitor indicates that MEC's management has already undertaken significant efforts to prepare a preliminary calculation of the severance and termination amounts owing to former employees, with oversight and input from the Monitor. This would include an assessment of the applicable provincial statutory requirements (including those arising from any group terminations), which the Monitor states would apply to the majority of these employees. The Monitor considers that approximately 34 employees are entitled to contractual and/or common law notice.
- [15] MEC's assessments of all the former employee claims will be included in the Employee Claims Packages that each of them will receive and review. As above, if any employee disputes MEC's assessment of his/her claim amount, the claim will be reviewed by the Monitor and, if necessary, determined by the Claims Officer or the Court.

- [16] Although uncertain at this point, the initial indications are that the unsecured creditors could receive between 30%-50% of their claims.

REPRESENTATIVE COUNSEL

- [17] Mr. Hoover was employed by MEC for just over 21 years. He was terminated on October 14, 2020. He believes that one or more contracts governed his terms of employment. He states that he is uncertain as to his contractual status.
- [18] Mr. Hoover's status in relation to the remainder of MEC's other terminated employees arises from a Facebook group called "Former MEC Staffers". This Facebook group is comprised of approximately 85 members who purport to be former MEC employees.
- [19] Mr. Hoover states that he is unaware of any other organized group of former MEC employees with claims who are involved in the CCAA proceedings. Mr. Hoover has been told that the Administrator of the Facebook group has advised the members of his application before the Court. Mr. Hoover has been advised that no member of the Facebook group has expressed concern about the application.
- [20] Mr. Gusikoski, counsel for Mr. Hoover from VSLO, has been in contact with approximately 35 former employees who are members of the Facebook group, many of whom have no written contracts. In addition, Mr. Gusikoski has reviewed the contracts of many employees. Since the filing of Mr. Hoover's application, Mr. Gusikoski has received numerous emails from former MEC employees, expressing their wish that he represent them in these proceedings.
- [21] Mr. Gusikoski is of the view that there is a complex array of legal and factual issues likely to arise in relation to the employee claims to be addressed in the Claims Process. Those issues include:
- a) Employment Standards: He agrees with MEC that the provincial employment standards legislation applies to employees who have been terminated, and that group termination provisions may be applicable;
 - b) Common Law Severance: He agrees with MEC that there are former employees who will be entitled to file claims for common law severance. There is no dispute that the issue will be a determination of what is "reasonable notice" in the circumstances, as that phrase is discussed in the case authorities. It is uncontroversial that the assessment of reasonable notice will be highly fact specific in relation to each former employee;
 - c) Contractual Severance Provisions: He asserts that there are a variety of contractual terms dealing with severance. Many contractual provisions are simply to the effect that the notice period is as set out in the legislation, however, he asserts that common law severance may still be available. Other contractual provisions refer not only to the legislated minimum notice periods, but also further entitlements (i.e. Separation Payments). He similarly takes the view that this language only sets a further minimum entitlement without waiving an

employee's right to pursue damages at common law; and

- d) **Application of Written Contracts:** He raises other issues that may also become relevant to an employee's claim. The first issue raised is whether any contract is even in force, arising from the contention that a number of employees were not offered fresh consideration when they signed a new contract in mid-employment. The second issue relates to long-term employees and whether the changed nature of their employment over time has negated the legal effect of termination provisions in an earlier employment contract, citing *Rasanen v. Lisle-Metrix Ltd.* (2001), 17 C.C.E.L. (3d) 134 at para. 41 (Ont. S.C.J.); aff'd (2004) 33 C.C.E.L. (3d) 47 (Ont. C.A.).

Legal Principles for Appointing Representative Counsel

[22] Appointment of representative counsel in CCAA proceedings is not entirely unusual. There is no dispute here that the Court has jurisdiction to appoint representative counsel under its general power set out in s. 11 of the CCAA, if such relief is appropriate in the circumstances.

[23] Many case authorities discuss the factors to be considered by the courts in determining whether the appointment of representative counsel is appropriate. Generally, these cases refer to the well known non-exhaustive factors set out in *Canwest Publishing Inc. (Re)*, 2010 ONSC 1328 at para. 21, as adopted by this Court in *Re League Assets Corp. (Re)*, 2013 BCSC 2043 at para. 72:

- the vulnerability and resources of the group sought to be represented;
- any benefit to the companies under CCAA protection;
- any social benefit to be derived from representation of the group;
- the facilitation of the administration of the proceedings and efficiency;
- the avoidance of a multiplicity of legal retainers;
- the balance of convenience and whether it is fair and just including to the creditors of the Estate;
- whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- the position of other stakeholders and the Monitor.

[24] For the purposes of this application, analysis of the *Canwest Publishing* factors can be addressed under three broad categories: (1) the former employee group, (2) the benefit of their representation in this proceeding, and (3) the balancing of stakeholder interests.

The Former Employee Group

- [25] Mr. Hoover submits that the former employees are a financially vulnerable group dispersed throughout Canada, but concentrated in western Canada. He confirms that the former employees have severance claims, only a portion of which are expected to be returned. He asserts that the former employees are disproportionately affected by MEC's CCAA proceedings, in that they have not only suffered immediate losses, but loss of income going forward. Mr. Hoover says that the former employees have little financial resources available to fund any "sophisticated" defence of their interests. He says that a "social benefit" will be derived from ensuring this vulnerable group of employees is represented by legal counsel.
- [26] MEC asserts that there is insufficient evidence to support that these former employees could not retain a law firm, either individually or as a group. However, later emails sent by many former MEC employees to VSLO mention that the termination of their employment has caused financial stress in their lives. This is not entirely surprising, whether this is a short-term or longer-term situation.
- [27] Certainly, the negative economic consequences of the COVID-19 pandemic have caused significant hardship to many Canadians, despite the government support available to them. For the purpose of this application, I accept that Mr. Hoover has established some evidence to the effect that, generally speaking, the former employees have been left in a vulnerable position arising from the loss of their jobs.
- [28] Courts have appointed representative counsel in numerous CCAA proceedings for current and/or former employees and retirees: see *Nortel Networks Corp. (Re)* (2009), 53 C.B.R. (5th) 196 at paras. 10-16 (Ont. S.C.J.); *Fraser Papers Inc. (Re)*, 2009 CanLII 55115 and 2009 CanLII 63589 (Ont. S.C.J.); *Target Canada Co. (Re)*, 2015 ONSC 303 at para. 61. However, the circumstances in those cases were significantly different than those here. An important factor in those restructurings was that literally thousands of former and current employees or retirees sought representation in the early days of those complex CCAA proceedings.
- [29] In *1057863 B.C. Ltd. (Re)*, 2020 BCSC 1359 at paras. 122-129, this Court appointed the union to represent hundreds of laid-off employees in the early days of the Northern Pulp restructuring.
- [30] In *Canwest Publishing*, a smaller number (75) of former employees and retirees sought representation. Justice Pepall (as she then was) agreed that a representation order was appropriate because, among other factors, the vulnerable employee group was facing what was to be a complex CCAA restructuring, particularly given the sales process that was underway.
- [31] The circumstances relating to MEC and this Claims Process represent a far different scenario than was addressed in the above cases. At present, what remains to be advanced is the distribution of the monies in the Monitor's hands in accordance with the Claims Process. Of particular note are the following factors in relation to the Employee Claimants:

- a) There is no reason to question the good faith efforts of MEC's management to gather the applicable facts and documents and assess what MEC considers to be the termination entitlement of each employee. This effort is subject to the involvement and oversight of the Monitor;
- b) The majority of the 210 employees will be subject to the applicable provincial legislation, where the calculation of severance entitlement, including in the event of a group termination, is fairly straightforward;
- c) With respect to the former employees who have contracts or are entitled to common law notice, their entitlement will be based on the specific facts and circumstances unique to them, indicative of a unique analysis, as opposed to common issues to be advanced on behalf of all or most of them;
- d) It remains to be seen whether common issues arise with respect to the former employees that would justify joint representation on the contract or common law issues;
- e) Mr. Hoover argues that "information asymmetries" between employees would lead to obvious and manifest unfairness. However, there is no evidence that the employees who are clearly not subject to the legislation could not band together to fund joint representation to present common or individual issues, whether through VSLO or another law firm: *Urbancorp Inc. (Re)*, 2016 ONSC 5426 at para. 16;
- f) It may be that VSLO's representation of all the employees would present a conflict, since advocating for one employee may increase his or her claim to the detriment of others who will share in the same pot of monies: *Urbancorp* at para. 20;
- g) Mr. Hoover argues that many employees are or may be unaware of significant legal interests they have without representation. However, Mr. Gusikoski has already been in contact with 35 employees. In addition, copies of Mr. Hoover's application materials, which identify various legal issues, can be posted on the Facebook group or other social media; and
- h) Mr. Hoover also argues that some employees may not be aware of common law severance rights, which could increase their claim significantly. Again, VSLO and/or Mr. Hoover can identify the issues for the Facebook group and identify sources of legal resources for use by them, just as many self-represented parties use in other litigation before the Court.

Benefit of Representation in this Proceeding

- [32] Many of the above factors are brought into sharper focus in relation to whether there is some benefit in appointing representative counsel to promote the efficient administration of these proceedings for the benefit of all stakeholders.

- [33] This proceeding is not in its early days; rather, it is in its final days as the Claims Process begins toward determining the proportionate sharing of the remaining monies as between the creditors. The Claims Process is a comprehensive one that will lead unsecured creditors toward that final outcome. Each former employee will have a full opportunity to either accept MEC's proposed assessment of his/her claim or contest that assessment within the specific procedures set out in the CPO.
- [34] In that event, I agree with MEC's counsel that there seems to be little utility in appointing representative counsel even before that process is underway.
- [35] Mr. Hoover submits that VSLO possesses specialized expertise in labour and employment law matters and, of that, I have no doubt. Mr. Hoover also submits that VSLO can work with MEC's counsel or the Monitor to sharply consolidate issues and streamline dispute resolution processes before the Claims Officer. However, it is far from clear what issues may need to be "consolidated" and it is far from clear whether there will be need for counsel to act for employees to streamline the process to determine their claims if they dispute MEC's assessment.
- [36] Mr. Hoover argues that the former employees have not been involved with legal counsel in these proceedings. Furthermore, Mr. Hoover says that they have not been provided with timely advice about the CCAA proceedings which relate directly to their interests. That may be the case, but former employees have full access to the materials filed in these proceedings which have been posted online from the outset. I expect that, in large part, many of the stakeholders, including the former employees, have been awaiting the outcome of the sale process to see what amounts might be available to them as unsecured creditors.
- [37] Mr. Hoover cites *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 at paras. 9 and 16 as confirming that representative counsel can provide effective communication to stakeholders regarding the CCAA proceedings and ensure that their interests are brought to the attention of the Court.
- [38] As I see it, MEC and the Monitor are very much alive to the interests of the Employee Claimants and the Claims Process has been designed to specifically address their unique interests. Further, leaving aside Mr. Hoover's Facebook group, the Employee Claims Package that each of them will receive will describe in detail the stage of these proceedings and how their claims are to be addressed.
- [39] Mr. Gusikoski asserts that many former employees are entitled to both statutory and contractual/common law notice periods. He asserts that many of the written contracts have similar legal issues which could apply to many participants, which could be more efficiently grouped and adjudicated within the Claims Process in a manner most efficient to the resolution of all issues. As such, Mr. Hoover argues that granting a representative counsel is the only way in which to ensure the former employees' claims are determined in the fairest, consistent and efficient manner possible.

- [40] At paras. 62-63 in *Nortel Networks*, in assessing appointment of representative counsel, the court considered the "commonality of interest" test that is commonly referred to in respect of classification of creditors. Justice Morawetz (as he then was) found that the former employees had a "commonality of interest" that could benefit the proceeding by the appointment of one representative counsel.
- [41] Mr. Hoover refers to authorities where representative counsel were appointed in relation to claims processes. In *Target Canada Co. (Re)*, 2015 ONSC 1028 at paras. 32-40, the court appointed, with limited funding, counsel for certain franchisees who were facing "similar circumstances". The role of counsel in that event was with respect to several matters, one of which related to participating in the claims process. In *TBS Acquireco Inc. (Re)*, 2013 ONSC 4663 at paras. 33-37, the court declined any appointment and funding to allow terminated employees to advance Wage Earner Protection Program claims.
- [42] I accept that there may be circumstances to justify appointing representative counsel for the purpose of pursuing claims in a claims process. Mr. Hoover's arguments may be valid at some point in the Claims Process. However, until the Claims Process is underway and the former employees respond, it is completely unknown as to which of them might dispute MEC's assessment and, if so, on what basis. In that event, it is largely premature as to whether any common issues will emerge that may support a representative counsel appointment.
- [43] I have no doubt that the Monitor will be attuned to any common issues as may emerge in the Claims Process and will consider the most efficient manner of adjudicating those issues. At that time, it may be the case that representative counsel makes sense to coordinate the former employees' arguments so as to avoid a multiplicity of retainers within the Claims Process.

Balancing of Stakeholder Interests

- [44] MEC filed a Response opposing the appointment of representative counsel and the granting of a charge in favour of representative counsel. In addition, the Monitor filed a Response indicating that it was not supportive of this relief. No other stakeholder took a position on this application.
- [45] The Monitor's position was addressed in more detail in the Fourth Report. At para. 11.5, the Monitor states that it views the relief sought as possibly redundant and not necessary in the circumstances. The Monitor states, in part:

- d) the Monitor, as an independent officer of the Court, will be adjudicating claims and any disputed claims that are unable to be settled will be referred to the independent Claims Officer and/or the Court for resolution. Any third-party legal counsel engaged to prepare and calculate the Former Employees' claims when a negative claims process is being administered by the Court's officer is duplicative and impacts potential recoveries to the estate and affected creditors including non-former employee claimants; and
 - e) the Employee Claims are unsecured claims that should be treated equitably with other unsecured claims in the Claims Process, of which such claimants (primarily landlord claims in respect of disclaimed leases) have not been granted a charge for their respective legal counsel.
- [46] Mr. Hoover takes great umbrage at the Monitor's stated position, either in the Response or the Fourth Report, asserting that the Monitor has "entered the fray" by failing to act impartially in relation to the former employees. In addition, Mr. Hoover asserts that, in doing so, the Monitor has acted outside the scope of its duties as prescribed by this Court.
- [47] The comments found in *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 are well accepted in describing the role of a monitor in CCAA proceedings, in that:
- [109] . . . the monitor is to be independent and impartial, must treat all parties reasonably and fairly, and is to conduct itself in a manner consistent with the objectives of the CCAA and its restructuring purpose.
- [48] Having reviewed the Monitor's statements in context, I consider that Mr. Hoover's submissions on this point are misplaced. The Monitor has considered the particular circumstances of the former employees, but importantly, the Monitor has also considered the relief sought by them more generally in the present circumstances of this CCAA restructuring proceeding. To do so is entirely appropriate, since the interests of the former employees cannot be considered in isolation in terms of the balancing of interests of all stakeholders.
- [49] As with many issues, the Monitor is uniquely situated to comment on the overall circumstances so as to assist the Court in the balancing exercise. Indeed, the very authorities that are cited by all parties here, including the former employees, as to the applicable test in appointing representative counsel (*Canwest Publishing*), specifically sets out that one factor to be considered is the position of the Monitor.
- [50] The Monitor's comments and its position emphasize that the Claims Process has been put in place and is a comprehensive process for the determination of the claims to be advanced against MEC. As with other claims processes granted in CCAA proceedings, it is intended to afford an efficient and expeditious means of resolving claims, including those of the former employees, to allow distribution to the creditors as soon as possible.

- [51] With the Enhanced Powers Order, the Monitor has assumed conduct of the Claims Process and has full access to MEC's books and records as may be relevant to that task. Further, the Monitor, as a court appointed officer, can be expected to address claims in a fair manner, including those relating to former employees.
- [52] The Claims Process is intended to benefit all stakeholders, not just the former employees. Many other creditors will participate in the Claims Process without legal representation as they wish. The Claims Process is expected to be easily understood in terms of how the process works, and how disputes are to be raised and addressed. As noted by the court in Urbancorp at para. 18, it is a "normal process" for a Monitor to deal with claimants.
- [53] In all of the circumstances, I am not convinced that a representative counsel appointment is appropriate at this time. If certain issues emerge in the Claims Process that might support a more coordinated resolution of common issues, either the Monitor or any of the former employees have leave to reapply for such relief.

REPRESENTATIVE COUNSEL CHARGE

- [54] I will also address Mr. Hoover's request for a court ordered charge for representative counsel if I had acceded to his request for representative counsel and to address any future application that might arise.
- [55] Mr. Hoover seeks a charge of \$85,000 against MEC's property to secure what he expects will be VSLO's anticipated fees so as to allow for the former employees' "effective participation" in the Claims Process.
- [56] Section 11.52(1)(c) of the CCAA allows the court to grant a charge on a petitioner's assets to secure payment of the legal fees and disbursements for representative counsel who may be appointed:

11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge -- in an amount that the court considers appropriate -- in respect of the fees and expenses of

...

- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

...

- (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

- [57] The Court must be satisfied that the charge is necessary for the effective participation of representative counsel in the proceedings: Urbancorp at para. 14.
- [58] Factors to consider in approving an administrative charge include those set out in Canwest Publishing Inc. (Re), 2010 ONSC 222 at para. 54, as adopted by this Court in Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at para. 42:
- (a) the size and complexity of the businesses being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwanted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and,
 - (f) the position of the Monitor.
- [59] MEC's business was large and complex, but that was in the past. Having now sold the business, MEC's interests are simply to administer a sum of money for distribution to its creditors under the Claims Process, now a role assumed by the Monitor.
- [60] The Claims Process has been designed to provide as streamlined a process as possible for the former employees. The process is not complex or difficult.
- [61] Mr. Hoover argues that, while the Monitor is a representative of the Court and has an obligation to all stakeholders, it does not have the time or resources to properly advise the former employees. I disagree and would respond that this is not a correct characterization of the Monitor's role in the Claims Process.
- [62] The Monitor will have an impartial and important role in that process, and it is to be expected that the Monitor will provide assistance to all claimants, as necessary and appropriate. In that sense, I am of the view that the Monitor's comments about this relief being redundant and unnecessary have some merit given present circumstances: Homburg Invest Inc. (Arrangement relatif a), 2014 QCCS 980 at para. 100 (see factors a and b).
- [63] In addition, MEC argues that the proposed charge for the former employees is unnecessary and would adversely affect MEC's other stakeholders, including its landlords, suppliers and vendors, and other unsecured creditors. Just as the Monitor has in this case, the monitor in Urbancorp argued that the court would be wrong to allow funding that was solely in the interest of one group of stakeholders (para. 18). This argument was accepted by Justice Newbould, who noted:
- [24] Estate funds should be spent for the benefit of the estate as a whole, not for the benefit of one group whose interests are contrary to the interests of the estate as a whole. . . .

- [64] No other unsecured creditor or creditor group has sought funding from MEC's estate for their participation in the Claims Process. While certainly some of them will have more substantial resources than the former employees individually, certainly some of them will not.
- [65] Further, it is difficult to assess the reasonableness of the quantum of the proposed charge. This is because it is difficult to say which of MEC's assessments might be contested and, if so, on what basis. For example, if only a few employees advance a dispute within the Claims Process, it will be apparent that estate resources are being spent on only a relatively small subset of stakeholders. This is arguably unreasonable, particularly since those funds would be spent to increase those few employees' slice of the pie to the detriment of others who do have the benefit of estate funded representation.
- [66] In my view, weighing all the above factors leads me to conclude that, even if I had appointed representative counsel, the proposed charge to secure that representation is not appropriate in the present circumstances.

CONCLUSION

- [67] Mr. Hoover's application is dismissed. Mr. Hoover and the Monitor have leave to bring this issue forward in the future, if further steps taken within the Claims Process dictate a further consideration of the issues.

"Fitzpatrick J."

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