

CANADA / JUDGMENT

Port Capital Development (EV) Inc. (Re)

2022 BCSC 1464

COURT

Supreme Court of British Columbia

DECIDED

23 August 2022

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2022 BCSC 1464 Port Capital Development (EV) Inc. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Port Capital Development (EV) Inc. (Re),

2022 BCSC 1464

Date: 20220823

Docket: S205095

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 the Business Corporations Act, S.B.C. 2002, c. 57, as amended

- and -

In the Matter of a Plan of Compromise and Arrangement of Port Capital Development (EV) Inc.
and Evergreen House Development Limited Partnership

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

July 13, 18, 22, 2022

Place and Date of Decision with Written Reasons to Follow:

Vancouver, B.C.

July 22, 2022

Place and Date of Written Reasons:

Vancouver, B.C.

August 23, 2022

INTRODUCTION

[1] In May 2020, the Petitioners sought and obtained creditor protection pursuant to the Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36 [CCAA].

[2] Now, over two years later, there has been no advancement of any restructuring, despite the Petitioners making substantial efforts to do so. In large part, the efforts of the Petitioners have been toward obtaining various iterations of funding that have allowed its assets (an unfinished condominium development) to be stabilized while they attempted to obtain longer term funding to allow a restart of construction toward completion of the development.

- [3] The present state of affairs has given rise, albeit haltingly, to the present suite of applications.
- [4] In early July 2022, the first secured creditor, Domain Mortgage Corp. ("Domain") filed two applications to allow it to realize on its security and recover its loans. In this CCAA proceeding, Domain sought an order terminating all of the CCAA relief and granting various transitional relief. In Action No. S225423 (Vancouver registry) (the "Receivership Proceeding"), Domain, as petitioner, sought the appointment of The Bowra Group Inc. as receiver of the Petitioners' assets, with the intention that the receiver would immediately undertake a sales process for the assets.
- [5] Faced with an imminent receivership, the second most senior secured creditor, Aviva Insurance Company of Canada ("Aviva"), filed its own application in this proceeding to approve a sales process. In addition, Aviva undertook immediate efforts to resurrect a sale with parties who had previously participated in a sales process in the CCAA proceeding.
- [6] Aviva's efforts led to another offer from Solterra Acquisitions Corp. ("Solterra"), who is no stranger to these CCAA Proceedings, as I will discuss below.
- [7] On July 22, 2022, I approved the sale of the Petitioners' assets to Solterra, with written reasons to follow. These are those reasons.

BACKGROUND FACTS

- [8] The Petitioners' business was to construct, develop and sell residential and commercial condominiums units in a high-rise development located on Hastings Street, Vancouver, BC (the "Development"). By May 2020, some pre-sales of the units were in place and some construction had begun.
- [9] The CCAA filing in May 2020 was required to halt the imminent actions by the first secured creditor to realize on its loans and security.
- [10] Almost immediately, the proceedings were directed toward a "dual track" sale and investment solicitation process (the "SISP"). The SISP was undertaken to either produce bids for the purchase of assets comprising the Development or, alternatively, a refinancing that could result in a restructuring or reorganization, to allow the Petitioners to continue with construction of the Development and sale of the units.
- [11] The SISP process was lengthy and complex. Approximately 670 potential bidders were contacted; a number (42) of persons signed non-disclosure agreements to consider the investment; and, six offers from "Qualified Offerors" were received. Ultimately, an offer arising from the SISP was approved, but did not proceed. After a return to the market, the Monitor put forward what was essentially a stalking horse bid. The full details are set out in my earlier reasons: Port Capital Development (EV) Inc. (Re), 2021 BCSC 1272 at paras. 5-26 [BCSC Sale Reasons].

- [12] In April 2021, I approved an offer from Landa Global Acquisitions Inc. ("Landa") for \$19 million, subject to the Monitor returning to the market for a final round of bids. Further offers received created more complexity and more controversy.
- [13] Solterra submitted a bid. Landa submitted two further bids. Another bid was received from 1296371 B.C. Ltd. ("129"), which is controlled by the principal of the Petitioners, Macario Reyes (the "129 Revised Offer"). Details of the 129 Revised Offer are found in the BCSC Sale Reasons at paras. 44-50.
- [14] In the BCSC Sale Reasons, I described Mr. Reyes' arguments in support of the 129 Revised Offer as follows:
- [78] The anchor on which Mr. Reyes argues that the 129 Revised Offer and extended stay of proceedings is appropriate is the suggestion that it will allow the Petitioners to secure new construction financing to repay the New Loan Facility and proceed with the Project as intended. Mr. Reyes suggests in argument that there is a "realistic prospect" in the future that 129 will be able to secure new construction financing to permit some, or potentially full, recovery by the "Other Creditors".
- [80] In essence, 129's plan is to use the proposed six-month stay extension to secure construction financing with the intention then of exiting these CCAA proceedings and completing the Project. This makes sense from a business point of view -- that way, Mr. Reyes satisfies his obligations to Aviva by allowing the pre-sale purchasers to obtain their units by crediting their deposits, thus avoiding a call on Aviva's deposit insurance.
- [15] Ultimately, on June 15, 2021, I rejected the 129 Revised Offer and approved an offer from Solterra for \$23.67 million (the "Solterra Backup Offer"): BCSC Sale Reasons at para. 111.
- [16] Mr. Reyes was unhappy with my decision and the Petitioners appealed. The appeal was heard by a five-justice division of the BC Court of Appeal, after leave was granted. The appeal was supported by Aviva (then the only second secured creditor) and later, by the interim lender and first secured creditor.
- [17] On September 22, 2021, the BC Court of Appeal allowed the appeal and ordered that the 129 Revised Offer was approved rather than the Solterra Backup Offer: *Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd.*, 2021 BCCA 382 [Port Capital BCCA]. The Court accepted that there was sufficient evidence to support Mr. Reyes' "expression of hope" for some "breathing space" that would allow him time to seek refinancing of the Development on an interim basis and, thereafter, find construction financing that would allow completion of the Development; in other words, the court found that there was a "kernel of a plan": Port Capital BCCA at paras. 85-86.
- [18] In October 2021, the refinancing contemplated by the 129 Revised Offer closed. As a result, the interim lender and the first secured creditor were paid in full. The resulting new secured "debt stack" against the Development was:

- a) First: \$14.7 million provided by Domain;
 - b) Second: \$8.4 million provided by 129. Most of these monies (approximately \$8 million) were derived from the cash deposits of various pre-sale purchasers who agreed to the release of these funds. One of these purchasers was Mr. Reyes' mother, whose deposit (\$2.8 million) was assigned to Aviva. Accordingly, Aviva holds 35% of this secured loan;
 - c) Third: \$14.7 million in favour of Aviva in respect of the insurance provided to allow release of pre-sale deposits to the Petitioners. This contingent secured claim would arise if those pre-sale purchasers are not provided with the purchased units and the deposits must be returned to them; and
 - d) Fourth: \$2.15 million provided by 1260780 B.C. Ltd. ("126"), a company controlled by Mr. Reyes' mother.
- [19] For reasons not expressed in their decision, the BC Court of Appeal also extended the stay of proceedings to April 30, 2022, despite there being no evidence that the Petitioners had sufficient financing to cover all of its cash needs to that date: Port Capital BCCA at para. 89. Those cash needs included essential site maintenance and payment of professional fees incurred as a result of this proceeding.
- [20] Mr. Reyes' expression of hope quickly ran into difficulty. Only 40 days after closing the 129 Revised Offer, the Petitioners had run out of cash. Most of the Domain funds were used to close the 129 Revised Offer and there was little left for working capital. On December 10, 2021, the Petitioners filed an application seeking to increase their borrowings by \$1.3 million, citing a "critical and immediate need for additional financing". These further funds were to be advanced to the Petitioners from Domain on terms that the Monitor described as "onerous".
- [21] Over the holiday period, somehow, the Petitioners managed to survive the financial strain. However, by early 2022, their need for further cash remained acute. On February 14, 2022, I granted an order approving further financing from Domain of \$1.8 million, which included the "onerous" terms as before: Port Capital Development (EV) Inc. (Re), 2022 BCSC 370.
- [22] By April 2022, the Petitioners' prospects had improved. They had identified a development partner, Enso Holdings Ltd. ("Enso"), with whom they were discussing construction financing. They had developed key economic terms of a plan of arrangement. Finally, the Petitioners and Enso had negotiated further interim refinancing of \$20 million from Mandate Management Corporation (the "Mandate Loan"). The Petitioners intended to use funds from the refinancing to repay Domain and provide working capital to August 2022, when they anticipated having creditor and court approvals for a plan of arrangement that would allow them to exit the CCAA proceedings.

- [23] By late April 2022, the Monitor reported that post-filing debts for supply of goods and services were accruing and unpaid. There was increasing uncertainty that prevailed in this proceeding about whether those amounts would be paid.
- [24] On May 13, 2022, I granted an order approving the Mandate Loan and extending the stay of proceedings to September 30, 2022. The Mandate Loan was scheduled to close shortly thereafter, on May 20, 2022. At the time, I noted a significant lack of transparency concerning the apparent agreements between the Petitioners and Enso. In any event, this was the only transaction put forward that would enable the Petitioners to advance the proceedings, and the requested relief was granted without any opposition. In addition, I ordered that the Monitor advise the unpaid post-filing creditors of the status of matters so that they would be alerted to potential prejudice in respect of further supply.
- [25] On June 15, 2022, the Petitioners filed a proposed plan of arrangement (the "Plan") and they applied for a meeting order to consider the Plan and an order to approve a claims process. This application came on hearing on June 17, 2022. In its Twelfth Report, the Monitor did not support this relief, noting a "material adverse change". The Monitor stated that the relief was premature in that the Mandate transaction had not closed on May 20, 2022, as scheduled, and there was no evidence that the Petitioners were capable of implementing the Plan without it. In addition, the Monitor confirmed that many of the post-filing suppliers continued to be unpaid and the amounts outstanding had increased.
- [26] By this time, Domain had extended the maturity date for its loan facility to July 1, 2022 (for a fee) to allow the Petitioners further time to close the Mandate Loan.
- [27] July 1, 2022 came and went and the Mandate Loan still had not closed. By this time, the post-filing outstanding debt unpaid since March 2022 had risen to \$413,196. In addition, it became apparent that substantial professional fees for the Monitor and its counsel and the Petitioners' counsel were also unpaid.

PROCEDURAL DEVELOPMENTS

- [28] On July 5, 2022, Domain's applications--in this proceeding and the Receivership Proceeding respectively--were filed, returnable on July 13, 2022.
- [29] On July 7, 2022, Aviva filed an application to enhance the Monitor's powers to direct, commence and administer a simplified sale and investment solicitation process (the "SSISP"). Aviva proposed that the SSISP would involve inviting offers from the six "Qualified Offerors" and others identified by the Monitor through the SISP, over a period of three weeks, and thereafter seek an approval of any offer obtained. Aviva's goal was to secure and close a transaction by the end of August 2022.
- [30] In its application, Aviva stated that the Monitor had fully exposed the Development's assets to the market through the SISP and identified the parties most likely to acquire those assets. Aviva further stated that a further sales process by a receiver would not likely identify any

other interested bidder and would not likely generate a significantly higher sale price. All the while, any later sales process would undoubtedly give rise to further significant costs, including receiver's fees, site preservation costs (\$80,000 per month) and carrying costs for the Domain debt (over \$225,000 per month).

- [31] On July 11, 2022, the Monitor filed its Thirteenth Report outlining the status of matters and its recommendations in terms of Domain and Aviva's applications. In particular, the Monitor stated:
42. The Monitor remains of the view that the Plan Motion should not proceed give the Petitioners do not possess sufficient liquidity to meet their unpaid post-filing and ongoing obligations and fund the within CCAA proceedings.
- [32] In its Thirteenth Report, the Monitor described the 129 secured ranking position (which includes Aviva) as the "fulcrum creditor".

July 13, 2022 Hearing

- [33] On July 13, 2022, certain of the parties appeared in Court. 129 and 126 did not appear. On that date, Domain and Aviva's applications were before the Court.
- [34] The Petitioners conceded that Domain's loan facility was in default. Their counsel indicated that they only had conditional commitments from some persons to refinance the Domain loan. No document was produced. The Petitioners conceded (correctly) that such "commitments" were unlikely to succeed in resisting the appointment of a receiver. The Petitioners did not oppose the receivership; however, they opposed a termination of the CCAA proceedings, hoping to keep them "dormant". The Petitioners still had hopes of reinvigorating their restructuring efforts in this CCAA proceeding if they could refinance in the future which would also entail them seeking to have Domain's receiver discharged in the Receivership Proceeding.
- [35] The Monitor was prepared to assist in any transition to a receivership. However, an issue arose as to the Monitor's and its counsel's unpaid fees that exceeded the limit in the Administration Charge (by \$120,000) and there was also concern as to the payment of ongoing costs of the Monitor and its counsel. Domain took the position that these unpaid or further costs ranked in priority behind its charge. The Petitioners' counsel was also owed approximately \$80,000 beyond the protection afforded under the Administration Charge.
- [36] Domain's applications were heard. Through the course of Domain's counsel's submissions, Domain indicated that any receiver appointed would undertake a "simplified" SISP with a view to concluding a sale in a short timeline.
- [37] Despite the above, on July 13, 2022, the Petitioners, Domain, Aviva and the Monitor were content to defer a final decision of this Court on Domain's applications and leave Aviva's application in abeyance. The reason for that approach lay in Aviva's very recent efforts to reactivate an offer from persons who had participated in the SISP, including Landa and

Solterra. All parties were aware that Aviva was making these efforts and that the stated goal was to bring forward a sale for the Court's consideration in this proceeding in very short order, if at all possible.

[38] In order to allow Aviva's efforts to continue, the matter was adjourned briefly to July 18, 2022.

July 18, 2022 Hearing

[39] On July 18, 2022, the Petitioners, Domain, Aviva and the Monitor attended before the Court.

[40] Aviva's counsel updated the Court on its efforts to revive a sale. No offer from Solterra or Landa had come forward. However, Aviva's counsel indicated that Enso had executed a letter of intent, providing for Enso's potential purchase of the Development. Aviva's counsel advised that the proposed transaction with Enso was a cash sale of \$20 million that was substantively on the same terms as had been proposed by Solterra in May 2021 arising from the SISP (i.e., through a reverse vesting order ("RVO")).

[41] The Petitioners also reported that their efforts to secure refinancing were continuing.

[42] As a result, the matter was adjourned to July 22, 2022 to allow Aviva to secure a sale transaction.

PRESENT APPLICATION

[43] On July 22, 2022, the Petitioners, Domain, Aviva and the Monitor appeared before me. Counsel for the Hynes Group also appeared. Finally, Solterra's counsel also appeared before the Court. As before, 129 and 126 did not appear on the application.

[44] Aviva reported that it had exhausted its efforts to obtain an offer. Enso had declined to participate further. Similarly, Landa was not interested. However, on July 22, 2022, Solterra advanced an offer (the "Solterra Offer") that Aviva considered the best achievable in the circumstances. The form of the Solterra Offer is substantially consistent with the form of the Solterra Backup Offer that this Court approved in June 2021. The salient terms of the Solterra Offer are:

- a) The First Deposit is \$1 million;
- b) The purchase price is \$18.5 million, subject to an increase of the deposit by \$650,000 (to \$19.15 million) if the closing of the transaction is extended;
- c) The closing date is 60 days following court approval, that can be extended by a further 30 days; and
- d) The purchase price also includes a "Revenue Share Portion" meaning that the vendors will receive 40% of any gross sales revenue from the unit sales that exceed \$134 million.

- [45] On July 22, 2022, Aviva brought forward an application to approve the Solterra Offer and grant the Monitor enhanced powers to complete the sale.
- [46] Aviva advised that the Solterra Offer would generate sufficient funds to pay the amounts accrued under the Administration Charge and fully repay Domain. As of that date, the amount owed to Domain was approximately \$16.8 million plus legal costs. In addition, the sale proceeds were to be used to pay the outstanding post-filing receivables, most of the amounts then owing to the Monitor and finally, the costs of the Monitor to complete the Solterra Offer. After payment of all these amounts, it was anticipated that about \$500,000-600,000 would remain for 129, the second secured creditor.
- [47] The parties present with the most direct economic interest in a sale--Domain and Aviva--supported immediate approval of the Solterra Offer. The Monitor also supported the sale and in doing so, confirmed to the Court that it had been involved in reviewing Aviva's recent efforts to produce a sale and were satisfied that those efforts had produced the best and timeliest offer available.
- [48] As before, the Petitioners sought further time. The only evidence put before the Court was a letter dated July 21, 2022 from Synvest Investment Management Inc. indicating an "expression of intent to negotiate in good faith" which was also signed by Port Capital and Mr. Reyes. Petitioners' counsel also advised that the Petitioners were working on attracting another \$4 million investment and had a conditional commitment letter in hand that was not before the Court. To support the Petitioners' position, the Hynes Group suggested that they had been in discussions with Mr. Reyes toward making an offer for the assets.
- [49] In addition, the Petitioners' counsel advised the Court that 129's counsel has asked her to report to the Court that 129 did not support any sale unless it resulted in full repayment to it. There is no evidence before the Court to suggest the availability of any sale transaction that would achieve that result.
- [50] As a result of all of the above, by July 22, 2022, three potential paths had emerged: (1) appoint the receiver in the Receivership Proceeding who would then embark upon a sales process; (2) hear and consider Aviva's application for the SSISP in this proceeding that, if approved, would result in further sale efforts; or (3) approve the Solterra Offer.
- [51] In my view, the appointment of a receiver is of little utility here. The Solterra Offer is sufficient to repay Domain. In that event, there is no need to turn to an entirely different process with a different professional to run that process, with the attendant delay and costs, all toward the same goal of achieving a sale of the Development. Domain supports the Solterra Offer. The Petitioners do not oppose a receivership, although that position appears to be driven by their simple wish to further delay any sale so that Mr. Reyes' can keep his hopes of a refinancing alive.

- [52] This Court can approve another sales process, substantially the same as the SISP undertaken in 2020/2021. In addition, this Court can approve a sale pursuant to s. 36 of the CCAA. Section 36(3) sets out a list of non-exhaustive factors to be considered by the court:
- a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - b) whether the monitor approved the process leading to the proposed sale or disposition;
 - c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - d) the extent to which the creditors were consulted;
 - e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
- [53] In addition, the principles identified in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 at 6 (C.A.) are helpful in considering whether to approve a sale, including the sales process:
1. [The court] should consider whether the receiver has made sufficient effort to get the best price and has not acted improvidently.
 2. [The court] should consider the interests of all parties.
 3. [The court] should consider the efficacy and integrity of the process by which offers are obtained.
 4. [The court] should consider whether there has been unfairness in the working out of the process.
- [54] As I stated in the BCSC Sale Reasons:
- [97] Various authorities support that, in considering the test under s. 36 of the CCAA, the Soundair principles remain relevant and indeed overlap with some of the specific s. 36(3) factors: *Veris Gold Corp. (Re)*, 2015 BCSC 1204 at paras. 22-25; *8450025 Canada Inc. and Telephone Data Centers Inc. (Re)*, 2017 BCSC 1291 at paras. 9-13.
- [98] The tension that exists at this hearing, as commonly arises, is between the twin objectives of 1) fairness in the process and 2) outcome or price with regard to the interests of the Petitioners' stakeholders. In framing the issue in this way, I do not mean to suggest that the test is a simple one to apply. The issues here require a consideration of all the s. 36 factors in these unique and unusual circumstances.

- [55] This CCAA proceeding has been a long and difficult one. Ultimately, the Petitioners have not succeeded in a restructuring, despite their best efforts to do so.
- [56] I have considered the s. 36(3) CCAA factors and those discussed in Soundair, and conclude that the Solterra Offer is the best achievable in the circumstances and should be approved now. In particular, I rely on the following:
- a) This proceeding has been ongoing now for over two years, without any real advancement by the Petitioners in their hopes to obtain appropriate financing that would allow them to exit these proceedings;
 - b) The BC Court of Appeal gave the Petitioners another opportunity to realize Mr. Reyes' "expression of hope". In addition, this Court granted all the relief requested by the Petitioners over the ensuing seven months to allow them to advance their efforts. When all was said and done, the Petitioners were unable to proceed. They had run out of cash and options, only leaving ongoing uncertainty and risk to the stakeholders. Whatever hope was held by Mr. Reyes has largely dissipated, save at the expense of other stakeholders who no longer support him. In short, Mr. Reyes' efforts are doomed to fail;
 - c) At present, the stakeholders are essentially back to where we were in June 2021, with a sale being the only option. As best I can discern, the last year has essentially involved a reshuffling of the secured debt stack, with the noteworthy loss by the pre-sale purchasers of most of their \$8 million cash deposits, largely used by the Petitioners to fund the ongoing carrying costs and fees;
 - d) The SISP gave rise to an extensive and robust sales process that generated a lot of interest and ultimately, a bidding war in June 2021. There is nothing to suggest that there are any other potential bidders for the Development that have not already been identified and recently contacted by Aviva;
 - e) The bidding war that took place in summer 2021 resulted in sophisticated forms of offers that were easily repurposed for this application, just as Solterra did;
 - f) There is every indication that market conditions for the Development have worsened since June 2021, with inflation and rising interest rates;
 - g) I reject the Petitioners' complaints about the Solterra Offer being considered on very short notice. Mr. Reyes, as the person instructing counsel for the Petitioners, was well aware of Domain and Aviva's applications and also, Aviva's stated intentions to revive a sale on July 13, 2022. In fact, over the last weeks, Mr. Reyes has been making efforts to generate his own offer, to no effect;
 - h) As he has done many times in this proceeding, Mr. Reyes only wishes to avoid a sale at this time to buy himself more time; however, it is crystal clear that any further time will come at a significant cost and risk to other stakeholders. In essence, Mr. Reyes' only remaining "kernel of a plan" is simply delay;

- i) I accept that the Solterra Offer has arisen without any further formal sales process and in a very expedited manner. This is an aspect of the "real time litigation" that these proceedings require. However, there is no evidence to suggest that any further sales process--whether by a receiver or through the SSISP--would produce a superior offer to the Solterra Offer, either in terms of price or closing terms. As such, no unfairness arises;
 - j) The Solterra offer has certainty in terms of an already well-vetted purchaser with proven financial means. In addition, the closing of the Solterra Offer in a short time frame will be beneficial for the stakeholders, in repaying much of the secured debt, minimizing the ongoing costs until closing and reducing risk to the estate; and
 - k) The Monitor supports the Solterra Offer, having been intimately involved in the SISP and also having overseen Aviva's recent efforts to produce a sale in the face of Domain's application for the appointment of a receiver.
- [57] In my view, approval of the Solterra Offer is in the best interests of the stakeholder group as a whole. Fairness demands that this process proceed on an expedited basis in order to benefit as many of the stakeholders as possible and reduce significant ongoing risk and cost in the circumstances.
- [58] Finally, I am satisfied that approval of the Solterra Offer in the form of an RVO is appropriate, just as it was in relation to the Solterra Backup Offer. In the BCSC Sale Reasons, I set out the reasons why such a structure would be beneficial, albeit in relation to Landa's offer:
- [20] Landa Offer #1 was in the form of an asset purchase, although the parties allowed for the possibility of completion pursuant to a Reverse Vesting Order ("RVO"). That scenario was seen as beneficial in order to allow the existing Petitioners to continue under Landa's ownership and control while preserving existing contractual rights, such as the building permit (but not the pre-sale contracts). The RVO structure also avoided payment of substantial property transfer tax.
- [59] In an earlier CCAA proceeding, I considered the circumstances that might support a sale being structured as an RVO, rather than an outright sale: *Quest University Canada (Re)*, 2020 BCSC 1883 at paras. 171-173, leave denied (sub nom. *Southern Star Developments Ltd. v. Quest University Canada*) 2020 BCCA 364.
- [60] In *Harte Gold Corp. (Re)*, 2022 ONSC 653 at paras. 70-77, the court considered many of the same circumstances that apply here, all toward providing for a "timely, efficient and impartial resolution" of the proceedings and preserving as much value for the stakeholders as possible. Another recent example of a Canadian court's consideration of an RVO in similar circumstances is found in *Blackrock Metals Inc. (Re)*, 2022 QCCS 2828 at paras. 83-124; leave denied *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCA 1073.

[61] No stakeholder here objects to the RVO structure. In addition, the benefits to the Petitioners' stakeholders by employing such a structure are manifest, particularly where it will preserve value and reduce the significant losses that will be incurred after repayment of the priority debts.

CONCLUSION

[62] I approve the Solterra Offer in the form of order requested. The order will include an enhancement of the Monitor's powers to complete the sale, including the corporate procedures anticipated by reason of the RVO process. Finally, the Monitor and its counsel are entitled to a Supplemental Administration Charge of \$150,000, ranking in priority after Domain's security, to secure the costs of the Monitor to conclude the sale and its final duties.

"Fitzpatrick J."

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