

CANADA / JUDGMENT

Quest University Canada (Re)

2020 BCSC 860

COURT

Supreme Court of British Columbia

DECIDED

28 May 2020

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2020 BCSC 860 Quest University Canada (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA
Citation: Quest University Canada (Re), 2020 BCSC 860 Date: 20200528 Docket: S200586 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 Sea to Sky University Act, S.B.C. 2002, c. 54
- and - In the Matter of a Plan of Compromise and Arrangement of Quest University Canada
Petitioner Before: The Honourable Madam Justice Fitzpatrick Oral Reasons for Judgment
Counsel for Petitioner: J.R. Sandrelli T.R.M. Jeffries Counsel for Monitor
PricewaterhouseCoopers Inc.: V.L. Tickle Counsel for Vanchorverve Foundation: C.D.
Brousson Counsel for Bank of Montreal: S.A. Poisson Counsel for Her Majesty the Queen in
Right of the Province of British Columbia: L.V. Mauro Counsel for RCM Capital Management
Inc. and SESA-BC Holdings Ltd.: K.M. Jackson Counsel for Academic Partner: R. Morse
Counsel for Pacific Coastal Financial Corp., Fivestone Capital Corp., Southern Star
Developments Ltd., Squamish Swift Creek Development Ltd., One Tree Hill Development
Ltd.: P.J. Reardon Counsel for Best Cure Foundation, Canada: G.E.H. Cadman, QC Counsel
for 1114586 B.C. Ltd.: K.E. Siddall Counsel for Dana Hospitality: D. Bateman Place and Date
of Hearing: Vancouver, B.C. May 28, 2020 Place and Date of Judgment: Vancouver, B.C. May
28, 2020

- [1] THE COURT: This is a proceeding pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c. C-36. (the "CCAA").
- [2] On January 16, 2020, the petitioner, Quest University Canada, ("Quest"), was granted creditor protection under the CCAA on January 16, 2020 pursuant to my Initial Order granted that date.
- [3] On January 27, 2020, I granted an amended and restated initial order (the "ARIO"). In part, the ARIO included an extension the stay of proceedings to May 29, 2020. In addition, under the ARIO, I also authorized Quest to access an interim lending facility for \$5.5 million to assist in funding its operations in the restructuring.

- [4] As of late January 2020, Quest had organized itself to undertake a variety of investigative steps, hopefully leading to a successful restructuring depending on how those investigations evolved. Unfortunately, the COVID-19 pandemic that came to hold fore in BC in mid-March 2020 has thrown a significant spanner in the works in terms of those restructuring efforts.
- [5] Nevertheless, Quest has continued with its efforts, as set out in Quest's materials and in the Monitor's Second Report dated May 25, 2020.
- [6] Those materials indicate that, despite the significant and negative consequences of the pandemic, Quest has continued to pursue a solution to its financial difficulties. Broadly speaking, those options include seeking an academic partnership and continuing with its efforts toward a sale of its assets, including the significant land holdings held in Squamish.
- [7] Fortunately, with respect to first option, Quest has identified significant interest from an as-yet unnamed party, referred to in the materials as the Academic Partner or Academic Partner # 1. The details of the Academic Partner's expression of interest to date are attached to Flora Ferraro's Affidavit #3 sworn May 25, 2020. Earlier in this hearing, I granted an order sealing this Affidavit, given the confidential nature of the documents provided by the Academic Partner which are attached.
- [8] On this application, Quest seeks the following relief:
- a) An extension of the stay to September 30, 2020;
 - b) An increase in the interim lending facility by \$3 million, to a maximum of \$8.2 million; and
 - c) Variation of the ARIO to allow Quest to defer rent payments to its landlord, Southern Star Developments Ltd. ("Southern Star"), in respect of the University residences from June-August 2020. There is significant opposition to any such order on the part of Southern Star and Southern Star's own lender, Bank of Montreal ("BMO").
- [9] In the usual fashion, the ongoing restructuring efforts have resulted in significant engagement between Quest and various stakeholders involved in this matter. Many of those stakeholders are present on this application, including the most significant secured creditor, Vanchorverve Foundation ("Vanchorverve").
- [10] There has been considerable dialogue between Quest and its stakeholders as to the relief sought. Fortunately, save as it relates to Southern Star, the relief sought by Quest is now supported by the stakeholders on terms that have been negotiated and that are reflected in the draft order before me.
- [11] I would add that the Monitor has attended and presented its Second Report to the Court. Both the Second Report and the Monitor's counsel's submissions confirm that the Monitor supports the original relief sought in Quest's Notice of Application. In addition, the Monitor has confirmed its support of the modified relief sought that arose from negotiations between Quest and various stakeholders.

- [12] With respect to the requested stay of proceedings, I am satisfied that Quest has been acting in good faith and with due diligence, as required by s. 11.02(3) of the CCAA. An extension of the stay will allow Quest to continue its negotiations with the Academic Partner, hopefully leading to an agreement. Otherwise, the continuation of the stay will allow Quest to continue to investigate all options open to it. I am satisfied that an extension is appropriate in the circumstances.
- [13] Quest, with the concurrence of the stakeholders, seeks an extension to August 10, 2020. However, it is also now agreed that, if a definitive agreement is negotiated with the Academic Partner on or before July 3, 2020, as confirmed by the Monitor to the service list on or before August 4, 2020, the stay would be extended to September 30, 2020. This flexibility is intended to allow any transaction to be addressed without the need to return to Court to seek another extension of the stay. These terms of the stay are appropriate.
- [14] The Monitor has also confirmed its support for an increase in the interim lending facility. I have reviewed the evidence, I have considered Quest's counsel's submissions and I have considered the Monitor's comments on the proposed increase to the lending facility. It is clear that Quest requires access to further funds to allow its operations to continue. Access to these funds will allow Quest to continue its investigations toward a solution to its financial difficulties, hopefully for the benefit of all stakeholders.
- [15] I have considered s. 11.2 of the CCAA and the factors that I am required to consider pursuant to s. 11.2(4). In my view, all of these factors, considered within Quest's present circumstances support, support that an increase in the funding is appropriate at this time. In particular, I am satisfied that no creditor would be materially prejudiced as a result of a further increase in the interim lending charge (s. 11.2(4)(f)). The increase to the interim lending facility is approved on the terms sought.
- [16] Quest and Southern Star have agreed that the rent deferral issue will be adjourned to a later date in the near future. In the meantime, they have agreed to an order that Quest will make the June rent payment (approximately \$240,000) by remitting those funds to the Monitor. The Monitor will hold that amount in trust pending a determination of Quest's application, which Southern Star and BMO will oppose, as will perhaps others. The final disposition of those monies will depend, of course, on the outcome of that application.
- [17] Finally, paragraphs 8 and 9 of the negotiated draft order relate to Vanchorverve. Those draft provisions will allow Vanchorverve to appoint one non-voting representative/observer to Quest's Restructuring Committee. In addition, paragraph 9 will allow Vanchorverve the right to make a credit bid with respect to the assets, undertaking and property of Quest on certain terms. There is to be a limit on the total amount of any credit bid.

[18] Quest has explained that the rationale for this limiting provision is necessary if such a representative is present at meetings of the Restructuring Committee. In that event, it can be reasonably anticipated that Vanchorverve will receive confidential information concerning the opportunities being explored by Quest. There is potential that Vanchorverve could use that information for its own purposes and in conflict with Quest's interests. I conclude that these provisions in the redrafted order are appropriate. "Fitzpatrick J."

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Prepared on 26 October 2026 · Esheria