

CANADA / JUDGMENT

San Industries Ltd. (Re)

2025 BCSC 645

COURT

Supreme Court of British Columbia

DECIDED

27 February 2025

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2025 BCSC 645 San Industries Ltd. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

San Industries Ltd. (Re),

2025 BCSC 645

Date: 20250227

Docket: S-248267

Registry: Vancouver

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

And

In the Matter of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, The Business Corporations Act, S.B.C. 2002, c. 57

And

In the Matter of San Industries Ltd., and Those Parties Listed on Schedule "A"

Petitioners

Before: The Honourable Justice Stephens

Oral Reasons for Judgment

(Monitor's Application for Delivery of Withheld Inventory
and Return of Equipment)

In Chambers

Counsel for San Industries Ltd., and Those Parties Listed on Schedule "A":

A.J. Froh

Counsel for the Royal Bank of Canada:

G.P. Nesbitt

Counsel for 1351697 B.C. Ltd., Cojax Heavy Duty Repair Ltd., Coombs Shadwell Holdings Ltd., and Kingsley Trucking Ltd.:

T.K. Ranu

Counsel for Deloitte Restructuring Inc., the Monitor:

P.L. Rubin

E. Roh, Articled Student

Counsel for the Trustees of the IWA - Forest Industry Pension Plan and Trustees of the IWA - Forest Industry LTD Plan:

H.P. McMahon

Counsel for the Ministry of Attorney General appearing by videoconference:

J. Wittig

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 27, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 27, 2025

Overview

- [1] THE COURT: In this Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCAA] proceeding the Monitor, in its capacity as court-appointed Monitor of the "San Group" as defined, brings an application filed February 18, 2025, for two orders for return of property belonging to the San Group, specifically as set out in para. 1(a) and 1(b):
1. The Monitor, in its capacity as Court-appointed Monitor of the San Group, seeks the following orders:
 - (a) a "Delivery of Withheld Inventory Order", substantially in the form attached as Schedule "B" hereto, which shall require Jace Trucklines Ltd. ("Jace Trucklines") and JPH Transport Ltd. ("JPH Transport") to deliver certain withheld inventory belonging to the San Group by no later than February 28, 2025;

- (b) a "Return of Equipment Order", substantially in the form attached as Schedule "C" hereto, which shall require Central Island Excavating Ltd. ("CIE") to return the 2014 Hitachi 370 Forester Log Loader, [of a certain model and serial number] (the "Log Loader") to the Coulson Mill by no later than February 28, 2025;
- [2] I am advised by counsel for the Monitor that the relief with respect to JPH Transport has been resolved.
- [3] These Reasons for Judgment, therefore, relate to the application with respect to Jace Trucklines and Central Island Excavating Ltd. ("CIE").

Background

- [4] On November 29, 2024, this court granted an Initial Order pursuant to the CCAA with respect to the petitioners. Under the Initial Order, the court granted, among other things, certain enhanced powers to the Monitor, and a stay of the proceedings with respect to the petitioners.
- [5] On December 9, 2024, the court issued an amended and restated initial order.
- [6] On December 19, 2024, the court issued a second amended and restated initial order ("SARIO"), which, among other things, granted the Monitor further enhanced powers and an extension of the stay of proceedings.
- [7] The Monitor submits on this application that since the approval of a SISP, which was ordered subsequently, the Monitor has been working to market the petitioners' assets for sale as contemplated by the SISP, and it is also been working to continue to stabilize the petitioners' operations and advance the restructuring under the CCAA. It submits that it now seeks the orders sought in furtherance of these objectives.

The Delivery of Withheld Inventory Order

- [8] The Monitor submits in its notice of application that the Monitor's fifth report describes two trucking companies that were engaged by the San Group to transport San Group's inventory to its distributors, and those two trucking companies are Jace Trucklines and JPH Transport, and the Monitor submits that these entities were withholding three sales orders, which it describes as the withheld inventory, that were to be delivered to a customer. (As I stated earlier, that part of the application that concerns JPH Transport has, I am told, been resolved.)
- [9] The Monitor advises that the approximate value of the withheld inventory in Jace Trucklines' possession is approximately \$72,000 USD: and here I refer to the Monitor's fifth report, dated February 18, 2025, at paras. 47-52.

- [10] From correspondence appended to the Monitor's fifth report, there is evidence that Jace Trucklines has been in communication with the Monitor or its counsel since December 2024 about the subject log inventory.
- [11] In support of the application, the Monitor refers to and relies on several sections of the SARIO, which it submits are protections designed to prevent creditors from exercising self-help remedies and ensure that the San Group's business can operate in the normal course while under CCAA protection. The Monitor refers to paras. 12(a), 17 and 18 and 20 of the SARIO. The Monitor submits that the taking of self-help remedies is contrary to the terms of the SARIO.

The Return of Equipment Order

- [12] In the notice of application, the Monitor submits that on November 14, 2023, San Forest Products Ltd. entered into a purchase and sale agreement with CIE, which the Monitor refers to as the log loader purchase agreement, to acquire the log loader, among other equipment.
- [13] And that pursuant to s. 10 of the log loader purchase agreement, ownership of the log loader transferred to San Forest upon the execution of the log loader purchase agreement.
- [14] The Monitor submits that the purchase price under the log loader purchase agreement may not have been paid in full. However, the log loader purchase agreement does not grant CIE any security interest in respect of such unpaid amounts and no security registration has been made in the personal property registry with respect to the log loader.
- [15] The Monitor's information is that, in December 2024, CIE seized the log loader, which the Monitor intends to market and sell as part of the San Group's assets pursuant to the SISP. The Monitor submits that it has repeatedly demanded return of the log loader from CIE, but it has not been returned, and accordingly the Monitor is seeking an order that the log loader be returned to the Coulson Mill, and here I reference the Monitor's fifth report, paras. 38-45:

LOG LOADER

- (38) On November 14, 2023, San Forest entered into a purchase and sale agreement with CIE to acquire certain equipment (the "Log Loader Purchase Agreement"), including a 2014 Hitachi 370 Forester Log Loader (the "Log Loader").
- (39) As contemplated in paragraph 10 of the Log Loader Purchase Agreement, attached hereto as Appendix "C", ownership of the Log Loader transferred to San Forest upon execution of the agreement.
- (40) The Monitor has performed a search of the BC Personal Property Registry for the Log Loader and found there to be no registrations. The search is attached hereto as Appendix "D".

- (41) The Monitor understands that there may be unpaid consideration owing by San Forest to CIE in respect of the Log Loader Purchase Agreement, but the quantum of the arrears is unclear (potentially \$35,000) (the "Arrears").
- (42) The Monitor understands that the Log Loader was seized by CIE in December 2024 and that it may currently be located in a remote logging area west of Port Alberni, BC.
- (43) On January 22, 2025, a representative of the Monitor spoke to Mr. Ryles, the owner of CIE and the signatory to the Log Loader Purchaser Agreement, to request that the Log Loader be returned by CIE to the Coulson Mill. Mr. Ryles advised that he would not return the Log Loader unless the Arrears were paid in full.
- (44) On February 12, 2025, the Monitor wrote to the Mr. Ryles by email demanding the return of the Log Loader by 5pm on February 14, 2025 and advising Mr. Ryles that any claim that CIE may have in respect of the Arrears would be addressed in accordance with the priorities under the CCAA.
- (45) As of the date of this Report, the Monitor has not received a response to its request and the Log Loader was not returned by the deadline. The Monitor respectfully requests this Honourable Court grant an order requiring CIE to release the Log Loader to San Forest and return it to the Coulson Mill by no later than Friday, February 28, 2025. The Monitor intends to sell the Log Loader pursuant to the SISF.
- [16] In the Monitor's fifth report at para. 77(a) and (b), the Monitor recommends the court grant the orders sought.

Notice of Application and Timing of Hearing of this Application

- [17] This application came on for hearing on short notice before me on February 21, 2025. At that time a lawyer for Jace Trucklines had in essence advised that he was not instructed to accept service.
- [18] With respect to CIE, it sought more time to respond to this application and appeared to assert an ownership interest in the log loader. I was advised of this by the Monitor at that February 21, 2025 hearing by way of a letter written by CIE to the Monitor.
- [19] In the circumstances, on February 21, 2025, I adjourned the hearing until this date to permit additional time for Jace Trucklines and CIE (and JPH Transport), following receipt of notice of this application, to respond to the application.
- [20] Neither Jace Trucklines nor CIE have appeared on this application hearing to make submissions.

Subsequent Developments after February 21, 2025

- (a) Jace Trucklines

- [21] On the morning of this hearing Jace Trucklines delivered to the Monitor's counsel an unfiled application response. In the application response Jace Trucklines states it did not deliver the load of lumber which it picked up on November 28, 2024 from San, and instead ended up selling it on November 29, 2024.
- [22] However, elsewhere in the application response Jace Trucklines says it, "received a trucking load from San in early December", not November. Jace Trucklines further states in the application response that it sold the lumber for \$9,000 CAD. This amount is well below the Monitor's information as to the estimated value of the petitioners' lumber in Jace Trucklines' possession.
- [23] I note also that the date of the Initial Order in this CCAA proceeding is November 29, 2024. Jace Trucklines states in the unfiled application response that "[a]t all times Jace was not aware of any court orders with respect to San". There was no affidavit evidence in support of the Jace Trucklines' application response.
- [24] Even though Jace Trucklines has been in communication with the Monitor since December 2024, I am advised by the Monitor that this is the first time the Monitor has heard from Jace Trucklines that it has sold any product belonging to the petitioners.
- [25] The Monitor now seeks various orders to obtain more information from Jace Trucklines about any product of San Forest which has been sold and for delivery of any San Group inventory still in Jace Trucklines' possession.
- (b) Central Island Excavating (CIE)
- [26] In an affidavit made on February 26, 2025, the Monitor also appends correspondence from CIE received on February 25, 2025. This correspondence followed an earlier letter dated February 20, 2025, where CIE told the Monitor that it had a "verbal contract" subsequently regarding the log loader. The February 20, 2025 letter said that the log loader was returned to CIE on November 1, 2024 by the San Group. The letter says there was an amount owing of \$55,000.
- [27] The February 20, 2025 letter says there was an agreement as of November 1, 2024 between "Suki" and the president of CIE for, in essence, CIE to use the log loader to keep generating income to cover the remaining purchase price, and if not CIE "was to keep ownership of the 370 log loader as the terms of the contract were not met and Suki agreed to this creating a verbal contract".
- [28] In the February 25, 2025 email from CIE to the Monitor, CIE attaches what CIE describes as an "Ownership Agreement" between CIE and Suki dated October 24, 2024. The attachment is a document dated October 24, 2024. The October 24, 2024 document states in part that the, "Log Loader's ownership is relinquished back to Central Island Excavating upon signature of this agreement".

- [29] Unlike the November 14, 2023 sales agreement for the log loader, in which there is a signature above the corporate name of San Forest Products Ltd., the corporate name of San Forest Products Ltd. does not appear above the signature of the October 24, 2024 document which was emailed to the Monitor on February 25, 2025.
- [30] There is also an inconsistency between the February 20, 2025 letter from CIE and the February 25, 2025 email, in that the February 20, 2025 letter from CIE referred to a "verbal contract" and notably did not make mention of any written ownership agreement.
- [31] I have no evidence from CIE before me on this application, despite having notice of this application. I have no evidence from any purported counter-party to any such Ownership Agreement, including Sukhjit Sanghera, whose name appears written above the signature in the document dated October 24, 2024. The only evidence before me in respect of CIE is appended to the Monitor's fifth report, which includes the purchase and sale agreement dated November 14, 2023, which includes clause 10, which I have previously referred to, which states:
10. For greater certainty, ownership of the two log loaders transfer on the signing of this agreement

Discussion

- [32] The Monitor relies on *Canada v. Canada North Group Inc.*, 2021 SCC 30 [Canada North], in which Justice Côté states:
- [18] The CCAA is part of Canada's system of insolvency law. Although both the CCAA and the BIA create reorganization regimes, what distinguishes the CCAA regime is that it is restricted to companies with liabilities of more than \$5,000,000 and "offers a more flexible mechanism with greater judicial discretion, making it more responsive to complex reorganizations" (*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 14).
- [19] The CCAA works by creating breathing room for an insolvent debtor to negotiate a way out of insolvency. Upon an initial application, the supervising judge makes an order that ordinarily preserves the status quo by freezing claims against the debtor while allowing it to remain in possession of its assets in order to continue carrying on business. The goal is to enable the parties to reach a compromise that allows the debtor to reorganize and emerge from the CCAA process as a going concern (*Century Services*, at para. 18).
- [33] Section 11 of the CCAA states:

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[34] Section 11 of the CCAA has been described as serving as "the engine that drives" the CCAA and empowers supervising judges to further its remedial objectives: Canada North at para. 138, Karakatsanis J. concurring, quoting with approval *Stelco Inc. (Re)*, 75 O.R. (3d) 5, 2005 CanLII 8671 (C.A.) at para. 36. Canada North also states, per Côté J.:

[21] The most important feature of the CCAA -- and the feature that enables it to be adapted so readily to each reorganization -- is the broad discretionary power it vests in the supervising court (*Callidus Capital*, at paras. 47-48). Section 11 of the CCAA confers jurisdiction on the supervising court to "make any order that it considers appropriate in the circumstances". This power is vast. Keeping in mind the centrality of judicial discretion in the CCAA regime, our jurisprudence has developed baseline requirements of appropriateness, good faith and due diligence in order to exercise this power. The supervising judge must be satisfied that the order is appropriate and that the applicant has acted in good faith and with due diligence [citation omitted]. The judge must also be satisfied as to appropriateness, which is assessed by considering whether the order would advance the policy and remedial objectives of the CCAA (para. 70). For instance, given that the purpose of the CCAA is to facilitate the survival of going concerns, when crafting an initial order, "[a] court must first of all provide the conditions under which the debtor can attempt to reorganize" (para. 60).

See also *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.

[35] In support of this application as it relates to Jace Trucklines, the Monitor submits that Jace Trucklines' failure to deliver the withheld inventory is contrary to the terms of the SARIO and of the "breathing room" sought to be granted to the San Group during the CCAA proceedings, and in particular: (a) "the San Group is prohibited from paying any pre-filing amounts owed to Jace Trucklines .. and allowing Jace Trucklines to exercise the self-help remedy of seizing the Withheld Inventory on account of any pre-filing amounts owing is contrary to the stay of proceedings"; (b) the "Monitor is not aware of any basis for Jace Trucklines to claim a secured interest against the Withheld Inventory, meaning that Jace Trucklines is an unsecured creditor and would be re-ordering priorities among the San Group's creditors if allowed to retain the Withheld Inventory"; (c) "any unsecured claim that Jace Trucklines may have against the San Group should be addressed in accordance with the CCAA, along with all other unsecured claims"; and (d) "by refusing to deliver the Withheld Inventory Jace Trucklines fail[ed] to honour their post-filing contractual obligations to San Group in a manner detrimental to the value of the San Group's estate (as no proceeds from the Withheld Inventory can be collected until it is delivered)".

- [36] The Monitor submits that the relief sought by way of the delivery of withheld inventory order will ensure that the protections granted to the San Group pursuant to the SARIO are observed and the objectives of the CCAA are met.
- [37] With respect to the application as it concerns CIE, at para. 29, the Monitor submits that CIE's failure to return the log loader to San Forest is also contrary to the terms of the SARIO and the breathing room sought to be granted to the San Group under the CCAA. In particular: (a) "the San Group is prohibited from paying any pre-filing amounts owed to CIE and allowing CIE to exercise a self-help remedy of seizing the log loader on account of any pre-filing amounts owing under the log loader purchase agreement is contrary to the stay of proceedings"; (b) "ownership of the log loader has transferred to San Forest and the log loader is intended to be marketed and sold as part of the SISP to the benefit of the San Group's estate"; (c) "in light of the provisions of the log loader purchase agreement, CIE is an unsecured creditor with respect to any amounts alleged to be owing under the log loader purchase agreement, and allowing CIE to retain the log loader would reorder priorities among San Group's creditors"; and (d) "any unsecured claim that CIE may have against San Forest should be addressed in accordance with the CCAA along with other unsecured claims".
- [38] The Monitor submits in essence that CIE and Jace Trucklines' actions, in retaining the property of the petitioners to effectively secure the petitioners' pre-filing obligations, is contrary to the SARIO and the purpose and scheme of the CCAA as stated in the jurisprudence: see, for example, to paras. 18 and 20 of the SARIO.
- (a) Jace Trucklines
- [39] As stated, Jace Trucklines has recently advised through its unfiled application response that it has sold lumber instead of delivering it. The details of any sale are unclear.
- [40] Given the information and evidence before me, I am satisfied it is appropriate to grant the order sought by the Monitor seeking further information about any sale of the petitioners' product by Jace Trucklines and a return of any of the petitioners' product remaining in Jace Trucklines' possession and control.
- (b) Central Island Excavators (CIE)
- [41] I have considered the evidence before me, including the information provided by CIE as delivered to the Monitor. I note the lack of evidence from CIE. I am satisfied that the November 14, 2023 purchase agreement gave ownership of the log loader to San Forest Products Ltd.: see para. 10 of the purchase and sale agreement at Appendix C of the Monitor's fifth report.

[42] I am not satisfied that the information emailed to the Monitor by CIE on February 20 and February 25, 2025 establishes that CIE has any ownership interest to the log loader. In the absence of any convincing evidence from CIE, following what I find has been sufficient notice of this application, I am not persuaded that CIE was granted any subsequent ownership interest in the log loader on October 24, 2024, prior to the initial order in this CCAA proceeding, and that instead the log loader is owned by the petitioners.

(c) Section 11 of the CCAA

[43] I am satisfied the Monitor has proceeded in good faith and with due diligence and it is appropriate to grant the order sought by the Monitor for: (1) further information about the sale of the petitioners' product by Jace Trucklines and return of any of the petitioners' product remaining in Jace Trucklines' possession; and (2) a return of the log loader to the Monitor by CIE.

[44] I regard such orders to be appropriate, including in the sense that they would further the objectives of the CCAA: Canada North, at paragraph 21.

Order Granted

[45] Regarding Jace Trucklines, I make the following orders, and this is substantially in the form sought by the Monitor:

- 1) By no later than March 17, 2025, Jace Trucklines shall provide to the Monitor (a) copies of all documents in its possession and control including but not limited to agreements, accounting or banking records, emails, text messages, fax and notes related to or connected with the sale of product associated with the following order numbers: SG86876 and SG86956; and (b) documents in Jace Trucklines' possession or control regarding any sale of the petitioners' product including from November 1, 2024, to the date of this order.
- 2) By no later than March 6, 2025, Jace Trucklines shall advise the Monitor in writing of any of the petitioners' product (including lumber) in its possession and control and the location of such product.
- 3) Within seven business days of being advised by the Monitor of a delivery location on Vancouver Island or in the Lower Mainland of B.C., Jace Trucklines shall deliver all of the petitioners' product in its possession and control to such location.

And I will add:

- 4) That Jace Trucklines does have liberty to apply to vary this order on application made on 48 hours notice.

[46] With respect to CIE, I make the order in the terms sought, however with a return date of March 7, 2025; and, so the order will be by no later than March 7, 2025, Central Island Excavating Ltd. shall return the log loader to the Coulson Mill.

[47] Those are my reasons for judgment.

"Stephens J."

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