

CANADA / JUDGMENT

Teal-Jones Group (Re)

2025 BCSC 919

COURT

Supreme Court of British Columbia

DECIDED

16 May 2025

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2025 BCSC 919 Teal-Jones Group (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Teal-Jones Group (Re), 2025 BCSC 919 Date: 20250516 Docket: S242700 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 a Plan of Compromise and Arrangement of Teal-Jones Group and Those Other Parties Listed In Schedule "A" Petitioners Before: The Honourable Justice G.C. Weatherill Reasons for Judgment - Application by the Petitioners for a Declaration that the Stay of Proceedings applies to the Intact Insurance Company Customs Bond Counsel for the Petitioners: C.D. Brousson A. Mojtahedi Counsel for the Monitor of the Petitioners, Ernest & Young Inc.: J. Latham E. Axell Counsel for Intact Insurance Company: J. Fiddick R. Fischer Counsel for Wells Fargo Capital Financial Corp. and Export Development Canada: D. Rotchtin M. Shakra Place and Dates of Hearing of the Within Application: Vancouver, B.C. November 5 and December 12, 2024 May 7, 2025 Place and Date of Judgment: Vancouver, B.C. May 16, 2025 TABLE OF CONTENTS Introduction.. 3 Background.. 3 Customs Bonds. 3 Teal Jones. 5 Intact Insurance Company. 5 The CCAA Proceeding and Stay of Proceedings. 6 Issues to be Decided.. 8 Analysis. 8 Is the Replacement Bond a Right, Contract or Agreement in Favour of or held by the Petitioners?. 9 Is the Replacement Bond "Insurance"?. 10 Does the Replacement Bond Oblige Intact to Extend Credit to the Petitioners?. 10 Conclusion.. 13 Costs. 13 Schedule "A". 14

Introduction

- [1] The issue for determination is whether a stay and suspension of rights and remedies as against the Teal Jones Holdings Ltd. ("Teal Jones") and its 14 subsidiary companies (collectively, the "Petitioners"), a list of which is attached as Schedule "A", ordered in the context of a proceeding under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCCA], applies in respect of a customs bond.

Background

Customs Bonds

- [2] Customs bonds are a form of security required by U.S. Customs and Border Protection ("CBP") to safeguard the revenue of the United States government derived from the collection of duties on imported goods. They ensure compliance by the importer with applicable customs laws and regulations. Once issued, a customs bond is renewed automatically on the anniversary of the effective date of the bond and remains in effect until terminated.
- [3] The United States Code of Federal Regulations ("CFR"), 19 CFR s. 113.40 provides: Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.
- (a) General provisions. In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury, the Secretary of Homeland Security, or the Commissioner of CBP are authorized to enforce, the Director, Revenue Division or, in the case of single transaction bonds, a port director, may accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the face amount of the bond that would be required. The option to deposit cash or U.S. obligations in lieu of sureties is at the option of the importer, and a CBP Form 301 or other CBP-approved bond designating the appropriate activity for the cash deposits or U.S. obligations in lieu of surety must be filed. When cash or obligations in lieu of surety are accepted, it must be for a term of no more than one year. Additional cash deposits or obligations in lieu of surety may be required.
- [4] An importer of goods into the United States is required to pay the amount of duties it estimates will be owed to CBP for the goods within approximately 30 days of the date of importation. The import duties are based on the prevailing preliminary rates at the time of entry, as set by the CBP (the "Prevailing Customs Duties"). The Prevailing Customs Duties are paid by the importer's broker who then invoices the importer and is paid by the importer.
- [5] The customs bond secures payment of those estimated duties. The final amount payable is not determined until the CBP completes a process known as "Liquidation", which represents CBP's final computation of duties applicable to the imported goods. The Liquidation process is typically completed within 314 days. The CBP can extend the Liquidation process in one-year increments, up to three times. If the CBP determines that additional duties are payable, the importer is required to pay them promptly, failing which CBP is entitled to make a claim under the customs bond.
- [6] CBP also has the power to suspend Liquidation, including retroactively, if the goods being imported are subject to antidumping and/or countervailing duties ("AD/CVD"). Antidumping applies when a product is imported into the United States at a price that is below "normal value". Countervailing duties are intended to offset the price effect of foreign government subsidies.

- [7] In 2017, after a favourable determination by the United States International Trade Commission to a petition brought by the United States softwood lumber industry, Liquidation related to softwood lumber import duties was suspended and the CBP began collecting AD/CVD from Canadian importers of softwood lumber. The final amount of AD/CVD will not be determined until the United States Department of Commerce conducts a final administrative review to establish them.
- [8] In 2020, the World Trade Organization ("WTO")'s dispute-resolution panel ruled unanimously that the AD/CVD on Canadian softwood lumber were inconsistent with the WTO obligations of the United States. However, the United States has appealed the ruling. The dispute between Canada and the United States over softwood lumber duties is ongoing. The final AD/CVD amount owed by softwood lumber importers into the United States is unknown. It may increase, decrease, or remain unchanged. Teal Jones
- [9] Teal Jones has been in the lumber business since 1946. It and its subsidiaries are the largest privately-owned forest products operators on Canada's west coast. They produce a wide range of wood products including cedar. One of Teal Jones' subsidiaries, Teal Cedar, exports softwood lumber products from Canada to the United States.
- [10] The Petitioners' customs broker is a company called Livingston International ("Livingston"). Livingston pays the Prevailing Customs Duties and then invoices the Petitioners. The Petitioners have paid all of Livingston's invoices over the years. Payment under the Petitioners' customs bonds has not been demanded by the CBP at any time, including up to the present. Intact Insurance Company
- [11] Intact Insurance Company is a property and casualty insurer and is a licensed issuer of surety bonds. It is a wholly-owned subsidiary of Intact Financial Corporation ("IFC"), a publicly-traded insurance holding company in Canada. IFC also owns Atlantic Specialty Insurance Company ("ASIC"), a licensed property and casualty insurance company that operates throughout the United States. ASIC operates, inter alia, as a licensed issuer of surety bonds throughout the United States, including customs bonds. Intact Insurance Company and ASIC are individually and/or collectively referred to as "Intact" in these Reasons for Judgment.
- [12] In July 2017, Intact issued a Customs Bond to Teal Cedar for US\$1 million ("First Bond") as a consequence of the AD/CVDs. In September 2018, the First Bond was cancelled, and a second bond was issued by Intact in the amount of US\$2.5 million to replace it ("Second Bond"). The CCAA Proceeding and Stay of Proceedings
- [13] Commencing 2023, there was an erosion in the lumber markets in North America and globally, and lumber prices dropped significantly. This, coupled with inflationary pressures, increased labour and other input costs and rapidly escalating interest rates and corresponding debt service costs resulted in Teal Jones facing reduced liquidity in their ongoing operations.

- [14] Pursuant to the Initial Order of this Court made on April 25, 2024 (the "Initial Order"), the Petitioners were granted protection under the CCAA, including a stay of proceedings and restraining order ("Stay"). The Initial Order (which has subsequently been amended and restated) provides, in relevant part: STAY OF PROCEEDINGS, RIGHTS AND REMEDIES
16. Until and including the [Stay Period], no action, suit or proceeding in any court or tribunal (each, a "Proceeding") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.
17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court. [] NO INTERFERENCE WITH RIGHTS 19 During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court. CONTINUATION OF SERVICES
20. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation insurance are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court. NON-NEGOTIATION OF RIGHTS
21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA. [Emphasis added.]
- [15] On April 29, 2024, as a consequence and direct result of the CCAA proceedings, Intact purported to cancel the Second Bond, effective May 14, 2024. Teal Jones disputed Intact's right to do so.

- [16] On May 14, 2024, Intact agreed to issue a replacement customs bond (the "Replacement Bond") on the same terms as the Second Bond, with both parties reserving their respective rights. The Replacement Bond is known as an "Activity Code 1 - Basic Importation and Entry - Continuous Bond". It was issued in a prescribed form: Form 301.
- [17] Despite having taken the position throughout these CCAA proceedings that it was entitled to terminate the Replacement Bond, on March 1, 2025, Intact issued a continuation certificate for the Replacement Bond, continuing the bond until May 15, 2026 for a premium of US\$50,000, which the Petitioners paid on April 30, 2025.
- [18] To date, Intact has not had to make any payments under the various customs bonds it issued in respect of the Petitioners. Its exposure under those customs bonds is limited to the positive difference between the duties ultimately determined to be payable after a liquidation process and those that were paid at the time of entry. Its liability is an "inchoate contingent liability", contingent on a future payment demand from CBP. No such process has been initiated by CBP and no such demand has ever been made.
- [19] Because Intact nevertheless continues to take the position that the Replacement Bond is not captured by the Stay and that it is entitled to terminate it, the Petitioners, in their Notice of Application filed May 13, 2024, seek a declaration that the Stay applies to both Intact and the Replacement Bond. Issues to be Decided
- [20] Intact argues that the Replacement Bond is not captured by the provisions of the Stay and that it is entitled to terminate the Replacement Bond upon 15 days' notice because the Replacement Bond:
- a) is not a right, contract, or agreement "in favour of or held by" the Petitioners and hence is not captured by the language of para. 19 of the Initial Order;
 - b) is not "insurance" and hence is not captured by the language of para. 20 of the Initial Order; and/or
 - c) is a facility upon which the CBP can make demand at any time and hence requires Intact to "extend credit to the Petitioners", which obligation is expressly excluded from the Stay by virtue of para. 21 of the Initial Order.

Analysis

- [21] The purpose of a stay in a CCAA proceeding is to "give the applicant breathing room to negotiate a way out of insolvency" by maintaining the status quo so that it can restructure: *Royal Bank of Canada v. Canwest Aerospace Inc.*, 2023 BCSC 514 at para. 14; *Canada v. Canada North Group Inc.*, 2021 SCC 30 at paras. 19-21 [Canada North]; *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, 2018 SKCA 36 at para. 16.

- [22] The stay of proceedings is, at the very core of protections, offered by the CCAA. As was stated by the Ontario Court of Appeal in *Sproule v. Nortel Networks Corporation*, 2009 ONCA 833:
- [16] [] [T]he [] purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors, to the end that the company is able to continue in business. The primary instrument provided by the CCAA to achieve its purpose is the power of the court to issue a broad stay of proceedings under s. 11. [] []
- [33] As earlier noted, the stay of provisions of the CCAA are well recognized as the key to the successful operation of the CCAA restructuring process. []
- [23] The CCAA must be given liberal construction to fulfill its broad purpose: *Canada North* at para. 31. The CCAA contains narrow exceptions to the stay of proceedings, which must be read restrictively in order to achieve its remedial purpose. A liberal construction which furthers the policy objectives of the CCAA will dictate a narrow construction of the types of arrangement which are excepted from a stay order: *Smith Brothers Contracting Ltd. (Re) (Trustee of)* (1998), 53 B.C.L.R. (3d) 264, 1998 CanLII 3844 (S.C.) at paras. 40-41. Is the Replacement Bond a Right, Contract or Agreement in Favour of or held by the Petitioners?
- [24] Intact submits that the Replacement Bond is not a "right" of the Petitioners because, if the Replacement Bond is terminated, the Petitioners would still be able to replace Intact's surety position with cash or other form of equivalent monetary security such that there is no need for a surety: 19 CFR s. 113.40. Moreover, Intact submits that the Replacement Bond is not captured by the language of para. 19 of the Initial Order because the bond is not "in favour of or held by the Petitioners". Rather, they argue, it is in favour of and held by the CBP.
- [25] I reject both of these submissions.
- [26] First, the Replacement Bond is the foundation upon which the Petitioners have had and continue to have the right to import their lumber products into the United States. While there may have been other avenues that would also have given them that right (such as the posting of cash or Treasury Bonds), the Petitioners chose the option of a customs bond and have paid substantial premiums for that option.
- [27] Second, by definition, the word "favour" means "aid", "support", and "furtherance", and the phrase "in favour of" means "to the advantage of": *Shorter Oxford English Dictionary*, 3rd ed. (London: Oxford University Press, 1973) vol. 1 sub verbo "favour". By any measure, the Replacement Bond is an agreement in "support" of and "to the advantage of" the Petitioners' ability to import products into the United States.
- [28] I find that the Replacement Bond is captured by the language of para. 19 of the Initial Order. Indeed, in my view, it is a quintessential example of the type of agreement that the CCAA intended to ensure would be continue in place during a restructuring under the statute. Is the Replacement Bond "Insurance"?

- [29] Intact presented exhaustive submissions in support of its argument that the Replacement Bond is not an agreement of insurance and hence not captured by the language of para. 20 of the Initial Order.
- [30] I find that there is no need for me to decide that issue because para. 20 captures any "oral or written agreements with the Petitioners [] for the supply of goods and/or services including, without limitation [] insurance []". In my view, the Replacement Bond is a written agreement with the Petitioners for the supply of goods and/or services. Accordingly, the Replacement Bond is captured by para. 20; I need not determine whether or not the Replacement Bond is an agreement of insurance. Does the Replacement Bond Oblige Intact to Extend Credit to the Petitioners?
- [31] An early criticism of the CCAA's stay provisions was that preserving the status quo during the stay period required that lenders of operating capital continue to lend. To address this criticism, the CCAA was amended in 1997 to provide that a stay did not require the further advance of money or credit. Section 11.01 (formerly s. 11.3) of the CCAA now provides that: Rights of suppliers 11.01 No order made under section 11 or 11.02 has the effect of
- (a) []
- (b) requiring the further advance of money or credit.
- [32] This provision is reflected in para. 21 of the Initial Order.
- [33] Intact submits that, like a letter of credit, its contingent obligation to pay the CBP on demand under the Replacement Bond is purely independent of the Petitioners. Hence, it says that it is providing credit.
- [34] This provision of the CCAA has repeatedly been given a narrow construction by the courts. In Sproule, the Court stated:
- [17] Second, we also agree with the motion judge when he stated at para. 66: In my view, section 11.3 is an exception to the general stay provision authorized by section 11 provided for in the Initial Order. As such, it seems to me that section 11.3 should be narrowly construed. See also *Royal Bank of Canada v. Cow Harbour Construction Ltd.*, 2012 ABQB 59 at para. 20 [Royal Bank].
- [35] Similar arguments to those now being advanced by Intact were rejected by the Ontario Court of Appeal in the context of a CCAA proceeding in *Air Canada (Re)* (2003), 66 O.R. (3d) 257, 2003 CanLII 36792 (C.A.) [Air Canada]. In that case, most of Air Canada's customers paid for tickets using credit cards, involving a payment process where a fund processor, Global Payments Canada Inc. ("Global"), made immediate payments to Air Canada and later received reimbursement from the credit card issuers. Global faced potential exposure to "chargebacks" estimated at over \$432 million if Air Canada ceased operations, and took the position that the initial stay order in the CCAA proceeding requiring it to continue to process Air Canada credit card transactions was contrary to s. 11.3 (now s. 11.01). It moved for an

order declaring that it had no obligation to do so. Both the motions judge and the Ontario Court of Appeal rejected Global's submission.

- [36] The Ontario Court of Appeal held that Global's risk of chargeback exposure was a contingent liability, not the extension of credit. It stated:
- [16] In my view, the motions judge correctly concluded that the initial stay order did not have "the effect of requiring the further advance of money or credit" to Air Canada within the meaning of s. 11.3(b). I agree with the motions judge's characterization of Global's risk of chargeback exposure as a contingent liability rather than the extension of credit.
- [17] Extension of credit to a debtor generally arises in one of two ways. The first, contemplated by s. 11.3(a), is where goods, services or the like are provided on the promise of future payment. The second, contemplated by s. 11.3(b) is where a creditor advances funds on the debtor's promise of future repayment. In both situations, the extension of credit arises from the debtor's present promise to pay money in the future. A debt is created in favour of the creditor. There is almost invariably an obligation on the part of the debtor to pay interest to reflect the cost of borrowing, either immediately or after a specified period.
- [18] [] The word "advance" is typically used in connection with payments made by a lender to a borrower. Moreover, Global is two steps removed from liability for chargebacks as it only becomes liable if Air Canada fails to perform and if the credit card issuer decides to refund the cardholder. As the motions judge explained, Global's exposure is more aptly characterized as an "inchoate contingent liability" rather than the advance of money or credit.
- [37] Although, arguably, Intact is not "two steps removed" from liability under the Replacement Bond, its exposure is as much an "inchoate contingent liability" as was Global's in the Air Canada case. It cannot be said that this contingent liability constitutes the "further advance of money or credit", particularly having regard to the narrow construction of that section as discussed in *Sproule and Royal Bank*.
- [38] As was stated in *Air Canada* at para. 20, at the time of the 1997 amendments to the CCAA (referred to above), credit card processing arrangements were widespread and well-known. Undoubtedly, the provision of customs bonds was also widespread and well-known at that time. Yet, Parliament did not exempt either from the CCAA stay provisions.
- [39] The Replacement Bond does not require that Intact further advance money or credit to the Petitioners.

[40] It is noteworthy that the reason Intact wishes to terminate the Replacement Bond is because the Petitioners commenced proceedings under the CCAA. It has conceded as much. Section 34(1) of the CCAA stipulates that: Certain rights limited 34 (1) No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a debtor company by reason only that proceedings commenced under this Act or that the company is insolvent.

Conclusion

[41] The Petitioners' application is granted. There will be a declaration that the Stay applies to the Replacement Bond. Costs

[42] The Petitioners are entitled to their costs of the application at Scale B. "G.C. Weatherill J." Schedule "A"

1. Teal Jones Holdings Ltd.
2. Teal Cedar Products Ltd.
3. Columbia River Shake & Shingle Ltd.
4. Teal-Jones Aviation GP Ltd.
5. Teal-Jones Group
6. Teal-Jones Aviation Limited Partnership
7. Teal Jones Holdings USA Inc.
8. Teal Jones Lumber Services Inc.
9. Teal Jones Dry Kilns LLC
10. Teal Jones Lumber Sales LLC
11. Pine Products, LLC
12. Potomac Supply, LLC
13. Teal Jones Lumber LLC
14. Teal Jones Louisiana Holdings LLC
15. Greentree Lumber Company, LLC

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