

Zeldin, Adam

From: Gilmore, Madam Justice Cory (SCJ) [REDACTED]
Sent: Wednesday, September 23, 2020 3:24 PM
To: 'Robb English'; 'RJaipargas@blg.com'; Zeldin, Adam; 'Richard Swan'; Raj Sahni; 'a.dascanio@advocatesllp.com'; Sinnadurai, Ananthan (MAG); jnemers@airdberlis.com
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: Pace Savings v. Clearbeach et al. CV-20-00644116-00CL
Attachments: Counsel Slip - Justice Gilmore - September 23, 2020.pdf

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Counsel: See my endorsement below. The counsel slip is attached.

Endorsement of Gilmore, J.

Mr. English on behalf of the Applicant advised that it has abandoned its Application seeking the appointment of a Receiver. Counsel received notice of the abandonment this morning. There remains an issue of the Respondents' right to seek costs although they did not file material or a Notice of Appearance.

On July 22, 2020 the Respondents Forbes and Clearbeach filed a Notice of Intention to Make a Proposal ("NOI") pursuant to section 50.4(1) of the *BIA*. On August 7, 2020 Pace gave notice of a motion to appoint a Receiver for the assets of Forbes and Clearbeach.

At an appearance before Justice Dietrich on August 20, 2020, a stay of the proposal proceedings was sought to preserve the status quo and to allow Pace to proceed with its Receivership Application. Pace, Forbes, Clearbeach and the Trustee consented to that relief. Justice Dietrich signed two identical stay orders on August 20, 2020; one in relation to Forbes and the other in relation to Clearbeach. Both orders stipulated that the stay was in effect until further order of the court.

No extension was sought with respect to the stay. Counsel for the Applicant submits that under s.50.4 of the *BIA* the court has no authority to extend a stay where no extension has been applied for within 30 days of the stay being granted. As such, the Pace submits that I should declare Forbes and Clearbeach bankrupt as the stay was only intended to remain in place during the Application which no longer exists. Pace further submits that the stay was intended for only a short period and the debtors were well aware of the timelines in respect of requesting an extension of the stay and filing a proposal. Leaving insolvent debtors in possession during any extension period could result in mischief and is not in the best interests of the public.

Mr. D'Ascanio on behalf of the creditor Critch Holdings and Buildings Limited submits that the debtors should be given 10 days in which to decide whether to file a proposal failing which there will be a bankruptcy.

Mr. Swan on behalf of the debtors submits that the Notice of Abandonment by Pace was only served this morning and he was taken by surprise. He requests that the Orders of Justice Dietrich remain in place for a further 10 days in order to allow the parties to react to what happened and to reattend once the proposed court appointed officer, Richter, has had an opportunity to evaluate the situation. Mr. Jaipargus on behalf of Richter supports this request and agrees that an orderly process must be put in place given the nature of the assets.

I agree with Mr. Swan and Mr. Jaipargus. Given that counsel only received notice of the abandonment of the Pace Application this morning, a short period of time should be given to allow an effective transition and discussions between counsel. However, I understand the concerns raised by Mr. English on behalf of Pace and agree that the initial reason for the stay (the Receivership Application) no longer exists. Nothing else has changed and the debtors should be given a short time to have discussions with their counsel given the very recent notice of the abandonment of the Pace Application.

Given all of the above, I make the following Orders:

1. **The matter is adjourned to Thursday October 1, 2020 for a conference before any judge. Counsel to contact the Trial Coordinator to arrange.**
2. The stay remains in effect until October 1, 2020 at 5:00 p.m. unless extended by the conference judge.

C. Gilmore, J.

September 23, 2020

