SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Wolfridge Farm Ltd. (Re)*, 2015 NSSC 168

Date: 20150605
Docket: Court No. B-38923
Hfx. No. 437879
Registry: Halifax

In the matter of the recognition of foreign proceeding of
Wolfridge Farm Ltd.
of North Haven, Connecticut
in the United States of America

Decision

Judge:	The Honourable Justice Arthur J. LeBlanc
Heard:	May 6, 2015, in Halifax, Nova Scotia
Counsel:	Paul E. Radford, QC, for the Applicant James J. White, for Gerald P. Bonang and Dianne Bonang Jeffrey P. Flinn and Gavin D.F. MacDonald, for Farm Credit Canada

By the Court:

Introduction

[1] The applicant, Wolfridge Farm Ltd. (Wolfridge), seeks an Order recognizing its United States bankruptcy proceeding as a main proceeding under s. 270 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. Wolfridge also seeks recognition of John T. Early III as its foreign representative, and asks the court to provide judicial assistance and cooperation with the US court. The application is opposed by Gerald and Dianne Bonang and Farm Credit Canada.

Background

[2] Wolfridge Farm Limited (Wolfridge or WFL) was incorporated in Nova Scotia under the *Companies Act*, R.S.N.S. 1989, c 81, on October 31, 2001. The company designated its registered office and mailing address as 39 Dartmouth Road, Bedford, NS. Lydia B. Early, of 115 Hirtle Road, Mahone Bay, NS, was president and sole director. Mr. Early was vice-president. He resigned the position in 2002. Ms. Early remains the sole shareholder. The company primarily carried on business in Nova Scotia. Both Mr. and Ms. Early are United States citizens. They each attained permanent landed immigrant status in 2009. As will be discussed in

more detail later, WFL is now incorporated in the United States, in the state of Delaware, with the same corporate structure.

The Bedford property

[3] The Bedford property was purchased from Gerald and Dianne Bonang in 2003. The Bonangs took a vendor takeback mortgage. Due to nonpayment of the mortgage principal, interest and municipal taxes, the Bonangs initiated a foreclosure proceeding in July 2011. WFL filed a defence and counterclaim. After a four-day trial, Robertson J. ordered the foreclosure and sale of the property: 2014 NSSC 40. On April 3, 2014, she granted an order settling the amount of principal, interest, and taxes outstanding, and setting terms for the foreclosure, sale and possession of the property.

[4] WFL sought a stay of the decision and order of Robertson J. from the Nova Scotia Court of Appeal pending appeal. Fichaud J.A. denied the stay. Bryson J.A. subsequently ordered WFL to post security for costs of $10,000 by May 15, 2014, failing which the Bonangs could apply for a dismissal of the appeal. The appeal was scheduled for December 8, 2014, but WFL withdrew it.

[5] A Sheriff's Sale of the property was held on July 2, 2014. American Holdings 2000 Inc. (American Holdings), another Early company, was the

successful bidder. It paid a deposit of ten percent ($27,100), but failed to pay the balance. Accordingly, another sale was scheduled for September 17, 2014, then rescheduled for November 10, 2014. At that time the property was sold to 3258984 Nova Scotia Limited (another Early company), with a deposit paid at the time of sale. Once again, the balance of the purchase price was not paid. The sale was rescheduled to January 12, 2015, but did not proceed. McDougall J. then directed that the sale be held on March 5, 2015. On that date Mr. Early submitted the highest bid and paid the ten percent deposit. He did not pay the balance, however.

[6] Pursuant to a further order of McDougall J., the property was sold on April 8, 2015, this time to the Bonangs, whose bid had been the second highest at the March sale. On April 8, 2015, a Sheriff's Deed was granted to the Bonangs.

[7] I note that at one point WFL sought a stay of the sale under the *Farm Debt Mediation Act*, S.C. 1997, c. 21, but the stay was lifted when it became evident that the property was not a farm but used in connection with a retail automobile business.

The Wolfville property

[8] WFL acquired the Wolfville property in 2001 on order to operate a horse farm. WFL obtained a secured loan from Farm Credit Canada (FCC) in the amount

of $87,000. WFL executed a Loan Agreement and Collateral Mortgage to secure the loan. In addition, Mr. and Ms. Early executed personal guarantees. This mortgage fell into arrears and FCC initiated a proceeding for foreclosure, sale, and possession.

[9] On February 23, 2015, Moir J. ordered the sale of property. He determined that the amount due from WFL and the Earlys was $27,165.36 plus interest. On March 12, 2014, FCC served a Notice of Intention to Enforce (Realize) Security on WFL and Mr. and Ms. Early. The sale was scheduled for March 27, 2015. On March 25, Mr. Early, on behalf of WFL, sought to redeem the property. Ultimately, Ms. Early attended the sale on behalf of WFL and paid a deposit of ten percent of the purchase price of $95,000. The balance, due on April 22, was not paid. FCC intends to hold a further sale of the property.

[10] WFL was reorganized as a Delaware corporation on January 6, 2015. Its name was changed from Wolfridge Farm Limited to Wolfridge Farm Ltd. Previously, it had been a Nova Scotia company since its incorporation in 2001, with its head office in Bedford, NS. Ms. Early was president and director, and Mr. Early was an officer (in 2001 and 2002). The Delaware corporation has its registered office at 25 Vista Road, North Haven, Connecticut. It has registered as a foreign corporation under the *Corporations Registration Act*, R.S.N.S. 1989, c.

101. Its mailing address is 39 Dartmouth Road, Bedford, NS. The Earlys' residence continues to be 115 Hirtle Road, Mahone Bay, NS.

[11] Until April 2015 Mr. Early was the agent and representative of WFL. He claims that in April 2015 he filed a motion to withdraw as the agent for the company. He claims that he had retained Tim Hill, Q.C., to act on behalf of the Corporation but that this retainer came to an abrupt end within a couple of days.

The Chapter 11 proceeding

[12] Meanwhile, on March 3, 2015, the applicant filed an application under Chapter 11 of the United States Bankruptcy Code. On March 4 a notice to creditors was issued by the Bankruptcy Court for the District of Connecticut, directed to various secured and unsecured creditors. In the Chapter 11 filing, WFL reported that its principal assets are in Nova Scotia and Florida. The creditors holding the twenty largest unsecured claims are located in Nova Scotia.

[13] As mentioned above, the Bonangs and FCC oppose WFL's application for recognition of the U.S. proceeding. These secured creditors hold mortgages on separate properties, granted while WFL was a Nova Scotia company, before it was moved to the United States and before it sought to avail itself of U.S. bankruptcy protection. As noted, creditors have pursued foreclosure proceedings against WFL,

orders have been granted by this court, and foreclosure sales have been conducted. In respect of the mortgage held by the Bonangs, not only was the foreclosure sale conducted, but the property was ultimately conveyed to them after the adjourned sale.

[14] FCC holds the mortgage on the property where WFL conducted its horse farm business. Due to Ms. Early's failure to pay the balance of the purchase price, after entering the highest bid and paying the deposit at the Sheriff's sale, a further sale will be necessary.

Alleged misconduct by WFL or its officers or agents

[15] Counsel for the Bonangs and for FCC objected strenuously to Mr. Early's conduct, arguing that he lacks credibility. They note that both Mr. and Ms. Early are licensed attorneys and members of the Connecticut Bar. In her 2014 decision, Robertson J. found that Mr. Early was not a credible witness, observing, *inter alia*, that "[n]otwithstanding the closing documents: the deed, the indemnity agreement and the mortgage, Mr. Early insists on unwritten terms and conditions that meet his convenience" (para. 43) and finding that "Mr. Early's testimony regarding his original plans on purchase of the property and his intended use of the property was not very credible and often contradictory" (para. 45).

[16] On multiple occasions, counsel say, Mr. Early failed to notify the court and counsel for the parties enforcing security that WFL had been continued as a Delaware corporation as of January 6, 2015. After that date, they say, Mr. Early was representing that he was acting on behalf of Wolfridge Farm Limited (the former Nova Scotia corporation), not Wolfridge Farm Ltd., its new Delaware incarnation. They say this was an attempt to mislead the court by failing to disclose the change of corporate domicile. Mr. White and Mr. Flynn point to correspondence from Mr. Early on February 9, 2015, where he stated as follows:

> The statute specifically declares anything that goes forward from the failure to notify by the creditor, as a nullity and void. This would include the very service of process that secured jurisdiction for the Supreme Court where Justice Robertson ruled. The Supreme Court of Canada is quick to distinguish an "irregularity" which would be addressed by res judicata and a "nullity", which because it legally never existed, could not be allowed to exist.
>
> That is why I respectfully request that you reconsider and allow the application to proceed on the merits. If allowed to do so, I believe only two facts must be proven. That proper notice from the secured creditor was not given, and that Wolfridge Farm Limited is a farmer that farms in Wolfville, Nova Scotia and owns property at 39 Dartmouth Road, Bedford … where in addition its corporate offices have been located for years. [Emphasis added.]

[17] Counsel for the Bonangs and FCC both claim that this is misleading, in that Wolfridge Farm Limited no longer existed at the date of this correspondence, having been replaced by the Delaware corporation, Wolfridge Farm Ltd. They say this was clearly intended to mislead the court and the creditors as to the status of the corporation. Additionally, they say, the Bedford address was now simply the

mailing address, because the registered office had been moved to Connecticut. As of February 9, 2015, he maintained that there had been no change in the corporate offices, despite the change in corporate structure. Despite these assurances, within four days the corporation had authorized him to represent it in the U.S. bankruptcy process.

[18] Counsel refer to this, and other similar representations to various persons and institutions, that suggested that the recipients were dealing with a Nova Scotia company. They also note the comment of McDougall J. in his letter of February 3, 2015, addressed to Mr. White and Mr. Early, that WFL had the right to redeem, failing which the property would be sold. He added that the court could no longer countenance improper attempts to de-rail the process.

[19] Mr. Early's explanation for his ongoing representations that Wolfridge Farm Limited was a subsisting company is that it was the party that was named in the proceedings; therefore, in his view, it was appropriate to refer to that corporate name in correspondence and court documents. In any event, he says, the change was recorded for all to see in the records of the Registry of Joint Stock Companies. He also claims that the company name had no effect on the litigation and that its continuation in Delaware did not prejudice the creditors. He acknowledges, however, that the registered office had changed. He also agreed that when

requesting a return of funds paid into the Court of Appeal as security for costs, he gave no indication that WFL had been continued in Delaware.

[20] Mr. Early did not agree that his conduct was an attempt to derail the Bonang proceeding. He said the reason the corporation had changed to the U.S. was to take advantage of business opportunities.

[21] The question arises of whether WFL has abused the process of the court, thereby disentitling it to a consideration of the merits of the application.

[22] Counsel for the Bonangs and FCC submit that there was an additional misrepresentation as to the domicile of WFL at the time of filing the application in the US Bankruptcy Court. The Bankruptcy petition includes the following declaration under the heading "Information Regarding the Debtor – Venue":

"Debtor has been domiciled or has a residence, principal place of business, or principal assets in their District for 180 days immediately preceding the date of this petition or for longer part of such 180 days than in any other District."

[23] It is not controversial that the date of the continuation of the corporation in Delaware was January 6, 2015. The voluntary petition under Chapter 11 was filed on March 3, and the notices of the meeting of creditors were issued on March 4. Therefore, 59 days elapsed between the continuation and the filing of the petition.

This was less than 180 days. The Corporation did not meet this requirement. However, the provision provides an alternate means of qualification, namely, that the corporation has been domiciled in the District of Connecticut for more days than any other District. In that sense, I agree with Mr. Radford that the corporation was domiciled there for more days within the required period of 180 days than in any other District of the United States. The previous period of domicile in Canada would not appear to be relevant in the U.S. proceeding.

[24] I conclude that I cannot dismiss this application on the basis that the grievances of the two secured creditors, as I cannot conclude that the applicant's conduct rises to the level of abuse of process. I emphasize that this is my conclusion strictly for the narrow purpose of determining whether this application should be heard.

Recognition of foreign proceedings

[25] In order for the U.S. bankruptcy proceeding to be recognized as a foreign proceeding under the BIA, the court must be satisfied that the requirements of s. 270 of the BIA are met:

> Order recognizing foreign proceeding
>
> 270. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign

> representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.
>
> Nature of foreign proceeding to be specified
>
> (2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

[26] Mr. Radford submits that all of the relevant documents have been filed with the court. There were two resolutions passed by WFL, and the second appointing Mr. Early as representative of WFL to file bankruptcy proceedings, authorizing him to act as its designated foreign representative, and authorizing and directing the foreign representative to seek recognition as a foreign proceeding in Canada. The corporation has filed a certified copy of the chapter 11 voluntary petition, notice of bankruptcy, meeting of creditors, and deadlines, dated March 4, 2015. I also have confirmation that this is the only foreign proceeding in respect of WFL.

[27] In *Bankruptcy and Insolvency Law* (Toronto: Irwin Law, 2009) Roderick J. Wood states, at pp. 557-558:

> There are two types of foreign proceedings: a foreign main proceeding and foreign non-main proceeding. A foreign main proceeding is defined as a foreign proceeding in a jurisdiction that is the centre of the main interest of the debtor (COMI). Any other kind of foreign proceeding falls within the definition of a foreign non-main proceeding. This difference is important because the effects of recognition differ depending upon which of the two types of foreign proceeding is involved.

[28] Professor Wood goes on to comment on the question of the centre of main interest, at p. 558:

> The ascertainment of the debtor's centre of main interest is of great importance, since it will determine whether the foreign proceedings will qualify as foreign main proceedings. The centre of main interest is not defined, but a rebuttable presumption is provided. In the case of an individual, the centre of main interest is, in the absence of proof to the contrary, of the debtor's ordinary place of residence. In the case of non-individuals, it is the debtor's registered office.

[29] In this case, the registered office of the corporation is 25 Vista Road, North Haven, Connecticut. This is the presumptive centre of main interest. The presumption may be rebutted by considering objective factors, such as the location of assets, the location of the creditors, where the business operates from, the location of bank accounts, and the residence of the principal of the corporation such as the directors and officers.

[30] FCC contends that the centre of the main interest is Nova Scotia. Both Mr. Radford and Mr. Flinn cite *Re Probe Resources Ltd.*, 2011 BCSC 552, [2011] B.C.J. No. 802, where the registered office was in Vancouver, B.C. Probe Canada had four wholly-owned subsidiaries in the United States. In November 2010, the subsidiaries commenced bankruptcy proceedings in Texas. Probe Canada applied pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), for an order recognizing the cross-border insolvency proceedings relating to the petitioner, Probe Resources Ltd. The court recognized the U.S. Chapter 11 proceeding as a foreign main proceeding, and discussed the factors to consider in assessing the Debtor's COMI. Fitzpatrick J. said, at paras. 21-22:

> I have been referred by Probe Canada's counsel to Dr. Janis P. Sarra's text, *Rescue! The Companies' Creditors Arrangement Act* (Toronto: Thomson Carswell, 2007) at 295-296. There, Professor Sarra states that the *UNCITRAL Legislative Guide on Insolvency Law* defines centre of main interest as "the place where the debtor conducts the administration of its interests on a regular basis and that is therefore ascertainable by third parties." Professor Sarra also states that the presumption that the centre of main interest is the registered office of the debtor company can be rebutted if there are factors which, viewed objectively by third parties, would lead to the conclusion that the centre of main interest is other than at the location of the registered office.
>
> I also note the statement in Kevin P. McElcheran's text, *Commercial Insolvency in Canada*, 2nd ed., (Markham, Ont.: LexisNexis Inc., 2011), at 376:
>
> > Case law decided under other statutes based on the Model Law, such as the *European Union Insolvency Proceedings Regulation* [footnote omitted] and Chapter 15 of the U.S. *Bankruptcy Code*, provide guidance to Canadian courts in interpreting the meaning of COMI. European Union and American precedents suggest that COMI will be determined by reference to criteria that are objective and ascertainable by third parties. Such relevant factors include:
> >
> > (1) the location of headquarters;
> >
> > (2) the location of those who manage the debtor's business;
> >
> > (3) the location of primary assets and operations, and
> >
> > (4) the location of majority of creditors.
> >
> > In deciding whether the debtor has proven that its COMI is in the jurisdiction of the foreign proceeding, Canadian courts, as the U.S. courts have done, may consider the connections between the debtor and the foreign jurisdiction comprehensively in order to give effect to the legitimate expectations of the debtor's constituents as to which substantive laws will apply to their relationship with the debtor.

[31] In *Re Probe*, the court found that the Canadian corporation and its subsidiaries were involved in gas exploration in Texas and Louisiana, and that none of its businesses operations took place in Canada. The only connection to Canada was Probe Canada's registered office, which was hosted by Probe's Counsel. Financial statements indicated that all of the group's revenues were

derived in the U.S., and virtually all of the operating assets were located in the U.S., with only nominal assets in Canada. Only one director resided in B.C., and the CEO and Chairman of Probe Canada, who had recently been terminated, resided in Texas.

[32] In *Re Caesar's Entertainment Operating Co.*, 2015 ONSC 712, [2015] O.J. No. 1201, the company was incorporated in Ontario and had its registered office there. However, the centre of main interest was the U.S. Morawetz J. applied the factors set out in *Re Lightsquared LP*, 2012 ONSC 2994, stating, at para. 33:

> In *Lightsquared*, the Court found that the following principal factors, considered as a whole, will tend to indicate whether the location in which the proceeding has been filed is the debtor's COMI:
>
> a. the location is readily ascertainable by creditors;
>
> b. the location is one in which the debtor's principal assets or operations are found; and
>
> c. the locations where the management of the debtor takes place.

[33] In finding that the COMI was the United States, the Morawetz J. commented, at paras. 35-36:

> I am satisfied that the COMI for the Chapter 11 Debtors is the United States. In arriving at this decision, I have taken into account that CEWL is the only Chapter 11 Debtor that is not incorporated in a U.S. jurisdiction. All of the other 172 Chapter 11 Debtors have their head office or headquarters located in the United States. In addition:
>
> a. the Chapter 11 Debtors operate as an functionally integrated group from a corporate, strategic, financial and management perspective;

> b. pursuant to the USD, CEWL's corporate decisions are made by its sole shareholder, Caesars World, a Florida corporation;
>
> c. CEWL's Chief Executive Officer and President report to the Chairman, who resides in the United States and works from the Caesars head office in Las Vegas, Nevada;
>
> d. centralized services critical to CEWL's operations, including the administration of the Caesars brand and intellectual property rights, services related to online hotel booking, the Windsor Casino website, and administration of the "Total Rewards" loyalty program are operated from the United States;
>
> e. strategic and directional decisions for CEWL are ultimately made in the United States.
>
> In the result, I am satisfied that the Chapter 11 Proceeding should be recognized as a "foreign main proceeding".

[34] As has been noted, after existing as a Nova Scotia company, with a registered office in Bedford, since 2001, the corporation is now registered in Delaware, with its registered office at 25 Vista, North Haven, Connecticut, USA and that the corporation is registered in Nova Scotia as a foreign Corporation under the *Corporations Registration Act*.

[35] FCC says the current registered office of the corporation is the part-time law office of Mr. Early. However, in her decision, Robertson J. found that the principal business was the ownership and operation of a horse farm in the Annapolis Valley. Furthermore, in a letter to McDougall J., on February 9, Mr. Early represented that the corporate office was still 39 Dartmouth Road, Bedford, NS.

[36] FCC goes on to submit that the officers and directors of the corporation reside in Nova Scotia. Documents were served on Mr. and Ms. Early in both proceedings at 39 Dartmouth Road, Bedford, and 115 Hirtle Rd., Mahone Bay. At least for the period between June 25 and April 22, 2015, the civic address for Mr. Early was 115 Hirtle Road, Mahone Bay, Nova Scotia, the same address as Ms. Early. The residence is registered in the name of Baypoint Holdings, with an assessed value of $930,500. The Earlys are the sole directors of Baypoint. Its registered office is at 39 Dartmouth Road, Bedford. Mr. Early is also the president and sole director of 325894 Nova Scotia Limited, which also has its registered office at 39 Dartmouth Road, Bedford.

[37] Wolfridge's real property in Nova Scotia consist of the property at 1299 Ridge Road, Wolfville Ridge, Kings County, Nova Scotia, which is the subject of the FCC foreclosure proceeding. In addition, Wolfridge was the registered owner of real property at 39 Dartmouth Road, Bedford, which is the subject of the Bonang foreclosure proceeding.

[38] Mr. Early claims that WFL owns real or personal property in both Canada and the United States. U.S. Bankruptcy documents attached to his supplementary affidavit of May 5, 2015, refer to real property in Nova Scotia and in Florida, as

well as personal property of $26,500 USD (excluding a pending real property tax refund in Nova Scotia), the majority of which appears to be in Nova Scotia.

[39] WFL's creditors are divided relatively evenly between Florida and Nova Scotia. However, the majority of unsecured creditors are residents of Nova Scotia. In *Probe*, the fact that most of the creditors were in the United States helped to rebut the presumption that the registered office in British Columbia should prevail. In this instance, I note that the majority of unsecured creditors are based in Nova Scotia, and that they entered into contracts with WFL while the company was a Nova Scotia company with its registered office in the province.

[40] FCC maintains that the U.S. bankruptcy proceeding should not be recognized in Nova Scotia as a main proceeding because the evidence indicates – and the reasonable expectation of creditors was – that WFL's COMI has been in Nova Scotia since 2001. Only after thirteen years of existence did WFL change its registered office from Nova Scotia to Mr. Early's part-time law office, located in a residential property in Connecticut. FCC says this is not a sufficient basis to change WFL's centre of main interest.

[41] FCC maintains that even if I find that the COMI is in Connecticut, and thereby recognize the US bankruptcy proceedings as a foreign main proceeding

pursuant to s. 271(1) of the BIA, I should grant FCC an exception under s. 271(3). Section 271 states:

> Effects of recognition of a foreign main proceeding
>
> 271. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding,
>
> (a) no person shall commence or continue any action, execution or other proceedings concerning the debtor's property, debts, liabilities or obligations;
>
> (b) if the debtor carries on a business, the debtor shall not, outside the ordinary course of the business, sell or otherwise dispose of any of the debtor's property in Canada that relates to the business and shall not sell or otherwise dispose of any other property of the debtor in Canada; and
>
> (c) if the debtor is an individual, the debtor shall not sell or otherwise dispose of any property of the debtor in Canada.
>
> When subsection (1) does not apply
>
> (2) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor at the time the order recognizing the foreign proceeding is made.
>
> Exceptions
>
> (3) The prohibitions in paragraphs (1)(a) and (b) are subject to the exceptions specified by the court in the order recognizing the foreign proceeding that would apply in Canada had the foreign proceeding taken place in Canada under this Act.
>
> Application of this and other Acts
>
> (4) Nothing in subsection (1) precludes the commencement or the continuation of proceedings under this Act, the Companies' Creditors Arrangement Act or the Winding-up and Restructuring Act in respect of the debtor. [Emphasis added.]

[42] FCC submits that if WFL had filed a notice of intention to make a proposal pursuant to section 50.4 of the BIA, or a proposal pursuant to section 62(1), both procedures being the equivalent of the US bankruptcy filing, this would have been a basis upon which the Canadian creditors' actions would have been prohibited or

stayed pursuant to s. 69 or 69.1 of the BIA, without leave of the court. However, FCC gave notice under s 244(1) of its intention to enforce its security against WFL; this notice was received by WFL on March 17, 2014, about one year before WFL filed the U.S. bankruptcy proceeding. FCC does not consent to a stay of its foreclosure proceeding and relies on the exceptions in 69(2) and 69.1(a) of the BIA. Accordingly, FCC seeks an exception under s. 271(3) as a secured creditor, and specifically requests authorization to conduct a foreclosure sale of the farm property. WFL argues that there is no policy basis to make such an order, as, in its view, FCC is not placed at any risk as a result of recognizing the U.S. proceeding as a foreign main proceeding.

[43] WFL takes the position that the court should recognize the US bankruptcy proceedings. Mr. Radford says the preconditions in s. 269 have been satisfied: a certified copy of the instrument that commenced the foreign proceeding has been filed; a certified copy of the instrument authorizing the foreign representative to act has been filed; and a statement identifying all foreign proceedings known to the foreign representative has been filed.

[44] As to whether the court should recognize the US bankruptcy proceeding as a foreign main proceeding or a foreign non-main proceeding, Mr. Radford submits that the evidence allows the court to find it a foreign main proceeding. Subsection

268(1) of the BIA defines a "foreign main proceeding" as "a foreign proceeding in a jurisdiction where the debtor has the centre of the debtor's main interests." Mr. Radford relies on s. 268(2), which provides that "in the absence of proof to the contrary, a debtor's registered office" is "deemed to be the centre of the debtor's main interests."

[45] Based on the s. 268(2) presumption, WFL's real and personal property in the U.S., and the fact that the U.S. Bankruptcy Court has already undertaken this proceeding, WFL says there is sufficient basis for a finding that this proceeding is a foreign main proceeding under the BIA. In addition, counsel submits that WFL's U.S. real property has far greater value than its Canadian real property – based on estimates provided by Mr. Early. Counsel also notes that the company has no Canadian bank account. According to Mr. Early, WFL maintains its corporate bank account in Connecticut, and its last Canadian account was closed in 2014.

[46] Mr. Radford submits, on the basis of Mr. Early's evidence, that WFL's main interest presently is to sell the farm property in Wolfville and to develop its real property in Florida. In determining the centre of main interest, it is submitted, the court should consider what WFL intends to do in the future, rather than only looking back to what it has done in the past.

[47] Mr. Early indicated in his supplementary affidavit that the farm has declined in importance and now consists of only two owned horses and a few tenants. The future of the business, WFL maintains, is in real estate development. Mr. Radford notes references in documents on a motion by Deutsche Bank seeking a lifting of the stay of a secured claim, where it is suggested that the Florida property has a value of some $400,000.

[48] The Earlys had lived in Nova Scotia for an extended time, but they only obtained permanent residency status in Canada in 2009. Mr. Early said he spent at least sixty percent of his time in Florida up to 2012, and since then has spent about one-third of his time in Florida and Connecticut. He says he and Ms. Early have a permanent home in Florida, at 2322 Bayshore Road, Nokomis. Furthermore, they have Florida drivers' licenses, not Nova Scotia ones.

Analysis

[49] As to the value of WFL's real property, I am not prepared to accept the values ascribed in the US bankruptcy documents. Those values do not rest on any appraisals that are before me, although there has been second-hand reference to an appraisal obtained by Deutsche Bank. In any event, the property at 39 Dartmouth Road, Bedford, suggests that the real property in Nova Scotia is worth a great deal

more than the property in Florida. It also appears that the Nova Scotia personal property is of greater value than the U.S. property.

[50] The secured creditors are evenly divided between Canada and the U.S. when the Bedford property is taken into account. The debts to unsecured creditors, totaling about $163,000 (U.S.), are mainly owed to creditors located in Canada, in the amount of $125,000, or about seventy percent of the unsecured claims.

[51] The preparatory steps leading to the U.S. bankruptcy application were initiated on February 13, when Mr. Early was designated by WFL to pursue Chapter 11 protection. This was only four days after Mr. Early represented in a letter to McDougall J. that the corporation was a farmer that farms in Nova Scotia and which owns property at 39 Dartmouth Road, Bedford, where its corporate offices were also located. Mr. Early did not mention that WFL was winding down its affairs in Nova Scotia and shifting its focus to developing its real property in Florida. Nor was there any mention of the fact that the corporate offices had changed location and that the Bedford address was now only a mailing address, with the registered office moved to Connecticut.

[52] I am not persuaded by Mr. Early's claim that the Florida property has a market value of $400,000 US, on the basis of a Deutsche Bank appraisal, as of

October 30, 2014. I do not have access to the appraisal in question. Therefore I place no credibility on this estimate.

[53] In all the circumstances, I conclude that the COMI is Nova Scotia. Accordingly, the U.S. proceeding is not recognized as a foreign main proceeding.

[54] I also conclude, on the basis of the argument described above, that FCC's foreclosure proceeding would be exempt in any event, pursuant to s. 271(3) of the BIA. In addition, even if I were to recognize the foreign proceeding as a main proceeding, this would not extend to any steps taken in the Bonang foreclosure proceeding.

Conclusion

[55] I find that the presumption that WFL's centre of main interest is located in the United States has been displaced. I conclude that the COMI is, in fact, in Nova Scotia. I find no reliable and objective evidence to support Mr. Early's claims that WFL's entire focus has changed to real estate development in Florida.

LeBlanc, J.