SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Haring (Re)*, 2018 NSSC 241

Date: 20181001
Docket: No. 41594
Registry: Halifax

In the Matter of: The bankruptcy of Rolf Haring

Judge: Raffi A. Balmanoukian, Registrar

Heard: September 28, 2018, in Halifax, Nova Scotia

Counsel: Matthew J.D. Moir, for the Applicant, Dr. Axel Kulas, insolvency administrator of the estate of Rolf Haring, bankrupt
Tim Hill, QC, for Centennial Building Investments Limited, Centennial Building Acquisition Limited, and the shareholders of Centennial Building Investments Limited other than Rolf Haring

Balmanoukian, Registrar:

[1] Inquiring minds want to know. In Canadian Courts, they are presumed to have that right.

[2] This came before me as two applications: To seal an appraisal and business valuation report, and to ratify a share purchase agreement. I have jurisdiction to hear and decide these applications pursuant to s. 192(1)(j), (k), and (m) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA").

BACKGROUND

[3] In 2013, Mr. Haring was a German resident. I surmise from the global nature of his holdings, the size of the estate, and Mr. Haring's incarceration at the time of bankruptcy as an accessory to embezzlement that he is a colourful man. He is now apparently a resident of Latvia.

[4] On July 8, 2013, the local court of Tubingen, Germany, appointed Dr. Axel Kulas, a lawyer, as the administrator of Mr. Haring's bankrupt estate. In December, 2017, Registrar MacAdam of this Court recognized the foreign proceeding pursuant to Part XIII of the BIA. That order remains in effect. Although Mr. Haring has apparently changed his domicile, I am told the German

order remains in effect. Foreign law is a question of fact, and I am grateful for the assistance of counsel in working me through those niceties.

THE APPLICATION TO SEAL PARTS OF THE RECORD

[5] At the hearing, following questions from the Court, Mr. Moir withdrew the sealing application that had been made pursuant to *Civil Procedure Rule* 85.04 (which apply to these proceedings by virtue of Rule 3 of the *Bankruptcy and Insolvency General Rules*) . I believe that is appropriate.

[6] The sole asset of Centennial Building Investments Limited ("CBIL") is its eponymous building at 1660-1670 Hollis Street, Halifax, together with associated cash, leases, etc. CBIL is, in turn, owned by nine shareholders, including the bankrupt's estate, none of whom are controlling stakeholders. The building may best be said to be "unremarkable." Its assessed value is public knowledge; if there is a real property sale, the transaction information would be public pursuant to s. 101A of the *Municipal Government Act*, SNS 1998 c. 15; if there is a share sale, the transaction valuation placed on the Haring Estate's corporate equity is already in the public material on file, specifically the exchange of correspondence between counsel contemplating the price of the estate's shares and the estimated net

building value (and distributable corporate equity). The bankrupt's statement of affairs discloses his percentage ownership. The rest is simple arithmetic.

[7] To that end, I expressed doubts at the hearing that this type of unremarkable commercial data would satisfy the "DMS test," namely that set out in *Degenais v. CBC*, [1994] 3 SCR 835*; R. v. Mentuck*, [2001] 3 SCR 442; and *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 SCR 522. Although *Sierra Club* recognizes that a commercial interest can be a protected interest that may be subject to a sealing order, it cannot "merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of public interest in confidentiality." (*Sierra Club*, at para. 55). This valuation information seems to me to be precisely that kind of "merely specific" data which is captured by the presumption of the open court principle.

[8] Mr. Moir submitted that the fact the media had not responded to the mandatory notice issued by the Court's communications department pursuant to Rule 85.05(2) spoke in favour of the sealing order. I disagree. In *John Doe v. Jane Roe*, 2018 NSSC 174, Madam Justice Boudreau refused a confidentiality order, in far more salacious circumstances than the matter at bar, notwithstanding the consent of all parties and the absence of objection from the media (para. 10).

Newsworthiness is a completely separate topic from the policy considerations behind the strong presumption of an open court process.

[9] I add this: financial information is the backbone of the material before the Registrar in almost every file. No doubt people would prefer to keep much, if not most, of it to themselves. It may disclose how parties think of a particular asset and its value. These considerations do not, generally, trump the overriding policy values I have referenced, as enunciated by the DMS test and cases applying it.

[10] As I have said, Mr. Moir prudently withdrew the application after consultation with Mr. Hill, and to that end, I now turn to the merits of the sale application before me.

THE APPLICATION TO RATIFY THE SALE OF SHARES

[11] I note at the outset that Mr. Hill confirmed he represented the putative purchaser (a newly-incorporated company), CBIL, and the shareholders other than the Haring estate. He confirmed that all corporate steps had been taken by CBIL to approve the share transfer, subject to approval by this Court. I mention this as there was no direct evidence that CBIL approves of the share transfer. This would normally be a requirement under the standard Articles of Association for a Nova Scotia private company, as I understand CBIL to be. I of course accept the

representations of Counsel that there are no non-BIA corporate impediments to the proposed closing. In addition, I note that the evidence is that all necessary steps under German insolvency law to approve the sale have been taken.

[12] The completed September 21, 2018 Moir affidavit (that is, including the valuation information that was the subject of the sealing application discussed above) shows the following:

- A building value as of May 22, 2015 of $12,000,000, by Colliers International; and

- A valuation of the Haring shares as of April 30, 2017 of $345,000, by MNP.

In addition, Exhibit G of the same affidavit shows a purchaser valuation of the building of $14,000,000 with the Haring Estate's pro-rata net share (after payment of the mortgage but before tax consequences) being some $600,000. It is this amount that is the proposed share transaction price, some 74% higher than the above-noted share valuation.

[13] It should be noted that Mr. Moir candidly acknowledged in his brief four factors which may have resulted in an undervaluation of the shares. These include the date of the building valuation, the scope of the valuation engagements, the

minority share discount, and the fact that needed renovations were deducted dollar-for-dollar instead of reflecting any resulting increase in final net value.

[14] I have reviewed the reports. I am satisfied that although there is merit in these concerns, they are more than compensated by the $14,000,000 valuation placed by Mr. Hill's clients (as opposed to the $12,000,000 valuation in 2015) and the fact that the proposed transaction price does not reflect a minority discount (a discount I would view with some skepticism in the absence of a controlling stakeholder). As noted above, $600,000 represents a 74% premium over the 2017 share valuation effected by MNP. I am also cognizant of the depressing factors in the competing marketplace as identified in the Collier's 2015 valuation report.

[15] I also note that the proposed transaction clears what is effectively a logjam – the bankrupt estate is either unable or unwilling to provide needed additional investment in the property, and the other shareholders are unwilling to do so unless all do so.

[16] I therefore have no hesitation in finding that the proposed transaction is fair and in the best interests of the estate, which as part of a large global insolvency is now in its sixth year.

[17] In passing, and for the record, I note that the proposed agreement provides for forgiveness of vendor loans. Counsel confirmed to me that the valuations were on a 'total investment' basis – that is, the value of the Haring stakeholding was taken as both its debt (if any) from CBIL and equity. I note that from 2015 onward, the statements enclosed with the share valuation show no such debt, and the book value of total equity of between $7.4 and $7.8 million dollars (of which the Haring estate's pro-rata share would – rounded - be between $569,000 and $600,000). For the reasons set out in the Colliers 2015 valuation, it is reasonable to assume that this is static at best in 2018 and I agree with counsel's submission that updated professional input in this particular case would not bear a cost-benefit analysis.

CONCLUSION

[18] I grant the ratification order sought by counsel – that is, to approve the agreement between the estate and Centennial Building Acquisitions Limited as annexed to Mr. Moir's affidavit of September 28, 2018. For greater certainty I also allow the correction of a typographical or transcription error in the agreement, referencing non-resident tax clearance, that I pointed out at the hearing.

Balmanoukian, R.