

CITATION: Springer Aerospace Holdings Limited, 2023 ONSC 1356
COURT FILE NO.: CV-22-00690657-00CL
DATE: 20230227

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS LIMITED AND 1138969 ONTARIO INC.

BEFORE: Penny J.

COUNSEL: *Caitlin Fell* and *Sharon Kour*, Counsel for the Applicant Debtors

Ian Aversa and *Matilda Lici*, Counsel for Monitor, MNP Ltd.

Haddon Murray and *Katherine Yurkovich*, Counsel for Caisse Desjardins Ontario Credit Union Inc.

Vern DaRe, Counsel for the DIP Lender

HEARD: February 22, 2023

ENDORSEMENT

[1] On February 23, 2023, I issued the following orders, with reasons to follow:

- (a) the DIP loan may be increased by up to \$170,000;
- (b) phase 2 of the approved SISP is extended to March 21, 2023;
- (c) the proposed KERP is approved up to a maximum of \$70,000; and
- (d) no extension of the stay is approved at this time.

In addition, I made it a condition of the grant of these orders that the Debtor and Monitor, in consultation and co-operation with Desjardins and its proposed receiver, immediately begin to work toward a listing for sale of the Debtor's real property and other assets.

[2] These are the reasons for my February 23, 2022 orders.

[3] As discussed in my November 24, 2022 endorsement granting the initial order, Springer operates an aircraft maintenance, repair and overhaul businesses. The business is located

in Echo Bay (a community of about 1,600), near Sault Ste. Marie, Ontario. Springer employed about 100 people. Springer is the only aerospace business of its kind in Northern Ontario. Springer's primary secured creditor, Caisse Desjardins Ontario Credit Union Inc., delivered demands and notices under s. 244 of the BIA for amounts advanced by Desjardins under a line of credit and two term loans. In total, \$5,747,228.31 was outstanding to Desjardins as of July 2022.

- [4] On December 22, 2022, I granted the Debtor's motion for a sale and investment solicitation process ("SISP"). The purpose of the SISP was to solicit offers, in the form of a financing, sale or investment in Springer's business or assets, that would maximize value for all stakeholders.
- [5] The approved SISP had timelines. There were to be two phases for bid solicitation: an initial canvas and solicitation of non-binding expressions of interest, and then more in depth negotiations with specific interested parties directed at receiving final binding offers. Phase one was to have been concluded by February 3, 2023 and phase 2 was to have been concluded by March 7 (with selection of the successful bid by March 13).
- [6] There were unforeseen delays and potential compliance issues in obtaining initial, non-binding offers. However, the terms of the approved SISP allowed the Debtor, with the Monitor's concurrence, to waive qualification requirements and to extend timelines. This was done, such that the Debtor, supported by the Monitor, now wants to proceed with phase 2. The delays in phase 1, however, have produced a situation where the deadline for phase 2 is no longer feasible. The Debtor seeks an extension of phase 2 until March 31st.
- [7] In addition:
- (a) the Debtor's cash flow projections resulted in a shortfall of \$100,000, with additional cash needs also anticipated if the process is extended. The Debtor seeks an increase in the approved DIP loan limit of \$200,000;
 - (b) the ongoing business of the Debtor requires the continued employment of highly skilled certified aeronautical engineers. There is a risk that these employees will be "poached" or otherwise seek other opportunities, given the uncertainty associated with Springer's future. The Debtor seeks a \$70,000 KERP (to be funded out of the \$200,000 increase of the DIP loan) to ensure the continued employment of the necessary key employees; and,
 - (c) due to the extension sought for the SISP, the Debtor also seeks to extend the current stay from March 31 to April 14.
- [8] These requests are all supported by the Monitor.
- [9] The motion is opposed by Desjardins. Desjardins has been "primed" by the DIP loan and the administrative charges. Desjardins did not oppose the initial order or the SISP as originally approved. Desjardins made it clear, however, that its position was that Springer should get "one shot" at its restructuring plan, and that the approved SISP was that shot. Because Springer has essentially conceded it is unable to come back to court with a

successful bid by the original deadline, Desjardins says the CCAA proceedings should be terminated and its application for the appointment of a receiver granted.

- [10] It cannot be denied that there is a material risk to Desjardins that it could suffer a shortfall under a restructuring plan or under a liquidation. Thus, Desjardins argues that any increase in the DIP loan, and any other risks associated with extensions of the SISP, could well be for its account. It is also the case, as argued by Desjardins, that the prospect of an acceptable bid (i.e., one that would be better for stakeholders than a liquidation, among other things), is by no means a sure thing.
- [11] That said, Desjardins is not the only stakeholder with a material interest. In restructuring proceedings generally, and in this CCAA in particular, the interests of employees and the community in which they live and work are very material factors.
- [12] As I noted in my brief endorsement of February 23, this motion involves a difficult balance between potential prejudice to the first in priority secured creditor, Desjardins, resulting from the expenditure of more time and money on restructuring efforts (where Desjardins has lost faith in management's ability to conduct a successful restructuring) and the potential for a viable transaction with bidders who emerge from phase 1 of the SISP.
- [13] I use the word "difficult" because, although the requested increase in the DIP, for example, is modest in the scheme of things, the prospects for a viable transaction are also modest. If the increased DIP loan were modest and the prospects for a successful transaction were high, the decision might be an easier one. Likewise, if the increased risk to the secured lender were high, and the prospects of a successful restructuring low, it might also be an easier decision. The balancing of these, and other, factors is highly discretionary and is also highly fact and situation specific. There is, in the circumstances of this case no obviously "right" answer.
- [14] In the end, I find that, as Desjardins put it at an earlier stage, Springer is at least entitled to "one shot". Due to unforeseen delay in receiving phase 1 bids, the SISP has not yet run its course; Springer has not yet had its "one shot". Given the strong public interest in preserving these well-paid jobs in a small community, and the Debtor's important role in serving outlying, remote communities, including First Nation communities, a modest extension of time, and an equally modest increase in the DIP loan is warranted.
- [15] In fairness to the Debtor, its original "ask" on the DIP loan was \$1.5 million. That is, in fact, the facility it negotiated with the DIP lender. While the Debtor agreed to an initial limit of \$1.1 million, that was based on forecast cash needs which have now been superseded by circumstances which are reasonably explained in the Monitor's third report.
- [16] That said, however, I am not satisfied that the time and money requested, has been fully justified. The time frame does not reflect, in my view, a sufficient sense of urgency in bringing this process to a conclusion. It is not that complicated – this is an "as is where is" transaction. The bidders are either willing to propose something that could result in a viable transaction, or they are not. For these reasons, I order an extension to phase 2 of the SISP to March 21, 2023. The request for an extension of the stay is declined at this time, given

my expectation that the process should be wrapped up by March 31 in any event. However, if it becomes necessary and justifiable as circumstances evolve, the issue of a stay extension may be revisited.

- [17] I am likewise not satisfied that \$200,000 has been fully justified, particularly since the process is not being extended for as long as the Debtor requested. I find the amount of the increase in the DIP to be approved, for present purposes, is \$170,000.
- [18] The KERP, as I understand it, does not result in additional risk to Desjardins, as it is included in the DIP increase. I find the KERP is appropriate and necessary in the circumstances. It is approved in the amount of \$70,000.
- [19] A factor in the exercise of my discretion in this case is that, if I were to have acceded to Desjardins' request, it would have meant that Desjardins' debt would immediately be subject to yet another super priority charge in favour of its proposed receiver and its counsel, also likely involving several hundred thousand dollars.
- [20] This, of course, may happen in any event, if no successful restructuring plan emerges. In an effort to mitigate this additional risk to Desjardins, I have made the orders granted conditional on the Debtor and Monitor, in consultation and co-operation with Desjardins and its proposed receiver, immediately beginning to work on a listing for sale of the Debtor's real property and other assets.
- [21] The Desjardins application for the appointment of a receiver is adjourned pending the outcome of the SISP.



Penny J.

Date: February 27, 2023