Court File No. CV-21-00659187-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND DOMENICO SERAFINO AS A PERSON INTERESTED IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HYDRX FARMS LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA INC.

BOOK OF AUTHORITIES

November 19, 2021

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Beatrice Foods Inc., Re

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In the Matter of Beatrice Foods Inc.

And In the Matter of an application under the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36 for a compromise and arrangement with respect to Beatrice Foods Inc. and a reorganization of share capital and appointment of directors of Beatrice Foods Inc. under the Canada Business Corporations Act, R.S.C. 1985, c. C-44

Application Under the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36

Houlden J.A. (ex officio)

Judgment: October 21, 1996
Docket: 295-96

Counsel: *Joseph Groia*, *Barry I. Goldberg* and *Jonathan Stainsby*, for Beatrice Foods Inc. and Beatrice Foods Holdings Corp.
Patricia D.S. Jackson, *David E. Baird* and *Thomas J. Matz*, for Informal Committee of Noteholders
Ronald Walker, *Sheryl Seigel* for the Senior Banks
Malcolm M. Mercer, *Terry Dolan* and *Norma Priday*, for Merrill Lynch Funds

Subject: Corporate and Commercial; Insolvency
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Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Application of Act
Applicant brought application for order under Companies' Creditors Arrangement Act (CCAA) for approval of plan of compromise and arrangement and for order under Canada Business Corporations Act (CBCA) amending its articles to effect concurrent reorganization of share capital and to appoint directors — Application granted — Statutory requirements under CCAA had been complied with and plan was fair and reasonable — Section 191 of CBCA conferred jurisdiction on court to amend articles of applicant as requested — Order under CCAA constituted order made under "any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors" within meaning of s. 191 of CBCA — Section 191(2) of CBCA gives substantive and not merely procedural powers to amend articles of CBCA corporation — Court may amend

articles to effect any change that might lawfully be made by amendment under s. 173 of CBCA — Shareholders had no status to object to plan as common shares had no value.

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous issues

Applicant brought application for order under Companies' Creditors Arrangement Act (CCAA) for approval of plan of compromise and arrangement and for order under Canada Business Corporations Act (CBCA) amending its articles to effect concurrent reorganization of share capital and to appoint directors — Application granted — Statutory requirements under CCAA had been complied with and plan was fair and reasonable — Section 191 of CBCA conferred jurisdiction on court to amend articles of applicant as requested — Order under CCAA constituted order made under "any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors" within meaning of s. 191 of CBCA — Section 191(2) of CBCA gives substantive and not merely procedural powers to amend articles of CBCA corporation — Court may amend articles to effect any change that might lawfully be made by amendment under s. 173 of CBCA — Shareholders had no status to object to plan as common shares had no value.

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Cases considered by *Houlden J.A. (ex officio)*:

Central Capital Corp., Re (1996), 38 C.B.R. (3d) 1, 26 B.L.R. (2d) 88, 132 D.L.R. (4th) 223, 27 O.R. (3d) 494, *(*sub nom. *Royal Bank v. Central Capital Corp.)* 88 O.A.C. 161, 1996 CarswellOnt 316 (Ont. C.A.) — considered

Statutes considered:

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Generally — considered

s. 173 — considered

s. 173(1)(o) — considered

s. 176(1)(b) — considered

s. 191 — considered

s. 191(1) "reorganization" (c) — considered

s. 191(2) — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — considered

s. 4 — considered

s. 5 — considered

s. 20 — considered

APPLICATION for order approving plan of compromise and arrangement and for order amending applicant's articles and appointing directors.

***Houlden J.A. (ex officio)* (orally)::**

1 Beatrice Foods Inc. ("Beatrice") is applying for an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*") for approval of a plan of compromise and arrangement and under s. 191 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "*CBCA*") for an order amending the articles of the applicant to effect a concurrent reorganization of share capital of Beatrice and to appoint directors.

2 Beatrice is a corporation under the *CBCA* and operates in the dairy, food products and baked goods businesses in both Canada and the United States. It has some 3,200 employees. Beatrice owes approximately $172,000,000 to a group of senior

banks. It defaulted on its obligations to the senior banks in 1995. The senior banks entered into a standstill arrangement with Beatrice, but under the arrangement Beatrice must pay $100,000,000 to the senior banks on October 31, 1996. If the plan is not approved, Beatrice lacks the means to make the payment.

3 Beatrice is also indebted to the holders of 12 % senior subordinated notes. The amount owing to the noteholders, together with interest is approximately $240,000,000.

4 Beatrice Foods Holdings Corp. ("Holdings") holds 100% of Beatrice's issued and outstanding shares. Ninety-eight percent of Holdings is owed by Funds which are represented by Merrill Lynch Capital Partners Inc. The Funds are opposing these applications.

5 The plan in essence, provides for the following:

(a) the repayment in full of indebtedness to the Senior Banks;

(b) the exchange of 12% Senior Subordinated Notes held by Beatrice noteholders for new common shares in Beatrice, rights to buy additional new common shares, new subordinated notes maturing in 30 years bearing interest at 1% and a small amount of cash; and

(c) the cancellation of all issued and outstanding common shares and the issuance to the holder of such shares of:

(1) warrants entitling the holder to purchase new common shares at a specified exercise price; and

(2) a right to purchase all issued new common shares at a fixed price for four weeks after implementation of the Plan.

6 Since Beatrice is a large company with a substantial work force, I propose to say very little about the financial affairs of the company. Detailed information concerning all relevant aspects of Beatrice's finances is contained, however, in the material which has been put before me and I have carefully reviewed it.

7 In January, 1996, Beatrice retained R.B.C. Dominion Securities Inc. for the purpose of exploring all recapitalization, restructuring and disposition alternatives and opportunities available to Beatrice. Although R.B.C. Dominion Securities contacted over 150 prospective investors, only two binding proposals were received and only one proposal was for the purchase of the entire company. The offer received for the whole company would have paid the claims of the senior banks, but the noteholders would have had a substantial deficiency. In the past two weeks, a further offer has been received but this offer again is not sufficient to pay the noteholders in full. I am satisfied that the common shares held by the Funds have no value and that there is no likelihood in the foreseeable future that they will have any value. The 1995 annual review of operations for Merrill Lynch Capital Appreciation Fund II valued the equity in Beatrice at zero as of May 1996.

8 Dealing first with the *CCAA* application, I am satisfied that the statutory requirements have been complied with, that nothing has been done which is not authorized by the *CCAA* and that the plan is fair and reasonable. Mr. Mercer, for the Funds, has requested that the plan be amended to allocate to the Funds seven percent of the new equity including seven percent of the rights (with the resulting capital contribution applied thereby) or to accord dissent and appraisal rights to the existing common shareholders. I have pointed out to Mr. Mercer that, in my opinion, I have no jurisdiction to make such an amendment. In any event, to make either of those amendments would, in my opinion, render the plan unworkable.

9 Mr. Mercer's principal ground of opposition is that s. 191 of the *CBCA* does not confer jurisdiction on the court to amend the articles of Beatrice as requested by the applicant. Section 191 reads as follows:

191. (1) In this section, "reorganization" means a court order made under

(a) section 241;

(b) the *Bankruptcy Act* approving a proposal; or

(c) any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors.

(2) If a corporation is subject to an order referred to in subsection (1), its articles may be amended by such order to effect any change that might lawfully be made by an amendment under section 173.

(3) If a court makes an order referred to in subsection (1), the court may also

(a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After an order referred to in subsection (1) has been made, articles of reorganization in prescribed form shall be sent to the Director together with the documents required by sections 19 and 113, if applicable.

(5) On receipt of articles of reorganization, the Director shall issue a certificate of amendment in accordance with section 262.

(6) A reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

(7) A shareholder is not entitled to dissent under section 190 if an amendment to the articles of incorporation is effected under this section.

10 For an order to be made under s. 191(1)(c), it is necessary, Mr. Mercer submitted, that the other Act of Parliament affect the rights among the corporation and its shareholders and the *CCAA* is not such an act. Under the *CCAA*, the court can, he submits, sanction a compromise or arrangement between a debtor company and its creditors, but it cannot sanction a compromise or arrangement between a debtor company and shareholders Accordingly, the *CCAA* is not an Act of Parliament that falls within s. 191(1)(c).

11 I have on occasion made orders under the *CCAA* in conjunction with orders under the *CBCA*. Sections 4 and 5 of the *CCAA* contemplates that the court may order a meeting of shareholders. In addition, s. 20 of the *CCAA* provides:

20. The provisions of this Act may be applied together with the provisions of any Act of Parliament or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them

12 When discussing the reorganization provisions in the *Proposals for a New Business Corporations Law*, the *Dickerson Report*, which formed the basis for the comprehensive reform of Canada's corporations law, clearly anticipated that s. 191 would permit the elimination of issued shares. The Report (*Proposals for a New Business Corporations Law*, Robert W.V. Dickerson et at., v.1: Commentary, Part 14.00: Fundamental Changes, (Toronto: Information Canada, 1971) states, with reference to the section in the draft bill which became s. 191 (at p. 124):

To clear up the obscure meaning of "reorganization", subsection (1) of s. 14.18 states that the term includes a court order made under the *Bankruptcy Act*, s. 19.04 [the oppression remedy] and any other federal law. The object of the section is to enable the court to effect any necessary amendment of the articles of the corporation in order to achieve the objective of the reorganization without having to comply with all the formalities of the Draft Act, particularly shareholder approval of the proposed amendment. For example, the reorganization of an insolvent corporation may require the following steps: first, reduction or even elimination of the interest of the common shareholders; second, relegation of the preferred shareholders to the status of common shareholders; and third, relegation of the secured debenture holders to the status of either unsecured note holders or preferred shareholders.

> Presumably then the corporation will be in a position to borrow further upon the security of its assets. In addition, the court will have power to reconstitute the board of directors, thus permitting representatives of the creditors of the corporation to take over the administration of the corporation until the corporation is one again solvent.

13 In discussing s. 191 of the *CBCA*, the authors of Fraser & Stewart, *Company Law of Canada*, (6th ed.: 1993), at p. 581, state that:

> A reorganization, for purposes of s. 191, is defined in s. 191(1) to be a court order which is made pursuant either to the oppression remedy powers of s. 241, or an order under the *Bankruptcy and Insolvency Act* approving a proposal in bankruptcy, or any other federal act that affects the rights of a corporation, its shareholders and creditors. An example of such a federal statute would be the *Companies' Creditors Arrangement Act*.

14 In *Central Capital Corp., Re* (1996), 132 D.L.R. (4th) 223 (Ont. C.A.), Weiler J.A. said (at p. 257):

> By virtue of s. 20 of the *CCAA*, arrangements under the Act mesh with the reorganization provisions of the *CBCA* so as to affect the company's relations with its shareholders. Shareholders have no right to dissent to a reorganization: s. 191(7). On a reorganization, among other things, the articles may be amended to alter or remove rights and privileges attached to a class of shares and to create new classes of shares: s. 173, *CBCA*. These statutory provisions provide a clear indication that, on a reorganization, the interests of all shareholders, including shareholders with a right of redemption, are subordinated to the interests of the creditors. Where the debts exceed the assets of the company, a sound commercial result militates in favour of resolving this problem in a manner that allows creditors to obtain repayment of their debt in the manner which is most advantageous to them.

15 I agree with the interpretation of the relevant provisions of the *CCAA* and the *CBCA*. I am of the opinion that a court order under the *CCAA* is an order under an Act of Parliament that affects the rights among the corporation, its shareholders and creditors.

16 Section 191(2) of the *CBCA* gives substantive, not simply procedural, powers to amend the articles of a *CBCA* corporation. The court may amend the articles to effect any change that might lawfully be made by an amendment under s. 173 of the *CBCA*. Section 173(1)(o) provides that:

> 173. (1) Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to
>
> . . . . .
>
> (o) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

17 Section 173 is supported by s. 176(1)(b) which contemplates amendments to the articles of a corporation to effect a cancellation of all or part of the shares of a class of shares. Section 176(1)(b) provides:

> 176. (1) The holders of shares of a class or, subject to subsection (4), of a series are, unless the articles otherwise provide in the case of an amendment referred to in paragraphs (a), (b) and (e), entitled to vote separately as a class or series on a proposal to amend the articles to
>
> . . . . .
>
> (b) effect an exchange, reclassification or cancellation of all or part of the shares of such class.

18 I have found that the common shares have no value. I agree with the applicant that, in these circumstances, the shareholders have no status to object to the plan. An order will therefore go as requested. In the circumstances, there will be no order as to costs.

Application granted.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

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Applicant (Appellant in Appeal)

Court File No. CV-21-00659187-00CL

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PROCEEDING COMMENCED AT TORONTO

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