

QBG 1401 of 2019 – JCS

Pillar Capital Corp. v Harmon International Industries Inc.

Kevin N. Hoy and John J. C. Mansbridge for the applicant
Jared D. Epp for the respondent

FIAT - October 24, 2019 – ELSON J.

[1] The applicant seeks the appointment of a receiver over the property, assets and undertakings of the respondent, pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*]. The respondent resists the application, arguing that the application should be dismissed, outright. In the alternative, the respondent suggests that the matter be adjourned.

[2] For the brief reasons set out below, I have decided to adjourn the application to a later date.

[3] Having regard to all the evidence presented, particularly the affidavits of Calvin Moneo, sworn October 3, 2019 and October 8, 2019, I find there are reasonable grounds to believe the applicant's application is somewhat premature. While the initial evidence received suggested an urgent concern for the applicant's security, that urgency is no longer apparent. In this regard, I refer particularly to the fact that the utility arrears (power and natural gas) have now been paid, as have the outstanding property taxes.

[4] I should also say that I am left with some meaningful doubt as to whether the respondent has been shown, to the requisite standard of proof, to be insolvent within the meaning of s. 2 of the *BIA*. I am also not persuaded, however, that the respondent is solvent. Stated bluntly, I simply do not know. The evidence raises the distinct possibility that the land, which forms part of the applicant's security, is itself worth more than the outstanding indebtedness. That said, there is also the nagging fear that this possibility may be grounded more on optimism than reality.

[5] Accounting for all these considerations, I am satisfied that it is fair, just and convenient to give this matter more time to sort out. In particular, the additional time will give the respondent and its officers the opportunity to show how serious they are in addressing the applicant's concerns and, in particular, paying down the indebtedness.


[6] In the result, the application is adjourned to January 10, 2020 at 1:30 p.m. If the application is still pending at that time, the Court will expect a brief status report

from the applicant, which may be delivered by letter, by affidavit or by oral submission. Of course, the respondent may provide its own status report if it sees fit to do so.

[7] The adjournment is without prejudice to any applications that may be brought to address any material changes in circumstances, which may arise between now and the adjourned date. Such applications may be brought on seven days' notice, or such other abridged notice as the Court may direct.

[8] I do not consider myself seized with this application. That said, to the extent I am available to address any issues that arise, I will do my best to attend to them as required. At present, the adjourned date for the application is a date on which I expect to be available, subject to the possibility that I will preside by a conference call from a location other than Saskatoon.

[9] The matter of costs shall be left for submissions by counsel on the adjourned date.



J.
R.W. ELSON