

03-Apr-20

REGISTRY

No. S-1710393
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ALL CANADIAN INVESTMENT CORPORATION

APPLICATION RESPONSE

Application response of: McEown and Associates Ltd. (the "**Application Respondent**")

THIS IS A RESPONSE TO the notice of application of Parkland Funding Ltd. ("**Parkland**") filed February 19, 2020.

Part 1: ORDER(S) CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

1. Nil.

Part 2: ORDER(S) OPPOSED

The Application Respondent opposes the granting of the orders set out in Part 1 of the notice of application and seeks an order dismissing the application/appeal of Parkland with costs against Parkland.

Part 3: ORDER(S) ON WHICH NO POSITION IS TAKEN

N/A

Part 4: FACTUAL BASIS

1. The Application Respondent seeks an Order that the appeal from the disallowance of the Monitor of the claim of Parkland in the CCAA proceedings of ACIC be dismissed and costs and such further and other relief as this Court may deem just.
2. This application is an appeal from the Notice of Revision or Disallowance of the Monitor in these proceedings dated January 31, 2020.
3. The Claim arises out of the alleged failure, refusal or neglect of ACIC Financial Development Corp. (“**AFDI**”) to honour a formal demand for redemption of \$200,000 of preferred shares of AFDI in or about August of 2015.
4. In an effort to recover the Claim, on January 4, 2016, Parkland commenced an action against ACIC, AFDI, Donald F. Bergman and Wayne Blair (the “**Defendants**”) in the Supreme Court of British Columbia, Kelowna Registry, under No. 109643 (the “**Action**”).
5. The Defendants defended the Action in a Response to Civil Claim filed in the Action January 26, 2016.
6. Parkland filed a Proof of Claim dated December 29, 2019 (the “**First Proof of Claim**”).
7. Parkland’s First Proof of Claim was supported by an Affidavit of Hana Sparks sworn January 2, 2020 (the “**First Sparks Affidavit**”).
8. According to Exhibits “A” and “B” of the First Sparks Affidavit, Parkland and the Defendants, through their legal counsel, agreed to a settlement of the Action in or about September of 2016 whereby AFDI agreed to make payments to Parkland totalling \$205,000 (the “**Second Settlement**”).

9. The First Proof of Claim was then withdrawn and Parkland filed a second Proof of Claim dated January 10, 2020 (the “**Second Proof of Claim**”).
10. In support of the Second Proof of Claim, Parkland attached a second Affidavit of Hana Sparks sworn January 10, 2020 (the “**Second Sparks Affidavit**”).
11. According to the materials attached as exhibits to the Second Sparks Affidavit in support of Parkland’s Second Proof of Claim, the Plaintiff and the Defendants, through their respective legal counsel, reached a settlement of the Action in or about February of 2016, and prior to the Second Settlement, which contemplated a payment of the sum of \$200,000 (the “**First Settlement**”).
12. The Second Settlement superseded the First Settlement.
13. Neither the First Settlement nor the Second Settlement was consummated.
14. Neither the First Settlement nor the Second Settlement made Parkland a creditor of ACIC.
15. Parkland is neither a preferred shareholder nor a creditor of ACIC in respect of the Claim or any part thereof.
16. Any claim of Parkland is a claim against AFDI and not against ACIC.
17. As stated above, the First Sparks Affidavit sworn January 2, 2020 was part of the First Proof of Claim, which was withdrawn by Parkland.
18. The Second Sparks Affidavit sworn January 10, 2020 was delivered in support of the Second Proof of Claim dated January 10, 2020.
19. In support of this appeal Parkland has now filed and presumably purports to rely upon a third affidavit of Hana Sparks sworn February 19, 2020 (the “**Third Sparks Affidavit**”), which contains additional evidence and is therefore not admissible on this appeal. To put matters into perspective, the First Sparks Affidavit is five paragraphs long, the Second

Sparks Affidavit is seven paragraphs long and the Third Sparks Affidavit is twelve paragraphs long.

Part 5: LEGAL BASIS

1. The Claims Process Order in these proceedings was pronounced November 18, 2019 and paragraph 18 thereof reads as follows:

18. A Disputing Creditor Application or a Disputing Petitioner Application shall proceed before the Court *as a true appeal* and shall be heard upon such further terms as may be ordered by this Court, and for such purposes the Monitor is authorized and directed to seek directions from this Court in connection with any Disputing Petitioner Application and any Disputing Petitioner Application (sic). (emphasis added)

2. The Proof of Claim which was authorized by the Claims Process Order and circulated to all those filing a claim in these proceedings, included the following at the end of the Proof of Claim:

NOTE: All relevant documentation on which you rely in making your Claim must be attached to this Proof of Claim, as the validity of your Claim will be determined solely on this Proof of Claim and attachments thereto. If the claim (sic) is disallowed for any reason, and you file an appeal of that disallowance, the appeal will be heard as a true appeal and your ability to introduce fresh or new evidence in support of your claim (sic) will be limited accordingly.

3. The standard of review for a monitor's legal determinations, including the disallowance of a claim, is one of correctness.

Galaxy Sports Inc. (Re), 2004 BCCA 284 ("Galaxy") at paras. 39

4. The standard of review for a monitor's factual determination is one of reasonableness.

Galaxy Sports Inc. (Re), 2004 BCCA 284 ("Galaxy") at paras. 39

5. Parkland bears the onus of demonstrating that the monitor committed an error of law or a palpable and overriding error of fact in disallowing the proof of claim.

Sols Sportica Inc. (Syndic de), 2016 QCCS 2109 at para. 24

6. The monitor has specialized expertise in the area of insolvency and the monitor's decision to disallow the proof of claim is deserving of deference.

Galaxy at para. 33

7. The appeal of a monitor's decision is, in accordance with the Claims Process Order, a true appeal, not a trial *de novo*. Fresh evidence is not generally admissible on the hearing of an appeal.

Galaxy at para. 40
Tong (Re), 2008 BCSC 814 ("*Tong*") at para. 16

8. Such further or other legal basis as counsel may advise.

Part 6: MATERIAL TO BE RELIED ON

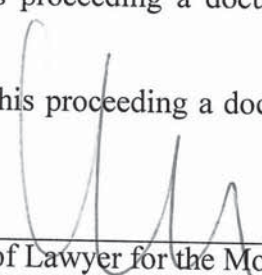
1. Affidavit #1 of Sandra Riley.
2. Such further or other material as this Honourable Court may deem just.

The Application Respondent estimates that the application will take 60 minutes.

Mr. Justice Walker is seized of this matter and a full day has been set aside to hear this matter -- April 21, 2020.

- The application respondent has filed in this proceeding a document that contains the application respondent's address for service
- The application respondent has not filed in this proceeding a document that contains an address for service.

Dated: April 3, 2020



Signature of Lawyer for the Monitor
Kornfeld LLP
Douglas B. Hyndman

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