

SUPREME COURT OF YUKON

Citation: *In the matter of the Business Corporations Act and Thierer*, 2012 YKSC 49

Date: 20120529
Docket S.C. No.: 12-A0028
Registry: Whitehorse

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
R.S.Y. 2002, c. 20

AND

**MARK THIERER, as a Director of
SXC HEALTH SOLUTIONS CORP**

Before: Ms. Justice R. Veale

Appearances:

Paul Lackowicz and Meagan Lang

Counsel for the Petitioner

RULING ON APPLICATION UNDER SECTION 145(1) OF THE *BUSINESS CORPORATIONS ACT* DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): So this is an application by SXC Corporation, which is incorporated under the *Business Corporations Act* of the Yukon, R.S.Y. 2002, c. 20, and has a registered office here in Whitehorse. SXC carries on the business of providing pharmacy benefit management and healthcare information technology products and services.

[2] Substantially, all of its business and operations are conducted in the United

States of America. Their Canadian transfer agent is located in Toronto. They are a distributing corporation under the Yukon *Business Corporations Act, supra*. Over 80 percent of the outstanding shares are held directly or beneficially by residents of the United States.

[3] They have entered into what is referred to as a definitive merger agreement with Catalyst, whereby Catalyst merges with the wholly owned subsidiary of SXC, and, as a result, Catalyst survives the merger and becomes a wholly owned subsidiary of SXC.

[4] The issue that brings the matter before this Court is that SXC, apparently, has set a special meeting date of July 2, 2012, which I understand is the same meeting date for Catalyst as well, and the requirement is that there be a record date established by May 31, 2012, and that is not required under the Yukon *Act*, but I am relying on the evidence of Mr. Thierer that the July 2nd date and the May 31 record date is required to comply with SEC proxy requirements.

[5] The problem arises in that s. 135(4) of the Yukon *Business Corporations Act, supra*, requires a seven-day notice of the record date be advertised in a local newspaper in Whitehorse, and also be in a written notice to each stock exchange in Canada where the shares are listed. The affidavit of Mr. Thierer indicates that on May 24, 2012, SXC sent a copy of the notice by e-mail to the TSX. On May 25, 2012, SXC published the notice of the record date in the *Whitehorse Star* which amounts to four clear days for the record date, or five if Sunday is included. On May 26, 2012, SXC will publish notice of the record date in the *Globe and Mail*, which will be three clear days before the record date. The evidence also indicates that it is not practicable for SXC to

delay the July 2, 2012 meeting date to provide for the full seven-day notice period that would be required under s. 135(4) because it involves significant additional costs to SXC, an example of which is paying its lenders a commitment fee based on \$1.8 billion of the debt commitment provided by the lenders.

[6] Consequently, SXC has applied under s. 145(1) of the Yukon *Business Corporations Act*, *supra*, and that section indicates that:

If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called, or [must be conducted according to] ... this *Act*, ... [then] the Supreme Court, on the application of a director ... may order a meeting to be called, held and conducted in the manner the Supreme Court directs.

[7] Counsel have indicated that there are no precedents with respect to an application of this particular nature, but I am satisfied, based on the affidavit material and the statements made by counsel, Mr. Lackowicz, in this matter, that no one is essentially prejudiced by having a short notice of the record date in question. I am therefore making an order under s. 145(1) that the special meeting of SXC Health Solutions Corporation scheduled for July 2, 2012, be called with the notice of record date being abridged. You wanted it abridged to May 26th?

[DISCUSSION WITH COUNSEL]

[8] THE COURT: Okay. The order will then be the notice of record date is abridged to May 25.

VEALE J.