SUPREME COURT OF YUKON

Citation: *Ultra Petroleum Corp.*, 2017 YKSC 23 Date: 20170327
S.C. No. 16-A0023
Registry: Whitehorse

ULTRA PETROLEUM CORP.

Petitioner

Before Mr. Justice L.F. Gower

Appearance:
Paul W. Lackowicz Counsel for the Petitioner

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by Ultra Petroleum Corp. ("Ultra Petroleum") in its capacity as a foreign representative of itself pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*"), for an order recognizing and giving full force and effect to: (1) a Claims Bar Order granted by the United States Bankruptcy Court, Southern District of Texas, Houston Division (the "US Bankruptcy Court") on May 3, 2016, *nunc pro tunc*; and (2) a Confirmation Order granted by the US Bankruptcy Court on March 14, 2017 (the "Confirmation Order").

[2] Ultra petroleum is a Yukon corporation incorporated pursuant to the laws of the Yukon Territory, with a registered office located in Whitehorse, Yukon. Through its direct and indirect wholly owned subsidiaries it owns oil and gas properties in Wyoming, Utah and Pennsylvania, in the United States.

[3] On April 29, 2016, Ultra Petroleum and a number of its subsidiaries (the "Chapter 11 debtors") commenced voluntary reorganization proceedings in the US Bankruptcy Court by each filing a voluntary petition for relief under Chapter 11 of Title 11 of the *United States Code*. Notice of the Chapter 11 proceedings was served upon over 6000 creditors or potential creditors of the Chapter 11 debtors. Three of those potential creditors are in Canada: Emera Energy Services Inc., Mowbrey Gil LLP and Enerplus Resources (USA) Corporation. None has filed proofs of claim in the Chapter 11 proceedings.

[4] On May 3, 2016, the US Bankruptcy Court granted a number of orders, including an order authorizing Ultra Petroleum to act as a foreign representative of itself for the purposes of the application made to this Court on May 13, 2016.

[5] On May 17, 2016, Veale J. of this Court granted an order which, among other things:

a) appointed Ultra Petroleum as foreign representative of itself pursuant to s. 45 of the *CCAA* in respect of the Chapter 11 proceedings;

b) recognized the Chapter 11 proceedings;

c) granted a stay of proceedings against Ultra Petroleum;

d) restrained persons with agreements with Ultra Petroleum for the supply of goods and services from discontinuing, altering or terminating the supply of such goods and services during the stay of proceedings; and

e) granted a stay of proceedings against the former, current and future officers and directors of Ultra Petroleum.

ISSUES

[6] There are two issues in this application:

1) Should the Claims Bar Order be recognized and given full force and effect in Canada by this Court, *nunc pro tunc*?

2) Should the Confirmation Order be recognized and given full force and effect in Canada by this Court?

ANALYSIS

1. The Claims Bar Order

[7] The purpose of Part IV of the *CCAA* is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Orders under this Part are intended, among other things, to promote cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions and to promote the fair and efficient administration of cross-border insolvencies. This also protects the interests of debtors, creditors and other interested persons. See: *Zochem Inc. (Re)*, 2016 ONSC 958, at para. 15; and s. 44 of the *CCAA.*

[8] In cross-border insolvencies, Canadian and US courts have made efforts to complement, coordinate and, where appropriate, accommodate the proceedings of the other in order to enable cross-border enterprises to restructure. Comity and cooperation are increasingly important in the bankruptcy context. As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination, there would be multiple proceedings, inconsistent judgments and general

uncertainty. See *Babcock & Wilcox Canada Ltd. (Re),* [2000] O.J. No. 786 (S.C.), at paras. 9 and 10.

[9] When a court considers whether it will recognize a foreign order, including Chapter 11 proceeding orders, it considers the following factors:

a) The recognition of comity and cooperation between courts of various jurisdictions is to be encouraged.

b) Respect should be accorded to the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is sufficiently different from the bankruptcy and insolvency law of Canada, or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.

c) All stakeholders are to be treated equitably and, to the extent reasonably possible, common or like stakeholders are to be treated equally, regardless of the jurisdiction in which they reside.

d) Plans that allow the enterprise to reorganize globally, especially where there is an established interdependence on a transnational basis, should be promoted. To the extent reasonably practicable, one jurisdiction should take charge of the principle administration of the enterprises organization, were such principal type approach will facilitate a potential reorganization and will respect the claims of stakeholders and does not detract from the net benefits that may be available from alternative approaches.

e) The recognition that the appropriate level of court involvement depends to a significant degree upon the court’s nexus to the enterprise. Where one

jurisdiction has an ancillary role, the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments regarding the re-organizational efforts in the foreign jurisdiction. Further, stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.

f) Notice as effective as is reasonably possible should be given to all affected stakeholders, with an opportunity for such stakeholders to come back into court to review the granted order and seek its variation.

See: *Babcock,* cited above, at para. 21; and *Xerium Technologies, Inc*., 2010 ONSC 3974, at paras. 26 and 27.

[10] The second affidavit of Garland Shaw confirms that the Claims Bar Order has been fully complied with by the Chapter 11 debtors, including Ultra Petroleum.

[11] Further, as stated above, the three potential creditors of Ultra Petroleum that have addresses in Canada, have been given notice of this application.

[12] As such, it is appropriate that the Claims Bar Order be recognized by this Court, notwithstanding that the recognition is *nunc pro tunc*. This recognition will ensure certainty with regard to the effect of the Claims Bar Order in Canada, with respect to creditors of Ultra Petroleum. Such recognition will also foster comity and cooperation between this Court and the US Bankruptcy Court, as well as supporting the global reorganization of the Chapter 11 debtors.

[13] I note that the Court of Queen's Bench of Alberta also recently recognized, *nunc pro tunc,* a claims bar order granted by the US Bankruptcy Court in an application by C&J Energy Production Services-Canada Ltd., Court File No. 1601-08740.

2. The Confirmation Order

[14] The Confirmation Order in this application satisfies the numerous factors set out in the case authorities just cited. The Order was made in good faith and in the interests of the Chapter 11 debtors, as well as the creditors and equity holders. It does not breach any applicable Canadian law. It will not likely be followed by a need for liquidation or further financial reorganization of the Chapter 11 debtors. The plan complies with US bankruptcy principles, as the US bankruptcy Court has confirmed. All holders of claims and interests in the Chapter 11 debtors, including holders of claims and interests in Ultra Petroleum who were entitled to vote on the Plan of Reorganization, have been given notice of, and the opportunity to vote on and object to, the Plan. These holders have voted overwhelmingly in support of accepting the Plan (98.84 % of the Class 3 votes and 99.89 % of the Class 8 votes).

[15] Accordingly, it is appropriate that this Court should recognize the Confirmation Order, to ensure that the purposes of the *CCAA* are satisfied and that the Chapter 11 debtors have the best opportunity to restructure their affairs. In this regard, the comments of Campbell J. in *Xerium*, cited above, at para. 29, are appropriate:

> In granting the recognition order sought, I am satisfied that the implementation of the Plan in Canada not only helps to ensure the orderly completion of the Chapter 11 Debtors' restructuring process, but avoids what otherwise might have been a time-consuming and costly process were the Canadian part of the Applicant itself to make a separate restructuring application under the CCAA in Canada.

[16] In order to give force and effect to the Confirmation Order, the proposed Articles of Reorganization attached as Schedule “C” to the form of the order sought on this application are approved as the form of the Articles of Reorganization to be filed with the Registrar of Corporations, pursuant to s. 194(4) of the Yukon *Business Corporations Act*, R.S.Y. 2002, c. 20.

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GOWER J.