

SUPREME COURT OF YUKON

Citation: *Ultra Petroleum Corp.*, 2017 YKSC 9

Date: 20170207
S.C. No. 16-A0023
Registry: Whitehorse

ULTRA PETROLEUM CORP.

Petitioner

Before Mr. Justice R.S. Veale

Appearances:
Paul Lackowicz

Counsel for the Petitioner

REASONS FOR JUDGMENT

INTRODUCTION

[1] Ultra Petroleum Corp. (“Ultra Petroleum”) applies for an order recognizing a foreign main proceeding pursuant to s. 48 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, (the “CCAA”) under Part IV Cross-border Insolvencies.

[2] The issue before this Court is not the comity of this Court recognizing a foreign insolvency proceeding but rather the issue of whether Ultra Petroleum should have the discretion to lift the mandatory stay of proceedings against it or whether that discretion should be retained by this Court.

BACKGROUND

[3] Ultra Petroleum is a Yukon corporation incorporated pursuant to the laws of the Yukon Territory with a registered office located in Yukon. Ultra Petroleum owns oil and gas properties in Wyoming, Utah and Pennsylvania in the United States. Ultra Petroleum and several wholly owned subsidiaries commenced a voluntary Chapter 11 Proceedings in the United States Bankruptcy Court Southern District of Texas,

Houston Division and seeks recognition of these proceedings in Yukon, Canada, pursuant to s. 46 of the CCAA, which provides for cooperation between courts in cases of cross-border insolvencies to ensure the fair and efficient administration in the interests of creditors and debtors.

[4] Sections 47 and 48 of the CCAA provide for the following:

47. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting

the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

DISPOSITION

[5] This Court has no difficulty in finding that the U.S. bankruptcy proceedings are a foreign main proceeding based on the location of the centre of its main interests and granting the order in s. 48(1)(a) to stay proceedings that might be taking against Ultra Petroleum or one of its wholly-owned subsidiaries. The issue that I wish to address is whether it is appropriate to grant Ultra Petroleum the right to remove or lift the stay on its own written consent.

[6] Specifically, counsel applied for the inclusion of the following order:

14. Notwithstanding anything else contained in this Order, Ultra Petroleum may, by written consent of its counsel of record, agree to waive any of its protections provided in this Order.

[7] The proposed Order also included the specific right to give the written consent of Ultra Petroleum to lift the general stay of proceedings.

[8] There is nothing nefarious about this request as it would certainly be cost efficient. However, s. 48(1)(a) provides a mandatory stay of proceedings “until otherwise ordered by the court”. In my view, this section does not permit the court to relinquish its control of the mandatory stay to the debtor company despite the discretion in s. 50 to make terms and conditions “that the court considers appropriate in the circumstances”.

[9] Counsel has been permitted to take out the order without the clause permitting the lifting of the stay or proceedings on the written consent of the debtor.

VEALE J.