

Court File No. 09-8363-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF BARZEL INDUSTRIES
CANADA INC.

Applicant

NOTICE OF MOTION

The Applicant will make a motion to a Judge presiding over the Commercial List on September 18, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an Order, abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on September 18, 2009 and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;
- (b) an Order directing ArcelorMittal Dofasco Inc. ("**Dofasco**") to comply with the terms of the Initial Order (as defined below) and the

Recognition Order (as defined below), including paragraph 18 of the Initial Order and paragraph 8 of the Recognition Order, which require Dofasco to supply goods, including hot rolled steel coils, to the Applicant pursuant to the Replenishment Agreement (as defined below);

- (c) an Order, in addition to the general obligations referred to in paragraph (b) above, requiring Dofasco to immediately deliver 3,114 tons of structural tubing coils to the Applicant;
- (d) an Order that any order granted shall be without prejudice to the right of the Applicant to commence contempt proceedings against Dofasco in respect of Dofasco's breach of the Initial Order, the Recognition Order or any order granted;
- (e) the costs of this motion on a substantial indemnity basis; and
- (f) such further and other Orders as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (g) the Applicant and Dofasco are party to a replenishment agreement between Barzel Industries Inc. (formerly Novamerican Steel, Inc. and indirect parent of the Applicant) and Dofasco dated November 2008 as amended by an amending agreement dated February 13, 2009 (the **"Replenishment Agreement"**);

- (h) pursuant to the terms of the Replenishment Agreement, Dofasco is contractually obligated to deliver purchased goods, including hot rolled steel coils, to the Applicant on a regular basis and agreed that such delivery times would be reliable;
- (i) Dofasco has been supplying goods, including hot rolled steel coils, to the Applicant since December 2008;
- (j) on September 15, 2009, the Applicant was granted protection under the *Companies' Creditors Arrangement Act* pursuant to an order of the Ontario Superior Court of Justice – Commercial List (the "**Initial Order**");
- (k) various of the Applicant's affiliates in the United States commenced Chapter 11 proceedings before the United States Bankruptcy Court for the District of Delaware under Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**") which proceedings were recognized by the Superior Court of Justice by way of a recognition order made by the court on September 15, 2009 (the "**Recognition Order**", together with the Initial Order, the "**Orders**");
- (l) paragraph 18 of the Initial Order states that, "... during the Stay Period, all Persons having oral or written agreements with the Applicant ... for the supply of goods and/or services, ... are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant ... ";

- (m) paragraph 8 of the Recognition Order states that, "... during the Stay Period, all Persons having oral or written agreements with any of the Applicants ... for the supply of goods and/or services, ... are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants ...";
- (n) the Stay Periods (as defined in paragraph 15 of the Initial Order and paragraph 5 of the Recognition Order) under each of the Orders are currently in effect;
- (o) the Replenishment Agreement is an agreement for the supply of goods as contemplated by the above-noted provisions of the Orders;
- (p) Dofasco, in breach of the Orders, has refused to continue supplying goods pursuant to the Replenishment Agreement unless the Applicant first pays its pre-filing arrears in full;
- (q) the continued breach by Dofasco of the Orders will result in immediate economic loss and irreparable harm to the Applicant;
- (r) Dofasco is an important supplier to the Applicant. It is currently the primary source supplier of a specific steel used in the manufacture of tubes at the plant in Baie d'Urfe, QC;
- (s) Coils are delivered by Dofasco to the Applicant under the Replenishment Agreement on an as-needed basis over a 2-week delivery timeframe;

- (t) the continued and uninterrupted supply of hot rolled steel coils pursuant to the Replenishment Agreement is critical to the Applicant's business model and is necessary for the continued operations of the Applicant as a going concern;
- (u) the Applicant only has enough hot rolled steel coils/structural tubing coils to sustain production at its facilities for a maximum of 4 days;
- (v) it will take no less than 6-8 weeks to re-source steel from another supplier;
- (w) if Dofasco does not supply hot rolled steel coils/structural tubing coils, the Applicant will not be able to sustain its operations and will be irreparably harmed;
 - (i) approximately 38, or more, employees will be laid off;
 - (ii) the Barzel Group will suffer loss of revenue and may breach supply contracts with its customers, thereby exposing the Barzel Group to significant claims for resulting damages;
 - (iii) the Applicant is a party to an asset purchase agreement (the "**Asset Purchase Agreement**") which will be put forth as the "stalking horse" in a sales process. If the Applicant does not continue to operate as a going concern the purchaser may have a right to terminate the Asset Purchase Agreement, resulting in the immediate loss of the value represented by the US\$65 million purchase price under the Asset Purchase Agreement;

- (iv) the refusal by Dofasco to continue the delivery of hot rolled steel coils to the Applicant pursuant to the Replenishment Agreement will also result in a Material Adverse Effect under the DIP Credit Agreement;
- (x) the provisions of the *Companies' Creditors Arrangement Act* (R.S., 1985, c.C-36);
- (y) Rules 3.02 and 37 of the *Rules of Civil Procedure*; and
- (z) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (i) the affidavit of Wayne Day sworn September 18, 2009; and
- (ii) such further and other materials as counsel may advise and this Honourable Court may permit.

Date: September 18, 2009

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TO: ATTACHED SERVICE LIST.

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Proceeding Commenced at Toronto

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