

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Re Smurfit - Stone Container Canada Inc.
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: Repall

| Counsel | Telephone No.: | Facsimile No.: |
|---------------------|----------------|----------------|
| <u>see attached</u> | | |
| | | |
| | | |

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
 Adjourned to: _____
 Time Table approved (as follows):

The Applicants ask that the sanction order be issued in the form submitted to the court on May 3, 2010 without any change to paragraph 29. The fund managers + the Indenture trustee disagree + seek additional language.

Counsel attended at a 9⁴⁵ am appointment to address this matter in chambers. At the conclusion of the appointment, I signed the order requested by the Applicants.

As I indicated in paragraph 17 of my reasons dated May 13, 2010, the exit financing will expire if the debtors do not emerge from court protection by mid-July. Counsel for

June 3, 2010
Date

B. Repall
Judge's Signature

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the Applicants also advises that the equity holders' dispute in the US has now been settled + must be implemented by mid July.)

In my reasons of May 13, 2010, I suspended the granting of the sanction order for 10 days. As stated by the Applicants in their memorandum filed, this balanced the need for expediency +, I might add, the potential unfairness to Ontario Canada's unsecured creditors generally that may arise from any delay, + the need to afford the Fund Managers the opportunity to pursue their applications for leave.

Mr Hatnay for certain retirees submits that the leave applications brought by the Fund Managers + the ~~Indenture~~ ~~Trustee~~ have been lethargic. I agree.

The Court of Appeal denied leave to appeal on March 9, 2010. Leave to appeal the Court of Appeal's denial of leave to appeal was only filed on April 8, 2010 + no stay motion or motion to expedite was brought by the appellants. In addition, on filing the leave to appeal with the Supreme Court of Canada, the appellants did not request the Applicants to file responding materials earlier than required by the Rules + the Fund Managers + the ~~Indenture~~ ~~Trustee~~ cannot act in a vacuum. They ignore the interests of others such

+ Nonetheless, the Applicants did file responding materials on an accelerated basis.

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as Mr Hatnays clients who are retirees who await the implementation of the Plan to recover some of their retirement income.

My reasons of May 13, 2010 sanctioned the Plan presented to me + as mentioned, I suspended the order for 10 days. The plan therefore has been sanctioned as of May 23, 2010. No one returned prior to that date to address anything.

The issue of releases was raised + argued on May 3, 2010 (see paragraph 16 of my reasons) in my reasons I stated that the issue of the release provisions was ~~was~~ largely addressed through amendments to the Plan + proposed changes to the requested order. If counsel were unable to resolve that issue conclusively, they could return for a 9:30 appointment. No one did + the Plan was sanctioned. Today, the Fund Managers + the Indenture Trustee are either raising issues already argued or arguing points that could have been argued before. Quite apart from that, I am not persuaded that they have merit.

Lastly, the Fund Managers request that I waive any requirement of service of the Finance II bankruptcy petition to be issued in Nova Scotia + that I confirm that Finance II is insolvent. I indicated that counsel should set forth this request

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in writing.

St. P. J.