

**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 THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SMURFIT-STONE CONTAINER
CANADA INC. AND THE OTHER APPLICANTS LISTED ON
SCHEDULE "A"

Applicants

**RESPONDING
MOTION RECORD**

December 10, 2009

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Management, LP and Columbus Hill Capital
Management, L.P.

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TAB

DESCRIPTION

1.

Affidavit of Dan Gropper dated December 10, 2009

TAB 1

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**AFFIDAVIT OF DAN GROPPER
(sworn December 10, 2009)**

I, Dan Gropper, of the City of New York in the State of New York, **MAKE OATH
AND SAY:**

1. I am a Managing Director of Aurelius Capital Management, LP (together with Columbus Hill Capital Management, L.P. the "Fund Managers"). The Fund Managers manage funds (the "Funds") that collectively own more than 60% of the 7 3/8% Senior Notes due July 15, 2014 (the "Notes") issued by Stone Container Finance Company of Canada II ("Finance II") and as such I have knowledge of the matters to which I hereinafter depose.

2. On January 26, 2009, the Applicants, including Smurfit-Stone Container Canada, Inc. ("Smurfit Canada") and Finance II, were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an initial order (the "Initial Order") made by this Court (the "CCAA Proceeding").

3. Finance II is an unlimited company formed under the laws of Nova Scotia (a "ULC").

4. Finance II is not an operating company and carries on no trade. The only assets of Finance II are claims it has against other Applicants or its US parent, Smurfit-Stone Container Enterprises, Inc. ("Enterprises").

5. Finance II's only disclosed obligations are the Notes, a potential unquantified tax claim and a claim of Enterprises in the amount of \$66 million. The Funds dispute that any amount is owing to Enterprises under its alleged claim.

6. Whether or not the claim of Enterprises is included among the creditors of Finance II for the purpose of voting on a plan of arrangement, the Funds have a veto over any plan of arrangement that may be filed by Finance II.

7. The Fund Managers have been wholly unsatisfied with the treatment of the holders of the Notes in these proceedings.

8. All of the directors and officers of Finance II are also employees and/or officers or directors of other Applicants, including Smurfit Canada, the debtor of Finance II under a \$200 million Loan Agreement.

9. From the beginning of our active involvement in this process in July 2009, the Fund Managers have been concerned that the interests of Finance II have been undermined for the benefit of the other Applicants and Enterprises because of the inherent conflicts between Finance II and Smurfit Canada as joint Applicants and because of the overlapping directors and officers with other Applicants including Smurfit Canada. Attached hereto as Exhibit "A" is a copy of a letter by the Fund Managers to the officers and directors of Finance II explaining our concerns and reminding them of their fiduciary duties to Finance II.

10. Because of our concerns as Fund Managers, we brought a motion in these proceedings to require Finance II to file an assignment in bankruptcy. The motion was dismissed for the reasons of this Court set out in the Endorsement of Justice Pepall made on October 20, 2009.

11. In summary, Justice Pepall held that the conflicts of interest that concerned us were not of sufficient concern at that time for a trustee in bankruptcy to be appointed. Her Honour did "accept that there is some basis for [the Fund Managers'] complaint of a need for a "seat at the table." Unfortunately, we have not had the seat at the table that we sought in order to participate in the negotiation of a plan of arrangement.

12. Without discussion with the Fund Managers, the Applicants have filed a draft Plan of Compromise and Arrangement in the related US Chapter 11 bankruptcy proceedings (the "Plan").

13. There is no plan to restructure Finance II nor have there been any efforts to do so with diligence or otherwise. The Plan provides benefits to holders of the Notes which they can access if they are successful in the following contested litigation with Smurfit Canada:

- (a) Litigation in both the United States and Canada over the disputed position of Smurfit Canada against Finance II that the claims of Finance II are not a loan, as stated in the loan agreement between them dated July 20, 2004 (the "Loan Agreement"), but are equity (the "Characterization Issue"); and
- (b) Litigation in the United States as to whether the loan by Finance II and the claims arising from them should be subordinated under section 5.10 of the Bankruptcy Code;

14. In respect of the Characterization Issue, Smurfit Canada has brought a motion in these proceedings for a declaration that Finance II's claims against Smurfit Canada are not provable as debt claims and should be treated as equity for the purpose of the Plan (the "Characterization Motion"). No counsel has been appointed to represent Finance II in the Characterization Motion and Stikeman Elliott LLP ("Stikemans") continues to act as counsel for Smurfit Canada and Finance II.

15. In its role as counsel to the Applicants, including both antagonists in the Characterization Motion, Stikemans was responsible for investigating the facts and circumstances of the Characterization Issue and providing Fund Managers' counsel with all documents and information that may be relevant to the dispute, as per Judge Pepall's order of November 23, 2009. Stikemans did not properly fulfill this obligation. As counsel for Finance II, before commencing the proceedings to attack its debt claim, Stikemans should have made the same inquiries as unconflicted counsel for Finance II would have made in order to assert its claims under the Loan Agreement.

16. In summary, the Fund Managers believe that the failure to properly investigate and the refusal to provide information and access to information that was available to Finance II at the time of the issuance of the Notes are indicative of a failure to properly respect and pursue the position of Finance II in this restructuring.

17. Further, the Plan settles nothing for Finance II and requires its only material stakeholders, the holders of the Notes, to pursue the same litigation that would be pursued if Finance II were bankrupt under the BIA or in liquidation under Chapter 7 of the US Bankruptcy Code, but without the benefit of the investigatory powers of a trustee.

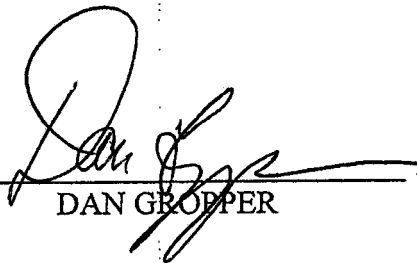
18. The Plan confirms our worst fears about this restructuring. We believe that the Applicants are conspiring to create a plan of arrangement that eradicates the influence of Finance II and its stakeholders in the plan process.

19. For all of these reasons, the Fund Managers have concluded: (i) that they will vote against the Plan or any plan structured like it, (ii) that continued restructuring attempts of Finance II are futile, and (iii) that by failing to discuss restructuring or to give the holders of Notes any "place at the table" for the purpose of negotiating a restructuring plan that in any way meets their needs or would be satisfactory to them, Finance II has not acted in good faith in this restructuring process.

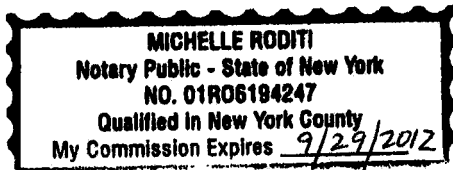
SWORN BEFORE ME at the City of
New York, in the State of New York,
USA, on December 10, 2009.

Michelle Roditi

Commissioner for Taking Affidavits



DAN GROPPER



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