

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THUNDER BAY FINE PAPERS INC.

THIRD REPORT OF THE INTERIM RECEIVER AND RECEIVER

March 11, 2009

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Background

1. By Order of the Honourable Mr. Justice Campbell dated October 29, 2008 (the “Initial Order”), Deloitte & Touche Inc. was appointed interim receiver and receiver (the “Receiver”), without security, over all of the assets, undertakings and properties of Thunder Bay Fine Papers Inc. (the “Company”) pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (“BIA”) and section 101 of the *Courts of Justice Act*.
2. The Initial Order empowered the Receiver to market and to sell any or all of the property of the Company (the “Property”). The Receiver undertook a sales and marketing process and had accepted an offer from Seaway Metals Recycling Corp. (“Seaway”) to purchase substantially all of the Property, (the “Seaway Offer”) subject to approval by this Honourable Court. The Receiver prepared its first report dated January 26, 2009 (the “First Report”) to inform this Honourable Court as to the status of matters since the appointment of the Receiver; to seek approval of its activities to date; and to seek approval of the Receiver’s acceptance of the offer from Seaway as set out in the First Report. The First Report and a Supplemental Report of the Receiver dated January 26, 2009 were submitted as part of a notice of motion and motion record heard by this Honourable Court on January 30, 2009. The Supplemental Report was filed with this Honourable Court under seal.
3. On the morning of January 30, 2009, prior to the Receiver seeking Court approval of the Seaway offer, Seaway advised the Receiver that they were not intending to close their agreement on the basis of their concerns over environmental issues. As a result of this last minute development, the Receiver requested and received an Order of the Honourable Mr. Justice Morawetz adjourning the Receiver’s motion to February 4, 2009 (the “Adjournment”).
4. Immediately after the Adjournment, the Receiver negotiated a new agreement to sell substantially all of the Property to Superior Fine Papers Inc. (“Superior”). Superior and Seaway were the only two parties that had submitted offers to purchase substantially all of the Property.
5. By Order of the Honourable Mr. Justice Morawetz dated February 5, 2009 (the “February 5 Order”), the agreement of purchase and sale between the Receiver and Superior dated February 4, 2009 (the “Superior Transaction”) as set out in the Receiver’s Amended Second Report dated February 5, 2009 (the “Amended Second Report”) was approved. Attached hereto as **Exhibit A** is a copy of the February 5 Order.

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6. On February 5, 2009, the Superior Transaction closed and title to the Property was vested in Superior pursuant to the February 5 Order.
 7. The purchase price in the Superior Transaction was paid, in part, by a \$1.7 million promissory note due 6 months from the closing date (the "Superior Note"). Until the Receiver is paid the full principal amount of the Superior Note, the Receiver is holding the deposit given to it in connection with the Seaway Offer (the "Seaway Deposit") to partially cover any damages that might otherwise be suffered as a result of Seaway's failure to close the Seaway Transaction.
 8. The purpose of this, the Receiver's Third Report to Court (the "Third Report") is to:
 - a) Advise this Honourable Court of the Receiver's activities since the Amended Second Report;
 - b) Provide a summary of the Receiver's cash receipts and disbursements for the period October 29, 2008 to February 28, 2009;
 - c) Seek this Honourable Court's approval of a Scheme of Distribution to the Company's secured creditors;
 - d) Seek this Honourable Court's approval of the Receiver's activities since the Amended Second Report;
 - e) Seek this Honourable Court's approval of the Receiver's fees and disbursements as well as those of the Receiver's legal counsel; and
 - f) Seek an Order of this Honourable Court terminating these proceedings and discharging Deloitte & Touche Inc. from the powers, duties and obligations attendant to its appointment as Receiver, subject to resolution of the issue of the Seaway Deposit and filing of a Receiver's certificate of completion.

Receiver's Activities

9. Since the Second Amended Report, the Receiver has undertaken the following steps in its administration of this matter:
 - i) Completed the sale of the Property to Superior including obtaining a vesting order regarding same;
 - ii) Completed the sale of paper inventory not included in the Superior Transaction;
 - iii) Assisted Superior in the orderly transition of the Property and related service contracts;
 - iv) Followed up with Canada Revenue Agency with regards to the determination of amounts owing in respect of employee source deductions; and
 - v) Attended to all other duties and responsibilities in connection with its appointment as Receiver.

Secured Claims

CIT Security

10. CIT was granted a General Security Agreement dated December 21, 2007 charging all of the property, assets and undertakings of the Company as well as a collateral charge dated December 21, 2007 over the Company's real property municipally known as 550 Shipyard Road, Thunder Bay, Ontario (the "CIT Security").
11. CIT was also granted a guarantee from Her Majesty the Queen in right of Ontario dated December 21, 2007 in support of the Company's term loan facilities with CIT.
12. The Receiver has received a favourable opinion from its independent legal counsel, Aird & Berlis LLP ("Aird & Berlis") as to the validity and enforceability of the security interest created by the CIT Security against all of the Company's assets.

Lien Claims

13. A review of title to the Company's real property indicates that there are a number of construction liens and certificates of action that have been filed since the registration of the CIT Security.
14. Aird & Berlis have advised the Receiver that CIT's collateral charge on the Company's real property secures three loan facilities from CIT to the Company, including a term loan in the principal amount of \$6,593,333.36. Aird & Berlis has also advised the Receiver that the term loan was fully advanced before the first claim for lien was registered on title to the property, and that the term loan therefore has priority over the liens. The net proceeds of sale recovered by the Receiver to date from the real estate and fixed assets, after payment of real property taxes, is approximately \$136,000. While the \$1.7 million balance of the purchase price from the Superior Transaction has not yet been allocated, it is clear that the total proceeds of sale from the real property will be much less than the amount owing on CIT's term loan and thus there will be no proceeds available to repay lien claims.

Receiver's Cash Receipts and Disbursements

15. Attached hereto as Exhibit B is a copy of the Receiver's Statement of Cash Receipts and Disbursements for the period October 29, 2008 to February 28, 2009 which indicates a net recovery after expenses of \$1,640,613. In addition to this amount, the Receiver also holds the \$1.7 million Superior Note, representing the unpaid balance of the purchase price of the Superior Transaction. The Superior Note has been secured by a vendor-take-back mortgage and a general security agreement in favour of the Receiver, repayable on August 5, 2009, six months from the closing date of the Superior Transaction. Also not included is the \$406,600 US Seaway Deposit. The Receiver has advised Seaway that it intends to retain this deposit until the Superior Note has been collected.

Proposed Scheme of Distribution

16. The Receiver proposes the Scheme of Distribution detailed below such that upon its approval by this Honourable Court, the net proceeds from the sale of the Company’s assets, less a reserve for future costs, will be paid either in whole or in part, as set out below.

17. Paragraph 17 of the Initial Order provides *inter alia* that the Receiver and counsel for the Receiver be granted a charge in priority to all other security interests in respect of their professional fees and disbursements (the “Receiver’s Charge”).

18. Set out below is an estimate of the amount outstanding under the Receiver’s Charge:

Unpaid Receiver’s fees to February 28, 2009	\$ 357,488
Unpaid Receiver’s counsel fees to March 10, 2009	\$23,755.64
Estimate of Receiver’s fees and disbursements required to complete its administration	50,000
Estimate of the fees and expenses required for the Receiver’s legal counsel to complete its duties and responsibilities	25,000
Unpaid operating costs incurred by the Receiver in connection with the sale, care and maintenance of the Company’s assets	<u>150,000</u>
	<u>\$ 606,244</u>

19. The Receiver has determined that the following claims rank in priority to the CIT Security:

i) Amounts owing for wages secured under Section 81.4 of the BIA, less the amounts paid by the Receiver	\$ 124,503
ii) Vacation pay in excess of the amount covered by the wage claim in item (i) above	46,050
iii) Employee portion of payroll source deductions	<u>660,287</u>
	<u>\$830,840</u>

20. CIT has advised the Receiver that the balance owing to CIT as at March 1, 2009 and secured by its security, including interest, fees and expenses is a total of \$14,978,693.94.
21. CIT has a valid and enforceable secured claim which ranks in priority to all other secured claims, other than the Receiver's Charge and certain government priority claims as further described in paragraph 19 above.

Anticipated Distribution

22. As set out in the Receiver's Statement of Cash Receipts and Disbursements, the Receiver currently has \$ 1,640,613 in its trust account. In addition, the Receiver is also in possession of the \$1.7 million Superior Note. Based on the foregoing proposed Scheme of Distribution, the Receiver respectfully requests this Honourable Court's approval for the following payments to be made.

	Amount
Firstly A reserve to be held by the Receiver in respect of the Receiver's Charge	\$606,244
Secondly A reserve in respect of priority claims to be paid by the Receiver	830,840
Thirdly Up to \$14,978,694 in respect of the CIT Security as at March 1, 2009 plus interest charges and any unpaid out-of-pocket disbursements as provided for in the CIT Security	<u>203,529</u>
	<u>\$1,640,613</u>

23. All of the Company's assets have now been sold or disposed of. In order to avoid incurring unnecessary costs until the Superior Note matures or is collected, with CIT's concurrence, the Receiver proposes that the Superior Note be assigned to CIT as a dividend in kind to represent a payment of up to \$1.7 million.

24. Based on the amount of cash currently available, the Receiver proposes that payment to CIT be as follows:

Cash Distribution (\$1,640,613 - \$606,244 - \$830,840)	\$203,529
Assignment of the Superior Note	<u>1,700,000</u>
	<u>\$1,903,529</u>

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25. Since CIT is owed in excess of \$14.9 million, the Receiver does not anticipate that there will be any funds available for distribution to the Company's unsecured creditors.

Professional Fees

26. The total fees and disbursements of the Receiver for the period October 29, 2008 to date amount to \$530,941.09 (excluding GST) which includes an accrual of \$47,619.05 (which, with GST added, equals \$50,000) for fees and disbursements to be incurred to complete its administration of the estate. Full particulars of the Receiver's fees and disbursements are set out in **Exhibit C** to the Affidavit of Robert J. Bougie sworn on March 11, 2009 which is attached hereto as **Exhibit C** (the "Bougie Affidavit"), the Bougie Affidavit also contains particulars of hours spent, hourly rates, total fees and disbursements of the Receiver.
27. The total fees and disbursements incurred by the Receiver for services provided by Aird & Berlis as the Receiver's legal counsel for the period November 7, 2008 to date amount to \$115,886.88 (excluding GST) which includes an accrual of \$23,809.52 (which, with GST added, equals \$25,000) for fees and disbursements to be incurred to complete the administration of the estate. Full particulars of Aird & Berlis' fees and disbursements are reported in **Exhibits A, B, C and D** to the affidavit of D. Robb English sworn March 11, 2009 which is attached hereto as **Exhibit D** (the "English Affidavit"). The English Affidavit also contains particulars of hours spent, hourly rates, total fees and disbursements by Aird & Berlis.

Conclusion

28. The Receiver respectfully requests that this Honourable Court grant an order which provides for the following:

- i) Approval of the actions and activities of the Receiver to date;
- ii) Approval of the Receiver's Statement of Cash Receipts and Disbursements including the accruals and provisions made therein;
- iii) Approval of the Receiver's proposed Scheme of Distribution as set out herein;
- iv) Approval of the Receiver's accounts and those of its legal counsel as set out herein including the accruals for completion of all administration relating to this matter; and
- v) Termination of these proceedings and discharge of Deloitte & Touche Inc. from the powers, duties and obligations attendant to its appointment as Receiver, subject to resolution of the issue of the Seaway Deposit and filing of a Receiver's certificate of completion.

All of which is respectfully submitted this 11th day of March, 2009.

Deloitte & Touche Inc.

In its capacity as Interim Receiver and Receiver
of Thunder Bay Fine Papers Inc.
and not in its personal capacity



Robert J. Bougie, CA • CIRP
Senior Vice-President