IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Quest University Canada (Re),* 2020 BCSC 318

Date: 20200306
Docket: S200586
Registry: Vancouver

In the Matter of the *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

- and -

In the Matter of the *SEA TO SKY UNIVERSITY ACT*, S.B.C. 2002, C. 54

- and -

In the Matter of A PLAN OF COMPROMISE AND ARRANGEMENT OF QUEST UNIVERSITY CANADA

Petitioner

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioner:	J.R. Sandrelli V.L. Cross
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Counsel for Her Majesty The Queen In Right of Province of British Columbia:	L.V. Mauro
Place and Date of Hearing:	Vancouver, B.C. January 27, 2020
Place and Date of Judgment:	Vancouver, B.C. January 27, 2020
Place and Date of Written Reasons:	Vancouver, B.C. March 6, 2020

INTRODUCTION

[1] On January 16, 2020, the petitioner, Quest University Canada ("Quest"), filed this proceeding, seeking creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*").

[2] On that date, there was limited attendance at the hearing. Two secured creditors, Capilano University ("CapU") and Vanchorverve Foundation ("VF"), were represented by counsel. I rejected VF's application for an adjournment of the hearing and granted an initial order (the "Initial Order").

[3] In accordance with new amendments to the *CCAA*, the relief granted in the Initial Order was limited to matters that were reasonably necessary until the comeback hearing in 10 days' time after all stakeholders had received notice of the proceedings: *CCAA*, ss. 11.02(1) and 11.001.

[4] At this comeback hearing, Quest applied for an amended and restated initial Order (ARIO) to provide for a further extension of the stay. Quest also sought approval of interim financing from RCM Capital Management Ltd. ("RCM") for its continued operations during this proceeding, consistent with what Quest's counsel had foreshadowed when the Initial Order was granted.

[5] VF opposed the proposed interim financing and brought a cross-application to approve interim financing that it has secured with Burley Capital Inc. ("Burley"). Concurrently, VF applied for orders removing four governors from Quest's board and replacing them with its own nominees. In the alternative, if the Burley financing was not approved and the governors not removed, VF applied for an order directing a sales and investment solicitation process (SISP) in respect of Quest and its assets.

[6] At the hearing on January 27, 2020, I granted the relief sought by Quest and dismissed VF's application, with reasons to follow. These are my reasons.

BACKGROUND FACTS

[7] In the early 2000s, Quest was formed as a private, not-for-profit, post-secondary institution, pursuant to the *Sea to Sky University Act*, S.B.C. 2002, c. 54.

[8] Quest is governed by a board of governors (the "Board"), whose members are elected in accordance with Quest's bylaws (the "Bylaws"). Pursuant to Bylaw 8.1, the Board appoints a president, who is the university's chief executive officer, to supervise and direct Quest's operations.

[9] Quest was founded in association with a federal society, the Sea to Sky Foundation ("SSF"). Funding for the development of Quest was initially provided through donations. Various individuals were involved in this endeavour, including Dr. David Strangway, Blake Bromley and Peter Ufford.

[10] In 2001, SSF acquired a 97 hectare (240 acre) property outside of Squamish, BC. Those lands were then subdivided and partially sold to fund, along with ongoing donations, the construction costs for the university campus on the portion still then held by Quest. In 2006, SSF transferred the remaining lands to Quest.

[11] In 2007, Quest accepted its first class of 73 students. By 2019, that complement had grown to include 510 students. All students are required to reside on campus in the present four student housing buildings, which also accommodate some faculty. Plans for the fifth student residence building are underway.

[12] Quest employs approximately 100 full-time persons in Squamish as staff or faculty.

[13] Quest's main assets include the real property on which the campus is located (12 acres) and the remaining development lands (presently 38 acres) which surround the campus. In addition, Quest is part of certain joint ventures which were formed to develop the current and proposed residences located on the campus. The book value of Quest's assets is estimated to be more than $80 million.

[14] Over the years since its inception, Quest has received various loans to fund the development of the campus and cover operating losses. Quest has never generated sufficient revenue to fund its expenses, in that it has always, to this time, operated at a deficit. Quest anticipates that an increase in student enrollment will assist in resolving that difficulty, at least in part.

[15] As of December 2019, Quest's outstanding liabilities (save for capital leases) were approximately $37 million, including $28.6 million owing to the five secured lenders. The two most significant secured creditors include CapU (owed $2.2 million) and VF (owed $23.6 million), both holding mortgage security against Quest's real and/or personal property interests.

[16] Mr. Bromley is an advisor to VF and various other foundations. In addition, Mr. Bromley is the president and director of Benefic Group Inc. ("Benefic"), whose offices are also the offices of VF. Employees of Benefic serve as directors of VF and other foundations in which Mr. Bromley is involved.

[17] Mr. Bromley served on Quest's Board from 2002-2010/2011. During that time, Mr. Bromley was actively involved in overseeing Quest's finances and he introduced programs that were described as financings. From 2011-2015, foundations associated with Mr. Bromley, including VF, entered into or took assignments of at least nine loan agreements with Quest.

[18] The evidence also establishes that Mr. Bromley has had deep ties to Quest and its operations over the years. PricewaterhouseCoopers Inc. (the "Monitor") indicates that there are a large number of complex transactions involving Quest and Mr. Bromley and his organizations. The Monitor has not yet reviewed those details to understand them.

[19] In prior years, certain of Quest's land transactions involved organizations with which Mr. Bromley is associated. In addition, Mr. Bromley's organizations purchased the naming rights to certain campus buildings and took control of the leases for several Quest residence buildings.

[20] Also relevant to Mr. Bromley's involvement in Quest and this proceeding is another lawsuit. In early 2018, two foundations in which Mr. Bromley is involved sued Quest, asserting claims arising from the development of certain lands held by Quest. In essence, these foundations seek injunctive relief to prevent Quest from developing its own lands. This litigation is being defended by Quest.

QUEST'S INSOLVENCY

[21] Quest's financial difficulties came to a head in the fall 2019.

[22] In the months leading to that time, Quest sought some concessions from VF that would see some portion of the debt forgiven or restructured. These efforts were not successful. VF's loans came due on November 1, 2019.

[23] On November 22, 2019, VF demanded payment of its loans and issued a notice of intention to enforce its security, pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*").

[24] Also, on November 22, 2019, Mr. Bromley wrote to the Board indicating that he was of the view that four members of the Board (then comprised of seven persons) should resign and that his nominees should be appointed in their place. His nominees included persons with roles at Benefic and other foundations in which he is involved.

[25] In December 2019, the Board sought some clarity from VF as to its intentions with respect to Quest, given Mr. Bromley's view that the Board should cede majority control of it to his representatives. The Board also sought further information as to what VF had in mind in terms of future transactions or plans for Quest. No information was forthcoming from VF or Mr. Bromley. As a result, on December 19, 2019, the Board declined Mr. Bromley's proposal.

[26] At the time of the initial hearing, I was satisfied that Quest was insolvent, as required by the *CCAA*: *Stelco Inc. (Re)* (2004), 48 C.B.R. (4th) 299 (Ont. S.C.J.); leave to appeal to C.A. refused, [2004] O.J. No. 1903 ; leave to appeal to SCC

refused, [2004] S.C.C.A. No. 336. As Justice Farley held, an “insolvent person” as defined in the *BIA* includes a financially troubled corporation that is “reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.

[27] In particular, Quest was facing the imminent requirement to make payments for payroll and leases; Quest was unable to satisfy these amounts without further financing. At this hearing, Quest indicated that it had initiated discussions with potential lenders for interim financing and that a term sheet was expected to be received shortly for its overall funding requirements in this proceeding.

[28] Given the new restrictions regarding the approval of interim financing during the initial 10-day stay period now found in s. 11.2(5) of the *CCAA*, it was appropriate to allow all stakeholders to be given notice before such relief was considered and possibly granted at the comeback hearing.

[29] The overall intention of Quest to seek relief in this *CCAA* proceeding is to allow it to continue with its operations and complete at least the existing academic year (ending April 2020). I agree that this objective has, at the very least, provided some certainty to the students and their families and preserved considerable value for Quest and its stakeholders while a more long term solution was sought.

[30] The “kernel of a plan” presented at the initial hearing was toward a consideration of one or a combination of:

a) Increasing the current student body;

b) Reducing expenses;

c) Seeking fundraising;

d) Seeking potential academic partners; and

e) Pursuing a transaction with respect to the remaining development lands.

[31] By the time of the *CCAA* filing, Quest had already made significant efforts toward a resolution of its financial difficulties.

[32] In March 2019, it had commenced a process toward the development of its excess lands and a potential bidder was selected. Unfortunately, that bidder did not proceed, in part because of the uncertainty about the level of support it would receive from the secured lenders, including VF.

[33] In addition, on December 16, 2019, Quest retained Halladay Education Group Inc. (“Halladay”), a private educational consultant. Halladay was tasked with marketing and soliciting interest from other post-secondary institutions toward a transaction with Quest.

ISSUES AND PARAMETERS

[34] Quest and VF agree that Quest requires interim financing in order to complete its restructuring efforts within this proceeding. The crux of the matter, however, is *who* should be the person to provide that financing, RCM (per Quest) or Burley (per VF)

[35] Quest submits that it is appropriate to approve the RCM financing and grant a charge in favour of RCM, pursuant to s. 11.2 of the *CCAA*.

[36] Section 11.2 of the *CCAA* grants this Court jurisdiction to approve an interim financing charge over Quest’s assets in an amount considered appropriate having regard to its cash-flow statement. Factors to be considered in granting such an order are set out in s. 11.2(4) and include, but are not limited to:

a) the period during which the debtor is expected to be subject to *CCAA* proceedings;

b) how the debtor’s business and financial affairs are to be managed during the proceedings;

c) whether the debtor’s management has the confidence of its major creditors;

d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor;

e) the nature and value of the debtor’s property;

f) whether any creditor would be materially prejudiced as a result of the charge; and

g) the monitor's report, if any.

[37] The above factors are also engaged in respect of VF's interim financing application, with the addition of other considerations as they relate to VF's concurrent application to remove four governors from Quest's Board and appoint four of its nominees as new governors in their place.

[38] With respect to the removal of four of Quest's governors on the Board and their replacements, VF relies on s. 11.5(1) of the *CCAA*:

> (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.
>
> (2) The court may, by order, fill any vacancy created under subsection (1).

[39] Finally, with respect to VF's application to approve a SISP, the Court must exercise its statutory discretion in light of the statutory objectives under the *CCAA* toward granting an order that is appropriate in the circumstances: *CCAA*, s.11.

THE COMPETING FINANCING PROPOSALS

[40] The competing proposals by Quest and VF are similar in most respects, but also differ in very material ways. In this context, I will also outline the relief sought by VF in relation to the removal of some of Quest's governors, since that relief is integrally tied to the financing proposed by Burley.

RCM's Proposal

[41] After the Initial Order was granted, with the assistance of the Monitor, Quest sourced interim financing from several parties. Quest's President, George Iwama, states that two proposals for interim financing were received from well-recognized

and experienced lenders in the field of interim financing who are independent of Quest.

[42] Both Quest and the Monitor concluded that RCM's offer was more competitive and involved the least risk. On January 18, 2020, Quest entered into a commitment letter with RCM with respect to a $5 million secured loan. Quest intends to use the RCM funds to fund its operational deficit for the current academic year and to continue to meet its normal course obligations while a plan is implemented in the course of these proceedings. The cash-flow statement before me supports that the amount of this financing is appropriate.

[43] The RCM financing does not contain any unusual features. The terms of the commitment letter and the now settled loan documentation include what are normal commercial terms.

[44] In addition, the RCM loan and charge would rank in priority only subject to the Administration Charge and certain secured interests, such as PMSIs. It would rank behind the D&O Charge granted in the Initial Order.

VF's Proposal

[45] As previously stated, the Burley financing has similar financial terms to that of RCM. However, one important difference is that the Burley commitment letter contains a condition precedent, namely:

> The board of governors of [Quest] being comprised of individuals that are acceptable to the Lender in its sole and unfettered discretion.

[46] As part of the Burley financing proposal, VF seeks an order removing four governors from Quest's Board (Mary Jo Larson, Chief Dale Harry, Stuart Louie and Claude Rinfret). In addition, VF seeks an order appointing four governors to Quest's Board (Christopher Richardson, Bill Woodson, David McMillan and Alpha Bugembe).

[47] The result of granting this relief would be to appoint VF's nominees to act as the majority of Quest's governors. The other present governors are Anna Lippman,

Sheila Biggers and David Kerr. Mr. Kerr was just appointed on January 21, 2020 and brings considerable business and finance expertise to his role.

DISCUSSION RE FINANCING / GOVERNANCE PROPOSALS

[48] I will address the issues within the context of the ss. 11.2(4) factors and s. 11.5 of the *CCAA*.

Period of *CCAA* proceedings

[49] Both financing proposals anticipate the same timeline for the completion of the restructuring process. Both financings provide for sufficient funding over the cash-flow period to the end of May 2020, a date when Quest anticipates that a much clearer picture will emerge as to what options are before it and its stakeholders.

Management of Quest's affairs / Confidence of Quest management

[50] These are the most substantial factors to be considered in light of the allegations raised by VF in respect of Quest's Board. I will consider the s. 11.2(4) factors together with VF's application to remove four of the governors under s. 11.5 of the *CCAA*.

[51] VF does not allege that the governors they seek to remove have acted inappropriately. Rather, VF contends that Quest's Board is "unreasonably impairing … the possibility of a viable compromise or arrangement" within the meaning of s. 11.5 of the *CCAA*.

[52] VF's evidence in support is found in the Affidavit #1 of Leslie Brandlmayr sworn January 23, 2020. Ms. Brandlmayr is a director of VF and a managing director, compliance, of Benefic.

[53] Ms. Brandlmayr states that VF has lost faith and confidence in Quest's board. She points to the annual operating deficits and negative cash flows due to Board "incompetence". She says that the Board has failed to take any meaningful steps to improve Quest's financial position on a long term basis, including by increasing student enrollment and decreasing subsidies to students. She also refers to what

she alleges were related party transactions within the three years before the *CCAA* filing.

[54] VF asserts that it is prepared to support Quest continuing in these proceedings and toward implementing a plan to achieve a sustainable long term model, but only if VF is allowed to control the Board. If not, VF baldly states that it will not support any plan developed by the current Board that might be presented in this proceeding.

[55] Yet, VF does not, in its evidence, provide any detailed reason why it has chosen to specifically remove Ms. Larson, Chief Harry, Mr. Louie and Mr. Rinfret as governors as part of its proposal. To the contrary, the evidence supports that all of these individuals, in addition to Ms. Lippman, Ms. Biggers and Mr. Kerr, are reputable and competent people and independent of Quest. There is no suggestion other than that they all bring considerable skill and knowledge to their positions as governors, in the areas of business, law, tax and finance.

[56] The evidence also contradicts VF's allegation that the Board has failed to take any steps to address the ongoing financial concerns that have persisted since Quest's inception. Based on the Monitor's recent and limited review of matters, there would appear to have been valid reasons for the continuing deficits, which did include periods of steady improvement in some years. In particular, the value of donations declined substantially after 2011 when Mr. Bromley left the Board. Finally, enrollment did increase each year after Mr. Bromley's departure from the Board until 2017, when it declined for various reasons not directly attributable to the Board's decisions.

[57] Ms. Larson states that, over the last two years, the Board has pursued a variety of avenues to address the financial situation, including negotiations with potential academic partners, significant discussions with its lenders, pursuing fundraising avenues, hiring various advisors (including Halladay), developing a proposal process with respect to the development lands and, attempting to bolster enrollment.

[58] Since the *CCAA* filing, the Board has also formed a Restructuring Committee (the "RC") to bring considerable focus to the need to move expeditiously in these proceedings toward a resolution. The RC is tasked with evaluating proposals, working with Halladay, soliciting interest for the development lands and making recommendations to the Board regarding its decisions in these proceedings. Members of that Committee include Mr. Rinfret, who VF seeks to remove.

[59] Section 11.5 of the *CCAA* has received little judicial attention.

[60] In *Unique Broadband Systems Inc. (Re)* (25 January 2012), Toronto CV-11-9283-00CL (O.N.S.C.), Justice Wilton-Siegel considered this provision. At para. 32, he held that the wording of s. 11.5 suggests that the proponent must meet a "significant threshold" before it is entitled to relief.

[61] Further, Wilton-Siegel J. stated:

> [33] A determination as to whether conduct is impairing, or is likely to impair, a restructuring requires a careful examination of the actions of the directors in the context of the particular restructuring proceedings, the interests of the stakeholders and the feasible options available to the debtor. … I note, in particular, that given this language, the fact that a shareholder or creditor may not agree with a decision of a director is far from being a sufficient ground for the director's removal. As a related matter, there is nothing in s. 11.5 that evidences an intention to displace the "business judgment rule".
>
> [34] Further, the language of s. 11.5 expressly requires that the actions of a director "unreasonably" impair, or are likely to "unreasonably" impair, a viable restructuring …
>
> [35] In addition, two other considerations also argue in favour of a significant threshold, although they may also be relevant to a determination regarding the exercise of judicial discretion where the necessary factual determinations have been made.
>
> [36] First, removing and replacing directors of a corporation, even a debtor corporation, subject to the CCAA, is an extreme form of judicial intervention in the business and affairs of the corporation. The shareholders have elected the directors and remain entitled to bring their own action to remove or replace directors under the applicable corporate legislation. At a minimum, in determining whether it should exercise its discretion, the court can take into consideration the absence of any such action by the other shareholders.
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> [37] Similarly, in a CCAA restructuring, the Monitor performs a supervisory function that provides a form of protection to the corporation's stakeholders. In determining whether to exercise its discretion in s. 11.5(1), a court would

> ordinarily take into consideration the presence or absence of any recommendation from the Monitor.
>
> [Emphasis added.]

[62] I would adopt the reasoning of the court in *Unique Broadband* as applicable here. While there are no shareholders *per se* to take action to remove the governors, Quest's Bylaw 2.10 provides that the Board may remove a governor before his or her term with a 2/3 majority vote. No such action has been taken by the Board.

[63] The only other decision brought to my attention on this issue was *Crystallex International Corp. (Re)*, 2012 ONSC 2125, where Justice Newbould was similarly considering competing financing offers. His only comment on s. 11.5 is found at para. 71, where the court emphasized that the remedy exists and must be considered in the context of all the circumstances and with the objectives of the *CCAA* in mind.

[64] Having considered the entirety of the evidence, I do not consider that VF has met its burden in establishing, on a balance of probabilities, that Quest's Board is unreasonably impairing the possibility of achieving a successful restructuring in this proceeding. At bottom, VF points to the ongoing deficits which the Board has made good faith efforts to address over the years. The fact that the governors have not yet been successful does not mean that they are incompetent; nor does it translate into a finding that they are now unreasonably impairing the restructuring efforts. Indeed, Mr. Bromley himself was part of those efforts in years past, when some of those unsuccessful efforts were made.

[65] In addition, reading between the lines, VF's main complaint is that the Board disagrees with its vision as to how Quest's financial difficulties may be solved. This disagreement is not a basis upon which to overhaul the Board's composition under s. 11.5 so as to give VF control of it: *Unique Broadband* at para. 33.

[66] The governors have been duly appointed under Quest's Bylaws. Their business judgment is to be considered and is to be afforded, where appropriate, considerable deference: *Unique Broadband* at para. 33, 36; *Crystallex* at para. 33;

and, *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1459 at para. 186. If the governors have conflicts arising in their duties, as VF now suggests, Quest's internal procedures under its Conflict of Interest Policy are in place to address any issues, just as those procedures were employed when Mr. Bromley was on the Board.

[67] This is not a situation where Quest's Board will be taking steps on its own in this restructuring without significant input and oversight. The Initial Order granted and the ARIO sought impose certain restrictions on the decisions to be made by Quest in the future. In addition, the Monitor is specifically tasked to monitor the restructuring efforts and assist and advisee Quest in those efforts. To this point in time, the Monitor fully supports the ongoing efforts of all members on Quest's Board, including those of Ms. Larson, Chief Harry, Mr. Louie and Mr. Rinfret: *Unique Broadband* at para. 37.

[68] Finally, the Court retains an overall supervisory function to address any steps taken by Quest that are not appropriate in the circumstances. That may include a reconsideration of an application under s. 11.5 if circumstances change.

[69] In summary, I do not consider that VF's concerns regarding Quest's Board are proven or justified under the s. 11.2(4) factors. Also, I do not find that VF has met the significant threshold under s. 11.5. Certainly, VF has not established any basis upon which to justify the removal of Ms. Larson, Chief Harry, Mr. Louie and Mr. Rinfret from the Board under s. 11.5 so that the majority of the Board can be populated by persons under the control of VF/Burley.

[70] As I will discuss below, there are also significant concerns arising with respect to VF's true intentions in putting forward Burley's financing proposal. These concerns arise in the context of Burley's lack of independence from Mr. Bromley/VF and the control provisions that are found in Burley's proposal, both of which may affect the course of this restructuring proceeding.

Would the loan enhance prospects of viable compromise/arrangement?

[71] With respect to this factor, I am more than satisfied that RCM's loan would enhance the prospects of a successful restructuring. RCM is an independent lender whose interests are plain and understandable – they want to advance a loan at a price and recover those amounts in due course.

[72] The same cannot be said for Burley's proposal. There are substantial concerns regarding inherent conflicts that are apparent from a closer review of Burley and its proposal.

[73] I have already outlined Mr. Bromley's considerable involvement in Quest since its inception, whether on its Board or through VF or other organizations who have transacted with Quest, including with respect to considerable loans. As noted above, Mr. Bromley's organizations hold naming rights to certain buildings and they control certain of Quest leases. One of Mr. Bromley's organizations is suing Quest in the 2018 litigation concerning the development property.

[74] Quest argues that VF has made numerous attempts in the past to take over Quest's Board and that the Burley proposal is simply the latest iteration of those efforts. The evidence supports that this indeed is VF's intention.

[75] Members of Quest's Board and/or its executive team met with Mr. Bromley and/or his advisors on November 27 and December 5, 2019 and January 10, 2020. By as early as November 2019, Mr. Bromley had clearly signalled that VF was looking to assume control of the Board through his nominees.

[76] On January 10, 2020, Mr. Rinfret met with Mr. Bromley and VF/Burley's nominee governor, Mr. Richardson, to discuss a restructuring opportunity suggested by Mr. Richardson. Mr. Richardson stated at the meeting that the proposal was dependent on the replacement of the majority of the Board with VF's nominees. However, Mr. Bromley was not able to provide specifics with respect to significant aspects of the proposal. This proposal was later rejected by the Board on the basis that it was vague and uncertain. The Board also considered that Mr. Bromley was

seeking to advance only his and his organization's best interests, without regard to those of Quest.

[77] Both Mr. Richardson and Mr. Woodson have considerable ties to Mr. Bromley. Mr. Richardson has been a director of several of Mr. Bromley's organizations and he has been involved in Mr. Bromley's attempted real estate developments. Mr. Bromley also put Mr. Richardson forward to Quest as a consultant to be hired as part of a loan proposal. Mr. Woodson was formerly Mr. Bromley and/or VF's lawyer and worked in transactions involving Quest's land in that capacity.

[78] Who, then, is Burley and what are its intentions in becoming involved in this restructuring?

[79] Burley is a BC company incorporated in May 2018. Shan Trouton is the sole registered director. One difficulty that arises – which Burley chose not to address at this court hearing – was that Burley, at this time, is not in good standing. The Monitor has not yet had time to assess Burley's capability to fund the required financing amount and no evidence has been presented by VF/Burley to support that conclusion.

[80] Mr. Trouton is also a director of Rostrum Developments (2015) Ltd. ("Rostrom"), a company not in good standing.

[81] Mr. Trouton is known to Quest's Board and management.

[82] Ms. Larson states that, based on personal discussions with Mr. Trouton and a review of records and Rostrom's website, Mr. Trouton has been involved in Mr. Bromley's foundations since 2015. She further states that Mr. Trouton has been actively involved in seeking to develop Quest's development lands. Ms. Larson's evidence is also supported by that of Flora Ferraro, Quest's Vice President of Finance and Operations.

[83] On November 27, 2019, when VF disclosed possible financing by Burley/Mr. Trouton, Ms. Ferraro received a request from Mr. Trouton to meet. A meeting was scheduled for later that day. Mr. Trouton seemed to be well aware of earlier discussions between Ms. Ferraro, Mr. Iwama and VF's counsel. Mr. Trouton advised Ms. Ferraro that he would be "in charge" of real estate transactions for Quest and that he was putting a land transaction together. He declined to advise Mr. Ferraro of the details. At that meeting, Mr. Trouton clearly stated that he would discuss the transaction with the Board only if VF's proposed changes were made to the Board's composition. Mr. Trouton indicated to Ms. Ferraro that, if the Quest's executive team did not support Mr. Bromley and/or VF's proposed changes to Quest's Board, the executive team would be replaced.

[84] Finally, at that meeting, Mr. Trouton described himself as Mr. Bromley's friend and stated that they had been in business for many years.

[85] The uncontradicted evidence strongly supports that Burley/Mr. Trouton are working together with Mr. Bromley on this matter and are not truly "independent" of each other. I can only conclude that the motivation behind Burley's financing proposal is to protect VF/Mr. Bromley's own interests by securing control of Quest's Board through Mr. Bromley's business associates so that it can direct Quest's activities in this proceeding.

[86] It might be assumed that Mr. Trouton has put forward Burley's financing proposal, requiring that Burley be given full control of the composition of Quest's Board, with the intention of implementing Mr. Bromley's intentions to populate the Board with his nominees, for the reasons advanced by Ms. Brandlmayr, which I have rejected. However, it bears repeating at this stage that Burley's proposal is not only that four of the governors be replaced with VF nominees, but is dependent on Burley having the ability to replace the *entire* Board as it sees fit in its sole discretion.

[87] Accordingly, if the Burley proposal was approved, Mr. Trouton would have the ability to remove even Ms. Lippman, Ms. Biggers and Mr. Kerr. No doubt that would

extend to the officers and other management, such as Mr. Trouton threatened at his meeting with Ms. Ferraro on November 27, 2019.

[88] It is an open question as to how the Quest Board, if controlled by VF/Mr. Bromley's nominees, would even vote on a transaction that involved VF/Mr. Bromley, either directly or indirectly. The four VF nominees have close ties to VF/Mr. Bromley and certainly, the prospect of a conflict would have to be considered.

Nature and value of Quest's property

[89] I agree that Quest's property and "business" are unique. It is a not-for-profit operation with aspirations not to make money, but to provide a valuable and unique learning experience for young adults.

[90] In addition, there are other challenges in forging a new path here, including dealing with the very unique nature of the assets which presently comprise the campus and its building. The development lands are more straightforward but, given their proximity to the campus, Quest's aspirations and the District of Squamish's requirements, they also pose some challenges.

Material Prejudice

[91] Both Quest and the Monitor state that no secured creditor would be materially prejudiced as a result of a charge to secure either the RCM or Burley loans. This is abundantly the case since, based on the apparent market value of Quest's lands, there is in excess of $50 million of equity in the lands.

The Monitor's Report

[92] The Monitor has filed its First Report to the Court dated January 24, 2020.

[93] The Monitor confirms that the RCM proposal was negotiated by Quest, with its support, after considering several proposals from different independent lenders. The Monitor supports the RCM proposal.

[94] The Monitor does not support the Burley proposal, essentially echoing my own concerns as to the independence of Burley/Mr. Trouton from Mr. Bromley and Quest. In addition, on the matter of the replacement of the four governors, the Monitor disagrees with that relief, stating that the Board is very focussed on the task ahead, including improving enrollment and addressing the cash deficits.

[95] The Monitor states in its First Report that removal of the governors may significantly impair the ability of Quest to put forward any restructuring proposal:

> 6.7.3 … In this case, Burley is stipulating who the new board members would be and is effectively seeking control of the board. Further, Burley is seeking the replacement of specific board members: Mary Jo Larson, Claude Rinfret, Stuart Louie and Chief Dale Harry. The Monitor notes that the first three of these board members have significant legal and financial training which is in contrast to the composition of the remaining board members. Removal of these board members seems counter-productive to the interests of Quest and appears would be potentially crippling at a time when Quest requires this expertise to navigate these CCAA proceedings. The Monitor also notes that these are the same four governors that Mr. Bromley had requested be replaced in November 2019.

[96] The Monitor recommends that the Court approve the RCM financing as representing the best option in terms of pursuing a successful restructuring. It is the Monitor's view that the interim financing facility should be provided by an independent lender with no association to VF/Mr. Bromley or Quest.

The Court as Gatekeeper

[97] In *Great Basin Gold Ltd.*, I also addressed the situation where there were competing applications to approve interim financing. In that case, I commented on the need to consider financing proposals carefully to ensure that they are reasonable and appropriate. The court must closely scrutinize any such proposal that it put forward as a means to advance the interests of one particular stakeholder, or which may have that effect. I stated:

> [179] I recognize that in some restructuring proceedings, certain stakeholders may use existing leverage, to the extent that they have it, to take advantage of the chaos and uncertainty that are inherent in these situations. Strategies might be employed to secure for themselves advantages that they would not otherwise obtain. These advantages inevitably come at the expense of other stakeholders in the proceedings.

> These advantages are also almost always court approved so that they cannot be later revisited. In those circumstances, the court must be constantly vigilant against such strategies. ...
>
> …
>
> [181] Even so, the Court remains the gatekeeper in terms of ensuring that the terms of any such agreements are reasonable and appropriate in the circumstances. Input from stakeholders participating in the process will be critical although the entire stakeholder group must be considered. Critical to the court's analysis will be evidence of the debtor company's actions in the face of these proposals. What is the underlying reason for these transactions? What due diligence was done in the face of these proposals? What negotiations took place? What are the true consequences of not obtaining this relief? What alternatives, if any, are available?

[98] To similar effect are the comments of Newbould J. in *Crystallex*:

> [63] The noteholders also contend that Tenor has been given control over Crystallex and the restructuring process by reason of the changes in the corporate governance required by the Tenor DIP facility. There is no doubt that Tenor has been given substantial governance rights, including the right to name two of the five directors and the right to agree on who the independent director shall be. An issue is whether the governance provisions are too intrusive for a DIP loan, which according to the case law relied on by the noteholders should not be excessive or inappropriate. …

[99] I readily conclude that VF's motivation in making its application to approve Burley's financing proposal is a not-so-transparent attempt to seize control of Quest's Board. While not supported by any direct evidence, there is sufficient evidence here to support a reasonable inference that those efforts are at least intended to secure control of the future sale and development of Quest's development lands for VF's own benefit or the benefit of other organizations with which VF or Mr. Bromley are involved.

[100] In my view, such a strategy in unreasonable and inappropriate in the circumstances and it may significantly disadvantage others interests in this proceeding. Quest clearly has other options, namely with RCM, which will better serve its interests and the interests of its stakeholders as a whole. I agree with the Monitor that the RCM financing represents the most appropriate option here.

[101] I approve the RCM financing proposal, on the terms sought.

THE SISP

[102] In the alterative to VF's application to approve Burley's financing proposal and remove four of Quest's governors, VF seeks an order that the Court order an immediate implementation of a SISP.

[103] The proposed SISP is to be conducted by the Monitor. However, consistent with the Burley financing and VF's earlier demands to Quest, the SISP terms also include significant involvement by VF in the SISP process. Those terms require that VF be included in:

a) The preparation of a list of bidders, the "teaser" or initial offering summary and the confidentiality and non-disclosure agreements; and

b) The preparation of a confidential information memorandum and development of procedures for access to the data room and other due diligence by bidders.

[104] The proposed SISP also provides that no amendments or termination of the procedures would be made unless with the consent of Quest and VF or as might be ordered by the Court.

[105] I have no difficulty here concluding that the ordering of a SISP, as sought by VF in this respect, is not appropriate at this time.

[106] Despite the fact that this proceeding has only just begun, Quest, as directed by the Board and the executive team, presents a picture of a debtor company who is well aware of its present circumstances and the need to act quickly to stabilize matters and move this restructuring along. In fact, much has already been accomplished by Quest toward this end since January 16, 2020, when I granted the Initial Order.

[107] At this time, Quest has formulated concrete options to pursue, all of which are supported by the Monitor as being valid ones in the circumstances. Those efforts will continue, now aided by RCM's financing that has been secured.

[108] The “kernel of a plan” established by Quest to support these efforts is valid and reasonable. The objectives of the *CCAA* are met by allowing the plan to continue: *North American Tungsten Corporation Ltd. (Re)*, 2015 BCSC 1376 at para. 26 citing *Azure Dynamics Corporation (Re)*, 2012 BCSC 781.

[109] It is simply too early to set this restructuring on a path – through the SISP and its strict deadlines – that would likely foreclose other possible solutions that may better serve Quest’s stakeholders and be acceptable to them and the Court through the *CCAA* process.

[110] I agree with Quest that, at this time, a SISP would be antithetical to the purposes and objectives of the *CCAA* which is intended to afford financially troubled companies with the breathing room to address, within appropriate constraints, its financial difficulties as opposed to sending the company into liquidation of its assets, no doubt having significant negative impacts on many stakeholders: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 59.

CONCLUSION

[111] Since the *CCAA* filing, Quest’s Board and its management have moved quickly to stabilize matters and expedite their efforts toward a solution in the best interests of all of Quest’s stakeholders.

[112] There is considerable interest and concern in the community as to these efforts, particularly evidenced by the number of people who attended on this court application. Many of those people were students, no doubt concerned about the viability of their school and education, particularly to the end of the present term in late April 2020.

[113] We are in the very early stages of this restructuring, with the Initial Order having been granted only 10 days ago. Despite that short time, I am satisfied that Quest is moving expeditiously and in good faith toward exploring options that might be considered by its stakeholders.

[114] The RCM financing presents the best option to fund those efforts in the meantime. I am full satisfied at this time that there is no basis upon which to question the ability or intentions of Quest's Board, management and the RC in those efforts, all as assisted by their legal counsel, the Monitor and other advisors, as appropriate.

[115] Quest seeks an extension of the stay to May 29, 2020, which is supported by the Monitor. No person opposes the stay, including VF. I agree that an extension of the stay to that date is appropriate in the circumstances: *CCAA*, s. 11.02(3).

"Fitzpatrick J."