

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHCV2016/0053

BETWEEN:

IN THE MATTER OF:

The Petition of Gabriella Klein, as representative Petitioner of the Petitioners listed within the Petition (the "Petitioner") for an Order Adjudging Harlequin Property (SVG) Limited Bankrupt

AND IN THE MATTER OF:

The Bankruptcy and Insolvency Act, Cap 136 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009

Appearances:

Mr. Joseph Delves and Ms. Heidi Badenock of Counsel for the Petitioner
Mr. B. McNamara, Ms. René Baptiste and Ms. Jenell Gibson for Harlequin;
Mr. G. Patterson Q.C. and Ms. Lalita Vaswani for the Proposal Trustee.

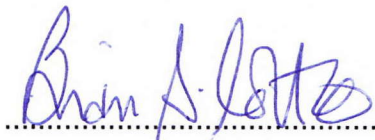
2016: November 28
December 8

JUDGMENT

- [1] **Cottle, J:** On October 3 2016 Harlequin Property (SVG) Ltd (the Company) filed a Notice of Intention (NOI) to make a proposal under the Bankruptcy and Insolvency Act CAP 136 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009, (The BIA). The automatic effect of the filing of the NOI was to stay the petition brought by the petitioners to have the company adjudged bankrupt for an initial period of 30 days. The company has now applied to have that initial period extended by 45 days. The packed court schedule and the need to deal with other applications in this matter meant that the hearing of the application did not come on for argument until November 28 2016. The date to which the extension is sought is December 16 2016.

- [2] Under section 29(9) of the BIA the court may grant an extension of up to 45 days provided three criteria are met by the company. Firstly, the company must have acted and must be continuing to act, in good faith and with due diligence. Secondly, the company must be likely to make a viable proposal if the extension is given. Finally, no creditor must be materially prejudiced by the grant of the extension. The company suggests that it has met all these criteria.
- [3] The petitioners oppose the grant of the requested extension. Counsel for the petitioners point out that the preconditions laid down in section 29(9) of the BIA to found the court's discretion to grant an extension are conjunctive. All must be met.
- [4] If the company fails on any one limb the court must reject the application for extension. This was the conclusion that the court arrived at in the case of **Royalton Banquet and Convention Center Ltd** 2007 ***CarswellOnt*** 3796. I agree that this is an accurate statement of the legal position. The company must show that it has fulfilled the three criteria before it can be considered for the grant of an extension of time to make a proposal under section 29(9) of the BIA.
- [5] It is important to note that when dealing with the application of the BIA the court's objective is to favour proposals over assignments, if possible the court should proceed *ut res magis valeat quam pereat*. The court in **Re Raynor Industries Inc** 2009 ***CarswellOnt*** 3207 approved of this principle as the objective of the BIA.
- [6] In his affidavit in support of the application for the 45 day extension David Ames, the director and owner of the company, swore that the company has prepared and presented a cash flow projection to the proposal trustee. He goes on to add that the company has been working diligently towards formulating a proposal but given the sheer number of creditors who has to be notified and the need for general due diligence the company has been unable to formulate anything "other than a high level proposal which is reliant on provision of subsequent information such as a valuation of land owned by (the company)".
- [7] The trustee in his reports to the court has been more guarded but appears to support the application for the extension of time to make the proposal.

- [8] One important consideration is that much of the requested period of extension is already past. It is to be expected that the company, would have been diligently working on the proposal while hoping for a favorable response from the court to the application.
- [9] The report of the proposal trustee was also considered to determine whether the company had met the statutory criteria.
- [10] The trustee highlighted that progress had been slow in the formulation of a proposal. This was in part because the company has a small management team and is simultaneously having to deal with a multiplicity of legal challenges.
- [11] Mr. Delves urges the court to place no reliance on the reports of the trustee. These reports are based upon information provided by the company to determine whether a viable proposal is likely to be made. Mr. Delves also points out that the petitioners are prejudiced by any grant of an extension. The legislation at section 29(9) allows the court a discretion to grant an extension only if no single creditor is prejudiced.
- [12] With respect to counsel's argument I consider that this approach to reading the section is far too restrictive.
- [13] I am content to allow this single extension in the peculiar circumstances of this case. I consider the limited capacity of the management of the company and the many challenges it now faces.
- [14] I consider that the period of extension sought is almost past and that a further few days to receive a proposal will not materially prejudice the creditor body as a whole. I accept the guarded optimism of the trustee that a viable proposal will be shortly forthcoming.
- [15] I grant the requested extension of 45 days to make a proposal. The proposal must now be made by December 16, 2016.



**JUSTICE BRIAN COTTLE
HIGH COURT JUDGE**