SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-11-060613-227

DATE : APRIL 22, 2022

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

IN THE MATTER OF THE ARRANGEMENT OR COMPROMISE OF:

RISING PHOENIX INTERNATIONAL INC.
and
10864285 CANADA INC.
and
11753436 CANADA INC.
and
CDSQ IMMOBILIER INC.
and
COLLEGE DE L'ESTRIE INC.
and
ÉCOLE D'ADMINISTRATION ET DE SECRÉTARIAT DE LA RIVE SUD INC.
and
9437-6845 QUÉBEC INC.
and
9437-6852 QUÉBEC INC.
Debtors

AND
MCCARTHY TÉTRAULT LLP, in its capacity as Students' Representative Counsel
Applicant

JC0B37

AND
RICHTER ADVISORY GROUP INC.
Monitor

AND
ATTORNEY GENERAL OF CANADA

AND
ATTORNEY GENERAL OF QUEBEC
Impleaded parties

JUDGMENT
(Application for an Order Extending Québec Acceptance Certificates and Canadian Study Permits, s. 11 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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[1] On January 6, 2022 this Court issued an Initial Order commencing proceedings in respect of the debtors under the *Companies' Creditors Arrangement Act* (CCAA) and named Richter Advisory Group as Monitor. The debtors own and operate three private colleges in Québec. They recruit foreign students, mainly from India, to attend these colleges.

[2] Foreign students must apply for residency and study permits from the Québec and Canadian immigration authorities before studying in Canada. A student admitted to the debtor colleges typically follows a one or two-year program of professional studies and, after graduating, may be eligible to work and stay in Canada. The debtors' educational program is therefore an attractive avenue for foreign students to immigrate to Canada.

[3] In the context of these insolvency proceedings a number of students are asking the Court to exercise its general powers under s. 11 of the CCAA and to order the Québec and federal authorities to extend their residency and study permits for a period of four months, or declare that the students have validly applied for a four-month renewal of these permits. Where students' applications for study permits have been rejected, the students ask the Court to order an expedited reconsideration process, as well as other ancillary relief.

[4] The students' application is made of behalf of approximately 1,500 students who have been prejudicially impacted by the debtors' insolvency. A first group of 740 students is currently studying in Canada at the debtor colleges. These students argue that their studies were interrupted for four months between November 2021 and March

2022 when the colleges were forced to lay off teachers and staff. As a result of this interruption, the students' Québec residency permits (*Certificate d'acceptation du Québec* – CAQ) and Canadian study permits will expire, in some cases as early as April 30, 2022, before they are able to complete their studies.

[5] A second group of approximately 308 students residing in India have received their CAQ permit from Québec, but fear that it will expire before the federal authorities consider their study permit application. Holding a CAQ permit is a necessary prerequisite to obtaining a study permit. These students are also asking the Court to order a four-month extension of their CAQ, or deem that they have applied for such an extension.

[6] Finally, a third group of 502 students in India have had their applications for a study permit refused by the Canadian government. Some of these students still hold a valid CAQ permit. Like the first two groups, they are asking for a four-month extension of the CAQ permit. For those students who wish to contest the government's decision to refuse their study permit, they are asking the Court to order the implementation of a rapid, online process for the reconsideration of these decisions, and for other relief in the event the decisions are reversed. This latter request is based on the students' belief that the government's refusal to grant them a study permit may have been based on the colleges' insolvency rather than on the merits of their application.

[7] The students point out that in the context of the present CCAA proceedings a purchaser has stepped forward, offering to purchase the debtor colleges if the government agrees to transfer their education permits by June 30 and the Court approves the transaction under a plan of arrangement. The purchaser has offered to continue operating the colleges, allowing the 740 registered students to graduate, and to offer a program of studies to those students presently in India who successfully obtain the necessary permits to come to Canada. In the meantime, the debtors have obtained interim financing and have resumed the operation of the colleges in the hope they will soon be transferred to the purchaser.

[8] It is important to note that, as a precondition to obtaining a CAQ permit and study permit, the foreign students were required to prepay their first year's tuition fees, amounting to approximately $15,000, to the debtor colleges. The students rightly fear that they will not recover these fees in the insolvency proceedings. Given the purchaser's offer to educate those students who have already paid their tuition fees, and who ultimately obtain permits allowing them to come to Canada, many students waiting in India want to pursue their applications rather than wait for a possible refund from the CCAA Monitor.

[9] The students argue that their application to the Court is consistent with the objectives of the CCAA, since if more students are admitted to study in Canada, fewer

students in India will file CCAA claims as ordinary creditors, resulting in a greater financial recovery for all.

[10] The students are correct to argue that the Court has broad powers under s. 11 of the CCAA to make orders which promote the objectives of the CCAA. These objectives, broadly described by the Supreme Court, are "to permit the debtor to continue to carry on business and, where possible, avoid the social and economic consequences of liquidating its assets". According to the Court, the CCAA attempts to provide for "timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of claims against a debtor [and] protecting the public interest ...".[1]

[11] As noted by the Supreme Court, the judge supervising a CCAA proceeding has a measure of "flexibility [...] allowing for creative and effective decisions".[2]

[12] The Court's power under s. 11 is not unlimited, however. Even where it appears that an order might avoid undesirable "social and economic consequences" resulting from an insolvency, or serve to maximize creditor recovery, the Court's order must have a sound legal basis.[3]

[13] In the present case, there is no legal basis for the orders being sought, even if their effect might be to lessen the burden on students and ultimately increase creditor recovery. The Court does not have the legal authority to issue the requested orders. The Court cannot invoke s. 11 CCAA to usurp the role of the provincial and federal governments and substitute its decision for theirs.

[14] The orders sought by the students are in the nature of a mandamus, since they require public officials "to perform an act which they are by law required to perform".[4] The requested orders ask that the *ministre de l'Immigration, de la Francisation et de l'Intégration* of Québec, and the Minister of Immigration, Refugees and Citizenship of Canada (IRCC) use their discretionary powers to renew or extend permits for a period of four months. Alternatively, the orders request the Court to declare that the students have applied to extend or renew their permits, even when in fact they have not done so, thereby requiring the two orders of government to respond to these deemed applications. Finally, an order would require the federal minister to reconsider its previous decisions, in response to online applications made in a manner directed by the Court, and then to take a certain number of measures if permits are ultimately issued.

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1 *Century Services Inc. v Canada (AG),* 2010 SCC 60, at paras 15 and 70; 9354-9186 Québec Inc. v Callidus Capital Corp, 2020 SCC 10, at para 40.

2 *Century Services Inc. v Canada (AG), supra*, note 1, at para 21.

3 *Arrangement relative à 9323-7055 Québec inc (Aquadis International Inc),* 2020 QCCA 659, at paras 77 and 78.

4 Art 529(3) *Code of Civil Procedure*.

[15] The legal authorities are clear that a court's power to issue mandamus orders is circumscribed. The court may order a public official to perform an act which they are required to perform. However, it may not direct a public official to perform an act or exercise their discretion in a particular manner, or with a view to a particular outcome, since that would effectively substitute the court's decision for that conferred by law on the public official. This is precisely what the students are asking the Court to do in this case – substitute its decision for that of the ministers.

[16] It is only in exceptional cases that the above rule doesn't apply, such as in cases where the public decision-maker enjoys little discretion, has already exercised their discretion, or is unlikely to exercise their discretion reasonably or in a timely fashion.[5] These exceptional circumstances do not exist here. The issuance of residency and study permits involves considerable discretion, and there is no proof this discretion has not been, and will not be, reasonably exercised. For one thing, the *ministre de l'Immigration, de la Francisation et de l'Intégration* of Québec undertook, during the hearing of the students' application on April 19, to respond by no later than April 30 to all student applications for a CAQ renewal. The delay is short, but the students can, if they act diligently, file online renewal applications before the April 30 deadline.

[17] According to the Québec minister, a student's permission to remain in Québec is maintained during the CAQ renewal process, even if the original CAQ may have expired.

[18] The orders sought against the *ministre de l'Immigration, de la Francisation et de l'Intégration* of Québec suffer from a further legal difficulty: sections 58 and 105 of the *Loi sur l'immigration au Québec*[6] provide that CAQ permits may be extended by government decree. The minister does not have the authority to grant such extensions and a court order directed towards the minister would have no legal basis.

[19] Likewise, there is no legal basis that would permit the Court to substitute its decision for that of the IRCC, either by extending study permits or ordering the IRCC to adopt an expedited reconsideration process. These processes are within the discretion of the federal minister and have not been abused. The IRCC (like the Québec minister) will have to examine the merits of each renewal application, including whether the student has demonstrated proof of means and is proposing an appropriate course of studies. The Court would unjustifiably substitute its discretion for the minister's if it

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5 *Mignault Perrault (Succession de) c Hudson (Ville de),* 2010 QCCA 2108 at paras 4 and 5; Pierre Giroux, Stéphane Rochette et Nicholas Jobidon, «Les recours judiciaires en droit public», dans Collection de droit 2021-2022, École du Barreau du Québec, vol. 8, *Droit public et administratif,* Montréal, Éditions Yvon Blais, 2021, at p 23; Pierre Giroux, Commentaires sous l'article 529, dans Luc Chamberland (dir.), *Le Grand collectif. Code de procédure civile. Commentaires et annotations*, 6e éd., vol. 2 «Articles 391 à 836», Montréal, Éditions Yvons Blais, 2021, EYB2021GCO539 (La référence) at pp 258-260.

6 CQLR, c I-0.2.1.

ordered the IRCC to extend or renew study permits without conducting such an examination.

[20] Moreover, another legal impediment exists: the Superior Court of Québec has no jurisdiction to make an order of mandamus, or other injunctive order, against the federal minister, since this prerogative is reserved exclusively to the Federal Court of Canada under s. 18 (1) of the *Federal Courts Act*.[7]

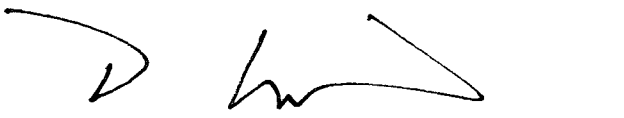
[21] For these reasons, the Court cannot grant the relief requested by the students. Nevertheless, the Court is not unsympathetic to the plight of the students, who are innocent victims in this matter. During the argument of this application, the Court asked the provincial and federal ministers to consider waiving the fees of $120 and $150 that apply to the renewal of the CAQ and study permits. These fees are not insignificant, have already been paid once, and may prevent some students from applying for extensions or renewals. However, this is a decision for the government, not the Court.

[22] The Court is also aware that discussions are being held between the students' legal counsel and the two levels of government in an effort to reduce the administrative burden on the students and the prejudice caused to them by the debtors' insolvency. The Court encourages the parties to continue these discussions.

FOR THESE REASONS, THE COURT :

[23] **DISMISSES** the amended Application for the Issuance of an Order Extending the CAQ and/or Study Permit of Certain Students and Implementing a Streamlined Process for the Reconsideration of Refused Study Permits Applications;

[24] **THE WHOLE**, without costs, considering the nature of the demand.



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7 R.S.C., 1985, c F-7.

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Hearing dates : April 13 and 19, 2022