



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02943175-0031

DATE: 26 September 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: **IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
Massimo Starnino	Counsel for the Applicant, All Communications Network of Canada, Co. (creditor)	max.starnino@paliareroland.com
Evan Snyder		evan.snyder@paliareroland.com

For Respondent:

Name of Person Appearing	Name of Party	Contact Info

For Other:

Name of Person Appearing	Name of Party	Contact Info
George Benchetrit	Counsel for the Proposal Trustee, Richter Inc.	george@chaitons.com
Danny Nunes	Counsel for the Interim Receiver, KSV Advisory Inc.	danny.nunes@dlapiper.com
Robert Danter	Counsel for the Bank of Nova Scotia	rdanter@harrisonpensa.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. All Communications Network of Canada, Co. ("ACN") seeks an order terminating these proposal proceedings by Planet Energy (Ontario) Corp. ("PEONT"), substituting KSV Restructuring Inc. ("KSV"), which is currently the Interim Receiver of PEONT (the "Interim Receiver"), as licensed insolvency trustee in these proceedings (the "Trustee") (i.e., trustee in bankruptcy) of PEONT, and granting corollary relief.
2. ACN is PEONT's largest creditor and is owed in excess of \$28 million (the "ACN Debt") pursuant to an arbitral award dated February 3, 2021. The award has been affirmed by an order of this court dated April 27, 2022, which was affirmed an order of the Court of Appeal for Ontario dated May 5, 2023 (the "Court of Appeal Decision").
3. PEONT commenced these proceedings shortly after the release of the Court of Appeal Decision, by filing a Notice of Intention to Make a Proposal ("NOI"), appointing Richter Inc. ("Richter") as the proposal trustee in the NOI proceedings (the "Proposal Trustee").
4. PEONT's management did not have ACN's support, and on June 8, 2023, KSV was appointed as Interim Receiver, without security, of all the property, assets and undertakings of PEONT, and has been administering the affairs of PEONT since that time. After the appointment of the Interim Receiver, management and the board of PEONT were supplanted and the Interim Receiver has been in control of the business of PEONT. PEONT is a reseller of natural gas and electricity in Ontario.
5. Efforts to sell PEONT's assets and undertaking were unsuccessful, and the amount available for distribution to creditors is expected to be less than \$10 million, considerably less than the ACN Debt.
6. On August 17, 2023, this Court extended the time for PEONT to file a proposal in in these proceedings to and including October 2, 2023, in order to facilitate an orderly wind-down of the business by the Interim Receiver and to determine if a distribution proposal or a bankruptcy was most advantageous for stakeholders.
7. ACN has had several discussions with the Interim Receiver having regard to the circumstances described above. Having regard to those discussions, ACN does not perceive any advantage to, and is not supportive of, a distribution proposal. ACN believes it represents in excess of 95% of PEONT's debt and would therefore have a veto over any proposal that might be made.
8. In order to avoid the automatic appointment of the Proposal Trustee upon the expiry of the time for PEONT to file a proposal on October 2, 2023 (under s. 50.4(8)(c) of the BIA)), ACN seeks:
 - a. an order pursuant to s. 50.4(11)(c) of the BIA for a declaration for the early termination of the period for the making of a proposal (on the grounds that it is unlikely that any proposal could be made that ACN will accept); and
 - b. an order pursuant to s. 57.1 of the BIA appointing KSV as the trustee in lieu of the Proposal Trustee (Richter) that would otherwise automatically be appointed trustee upon the expiry of the time for making the proposal.
9. The motion is unopposed. All known creditors and stakeholders in these proposal proceedings received notice of it, albeit some not until yesterday. Counsel for the only other creditor, Bank of Nova Scotia ("BNS") appeared on the motion but advised that he had no instructions to oppose it. Counsel for ACN noted that BNS issued a letter of credit that is fully cash collateralized so would not be expected to have a position on this motion.
10. ACN submits that it is in the interest of stakeholders that KSV assume the role of Trustee of PEONT because, since the appointment of the Interim Receiver, KSV and its counsel have attended to all operational matters, including, most recently, the transition of customers in consultation with representatives of the Ontario Energy Board, and the Pennsylvania Proceedings. As Trustee, KSV will be able to maintain and continue those processes to facilitate the transition to bankruptcy as seamlessly as possible, and the making of distributions to creditors as expeditiously as possible.

11. The court agrees that in these circumstances the requested orders under s. 50.4(11)(c) and 57.1 of the BIA are appropriate and they should be granted. It will be more efficient for KSV to continue in the role of Trustee given the work that it has been doing as Interim Receiver since appointed in June, 2023. It is expected that the work of the Trustee going forward will be focused on winding down the business and affairs of PEONT given that the attempts to sell its business were not fruitful.
12. Since a deficit is projected, cost savings is important and there have already been significant professional fees incurred and owing to KSV to date (discussed below) so there is an investment in KSV continuing. This approach also avoids interim administrative steps associated with letting the proposal proceedings run their natural course, and avoids the duplication of professionals and their fees.
13. The ancillary orders are consistent with the commercial list practice:
 - a. To provide for releases of the Proposal Trustee and Interim Receiver (excluding gross negligence or willful misconduct); and
 - b. Approval their fees and disbursements to the conclusion of their work in those capacities.
14. With respect to the fees, those were reviewed in detail by counsel during the hearing and they are supported by fee affidavits (one of which was corrected during the hearing to clarify that the Proposal Trustee's fees and disbursements did not include the fees and disbursements of its counsel for which separate approval is sought). Although the amounts are high, ACN does not object to any of the fees and disbursements for which approval is sought and the professionals and their counsel consider them to be reasonable in the circumstances, having regard to the work that has been done to date and the particular circumstances of this case. Estimates have also been provided for the caps indicated for the additional (as of yet unbilled) fees for the Interim Receiver and Proposal Trustee and their counsel to complete their work, since their accounts for which approval was sought were not current to the date of this motion. For these reasons, I am prepared to approve them as requested.
15. Order to go in the amended form provided by counsel after the hearing and signed by me today.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in black ink.

KIMMEL J.