

Case summary of Concrete Equities Inc. (Re)

July 12, 2022

What this means for the shareholders of a business facing insolvency

In Concrete Equities Inc. (Re), the Alberta Court of Queen's Bench determined that the receiver of a dissolved entity was not entitled to execute or deliver a proxy vote on behalf of the entity without a specific court order allowing the receiver to do so. This decision provides comfort to the shareholders of a business facing insolvency, as it underscores that they are not bound by a Court-appointed receiver's questionable decisions. Rather, there are legal mechanisms in place that allow shareholders to seek relief from the Court with respect to the administration of the dissolved entity, and the Court is willing to enforce them.

What you need to know

- A shareholder of a dissolved corporation is an “interested person” capable of seeking relief from the Court with respect to a Court-appointed receiver;
- A receiver cannot, without a court order permitting such activities, execute or deliver a proxy vote on behalf of a dissolved entity; and
- A Court-appointed receiver acts in a fiduciary capacity towards the shareholders of the dissolved entity.

Background

Concrete RRSP Holding Inc. (Concrete RRSP) was created to allow individuals to hold an interest in Castleridge LP in their RRSP. In 2011, Concrete RRSP was struck from the corporate registry for failing to file annual returns. In response to Castelridge LP's request for the appointment of a receiver for Concrete RRSP, the Court issued its First Order. It directed the revival of Concrete RRSP for a limited set of purposes, suspended the powers of the directors of Concrete RRSP, and prohibited any meetings of shareholders and directors. The First Order of the Court also granted interested persons leave to apply for relief from the Court and appointed the respondent, Mr. Butt as receiver.

In response to an application by the respondent, the Court issued its Second Order, expanding the set of purposes to include acting as the registrar and transfer agent for Concrete RRSP and depositing to the credit of Concrete RRSP any funds received for it

from any source. The Second Order of the Court also modified the requirement for leave to provide that the receiver and any other interested party may apply to vary the Order upon appropriate notice. Notably, neither of the two Court Orders allowed the receiver, **Mr. Butt to vote Concrete RRSP's proxy shares.**

The applicant, Mr. Mills, was part of a group of limited partners that shared concerns with the general partner's management of Castleridge LP. This group of limited partners attempted to remove the general partner by way of vote. However, their effort was thwarted by the respondent, who was able to defeat the motion to remove the general partner by voting a significant number of proxy shares of the company. Mr. Mills brought an application to set aside the result of that vote. He argued that the respondent lacked the authority to vote the limited partnership units. The Alberta Court of Queen's Bench agreed with the applicant and found that the respondent erred in voting the proxy shares of the company. In support of this decision, the Court added that Concrete RRSP had not been revived in order to exercise voting rights, and doing so was within the purview of the directors, not the receiver. Mr. Mills' application was granted and a new vote was ordered.

Issues

The first issue involved whether the applicant was an "interested person" capable of seeking relief from the Court. The Court of Queen's Bench confirmed that he was and noted that s. 206.1 of the Business Corporations Act, R.S.A. 2000, c. B-9, defined an "interested person" as, "a shareholder ... of a dissolved corporation", and "a person who has a contractual relationship with a dissolved corporation". Mr. Mills fit both criteria, as he was both a bondholder and shareholder of Concrete RRSP, which was dissolved. His status as shareholder gave him a contractual relationship with Concrete RRSP and he maintained a pecuniary interest in the respondent's discharge of his receivership. The applicants' position as an "interested person" capable of seeking relief was further supported by the Court's prior two orders, which expressly stated that interested persons would have leave to reapply to this Court for further relief and that an interested person could apply to vary this Order upon appropriate notice.

The second issue involved whether the respondent was authorized to vote Concrete RRSP's limited partnership units. The Court found that the respondent did not have that authority. Nothing in either of the Court's prior two orders granted the respondent permission to vote proxy shares. Moreover, a meeting or resolution would have been required to effect that result, but the Court's orders specifically prohibited such a meeting.

The third issue involved whether the receiver breached his fiduciary duty to all the limited partners of Castleridge LP, irrespective of whether they held units directly or indirectly through Concrete RRSP. The Court found that the respondent did have knowledge of Concrete RRSP's incapacity to give proxy and that the receiver nevertheless chose to execute it. This constituted a breach of the receiver's fiduciary obligations.

Takeaway

This case is an example of a Court-appointed receiver deviating from the narrow scope of the purpose for which they were appointed. It also serves as a reminder to the shareholders of a business facing insolvency that Court-appointed receivers owe them a fiduciary duty. When a receiver acts outside the scope of their authority or contrary to their duties, a shareholder may be able to seek relief from the Court if they can prove that they are an “interested person” within the definition of s. 206.1 of the Alberta Business Corporations Act. As such, shareholders can take comfort in knowing that mechanisms for seeking relief are available when the administration of the dissolved entity is conducted unjustly, and the Court is not shy about enforcing them.

For more information about your course of action as a shareholder of a business facing insolvency, please reach out to one of the key contacts below.

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