Broadened stay of proceedings in favour of director granted pursuant to the CCAA

March 10, 2025

How broad of a stay of proceedings can the courts grant in favour of a director of a debtor company under the *Companies' Creditors Arrangement Act*[1]? Can such a stay extend so far as personal claims that are unrelated to the debtor company?

Background

The ELNA Group, which is made up of over 70 entities, is one of the largest integrated networks of medical clinics in Canada. Ultimately, all those entities are directly or indirectly owned by the ELNA Group's founder and sole director, Laurent Amram (Amram).

On Dec. 10, 2024, thirty-four of those entities (the Applicants) sought protection under the CCAA pursuant to an *Application for an Initial Order, an Amended and Restated Initial Order, a SISP Approval Order and Other Ancillary Relief* (the Initial Application). Amram is named in the Initial Application as an Impleaded Party.

The Applicants sought for the initial 10-day stay of proceedings to extend not only to the Applicants, but also to **all** proceedings and remedies taken or that might be taken in respect of Amram and any of his property (the Amram Stay Request).[2]

Analysis – Initial Order

On Dec. 11, 2024, following the first day hearing, the Honourable Justice Martin F. Sheehan, J.S.C. partially granted the Amram Stay Request.[3]

In considering this request, Justice Sheehan first turned to section 11.03(1) of the CCAA, which allows the Court to stay proceedings against directors that "arose before the commencement of proceedings under [the CCAA] and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations".[4]

Justice Sheehan also noted the broad jurisdiction granted to the courts by sections 11 and 11.02 of the CCAA to grant a stay of proceedings in favour of third parties that are

not themselves applicants in a CCAA proceeding, including recourses seeking the enforcement of personal guarantees against a director.[5]

As noted by Justice Sheehan, in most cases where stays are issued to protect directors, the stayed claims relate to either (a) statutory claims covered by subsection 11.03(1) of the CCAA, or (b) personal guarantees of company debts[6]. The protection sought pursuant to the Amram Stay Request was therefore broader than what is typically awarded to a director in proceedings under the CCAA.

In determining whether to exercise their discretion to extend a stay of proceedings to non-applicant third parties, the courts have considered the following non-exhaustive list of factors:[7]

a. The business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
b. Extending the stay to the third party would help maintain stability and value during the CCAA process;
c. Not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;
d. If the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant;
e. Failure of the restructuring would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay;
f. If the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and
g. The balance of convenience favours extending the stay to the third party.

In support of the Amram Stay Request, Amram submitted that he and his work were essential to the operations of the Applicants and the restructuring proceedings, and that this work would need to take place without any distraction, including the distraction created by personal claims against him. On this point, the Court remarked:[8]

> "[54] While at first glance sympathetic, this argument cannot be accepted on its own. **If it were, any principal shareholder, director or key employee of the debtor would be justified to seek protection from his or her creditors during the restructuring as long as he or she could establish that they are a key protagonist in the process. This would entail a significant expansion of current practice.** In fact, the Applicants were not able to provide any precedent for the issuance of an unrestricted stay to protect key players in a CCAA proceeding from lawsuits related to personal debts."
>
> [Emphasis added]

Amram also submitted that he had obtained personal loans, the proceeds of which had been 100% invested in the ELNA Group. He alleged that due to his personal wealth being intimately tied to the value of the ELNA Group, he could not satisfy his personal obligations until the restructuring efforts were fully implemented.[9] In addition, he was

unable to file for personal bankruptcy as this would prevent him from acting as a director of a corporation governed by the *Canadian Business Corporations Act*.[10]

Justice Sheehan concluded that although this may be true, "an overall and over encompassing stay of all claims against Mr. Amram" was nonetheless not supported by the evidence or warranted. Of note, very little evidence had been provided as to Amram's assets, income or revenue, no evidence had been submitted in support of the statement that personal loan proceeds were reinvested in the ELNA Group, and in any event, those personal loans had not been identified.[11]

In view of this, the stay of proceedings against Amram (the Amram Stay) granted by the Court was limited to the following claims:

1. Statutory claims against Amram as a director pursuant to subsection 11.03(1) of the CCAA;
2. Personal guarantees granted on debts to the Applicants;
3. **Personal loans whose proceeds were wholly reinvested in the Applicants**.

This last category of claims departed from, and went further than, what Justice Sheehan had identified in his reasons as the types of claims typically stayed to protect directors.

Analysis – ARIO

At the comeback hearing on Dec. 17, 2024, Justice Sheehan granted an extension of the Amram Stay to Feb. 12, 2025.[12]

Although the Applicants' main secured creditors supported the Amram Stay, it was opposed by Mr. Brandon Shiller (Shiller), a private lender having loaned $2.8 million to Amram (the Shiller Loan). The Shiller Loan is secured by a second ranking mortgage on Amram's personal residence.[13]

Justice Sheehan drew the following conclusions from the sworn declaration and personal balance sheet filed by Amram:

a. Amram's personal wealth is intimately tied to the value of the ELNA Group, and without the restructuring he is not in a position to repay his debts;
b. The proceeds of the most important personal loans (especially the Shiller Loan), were reinvested into the ELNA Group;
c. Several of those personal loans are guaranteed by certain of the Applicants or secured by some of the Applicants' assets; and
d. Amram's non-ELNA assets are highly leveraged.

He also concluded that the bulk of the proceeds from the Shiller Loan had been wired to the ELNA Group the day after being received by Amram.[14]

Amram, as sole director, shareholder and founder of the ELNA Group, was found to be essential to the operations of the Applicants and to a successful restructuring process. Extending the stay to him would maintain stability and value during the CCAA process and preserve the *status quo*, while refusing to do so would negatively impact the ability of the Applicants to restructure, potentially jeopardizing the success of the restructuring.

Of note, Justice Sheehan found that Shiller would not suffer a major prejudice from the extension of the Amram Stay – the value of his debt would be unaffected, and the debt would continue to bear interests. Only Shiller's recourses would, temporarily, be suspended.[15]

Turning to the scope of the Amram Stay, Justice Sheehan found he was now "satisfied that the loan proceeds from certain lenders listed in the table attached to Exhibit LA-1 (copied as Exhibit B to the ARIO) were mostly reinvested into ELNA to keep the business afloat".[16] To require a detailed tracing of those funds as a prior condition to the extension sought would require considerable time investment without significant added benefit. The Monitor, who supported the extension of the Amram Stay, opined that Amram was fully committed to the restructuring and that refusing to extend the Amram Stay would be counterproductive.[17]

As observed by the Supreme Court of Canada in *Century Services*, appropriateness under the CCAA is assessed "by inquiring whether the order sought advances the policy objectives underlying the CCAA". "The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company."[18]

Justice Sheehan maintained the Amram Stay, ordering that it now cover personal claims of creditors listed in Schedule B of the ARIO (which includes Shiller's claim regarding the Shiller Loan) and stay in place until Feb. 12, 2025, but specified that this decision in no way limited the right of creditors to ask that the Amram Stay be further limited or even eliminated.[19]

Conclusion

As emphasized by Justice Sheehan, stays benefitting directors are typically limited to statutory claims covered by subsection 11.03(1) of the CCAA, or personal guarantees relating to company obligations.

In determining whether to broaden the stay protection granted to directors, the court will consider the non-exhaustive list of factors established in previous decisions when considering extending a stay of proceedings to third parties.

Ultimately, the appropriateness of a broadened stay of proceedings benefitting a director will be determined by inquiring whether granting such a stay will advance the policy objectives underlying the CCAA. In this case, the unique circumstances justified the granting of the Amram Stay.

This decision highlights the importance of applying this broad principle to the specific circumstances of each case, especially when exercising the broad discretion allotted to CCAA judges.

Appeal

Pursuant to the *Notice of Appeal* notified by Shiller on Jan. 7, 2025, Shiller sought to overturn the Amram Stay on the following grounds:[20]

a. The Court erred in ordering something explicitly prohibited by the CCAA, namely the stay of a personal claim based on a personal obligation contracted by Amram which has no relation to the restructuring, and did so on the basis of manifest errors of law; and
b. Alternatively, the Court exercised its discretion unreasonably in this regard.

On this first ground, Shiller submits that the exercise of the broad jurisdiction conferred by s. 11 CCAA is explicitly "subject to the restrictions set out in [the CCAA]"[21]

Shiller makes the argument that s. 11.03 of the CCAA anchors the Court's discretion to stay proceedings against directors. Since s. 11.03(1) limits such a stay to claims that relate "to obligations of a company if directors are under any law liable in their capacity as directors for the payment of those obligations",[22] and since s. 11.03(2)[23] specifies that this stay "does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations," the Court could not rely on s. 11 to grant the Amram Stay, which goes against those restrictions. Essentially, Shiller argues that the Court should not have done indirectly what they could not do directly.[24]

Alternatively, Shiller argues that Justice Sheehan could not conclude, on the evidence before him, that the bulk of the proceeds from the Shiller Loan had been wired to the Applicants, and that the conclusions drawn from this evidence constituted an unreasonable exercise of discretion.[25]

The Application for Leave to Appeal was heard on January 16, 2025. Leave to appeal was denied.

Footnotes

[1] R.S.C., 1985, c. C-36 [CCAA].

[2] Initial Application at para 21 ii.

[3] *Arrangement relatif à Elna Medical Group Inc./Groupe médicale Elna inc.*, 2024 QCCS 4542 at paras 18-19.

[4] CCAA, *supra* note 1 at s. 11.03(1).

[5] *Arrangement relatif à Elna Medical Group Inc./Groupe médicale Elna inc.*, 2024 QCCS 4541 [Initial Order Judgment] at para 52, citing *Great Basin Gold Ltd. (Re)*, 2015 BCSC 1199 at para 32.

[6] Initial Order Judgment, *supra* note 5, para 55.

[7] *Ibid* at para 57, citing *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 43.

[8] *Ibid* at paras 53-54.

[9] Initial Order Judgment, *supra* note 5, paras 59-60.

[10] R.S.C., 1985, c. C-4, s. 105(1); *Ibid* at para 61.

[11] Initial Order Judgment, *supra* note 5, paras 62-63.

[12] *Arrangement relatif à Elna Medical Group Inc./Groupe médicale Elna inc.*, 2024 QCCS 4609 [ARIO] at paras 19-20.

[13] *Arrangement relatif à Elna Medical Group Inc./Groupe médicale Elna inc.*, 2024 QCCS 4612 [*ARIO Judgment*] at paras 21-22; *Ibid* at Schedule B.

[14] *ARIO Judgment*, *supra* note 13, para 33.

[15] *Ibid* at para 56.

[16] *Ibid* at para 58.

[17] *Ibid* at paras 59-61.

[18] *Ibid* at para 64, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para 70.

[19] *Ibid* paras 66-67.

[20] *Notice of Appeal* of Brandon Shiller [Shiller NOA], para 8.

[21] CCAA, *supra* note 1 at s. 11.

[22] *Ibid*, s. 11.03(1).

[23] *Ibid*, s. 11.03(2).

[24] Shiller NOA, *supra* note 20 at paras 11-12.

[25] *Ibid* at para 19.

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