SCC decision opens doors to litigation funding in insolvency proceedings

February 10, 2020

On January 23, 2020, the Supreme Court of Canada unanimously allowed the appeal from the Québec Court of Appeal's decision in *9354-9186 Québec Inc. et al. v. Callidus Capital Corporation, et al.*, opening the doors to third-party litigation funding in insolvency proceedings in Canada.

Background

The appeal concerned insolvent entity Bluberi's attempt to fund a $200-million lawsuit against its secured creditor, Callidus Capital Corporation (Callidus), in a *Companies' Creditors Arrangement Act* (CCAA) proceeding. At issue was whether a CCAA debtor, whose only asset was a litigation claim against Callidus, was required to obtain creditor approval for the litigation funding as part of a plan of arrangement to be filed in Bluberi's CCAA proceedings.

The CCAA judge held that such approval was not necessary and approved Bluberi's request for interim financing under the CCAA pursuant to a litigation funding agreement. The Québec Court of Appeal, in a unanimous decision, disagreed. The litigation funding agreement, the court stated, could not be approved as interim financing, instead requiring approval in the context of a plan of arrangement that required a vote of Bluberi's creditors.

Decision significance

The Supreme Court's decision restored the CCAA decision and approved the litigation funding agreement without needing to file a plan of arrangement. This decision brings clarity to the application of litigation funding for insolvency proceedings in Canada. In light of this new acceptable form of litigation funding, it is expected that debtors and creditor groups will more frequently turn to litigation funding.

By

Katie Archibald, Tyler McNaughton

Expertise

Insolvency & Restructuring

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.