

Employees affected: Superior Court of Québec clarifies the status of employee claims in CCAA proceedings

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Employee terminations and downsizing are features of most restructurings. While employees can typically assert a claim in the insolvency process, parallel claims and complaints with labour relations regulators and tribunals are relatively common. In a recent judgment, the Superior Court of Québec clarified that all employee claims can be extinguished through a plan of arrangement under the *Companies' Creditors Arrangement Act* (CCAA), including those filed before regulators and tribunals.

On September 5, 2023, the Superior Court of Québec rendered a judgment^[1] regarding the treatment of claims by employees terminated in the context of restructuring proceedings of Magasin Laura (P.V.) Inc./Laura's Shoppe (P.V.) Inc.'s (Laura) under the CCAA, following the sanction of Laura's plan of arrangement (Plan). Further to an application of KPMG Inc., acting as Laura's Court-appointed Monitor (Monitor), the Court declared that

- five former employees of Laura, whose employment was terminated in the context of the CCAA proceedings (Employees), are "affected creditors" under the Claims Procedure Order (Claims Procedure Order) and under the Plan
- the Employees' complaints (Complaints) before the *Tribunal administratif du travail* (Tribunal) are "affected claims" under the Plan
- the Plan sanction and its subsequent implementation extinguished all affected claims, including those of the Employees

This decision clarifies the scope of employee claims affected by a CCAA plan of arrangement.^[2]

Background

In the context of its restructuring, Laura closed a number of stores and laid off and subsequently terminated a total of 265 store and head office employees. Following their termination and during the pendency of the CCAA proceedings, the Employees filed the Complaints with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST), alleging that their dismissal was illegal and not made in the context of the restructuring, but rather driven by discriminatory motives. Laura was informed of the

Complaints by the CNESST, without being informed of the remedies being sought by the Employees.

After receiving the Complaints, the Monitor issued stay notices to the CNESST. Despite the stay notices, the terms of the initial order and the stay provisions contained therein, the CNESST proceeded to file the Complaints with the Tribunal, without informing Laura or the Monitor.

Four of the five Employees filed proofs of claim with the Monitor in the context of the claims process, without disclosing that they were, in parallel, seeking additional remedies before the Tribunal.

Decision

The Court found that regardless of the underlying reasons giving rise to the Employees' termination, pursuant to the Claims Procedure Order, all claims of employees terminated during the course of the CCAA proceedings are considered restructuring claims under the Plan and are compromised and settled following Plan implementation. The fact that the Complaints were not quantified, or that they may have resulted from an alleged breach of the Employees' rights under the *Charter of human rights and freedoms*, did not change their status under the Plan as an affected claim.

The Court noted that the key objective of the claims process is to compel all creditors to fully disclose and substantiate any claims they may have against the debtors, which would include, in this case, the disclosure of the Complaints. In the context of Laura's stated intention to file a Plan and emerge from the CCAA proceedings, it was of utmost importance that the Monitor and Laura be informed of all claims such that creditors could not "lie in the weeds" with a view to asserting claims following Plan implementation.

Justice Pinsonnault held that the Employees could not pick and choose which claims to assert in the context of the claims process under the CCAA proceedings and which to assert before the Tribunal. Indeed, the key objective of the CCAA is to allow debtors to restructure their affairs by submitting a plan of arrangement to their creditors. For a debtor to successfully emerge from restructuring proceedings and be best positioned for future success, it is essential that all claims being the object of the claims process be definitively dealt with in accordance with the terms of the Plan and that creditors not have the ability to retain and pursue claims that are otherwise affected by the Plan.

In the context of sanctioning the Plan, the Court determined that it was fair and reasonable and in line with the provisions of the CCAA and the Court's orders. It is therefore appropriate that employee termination claims and the Complaints constitute affected claims under the Plan and be extinguished accordingly.

Key takeaways

This decision serves as a reminder to creditors to be fully transparent when asserting claims in a CCAA claims process. A creditor cannot "lie in the weeds" to gain an advantage over other creditors.

This decision also provides certainty regarding the status of employee claims in CCAA proceedings, as the Court confirmed that an employee's exercise of rights stemming from a public order statute (including those protected by the *Charter of human rights and freedoms*) does not confer the employee status that is different from other creditors. The ability to

downsize and permanently reduce the workforce is a valuable tool available to debtors in their CCAA restructuring toolbox, and the ensuing claims of terminated employees can be effectively compromised in a plan of arrangement.

[1] 2023 QCCS 3435.

[2] The period to appeal the judgment has not yet lapsed.