

Introduction

1. Abitibi/Bowater believes it is the largest supplier of paper products to the Debtors and the largest trade creditor in the Chapter 11 Cases.¹

2. On February 8, 2008, pursuant to section 546(c) of title 11 of the United States Code (the “Bankruptcy Code”), Abitibi/Bowater submitted a reclamation demand to the Debtors (the “Reclamation Demand”) demanding reclamation of all paper received by the Debtors from Abitibi/Bowater within 45 days prior to the date of the commencement of the Chapter 11 Cases (the “Reclamation Period”).

3. The Reclamation Demand demanded reclamation of (a) paper sold by Abitibi Consolidated Sales Corp. and Bowater America Inc. to the Debtors during the Reclamation Period with an aggregate purchase price of \$22,664,620.86, and (b) an additional 14,169,084 pounds of paper delivered by Bowater Inc. to the Debtors during the Reclamation Period.

4. In the Reclamation Procedures Motion, the Debtors seek, among other relief, (a) at least 120 days from the petition date (the “Review Period”) to review and determine the validity of reclamation demands, (b) during the Review Period, a prohibition against any reclaiming seller making any motion for relief with respect to goods subject to reclamation demands, and (c) a prohibition – apparently forever – against any seller from filing an adversary proceeding with respect to goods subject to reclamation demands.

¹ Abitibi Consolidated Sales Corp. is a member of the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases. This objection is being filed by the entities comprising Abitibi/Bowater in their individual capacities as creditors in the Chapter 11 Cases.

5. Significantly, there is nothing in the Reclamation Procedures Motion which (a) prohibits the Debtors from using or selling any goods subject to reclamation demands during or after the Review Period (b) requires the Debtors to do anything during or after the Review Period, including, without limitation, file a Reclamation Notice (as defined in the Reclamation Procedures Motion) or (c) addresses the treatment of what the Debtors refer to as “Reclamation Claims,” other than to state that the treatment of such claims shall be reserved.

6. Under the current version of the Bankruptcy Code, reclaiming sellers who comply with Section 546(c) of the Bankruptcy Code have an absolute right to reclaim their goods where there is no prior security interest covering such goods. However, if the Reclamation Procedures Motion is granted, the Debtors – by using and/or selling such goods during the Review Period while at the same time prohibiting reclaiming sellers from taking any actions to protect their interests – will effectively wipe out a seller’s rights to reclaim such goods. Simply put, once the Debtors use or sell such goods, the right to reclaim goods physically will be rendered meaningless. This is not permissible under the current version of the Bankruptcy Code.

7. Accordingly, the Reclamation Procedures Motion should be denied because the proposed Reclamation Procedures: (a) permit the Debtors to eliminate Abitibi/Bowater’s statutory right to reclaim the paper referenced in the Reclamation Demand; (b) preclude reclaiming sellers from taking any action to protect their rights with respect to reclamation; and (c) fail to indicate what the treatment will be for “Reclamation Claims” or to provide any protection for the rights of reclaiming sellers.

Background

8. On January 20, 2008, the Debtors' corporate parent, Quebecor World, Inc. ("QWI"), together with each of the Debtors, commenced a proceeding in Montreal, Canada under the the Canadian Companies' Creditors Arrangement Act.

9. On January 21, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

10. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

11. The Debtors collectively operate the second largest commercial printing business in the United States, and the principal raw materials used by the Debtors to operate their businesses are paper and ink.

12. According to the Reclamation Procedures Motion, as of the Petition Date, the Debtors had a \$750 million revolving credit facility with a bank syndicated under which the Royal Bank of Canada is administrative agent which was secured up to a maximum of \$135 million by certain collateral. Such collateral consisted of pledges of certain shares in certain of the Debtors and (a) all personal and real property of QW Memphis Corp. ("QW Memphis"), and (b) all inventory of QWI located in Canada (collectively, the "Alleged Bank Collateral").

Abitibi/Bowater

13. In 2007, Abitibi-Consolidated Inc. and Bowater Incorporated merged to create Abitibi Bowater Inc., one of North America's largest paper and forest products

companies. The companies that comprise Abitibi/Bowater are subsidiaries of Abitibi Bowater Inc.

14. Abitibi/Bowater believe that, together, they are the largest suppliers of paper to the Debtors and the largest trade creditor in the Chapter 11 Cases.

15. During the Reclamation Period, Abitibi/Bowater sold paper to one or more of the Debtors with an aggregate purchase price of \$22,664,620.86 and delivered an additional 14,169,084 pounds of paper (the “Warehoused Paper”) to the Quebecor Buffalo Warehouse located in Buffalo, New York (the “Buffalo Warehouse”). Such paper was received by the Debtors within the Reclamation Period. Accordingly, as part of the Reclamation Demand, Abitibi/Bowater demanded reclamation of such paper (while reserving all of its rights as to the Warehoused Paper).

16. All of the paper received by the Debtors from Abitibi/Bowater during the Reclamation Period was received by the Debtors in the United States.

17. Upon information and belief, with respect to the paper which was the subject of the Reclamation Demand, an insignificant portion, if any, of such paper may be part of the Alleged Bank Collateral.

The Reclamation Procedures Motion

18. The Debtors filed the Reclamation Procedures Motion on January 22, 2008 requesting that this Court enter an order establishing and implementing exclusive procedures for the reconciliation and “treatment” of all reclamation claims asserted against the Debtors (the “Reclamation Procedures”). The Debtors allege that such an order is necessary to avoid costly, distracting, piecemeal litigation that would interfere with the Debtors’ reorganization efforts.

19. The proposed Reclamation Procedures provide that the Debtors will have at least 120 days after the Petition Date to file a Reclamation Notice (although there is no obligation for the Debtors to file such notice), during which 120 day period all holders of reclamation claims are prohibited from (a) bringing a motion to seek relief with respect to its reclamation claim, (b) making any attempt to obtain possession of any goods, including by seeking relief from the automatic stay; or (c) otherwise attempting to collect any reclamation claims. In addition, the Reclamation Procedures appear to prohibit any party from *ever* commencing an adversary proceeding with respect to any goods received by the Debtors within the Reclamation Period.

20. The Reclamation Procedures proposed by the Debtors further provide that at the expiration of the Review Period, if the Debtors fail to file the Reclamation Notice, the holder of a reclamation claim may bring a motion to seek relief with respect to its reclamation claim.

21. Further, pursuant to the proposed Reclamation Procedures, “Reclamation Claims” included in any Reclamation Notice will be deemed a valid “Reclamation Claim” if not objected to within 20 days of the service of the Reclamation Notice with respect to the

amount of such claim; however, *all issues relating to the treatment of such claims are reserved.*

Objection

22. Abitibi/Bowater objects to the Debtors' proposed Reclamation Procedures because, among other things, they permit the Debtors to eliminate Abitibi/Bowater's statutory right to reclaim any paper it sold to the Debtors within the Reclamation Period.

23. In 2005, as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Section 546(c) of the Bankruptcy Code was amended. Prior to the amendment, Section 546(c) of the Bankruptcy Code permitted a bankruptcy court to deny a seller (who complied with the provisions of the statute) the right to reclaim goods by instead granting such seller a replacement lien or an administrative expense claim for the value of the goods. The 2005 amendments to Section 546(c) of the Bankruptcy Code eliminated the ability of a court to deny such a seller the right to reclaim such goods.

24. The current version of Section 546(c) of the Bankruptcy Code provides:

(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

11 U.S.C. § 546(c).

25. Pursuant to the current version of Section 546(c) of the Bankruptcy Code, a seller which complies with the provisions of the statute has an absolute right to reclaim goods received by a debtor within the 45 days prior to the petition date provided that the debtor was insolvent at the time it received such goods. Indeed, absent an agreement among the parties, Congress has made it clear, by eliminating the alternative remedies of replacement liens and administrative expense claims, that the Debtors are required under the current version of Section 546(c) of the Bankruptcy Code to grant reclaiming sellers specific performance (*i.e.*, a return of the specific goods in question).

26. Thus, so long as Abitibi/Bowater has satisfied the requirements of Section 546(c) of the Bankruptcy Code, Abitibi/Bowater has an absolute right to reclaim the paper it sold to the Debtors which was received during the Reclamation Period.

27. The proposed Reclamation Procedures would completely obliterate Abitibi/Bowater's right to reclaim by (a) providing the Debtors with an unfettered opportunity during the Review Period to consume and/or sell such paper, and (b) preventing Abitibi/Bowater from taking any actions whatsoever to preserve their right to reclaim during the Review Period. Once the paper is consumed and/or sold, there will not be any possibility for Abitibi/Bowater to reclaim physical possession of the paper.

28. In addition, to the extent goods are not used or sold by the Debtors during the Review Period, the proposed Reclamation Procedures make no provision for the return of such goods even after the expiration of the Review Period. Instead, despite the clear mandate

of Congress that Section 546(c) of the Bankruptcy Code now requires specific performance (*i.e.*, return of the goods) as opposed to permitting the Court to deny reclamation and give a reclaiming seller a replacement lien or administrative expense claim, the Debtors propose to ***potentially*** grant reclaiming sellers something the Debtors refer to as a “Reclamation Claim” ***but fail to explain the meaning of such claim or its treatment.*** Indeed, there is no mention whatsoever in the Reclamation Procedures Motion as to how such “Reclamation Claims” will be treated. Thus, the “Reclamation Claim” that the Debtors may grant is illusory at best.

29. Thus, the proposed Reclamation Procedures, in essence, wipe out the reclamation rights of sellers and leave such sellers with no remedy or recourse for the eradication of such rights. In sum, the Reclamation Procedures give the Debtors rights they otherwise would not have under the Bankruptcy Code, takes away rights reclaiming sellers do have under the Bankruptcy Code and provides no recourse or remedy for reclaiming sellers (including no protection or compensation for any diminution in value or amount of goods received by the Debtors during the Reclamation Period). ***None of this is permissible under the Bankruptcy Code.***

30. Here, Abitibi/Bowater has timely filed and served its Reclamation Demand and has otherwise complied with the provisions of Section 546(c) of the Bankruptcy Code. Further, upon information and belief, with respect to the paper which was the subject of the Reclamation Demand, the Debtors were insolvent at the time they received such paper and an insignificant portion of such paper, if any, may be part of the Alleged Bank Collateral. As such, Abitibi/Bowater has an absolute right to reclaim such paper.

31. If the Debtors need time to evaluate the reclamation demands, the Debtors should be required during such time to either: (a) segregate and hold in trust all goods subject

to reclamation demands and provide adequate protection to the holders of such reclamation demands against the diminution of the value of such goods while in the Debtors' possession; or (b) provide for treatment of "Reclamation Claims" that are determined to be valid in the form of payment in full of the purchase price of the goods. Furthermore, at the end of the Review Period, the Debtors should be required to file the Reclamation Notice and include in such Reclamation Notice a sufficient explanation for the omission of any "Reclamation Claim."

32. The Debtors refer to three other chapter 11 cases in this district where relief similar to the relief requested in the Reclamation Procedures Motion has been granted. Two of the cases cited, however, were filed *prior to* the 2005 amendment to Section 546(c) of the Bankruptcy Code and, therefore, should not have any precedential value in this case with respect to the proposed Reclamation Procedures. As indicated above, denying reclamation to sellers who satisfy all of the conditions of Section 546(c) of the Bankruptcy Code, although permissible prior to the statute's 2005 amendment, is no longer permissible under the current version of the statute.

33. With respect to the third case, In re Dana Corp.; Case No. 06-10354 (BRL), although similar relief was granted, the case is distinguishable on the basis that no objections were filed to the requested relief.

34. For the reasons set forth above, the Reclamation Procedures proposed by the Debtors impermissibly provide substantial benefits to the Debtors, impose absolutely no obligations on the Debtors, and completely extinguish the absolute right of sellers to reclaim their goods without providing any protection, recourse or remedy to such reclaiming sellers.

35. Accordingly, Abitibi/Bowater objects to the Reclamation Procedures Motion.

Reservation of Rights

36. Abitibi/Bowater hereby expressly reserves all of its rights with respect to the Warehoused Paper delivered to the Buffalo Warehouse. Nothing contained herein shall be deemed an admission by Abitibi/Bowater of the type, nature or timing of the transaction with respect to such paper. To the extent the Reclamation Procedures would prevent Abitibi/Bowater from commencing an adversary proceeding or otherwise taking action to establish its rights in and to such paper, Abitibi/Bowater further objects to such procedures.

WHEREFORE, Abitibi/Bowater respectfully requests (a) that the Debtors' Motion for an Order to Authorize the Establishment and Implementation of Exclusive, Global Procedures for Treatment of Reclamation Claims be denied and (b) grant such further relief as the Court deems just and proper.

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