SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-043034-129

DATE: August 31, 2012

UNDER THE PRESIDENCY OF: THE HONOURABLE ROBERT MONGEON, J.S.C.

IN THE MATTER OF A PROPOSED ARRANGEMENT CONCERNING YELLOW MEDIA INC. ET AL. under Section 192 of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended (the "CBCA"):

YELLOW MEDIA INC.
8254320 CANADA INC.
Applicants
-and-
YELLOW PAGES GROUP CORP. et al.
-and-
THE DIRECTOR UNDER THE CBCA
Impleaded Parties
-and-
THE AD HOC COMMITTEE OF HOLDERS OF 6.25% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES
presently represented by the entities set out in Schedule A attached to their Motion
First Petitioner
-and-
THE BANK OF NOVA SCOTIA
As Administrative Agent with respect to a certain credit Agreement dated 28 September 2011
Second Petitioner

JM1838

JUDGMENT ON FIRST PETITIONER'S MOTION FOR DECLARATORY JUDGMENT AND FOR OTHER RELIEF AND ON SECOND PETITIONER'S MOTION TO PROHIBIT THE AMENDMENT TO THE DEBTHOLDERS' ARRANGEMENT RESOLUTION

(ss. 192 and 238ff *CBCA* and Art. 2, 20, 46 and 453 *Code of Civil Procedure*)
(Relating to seq.#1-6 Plumitif)

[1] I have before me two Motions which address the same issue: should Yellow Media Inc. and its related companies (collectively "YMI") be allowed to amend its Debtholders' Arrangement Resolution which is to be submitted to the vote of the Debtholders on September 6, 2012 in the context of the seeking the approval and ratification of a Plan of Arrangement. The proposed amendment seeks to add a paragraph referring to an hypothetical procedure to be initiated under the *Companies and Creditors Arrangement Act* (CCAA) in the event of it becoming appropriate to pursue the current proposed Plan of Arrangement under the CCAA instead of pursuing the same under sections 191 and following of the *Canada Business Corporations Act* (CBCA).

[2] For the reasons set forth below, I am of the view that the proposed Amendment should not be part of the process currently envisaged under the CBCA inasmuch as it deals only with another proceeding under a different statute and which is, at this time, purely hypothetical.

[3] The Motion of the Ad Hoc Committee of Holders of 6.25% Convertible Unsecured Subordinated Debentures (the First Petitioner) is supported by the Bank of Nova Scotia as Administrative Agent "the Second Petitioner). Both the First and Second Petitioners take exception to the contents of an Amended Resolution of the Board of Directors of YMI seeking the approval of the Debtholders (as this expression is defined in the proposed Plan of Arrangement) to a future procedure. The proposed Amended Resolution states, *inter alia* the following:

> **5. Should circumstances permit and if implementation of the Arrangement under section 192 of the CBCA appears for any reason impracticable, the Corporation shall be authorized to seek to implement the Arrangement under the provisions of the *Companies' Creditors Arrangement Act* (the "CCAA") and section 191 of the CBCA subject to such conforming amendments as appear necessary or desirable (the "Alternative Plan"). Should the Corporation seek to implement the Alternative Plan then this resolution shall constitute the consent of the Debtholders to an order of the Court permitting the following procedure to be followed under the CCAA in order to permit approval and completion of the Alternative Plan at the earliest possible time:**

(a) The Corporation shall post the proposed Alternative Plan (including any proposed amendments to the Arrangement necessary or desirable to conform to the CCAA) on its web site and on SEDAR and shall give notice of such posting by way of press release;

(b) The Alternative Plan may be proposed by the Corporation and by such of its subsidiaries as it deems appropriate;

(c) The Meeting to consider and if thought advisable approve the Alternative Plan may be held seven days following the giving of notice in the manner contemplated by subparagraph (a) above or at such later date as the Court shall order;

(d) Proxies given by Debtholders for the meeting to consider this resolution shall be applicable to any meeting called by the Court to consider the Alternative Plan unless revoked or superseded by the grantor; and

(e) No further or other notice of the meeting or proceedings to consider the Alternative Plan need be given.

(emphasis added)

[4] The First and Second Petitioners allege that it is inappropriate, if not blatantly illegal, to tie into a resolution seeking the approval of a Plan of Arrangement under ss. 191 CBCA and following a consent to an eventual order of this Court upon an eventual procedure seeking an eventual Plan of Arrangement not under the CBCA but under the CCAA, at a moment in time where the terms and conditions of a CCAA application are unknown to all.

[5] The current proceedings are subject to the general rules governing amendments which are contained in sections 199 and following of the *Quebec Code of Civil Procedure*. Under these provisions, an amendment to a "proceeding" or "pleadings" may be entertained provided that:

- the proposed amendment is not useless or contrary to the ends of justice; and
- it does not result in an entirely new proceeding having no connection with the original one.

[6] I am of the view that the proposed amendment is in violation of the two above-noted conditions: the amendment is useless to the present arrangement process under section 191 and following of the CBCA and would become applicable only if the current process would be transformed into an entirely new proceeding, under a different statute.

[7] Allow me to explain this further.

[8] Firstly, YMI acknowledges that the proposed amendment is not necessary to the pursuance and completion of the arrangement currently in progress under the CBCA. In other words, if the amendment is not allowed to stand, the debtholders will be able to vote without any difficulty or restraint and either approve or reject the proposed arrangement.

[9] Secondly, the proposed amendment may only come into play in the event it becomes impractical to proceed therewith under the provisions of the CBCA. If this happens, the parties and various stakeholders will find themselves in an entirely new factual and legal context, subjected to different tests of admissibility and different procedures.

[10] Nevertheless,YMI wishes then to have the flexibility of proceeding under the CCAA with an identical plan. YMI concedes, however, that if there would be any modification to the current proposed plan, then the suggested procedure under paragraph 5 of the amended resolution would be useless: one cannot consent in advance to an unknown plan of arrangement.

[11] The First and Second Petitioners argue that there are no valid reasons to impose any deemed consent upon any stakeholder with respect to any issue which may arise in connection with an Application for an Initial Order under the CCAA, be it a "fast track" or other similar "pre-packaged" proceeding. This argument is not without merit.

[12] However, any decision touching upon an hypothetical procedure under another statute (in this instance, the CCAA as opposed to the CBCA) does not belong to the procedural context of an arrangement under sections 191 and following of the CBCA. If YMI wishes, at any time, to modify its course of action and proceed with an Application under the CCAA, so be it. YMI shall then have to seek and obtain anew any support proxies it may need to implement such plan. YMI may even negotiate this support immediately if it so wishes, but it cannot suggest that a consent given in favour of the CBCA plan will automatically survive its intended use and eventually apply to an eventual plan of arrangement under the CCAA, thus forcing the voting stakeholders to be tied to another legal process.

[13] Althought this scenario may show certain signs of creativity, or have some practical or money-saving effects for YMI, it is difficult to follow.

[14] A consent to a CCAA procedure seeking the re-arrangement and/or restructuring of a debtor company is not to be given lightly and certainly cannot be implied or presumed. What may be consented to today may become unacceptable tomorrow, if the conditions, timing, circumstances change, not to mention the fact that a consent given to a specific procedure will never be valid and conclusive unless the contents of the procedure, and the conclusions sought, are known beforehand.

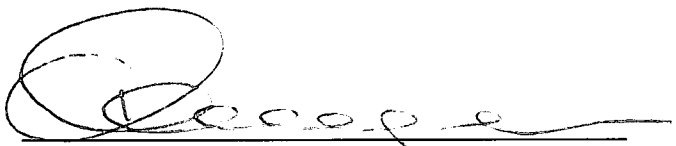
[15] This is not the case here. There is no draft CCAA Motion available upon which the stakeholders may express their consent.

[16] YMI is trying to "lock up" the agreement of certain consenting parties to its current proposed plan under the CBCA to an eventual CCAA arrangement, knowing fully that if the present CBCA Plan cannot successfully proceed or be completed under the CBCA, or even, if the proposed plan is rejected by the Debtholders, the next plan (be it under the CBCA or the CCAA) will most probably, if not certainly, have to be substantially modified in order to rally enough support. If, on the other hand, the plan is ratified but cannot be implemented fully under the CBCA, its "continuation" under the CCAA would require a different test of admissibility as well as a different threshold of vote for the approval of the plan.

[17] Accordingly, that part of the Amended Resolution seeking a consent of those to be called upon to vote on the current Plan of Arrangement to a subsequent Order of this Court permitting an eventual procedure under the CCAA may not be entertained in the present context.

[18] **FOR THESE REASONS**, the Motion of both Petitioners is granted in part, this Court **DECLARING** that the amendment to the Debtholders Arrangement Resolution as stated in Exhibit CDM-2, page 2 as well as in paragraph 5 of the Amended Debtholders Arrangement Resolution and reproduced in paragraph [3] above is neither necessary or useful and, consequently, that the said amendment shall not be submitted to the vote of any of the Debtholders in the context of the current proposed arrangement under sections 191 and following of the CBCA. **ACCORDINGLY**, the proposed amendment to the Debtholders Arrangement Resolution is rejected.

[19] **WITH COSTS**, against the Applicants Yellow Media Inc. and 8254320 Canada Inc.



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Date of hearing: August 31, 2012