

CITATION: Ornge Global GP Inc. (Re), 2013 ONSC 4518
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DATE: 20130710

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE BANKRUPTCY OF ORNGE GLOBAL GP INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO, CARRYING ON BUSINESS IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO,

AND:

IN THE MATTER OF THE BANKRUPTCY OF ORNGE GLOBAL HOLDINGS LP, A LIMITED PARTNERSHIP, ESTABLISHED UNDER THE LAWS OF ONTARIO, CARRYING ON BUSINESS IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO,

BEFORE: MORAWETZ J.

COUNSEL: L. Coodin, for Duff & Phelps, Trustee in Bankruptcy

HEARD: JUNE 28, 2013

ENDORSED: JUNE 28, 2013

REASONS: JULY 10, 2013

ENDORSEMENT

[1] Duff & Phelps Canadian Restructuring Inc. (“D&P”), in its capacity as trustee in bankruptcy (the “Trustee”) of Ornge Global GP Inc. (the “GP”) and Ornge Global Holdings LP (the “LP” and, together with the GP, the “Estates”) brought a motion for an order authorizing and directing the procedural and substantive consolidation of the Estates.

[2] The motion was not opposed and the Trustee advised that the Office of the Superintendent of Bankruptcy confirmed that it had reviewed the motion record and advised that it would not be attending.

[3] The GP was incorporated under the *Business Corporations Act (Ontario)* on November 26, 2010. The LP is a limited partnership which was established under the laws of Ontario on December 24, 2010. The GP and the LP are part of a group of for-profit and not-for-profit

entities (collectively, "Ornge") that provide air transport medical services to patients requiring critical, acute or emergency medical care in Ontario.

[4] Pursuant to an agreement dated December 24, 2010 (the "Limited Partnership Agreement"), the GP has the exclusive authority to manage, control, administer and operate the LP and, subject to the provisions of the Limited Partnership Agreement, to make all decisions in connection therewith.

[5] On February 2, 2012, an order was made pursuant to the *Bankruptcy and Insolvency Act* ("BIA"), adjudging the GP bankrupt. The GP was the sole partner of the LP, which was adjudged bankrupt at the same time. The applications for the bankruptcy orders of both the GP and the LP were made by Ornge Global Real Estate Inc. ("OGRE"), the largest creditor of the Estates and a company related to, or affiliated with, the LP.

[6] D&P was appointed trustee of both Estates.

[7] Counsel to the Trustee advised that the books and records of the GP and the LP are in the possession of the Ministry of Finance (the "Ministry") and/or the Ontario Provincial Police (the "OPP") as a result of an ongoing investigation into the activities of Ornge. Counsel further advised that the Trustee has met with representatives of the Ministry and was informed that many of the electronic and physical books and records of the GP and the LP are co-mingled with the books and records of other Ornge entities.

[8] Proofs of claim ("POCs") have been filed and are summarized below:

Creditor	Amount Claimed Against GP (\$)	Amount Claimed Against LP (\$)
Byron Capital Markets Ltd.		88,115.65
Cassels Brock & Blackwell		11,300.00
Christopher Mazza	withdrawn	
Fasken Martineau DuMoulin LLP	294,898.99	201,381.12
KPMG LLP		289,847.31
Ministry of Finance	1,168.93	
Ornge Global Air Inc.	38,729.62	38,729.62
Ornge Global Corporate Services Inc.	169,809.62	169,809.62
Ornge Global Real Estate Inc.	5,599,677.27	5,599,677.27
Ornge	27,554.39	27,554.39
Rhoda Beecher Human Resource Consulting	63,205.95	
WSIB	100.76	

[9] D&P submits that procedural consolidation is warranted in this case and will result in the most efficient use of the Estates' limited resources and will provide for greater and more certain and timely recoveries for the Estates' stakeholders than would otherwise result if consolidation were not approved.

[10] Further, D&P takes the position that procedural consolidation will also save significant estate resources by avoiding duplication in the administration of the Estates and by avoiding the

need for the Trustee to resolve complex factual and legal issues among the Estates relating to, among other things, accounting for funds in the two separate bank accounts between the creditors of the LP and the GP, and the allocation of professional fees as between the LP and the GP. In addition, unless the Estates are consolidated, the Trustee will either have to get each creditor that filed against the LP to withdraw their claims and re-issue them in the name of the GP, or disallow each claim.

[11] Counsel submits that, of primary importance in considering the appropriateness of substantive consolidation, is the treatment of limited partnerships in the context of bankruptcy. Counsel submits that, pursuant to the *Limited Partnerships Act (Ontario)* (the "LPA"), the GP is liable for the debts of the LP because, while each partner of the LP is only liable to the extent of their contribution, the GP's liability is unlimited. Section 85(1) of the BIA provides that, "on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee". Therefore, counsel submits that by operation of law, the assets of the LP vested in the Trustee of the GP on the GP's bankruptcy and as a result the Trustee of the GP holds all of the assets of both Estates. See *Re Tartan Goldfish Farms Limited*, (1996) 41 C.B.R. (3d) 245 at para. 6. Counsel further submits that a creditor does not need to file an application for a bankruptcy order as against all members of a partnership. Section 43(15) of the BIA provides that a creditor, "may present an application against any one or more partners of the firm without including the others". Section 43(16) provides that if a bankruptcy order has been made against one member of a partnership...the court may give any directions for consolidating the proceedings under the applications that it thinks just". Thus, counsel submits that the court has the explicit power to consolidate the Estates. See also *Re Kingsberry Properties Limited Partnership*, (1997) 3 C.B.R. (4th) 124 (Ontario Court of Justice (General Division) (In Bankruptcy), affirmed (1998), 3 C.B.R. (4th) 135 (Ont. C.A.).

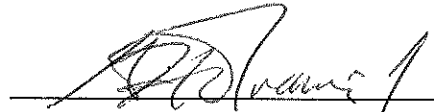
[12] In *Kingsberry, supra*, at para. 12, Farley J. found that, "A creditor need not petition all the members of the partnership into bankruptcy: see s. 43(15) BIA; however, where there are separate petitions against members of the same partnership, proceedings may be consolidated: See s. 43(16). It is therefore the choice of the plaintiff as to s. 43(15) and the discretion of the court as to s. 43(16), not the constitution of the partnership".

[13] I accept the submissions of counsel and its conclusion that, by operation of law, the assets of the LP vested in the Trustee of the GP on the GP's bankruptcy and, as a result, the Trustee of the GP holds all the assets of both Estates. Further, in view of s. 85(1) of the BIA, it is unlikely that any creditor will be prejudiced through substantive consolidation. For the foregoing reasons, I have concluded that substantive consolidation is appropriate in the circumstances.

[14] From a procedural standpoint, I am of the view that consolidation of the Estates is also warranted. Procedural consolidation of the Estates will provide for greater administrative efficiency by the Trustee by avoiding unnecessary duplication in the administration of the Estates, both of which arise out of the same transactions and occurrences.

[15] Although there is no express power to consolidate the administration of the bankrupt estates, I am satisfied that the inherent jurisdiction of the court permits such an order to be made.

[16] In the result, the motion is granted and an order shall issue authorizing and directing the procedural and substantive consolidation of the Estates.



Morawetz J.

Date: July 10, 2013