

Court File No. BK-24-03046342-0031
Court File No. BK-24-03046353-0031
Court File No. BK-24-03046358-0031

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF MARIA SNIEG**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF STANISLAW SNIEG**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF IGLOO INDUSTRIES GROUP LTD.**

RESPONDING FACTUM OF ROYAL BANK OF CANADA

March 22, 2024

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RESPONDING FACTUM OF ROYAL BANK OF CANADA

PART I - OVERVIEW

1. RBC is the principal secured creditor of Igloo Industries Group Ltd. ("**Igloo**") and holds personal guarantees from Stanislaw Snieg ("**Snieg**") and Maria Snieg (collectively, the "**Individual Debtors**").
2. On February 12, 2024, RBC issued demands for payment and a notice to enforce security pursuant to section 244 (the "**Section 244 Notice**") of the *Bankruptcy and Insolvency Act* ("**BIA**") against Igloo and the Individual Debtors.
3. Each of Igloo and the Individual Debtors filed Notices of Intention to Make a Proposal on February 21, 2024 ("**NOI's**"). Albert Gelman Inc. is the proposal trustee (the "**Proposal Trustee**").
4. On March 14, 2024, Igloo brought a motion returnable on March 20, 2024 for procedural consolidation of the estates of Igloo and the Individual Debtors and to extend the time to make a proposal and other relief (the "**Extension Motion**"). Through inadvertence of Igloo's counsel, the Extension Motion was not served on RBC until late in the evening on Sunday, March 17, 2024.
5. Due to the short service, the Extension Motion has been adjourned to April 8, 2024.
6. After the adjournment, while negotiating the terms, RBC learned that counsel for Igloo does not act for the Individual Debtors and that the Individual Debtors did not in

fact bring a motion to extend the time to make a proposal. There is no evidence satisfying the test for an extension of time for the Individual Debtors to make a proposal.

7. RBC's position is that procedural consolidation of the estates is inappropriate in the circumstances and that the Individual Debtors are deemed bankrupt at the end of day, March 22, 2024.

8. RBC is filing this factum without prejudice to filing a further factum addressing the Extension Motion brought by Igloo.

PART II - SUMMARY OF FACTS

9. The facts herein are taken from the affidavit of Philip O'Gorman sworn March 19, 2024 in response to the Extension Motion.¹

10. The accounts of Igloo were transferred to RBC's Special Loans and Advisory Services Group ("**SLAS**") in October, 2023 due to Igloo's inability to meet the covenants and conditions contained in its credit agreement with RBC.²

11. RBC met with Igloo and the Individual Debtors on October 10, 2023 at Igloo's offices to discuss the transition to SLAS and RBC's concerns.³

12. RBC sent out an information request on October 11, 2023 which was not satisfactorily addressed and as a result, RBC requested that Igloo consent to the engagement of msi Spergel inc. as consultant.⁴

¹ Affidavit of Philip O'Gorman sworn March 19, 2024 ("O'Gorman Affidavit"), para. 1

² O'Gorman Affidavit, para. 11; Exhibit "A"

³ O'Gorman Affidavit, para. 12

13. On December 19, 2023, Igloo consented to the appointment of msi Spergel inc., a licenced insolvency trustee. as consultant (the "**Consultant**") to evaluate RBC's security position, including reviewing Igloo's 13-week cash flow forecast, obtaining an appraisal of the inventory and reviewing Igloo's go forward annual financial projections.⁵

14. On February 12, 2024, RBC issued the payment demands and Section 244 Notice against Igloo and Individual Debtors.⁶

15. Each of Igloo and the Individual Debtors filed NOI's on February 21, 2024, one day before the expiry of the payment demands and Section 244 Notice.⁷

16. The amount owing by Igloo to RBC as at March 19, 2024 was \$6,610,141.84, not including i) the lease facility, ii) legal fees or iii) professional fees of the Consultant.⁸

17. At the time of the payment demands, and still a concern today, is the value of Igloo's inventory.⁹

18. RBC's concerns also include the following:¹⁰

- (a) The Proposal Trustee has not demonstrated that Igloo has a viable proposal that will result in RBC being repaid in full;

⁴ O'Gorman Affidavit, para. 13

⁵ O'Gorman Affidavit, para. 14; Exhibit "B"

⁶ O'Gorman Affidavit, para. 15

⁷ O'Gorman Affidavit, para. 16

⁸ O'Gorman Affidavit, para. 17

⁹ O'Gorman Affidavit, paras. 6 - 8

¹⁰ O'Gorman Affidavit, paras. 18 - 19

- (b) A substantial portion of Igloo's total debt is made up of the secured debt owed to RBC and to Business Development Bank of Canada ("**BDC**");
- (c) Igloo's 13-week cash flow forecast indicates that no payments will be made to the secured creditors, RBC and BDC, during the 13-weeks, while Igloo utilizes the assets subject to RBC and BDC's security to fund its operations including payment of professional fees of \$150,000;
- (d) Igloo intends to sell inventory to the US under an entity (NDG North America, LLC ("**NDG**"), wholly owned by Snieg (an insolvent person);
- (e) Igloo has been trying to set up the US distribution since at least October 2022¹¹ but as at the date of the first report of the Proposal Trustee there is zero sales reported in the US;
- (f) There is no indication as to how and when Igloo will be paid for the inventory it ships to the US;
- (g) At paragraph 9 of his affidavit, Snieg states: "NDG has not, to date, begun making sales, but will begin active operations in March 2024";

¹¹ Based on a RBC credit application dated October 17, 2022 it confirms that the Debtor was intending to go into the US market. A further credit application in January, 2023 notes that the Debtor is seeking additional security for the expansion and a temporary limit was approved by RBC on May 30, 2023 due to "the Debtor experiencing cash flow shortfall due to the following reasons: 1) US Expansion Sales slower than anticipated, pending orders in Pipeline which have not yet materialized due to price negotiations".

- (h) RBC has been consistent that no inventory can be sold or transferred to NDG without payment in full to Igloo to pay down the indebtedness owed to RBC;
- (i) At paragraph 18 of his affidavit, Snieg incorrectly states that the Operating Line was frozen on February 12, 2024. The Operating Line was at its authorized limit;
- (j) Temporary Accommodations were approved allowing the Operating Line to revolve up to \$6.5 million from January 7, 2024 to February 8, 2024 and from February 14, 2024 to February 23, 2024;
- (k) The Visa card ending in "9528" was cancelled on February 23, 2024 as it was in excess position and the other Visa card was also cancelled for non-utilization as at February 23, 2024;
- (l) Snieg has failed to address the fact that he agreed in or about January 2024 to provide additional security to RBC in support of the credit facilities to Igloo, in the form of an increased collateral mortgage against a property at 2881 20th Sideroad, Beeton, Ontario;
- (m) Snieg suggests that the payment demands and the Section 244 Notice did not allege Igloo was in default. However, Igloo was offside on its covenants to RBC, i.e., priority payable arrears and reporting, and the Operating Line and Visa Facilities are payable on demand and do not require an event of default;

- (n) Snieg suggests that RBC was advised of the auctions. This is incorrect. On a call in February, 2024, Snieg advised that Igloo was considering an auction of its assets. RBC advised him that this would need to be submitted as part of a proposal for a forbearance;
- (o) RBC was only advised of the February auction after it generated net proceeds of \$300,000 and after Igloo filed its NOI.

19. RBC is being materially prejudiced by the NOI and stay of proceedings and it is not likely that Igloo will be able to make a viable proposal.¹²

20. RBC will be filing further materials in response to the Extension Motion and, if necessary, a motion by RBC to lift the stay of proceedings against RBC.

21. As stated above, RBC was unaware that counsel for Igloo was not acting for the Individual Debtors and that the Individual Debtors had not brought their own motion to extend the time to make a proposal until after the hearing on March 20, 2024.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

22. Igloo and the Individual Debtors filed NOI's pursuant to section 50.4(1) of the BIA. The relevant provision of section 50.4 of the BIA are as follows:

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,

¹² O'Gorman Affidavit, para. 20

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and

(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

(a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;

(b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

...

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

- (i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and
- (ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and
- (c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- (b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) **The insolvent person** may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted. **[emphasis added above]**

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

23. It is clear from the statutory provisions that the **insolvent person** may, before the expiry of the 30 day period, bring a motion to extend the stay period. Neither of the Individual Debtors has done so. There is no authority for someone other than the insolvent person to bring a motion on his or her behalf.

24. Pursuant to section 50.4(10) the court is not authorized to extend the time for bringing such a motion.

25. In addition, as set out in the BIA, the proposal trustee is required to:

(a) Monitor the insolvent person's business and financial affairs;

(b) Have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs;

- (c) File a report on the state of the insolvent person's business and financial affairs at or before the hearing by the court of any application under subsection (9) to extend the time to make a proposal.

26. The Proposal Trustee's report contains no reporting whatsoever on the Individual Debtors' assets and liabilities, beyond the following:

42. The personal financial circumstances of the Individuals are closely tied to the Company's. As noted in the Snieg Affidavit and above, Maria and Stan have each personally guaranteed the Company's obligations to RBC in the amount of \$3.3 million and \$3.3 million, respectively (the "**Individuals' Guarantees**"), representing approximately 85% and 94%, respectively, of the Individuals' known liabilities. The Proposal Trustee understands that the Individuals' Guarantees are secured by a collateral mortgage on the Tecumseth Property.

43. As further noted in the Snieg Affidavit, the Individuals' only other significant debt consists of approximately \$550,000 owing to Bank of Montreal relating to home equity line of credit ("**HELOC**"). The Proposal Trustee understands that the funds advanced to Individuals pursuant to the HELOC were subsequently loaned to the Company to finance inventory purchases.

27. There is no disclosure or analysis of the Individual Debtors' assets or cash flow statements.

28. Even if the Individual Debtors had brought motions to extend the time to make a proposal, they have not satisfied the statutory tests. On a motion to extend, the onus lies on the debtors to satisfy the tests.

29. The Proposal Trustee's report includes the perfunctory statement:

While it is too early to determine whether a viable proposal will be presented by the Debtors to their creditors, in the Proposal Trustee's

view, it is **possible** that the Company can devise a going-concern solution that provides more value to stakeholders than a forced liquidation of the Debtors' assets at this time. [emphasis added]

30. This statement does not meet the BIA requirement to show that: "the insolvent person would **likely** be able to make a viable proposal if the extension being applied for were granted".

31. Further, without disclosure and analysis of the Individual Debtors' assets, liabilities and cash flow projections, it is impossible to determine whether they are acting in good faith and whether creditors will be materially prejudiced by an extension of time to file a proposal.

32. There are in fact many issues of concern regarding the good faith of the Individual Debtors, including the following:


- (a) Snieg arranged and carried out an auction of Igloo's assets, selling assets covered by RBC's security, without RBC's consent;
- (b) Igloo did not seek the consent of the court to carry out the auction(s);
- (c) There are substantial arrears of source deductions, which are in priority to RBC and which is a serious breach of trust;
- (d) There are also substantial arrears of HST, which is again a serious breach of trust and give rise to personal liability;

- (e) Igloo and the Individual Debtors have not disclosed key information regarding the value of Igloo's assets;
- (f) The Individual Debtors do not appear to have disclosed information to the Proposal Trustee about their personal assets, despite a statutory obligation to do so;
- (g) There was no clear disclosure to the Court or the creditors of the fact that the Individual Debtors had not in fact brought motions to extend the time to make a proposal.

PART IV - ORDER REQUESTED

33. It is submitted that the Individual Debtors should be deemed bankrupt today, March 22, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of March, 2024.



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