



The Cirque du Soleil's Restructuring or When Secured Creditors Won't Let It Go

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In 2020, the world-renowned Cirque du Soleil filed for protection from its creditors under the *Companies' Creditors Arrangement Act* (“**CCAA**”)² in Canada, and Chapter 15 of the *United States Bankruptcy Code* (the “**US Bankruptcy Code**”) in the United States of America. As outlined below, the secured and unsecured lenders of Cirque du Soleil did not bend to the will of its shareholders and intervened in the insolvency proceedings to change their course and the future of the company.

Background

Cirque du Soleil Entertainment Group (“**Cirque du Soleil**”, “**Cirque**”, or the “**company**”) originally started in 1984 as *Les Échassiers de Baie-Saint-Paul* (i.e. *The Stiltwalkers of Baie-Saint-Paul*), a troupe of 20 street performers in the small town of Baie-Saint-Paul, Québec, Canada.³ Throughout the years, Cirque du Soleil has redefined how the world views the circus by offering a unique take on the circus arts – animal free, striking, dramatic, beautiful, and reflective – and went from small town talent to a world leader in live entertainment. Now established in Montréal, the Canadian organization has brought its art to over 180 million spectators with productions presented in 450 cities in 60 countries.⁴

In 2015, Cirque's founder Guy Laliberté sold a 90% joint stake in Cirque du Soleil to American private equity investment firm TPG Capital, Chinese investment company Fosun Capital Group and the *Caisse de dépôt et placement du Québec* (“**CDPQ**”), a Québec state owned pension plan, for approximately \$1.5 billion, while himself retaining a 10% stake in the company.

In February 2020, just before the outbreak of the COVID-19 pandemic, Guy Laliberté sold the last of his shares in Cirque du Soleil to CDPQ (doubling the latter's share to about 20%), nearly 36 years after launching the Québec-based circus troupe. Following this transaction, TPG Capital remained Cirque's majority shareholder and Fosun Capital Group retained a 20% stake.

In late March 2020, the company laid off the majority of its employees after all of Cirque's shows around the world were shuttered as a result of the pandemic.

¹ The firm, under Antoine Leduc's leadership and coordination, represented some potential bidders in their due diligence review of the Cirque, in the context of the sale and investment solicitation process described in this article.

² R.S.C. 1985, c. C-36.

³ Please see the Cirque's website, online: <https://www.cirquedusoleil.com/about-us/history>.

⁴ Please see the Cirque's website, online: <https://www.cirquedusoleil.com/press/kits/corporate/about-cirque>.

According to a report by Ernst & Young⁵ – the firm responsible for overseeing Cirque du Soleil’s restructuring proceedings described below – the company was in a vulnerable position even before the pandemic paralyzed its activities. The company’s net loss gradually increased from USD \$10 million to USD \$80 million from 2017 to 2019 and, as of March 31, 2020, the company’s various debts totalled more than one billion USD.

Restructuring

With the Cirque’s precarious financial situation and no revenues since the forced closure of all of its shows due to COVID-19, on June 29, 2020, Cirque du Soleil and certain of its affiliated companies filed for protection from their creditors under the CCAA⁶ in order to restructure its capital structure and restart its business. The Superior Court of Québec (Commercial Division) in Montréal (the “**Court**”) granted Cirque’s application.

First Purchase Agreement

In connection with the CCAA filing, Cirque du Soleil entered into a “stalking horse” purchase agreement (the “**First Purchase Agreement**”) with its existing shareholders (the “**Sponsors**”) as well as *Investissement Québec*, the Québec government’s financial arm, as a debt provider, pursuant to which the Sponsors would acquire substantially all of the company’s assets, for a combination of cash, debt, and equity.

The First Purchase Agreement was intended to serve as the “stalking horse” bid in a sale and investment solicitation process (the “**SISP**”) supervised by the Court and Ernst & Young, the Court-appointed monitor (the “**Monitor**”). The First Purchase Agreement set the minimum acceptable bid for an auction of the company pursuant to the SISP.

The First Purchase Agreement provided that the Sponsors would inject USD\$300 million of liquidity into the restructured business (USD\$20 million of which was to be used for the creation of two dedicated funds to provide relief to impacted employees and independent contractors) and, as part of this USD\$300 million, *Investissement Québec* would provide USD\$200 million in interest free debt financing to support the proposed acquisition. The USD\$200 million interest free debt financing by *Investissement Québec* did however come with a very strong “Québec clause” with undertakings in favour of the Québec community, such as maintaining the company’s headquarters and have its CEO based in Montréal, Québec.

The First Purchase Agreement further provided that Cirque du Soleil’s existing first lien and second lien secured lenders (the “**Lenders**”) would obtain USD\$50 million of unsecured, takeback debt in addition to a 45% equity stake in the restructured company, and repayment of an interim loan made by certain first lien lenders in an amount of USD\$50 million.

Second Purchase Agreement

The Lenders were not satisfied with their position under the First Purchase Agreement and moved to force a different deal. As a result, on July 16, 2020, Cirque du Soleil entered into a new “stalking horse” purchase agreement (the “**Second Purchase Agreement**”) with the Lenders pursuant to which the Lenders would acquire substantially all of the company’s assets in settlement of Cirque’s first and second lien debt. The Second Purchase Agreement would cause all the Sponsors’ investment being wiped out. Cirque and the Sponsors had to agree to mutually terminate the First Purchase Agreement.

⁵ Please see the *Report of the Proposed Monitor – June 29, 2020*, online: <https://documentcentre.ey.com/api/Document/download?docId=640&language=EN>.

⁶ *First Day Initial Order*, June 29, 2020, Superior Court of Québec, Commercial Division (Montréal), Court File No. 500-11-058415-205.

The Second Purchase Agreement was intended to serve as the new “stalking horse” bid and to set the minimum acceptable bid for an auction of the company under the Court’s supervision. It replicated the Sponsors’ proposal in the First Purchase Agreement by providing for the establishment of two funds totaling USD\$20 million to provide relief to impacted employees and independent contractors. It also included similar Québec undertakings.

On July 17, 2020, the Court approved the Second Purchase Agreement and the SISP,⁷ despite contestation from second lien secured lenders and unsecured lenders – who would not be compensated under the Second Purchase Agreement –, and the Court established a very structured and short bidding process.

Bid

According to the Monitor’s report,⁸ Cirque received several other non-binding preliminary offers to buy the company, but none of those resulted in a formal offer that could better the Lenders’ bid as at the August 18, 2020 bid deadline. As a result, the Lenders’ bid won.

US Proceedings

Given their activities in the United States, Cirque had to seek immediate provisional recognition of the initial order for the filing by Cirque for protection from its creditors under the CCAA (the “**Initial Order**”) in the United States. Therefore, on July 1, 2020, Cirque du Soleil Canada Inc., as authorized foreign representative, filed a voluntary petition for each of the Cirque and certain of its affiliated companies under Chapter 15 of the *US Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) seeking recognition of the proceedings under the CCAA as a foreign main proceeding and the enforcement in the United States of the relief granted by the Court in Canada.

On July 2, 2020, the US Court issued an order granting provisional relief pursuant to Section 1519 of the *US Bankruptcy Code*, which granted, on a provisional basis, recognition of the CCAA proceedings and gave effect in the United States to the Initial Order.

On August 11, 2020, the US Court issued a definitive Recognition Order which, *inter alia*: (1) recognized the CCAA proceedings as foreign main restructuring proceedings; (2) gave full force and effect, on a final basis, to the Initial Order, (3) and reserved the rights of all parties to object to recognition of any orders of the Court authorizing any bid process or sale in the CCAA proceedings.

The second lien secured lenders and unsecured lenders also unsuccessfully tried to contest the recognition of the CCAA proceedings and the giving of effect of the Initial Order in the United States.

Conclusion

On November 24, 2020, Cirque du Soleil announced the successful closing of the sale transaction with the Lenders and its emergence from creditor protection under the CCAA in Canada and Chapter 15 of the *US Bankruptcy Code* in the United States.⁹ Additionally, the Lenders agreed to maintain the company’s headquarters in Montréal for at least five years and that Daniel Lamarre remains in position

⁷ *Order Approving a Sale and Investment Solicitation Process*, July 17, 2020, Superior Court of Québec, Commercial Division (Montréal), Court File No. 500-11-058415-205.

⁸ *Third Report of the Monitor* – August 25, 2020, online: <https://documentcentre.ey.com/api/Document/download?docId=31806&language=EN>.

⁹ Please see the Cirque’s website, online: <https://www.cirquedusoleil.com/press/news/2020/cirque-du-soleil-entertainment-group-confirms-closing-of-sale-transaction>.

as President and Chief Executive Officer of Cirque du Soleil Entertainment Group, as well as continue to sit on the company's Board of Directors.¹⁰

The Cirque du Soleil's case is a prime example of secured lenders thwarting shareholders' attempt to keep control of a worldwide company in a court-supervised restructuring and winning over such control for themselves. However, the coming months, with the expected end of the pandemic everyone prays for, will be interesting and revealing about how the Lenders will cope to manage and operate the Cirque, which will no doubt represent a real challenge.

The information and commentary set forth herein are for the general information of the reader and are not intended as legal advice or as an opinion to be relied upon in relation to any particular circumstances.

¹⁰ *Ibid.*