

Q.B.G. No. 25 of 2009 J.C.R.

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE APPOINTMENT OF A  
RECEIVER PURSUANT TO THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3

BETWEEN:

SASKATCHEWAN TELECOMMUNICATIONS

APPLICANT

v.

WIRELESS AGE COMMUNICATIONS LTD.  
AND  
WIRELESS SOURCE DISTRIBUTION LTD.

RESPONDENTS

Mr. Leonard Andrychuk, Q.C. for the applicant  
Mr. Randall Rooke Q.C. for the respondents  
Michael W. Milani, Q.C. for interested party Bell Distribution Inc.  
Mr. Victor Dietz, Q.C., for interested party Jump.ca Wireless Supply Corp.

FIAT — Zarzeczny J.

April 29, 2009

SaskTel and the court appointed receiver, Myers Norris Penny Limited (the "Receiver") apply for approval of a proposed sale by the Receiver of certain assets of the respondents located in Manitoba and Saskatchewan. The respondents do not oppose. The terms of the proposed sale are as described in purchase

agreements dated March 2, 2009 for the Manitoba assets and April 14, 2009 for the Saskatchewan assets. Manitoba's sale is not controversial.

The proposed Saskatchewan sale involves a purchaser by the name of IM Wireless Communications Ltd. (the "Purchaser"), one of two short listed potential purchasers, the other being the interested party, Jump.ca.

Jump.ca opposes the court approval of the sale. It does so claiming unfairness in the purchase proposal solicitation process. The complaints relate to the fact that the current general manager of the respondents (Allen Cowie) was a principal and part owner of the Purchaser. The president of Jump.ca (Kelly Kazakoff) alleges he shared commercially confidential information with and made an offer of employment to Mr. Cowie if Jump.ca was the successful purchaser. Jump.ca alleges that Mr. Cowie did not disclose his interest as a proponent for the purchase to Jump.ca as he should have done. Nor did the Receiver and its representatives, in directing Mr. Kazakoff to seek information or clarifications from Mr. Cowie, disclose such interest.

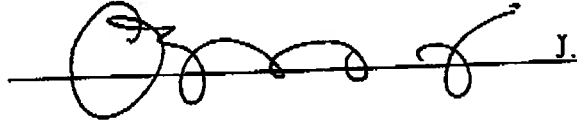
From the material filed, I have concluded that there is no basis for the assertion by Jump.ca that the process leading to the purchase and sale of the respondent's assets to the Purchaser was flawed or led to any unfairness in its results. I have reached this conclusion for the following reasons stated summarily:

1. The Purchaser's bid had been submitted to the Receiver prior to any discussion or communication between Mr. Kazakoff or Mr. Cowie respecting the assets purchased or any information relevant to any purchase proposal. That (the Purchaser's) bid remained unchanged until after the closing date for the Receiver's receipt of proposals February 20, 2009. Any discussions between Messrs. Kazakoff and Cowie could not have influenced the Purchaser's initial proposal;
2. While of limited relevance, I have also concluded that Mr. Cowie informed Mr. Kazakoff that he was a participant in a potentially competing bid for the purchase of the assets in respect of which Mr.

Kazakoff sought information from him. Although Mr. Kazakoff could not recall this disclosure (indeed he denies that it occurred in his affidavit) I am supported in this conclusion by my review of Exhibit "A" to the Cowie affidavit containing, as it does, an email dated the day of his discussions with Mr. Kazakoff in which he confirms he disclosed his involvement (albeit an email to his partners in the proposal);

3. A careful review of Mr. Kazakoff's affidavit does not disclose any sensitive commercial information exchanged between he and Mr. Cowie in respect to the proposed bid which would not have been available to any other proponent making inquires either of Mr. Cowie or the Receiver. Nor is there any impropriety respecting Mr. Kazakoff's offer of employment to Mr. Cowie should Jump.ca be the successful purchaser and Mr. Cowie's expression of interest in such employment;
4. After the proposal submission deadline of February 20, 2009, the Receiver notified both Jump.ca and the Purchaser that they were short listed proponents and he gave each of them two separate opportunities to enhance the financial and other elements of their proposal which both did. During this phase of the process, no further communication took place between Messrs. Kazakoff and Cowie;
5. The third report of the Receiver recommending to this Court the Purchaser and the purchase agreement rated both the Jump.ca and Purchaser's proposal equally from a financial perspective. The Receiver recommended acceptance of the Purchaser because of its enhanced proposals for retention of existing employees over that of Jump.ca.

In the result, and for these stated reasons, the court dismisses Jump. ca's objections and grants the orders applied for subject to appropriate amendments as discussed with counsel including deletion of paragraph 7 of the draft order. The court approves the Manitoba and Saskatchewan purchases as proposed and recommended by the Receiver. A revised draft order may be presented to Zarzeczny J. for review prior to issuance.

A handwritten signature in black ink, appearing to be 'Zarzeczny J.', written over a horizontal line. The signature is cursive and somewhat stylized.