

Mock Creditors Meeting

FACTS:

The Malborough Company filed a Division I Proposal with your office and you are the designated trustee on the file.

The Malborough Company has been operating for over 20 years in the construction business, specializing in the manufacturing and installation of heating exchange systems. Historically, the company has done well but, in recent years, with the obligation to modernize the plant, some strikes by the unionized employees and the new environmental laws, the company has been unable to generate a profit. In addition, the brain and heart of the company, Mr. Malt, has informed you that he is unwilling to invest additional monies into the company. The company employs 50 employees and is located in the suburb approximately 50km from (*The name of the city where the Forum is taking place*).

All employees are paid to date and most of their vacation pays have been paid. As the designated trustee on the proposal, you have reviewed the financial statements of the debtor company for the last 3 years, had an inventory taken, examined the receivables of the company and all other necessary accounting documents and are satisfied that, according to those documents, there are no reviewable or undervalued transactions. The terms of the proposal are as follows:

1. Chill Bank, for which the payments will continue as per the current agreement;
2. Deemed trust, payable within 6 months of the acceptance of the proposal by the court;
3. The unsecured creditors will receive a dividend of 20% of the amount owed as of the date of the filing of the proposal. The amount is payable in 4 installments, the first installment will be due 12 months after the payment of the deemed trust amounts.

Note that your fee of 25,000\$ for all the work that has been done plus expenses will be taken from the monies within the terms of the proposal.

Your analysis of the file and your discussion with the director of the debtor company has strongly convinced you that this is the best the company can offer. You are confident that the company, with full cooperation from Chill Bank, will be able to comply with the terms of the proposal and, as a result, survive this financial crisis.

On the day of the meeting of creditors, a review of the file reveals that you have received some proofs of claim, but no completed voting letters.

LIST OF CREDITORS OF THE MALBOROUGH COMPANY

The company has the following creditors according to Mr. Malt:

Revenue Canada	\$ 125,000 deemed trust	
Revenue Canada	\$ 300,000 (arbitrary GST amount)	
Suppliers	\$ 400,000	
Important supplier	\$ 350,000	
Critical Supplier X	\$ 25,000 (only one supplying a specific item)	
Rent	\$ 75,000 (landlord is a company controlled by Mr. Malt)	The terms of the proposal are such that the landlord agrees to forego the Section 136 (1) f) BIA claim and file the entire claim as an unsecured creditor.
Chill Bank	\$ 500,000 (secured creditor on various pieces of equipment)	According to your evaluation the equipment is worth only \$200,000.
Chill Bank	\$ 250,000 (line of credit secured by inventory)	According to your evaluation, the inventory is worth only \$50,000.
Mr. Malt	\$ 200,000 (injection of capital by the director)	As per the terms of the proposal, Mr Malt agrees to forego any payments until the completion of the terms of the proposal.

FIRST SCENE:

Discussion on stage between the trustee administrator of the proposal and the bank manager

The day of the meeting of creditors you are informed by the manager of Chill Bank (who had previously requested a copy of the inventory) that a few pieces of equipment covered by its security are missing from the inventory. You explain to him that a theft occurred a few weeks prior to the filing of the proposal and that probably the equipment missing is part of the insurance claim. You explain to the manager that you are awaiting final documentation from the police as well as the insurance adjustor and that your report will be amended verbally at the meeting of creditors. The manager of Chill Bank informs you that he will be present at the meeting of creditors. He is unhappy and you foresee a difficult situation at the meeting. It is clear in your mind that the company needs the cooperation of Chill Bank in order to survive.

QUESTION

With respect to the trustee's report on the proposal, should the issue of the theft have been mentioned within the report sent to all creditors?

- a) There is no obligation to mention this issue in the report. It is sufficient to mention it verbally at the meeting of creditors.
- b) Yes, the trustee has an obligation to mention it on the trustee's report.
- c) Considering that all assets are under the security of Chill Bank, the Bank is the only creditor that needs to know about this issue.

SECOND SCENE:

Discussion on stage between the trustee administrator of the proposal and the director of the debtor company

Prior to the meeting you meet with Mr. Malt who informs you that he forgot to include an important creditor – his ex-wife. According to him, a long time ago (close to 10 years), she loaned the company \$100,000. He had completely forgotten about it as she is not a creditor who regularly receives payments, particularly since the divorce. In fact, Mr. Malt cannot remember when she last received a payment in reimbursement of this loan. His attorney has indicated that the debt is probably prescribed and so she really has no claim in the proposal. Mr. Malt suspects that his ex-wife will attend the meeting and will probably show some attitude. You indicate to him that his ex-wife has filed her claim and it is in the amount of \$200,000. The claim contains documentation – the original deed of loan for \$100,000 (no mention of interest).

When questioned, the ex-wife indicates that the extra \$100,000 is the interest accumulated over the last 10 years, pursuant to a verbal agreement between Mr. Malt and herself. She also indicates that she will attend the meeting and tell all why the company is really in trouble. Mr. Malt protests quite strongly that this amount is incorrect as he knows that his ex-wife has received payments (in his mind, at least \$25,000). In addition, Mr. Malt confirms that he never agreed to interest. He reassures you that there is no need to worry about his ex-wife as she is just melodramatic and there is nothing that he has

not told you. You briefly discuss with him your conversation with the Chill Bank manager concerning missing assets, but you run out of time to get the full information.

With respect to the ex-wife's claim, going into the creditors meeting Mr. Malt's position is that he is adamant that certain payments were made and that there was no interest rate to be charged. The ex-wife is equally adamant that there were no payments and that it was always clear that there would be interest paid – otherwise why would she lend the company this money.

QUESTION

How should the trustee deal with the proof of claim of Mr. Malt's ex-wife?

- a) Accept the claim for \$100,000 (original amount owed) as the deed is silent on any interest on the loan.
- b) Accept the claim for \$200,000. A brief calculation of the legal interest rate indicates that \$100,000 is reasonable for the duration of the loan (10 years).
- c) Accept the claim for \$ 75,000. Obtain proof of payment from the debtor company later.

THIRD SCENE

You open the meeting at the convened time.

After the introductions, you advise the meeting of creditors that you have just received a phone call from Mr. Important Supplier, who advises you that he will be approximately 15 minutes late because of traffic. He has his proof of claim with him in the car. He wants you to suspend the meeting until he arrives as he has invaluable information to provide the creditors.

QUESTION

With respect to the request to suspend the meeting of creditors from Mr. Important Supplier – what should the trustee do?

- a) Suspend the meeting of creditors for 15 minutes.
- b) Suspend the meeting of creditors for one week.
- c) Obtain a resolution from the creditors authorizing the postponement of the meeting of creditors.
- d) Start the meeting regardless of the request from Mr. Important Supplier.

CRA is unsatisfied with certain of the explanations and indicates that it will vote against the proposal on its unsecured claim portion of \$ 300,000. All other creditors are upset as they are not willing at this point to let the company go into bankruptcy.

QUESTION

With respect to the vote, do you let CRA vote on its \$ 300,000 arbitrary claim?

- a) Yes

b) No

CRA indicates to you that it is willing to vote yes only if you agree to reduce your fees substantially. As the CRA representative tells you – the future of the company, as well as the future of all the jobs, is in your hands. The other creditors seem to be in agreement with CRA.

QUESTION

As the designated trustee of the estate, do you:

- a) Reduce your fee to the level acceptable to CRA and the other creditors.
- b) Refuse to reduce your fee.