Alberta court finds a forced sale share provision violates the anti-deprivation rule when triggered by receivership proceedings

March 10, 2025

In the recent decision *ATB Financial v Mayfield Investments*, 2025 ABKB 61 (*Mayfield*), the Alberta Court of King's Bench (the Court) concluded that a forced share sale provision violated the Anti-Deprivation Rule and was thus void and unenforceable. *Mayfield* is an important decision as it considers the effects-based nature of the anti-deprivation rule (the ADR) and is one of few cases to have applied the ADR, affirmed by the leading case of *Chandos Construction Ltd. v Deloitte Restructuring*¸ 2020 SCC 25 (*Chandos*).

The anti-deprivation rule

The ADR is an ancient and rarely applied common law rule. The ADR was considered and affirmed to remain good law in Canada by the Supreme Court of Canada in *Chandos*. Justice Rowe described the ADR as follows:

> the anti-deprivation rule renders void contractual provisions that, upon insolvency, remove value that would otherwise have been available to an insolvent person's creditors from their reach. This test has two parts: first, the relevant clause must be triggered by an event of insolvency or bankruptcy; and second, the effect of the clause must be to remove value from the insolvent's estate. This has been rightly called an effects-based test.[1]

The effects-based nature of the test, confirmed by *Chandos*, makes the Canadian ADR more expansive than in other jurisdictions. More particularly, in *Belmont Park Investments Pty Ltd v BNY Corporate Trustee Services Ltd* [2012] 1 AC 383 the United Kingdom Supreme Court held that while the ADR continues to be good law, the test should be "purpose based" and look to the intentions of the parties rather than the effect of the provision in question.

In *Chandos*, Justice Rowe held that when applying the effects-based rule, courts (and commercial parties) do not need to look to anything other than the trigger for the clause and its effect. Whether the purpose of the clause was to remove value upon insolvency is irrelevant as a matter of current Canadian law.

The decision

In *Mayfield*, Ernst & Young Inc. was the court appointed receiver (Receiver) over Mayfield Investments (Mayfield). Mayfield's key assets included 50 per cent of the shares in 1995472 Alberta Ltd (1995). The remaining 50 per cent of the shares were owned by solvent third parties, not in receivership (the Shareholders). The Receiver sought to conduct a sales process for the shares, and in connection with the sales process, the Receiver applied to the Court for a declaration that a specific provision in the unanimous shareholder agreement (USA) for 1995 be rendered void pursuant to the ADR.

The provision in question under the USA allowed for the Shareholders to purchase the Mayfield shares in 1995 in the event that a "withdrawing event" occurred. A "Withdrawing Event", as defined by the provision, included an instance when a shareholder was petitioned into bankruptcy, insolvency or receivership, or it made an assignment for the benefit of its creditors. Further, upon a "Withdrawing Event", the Shareholders were entitled to acquire the Mayfield shares at a 25 per cent discount.

At the application, the Receiver argued that the provision contravened the ADR as set out by *Chandos*. The Receiver argued that the clause was triggered by insolvency (the receivership), and had the effect of removing value from the estate by virtue of the discount share price.

Conversely, the Shareholders argued that the triggering event was not receivership proceedings or Mayfield's insolvency, but a notice sent by one of Mayfield's creditors under the USA. This notice could not have been the triggering event as this notice was provided to EY after the receivership had begun.

Justice G.S. Dunlop granted the Receiver's application, and found the clause void on the basis of the ADR. Among other things, the Court found the effect was plainly to remove value, and held that while there may be non-insolvency events that trigger the clause, the only triggering event in question was the insolvency.

Takeaways

Mayfield is significant as being one of the few cases to apply the ADR, and void a contractual provision, since the Supreme Court revisited ADR in *Chandos*.

Mayfield also indicates that courts will analyze the application of the ADR by looking at the event that actually triggered the clause in that case, and a clause will not be saved merely because it includes non-insolvency triggering events. *Mayfield* also removes any lingering thought that the intentions of the parties may be considered, when applying the ADR test from *Chandos*.

From the perspective of receivers and court-officers, *Mayfield* is instructive in that it gives receivers an additional tool when arranging a sales process. One issue that arose in *Mayfield* was whether the clause in question had or could be disclaimed by the receiver. The Court found there was no need to consider a disclaimer, because the clause was void by the ADR. In future cases, the ADR may also be an alternative to a disclaimer.

Footnotes

[1] *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2020 SCC 25 at para 31.

By

Jack Maslen, Richard Kelba

Expertise

Insolvency & Restructuring

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749