

# COUNSEL SLIP

COURT FILE

NO.: BK-19-02551574 0031

DATE: 06-DEC-2019

NO. ON LIST APP 21

TITLE OF PROCEEDING WISP INTERNET ETAL.

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 PETITIONER(S)

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JUDICIAL NOTES:

Dec. 6, 2019

The moving party WISP Internet Provider seeks an interim injunction enabling it to access and use its internet tower on the property of the Respondent, DogsCamp etc.

On Aug 29 2019, WISP filed a notice of intention under s. 504 of the BIA. At the time, WISP was current in its rental payments under the tower agreement (the Agreement) it had with the Respondent. Thereafter it has not paid rent. It has filed a proposal which has been approved by 75% of its creditors (the Respondent did not attend the meeting or vote). It plans to bring an approval motion to the court in January 2020 (not scheduled).

On Dec 4 2019 the day after approval of WISP's proposal, the Respondent purported to terminate the Agreement and advised WISP that it could no longer enter its property. The consequences to WISP are significant and in my view irreparable. The Respondent has cut off WISP's subscribers who accessed the tower with consequences to WISP's revenue but to its proposal as well.

I am satisfied that WISP has met the RFR MacDonald test (1994] 1 S.C.R. 311). It has established a strong prima facie case. Apart from the creditor stay in s. 69(1)(a) of the BIA, the Agreement can only be terminated on 20 days written notice of default. (over)

The Respondent has not provided such notice. In fact it provided no notice. In correspondence concerning his actions, Mr. Kowarsky relies on the provision in the Agreement which states that if WISP fails to meet its obligations, ownership of the works will transfer to the Respondent. But that only happens when the Agreement is terminated, which it has not been. The evidence establishes the Respondent is in breach of contract as a result of its actions.

I am also satisfied, given the potential impact of the Respondent's actions on the ultimate success of the proposal, that such harm would be irreparable to WISP. For similar reasons, I find the balance of convenience favors WISP. I recognize that the Respondent is suffering harm as well in not receiving rent but in the circumstances such harm is not as significant as WISP's harm if the Respondent's actions are allowed to continue.

The Respondent was given notice of this hearing yesterday afternoon and sent the motion materials by email. Mr. Kowarsky had previously been communicating with both WISP and the Monitor so I'm satisfied he received the materials.

For the above reasons the interim injunction requested is granted and is in force pending the return of WISP's approval motion for the proposal.

As the provisions in RFR have been met here and given the circumstances, my order is subject to provisional execution under s. 195 of the BIA.

Order signed by me.

