



***Judges can stop creditors from voting on how to settle insolvent companies' debts and can approve "interim financing" from third parties to fund lawsuits, the Supreme Court has ruled.***

When a company doesn't have money to pay back its debts, it's "insolvent." If an insolvent company owes people (creditors) more than \$5 million, it can get help through the *Companies' Creditors Arrangement Act* (CCAA). Under the CCAA, it can work out agreements with its creditors to pay them back. A "supervising judge" oversees this process.

9354-9186 Québec inc., also known as Bluberi, was insolvent. It owed a lot of money to Callidus because Callidus had given it a loan. The loan was "secured," meaning if Bluberi didn't pay, Callidus could take things Bluberi owned. (A mortgage loan is a kind of secured loan.) This made Callidus a "secured creditor." Bluberi also had "unsecured creditors" (like its employees).

Bluberi agreed to sell what it owned to Callidus to pay its debt. The agreement said Callidus would get Bluberi's assets, and Bluberi would only owe Callidus \$3 million. The agreement also said Bluberi could keep the right to sue Callidus. Bluberi wanted to sue because it blamed Callidus for its insolvency problems. This right to sue was the only thing of value that Bluberi had left.

Bluberi still had other debts. It wanted to use money from the lawsuit against Callidus to pay them. But Callidus wanted to settle Bluberi's debts in a different way. It put forward a "plan of arrangement." A plan of arrangement is a proposal about how to pay an insolvent company's creditors. A plan of arrangement needs to be approved by the company's creditors. Under Callidus's plan, some of Bluberi's creditors would get everything they were owed, but some would only get part. In exchange, Bluberi would have to give up its right to sue Callidus. Bluberi's unsecured creditors voted and rejected the plan. Callidus could have tried to vote, but chose not to.

Bluberi then came up with a way to get the money it needed to sue Callidus, through a "third-party litigation funding agreement." A company would provide the money in exchange for part of anything Bluberi won from Callidus. Bluberi asked the supervising judge to approve this agreement as "interim financing." Interim financing is money that helps a company make use of the assets it has left. But Callidus said the agreement was a plan of arrangement, and that the creditors needed to vote on it.

At the same time, Callidus put forward a new plan, which was basically the same as its first one. Callidus asked the supervising judge if it could vote on the new plan. If it could vote, its plan would pass.

The supervising judge said Callidus couldn't vote. He said it was acting with an "improper purpose." He said Callidus chose not to try to vote the first time, and was now trying to override the result of that vote. He decided Bluberi could go forward with its litigation funding agreement without a vote because the agreement was fair and wasn't a plan of arrangement.

The Court of Appeal disagreed with the supervising judge.

The Supreme Court unanimously said the supervising judge's decisions should stand. It said appeal courts should give a great deal of respect to a supervising judge's decisions, even if they would have made different ones. The supervising judge oversees the case from start to finish, knows the specific situation the best, and is in the best position to balance the many goals of the CCAA. One of the CCAA's goals is to help companies stay in business. Another goal is to make sure creditors get back as much of the money they are owed as possible.

In this case, the Supreme Court said the supervising judge balanced those goals properly. It said he was allowed to stop Callidus from voting if it was acting with an improper purpose, which it was. He was also allowed to approve Bluberi's litigation funding agreement as interim financing, if he thought it was appropriate. He was right to think that it was. The agreement was meant to help Bluberi make use of the only asset it had left (its right to sue Callidus).

This case was decided "from the bench" right after the hearing on January 23, 2020. When a case is decided from the bench, it means the judges tell the parties the outcome right away. In this case, the judges gave written reasons later to explain.

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**Breakdown of the decision: *Unanimous*:** The Court unanimously allowed the appeal from the bench | ***Written decision*:** Chief Justice Richard [Wagner](#) and Justice Michael [Moldaver](#) wrote the Court's reasons (Justices [Abella](#), [Karakatsanis](#), [Côté](#), [Rowe](#), and [Kasirer](#) agreed)

**More information (case # 38594):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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