

# COURT OF APPEAL

CANADA  
PROVINCE OF QUEBEC  
REGISTRY OF MONTREAL

No: 500-09-027421-189  
(500-11-049737-154)

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## MINUTES OF THE HEARING

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DATE: April 20, 2018

THE HONOURABLE MARK SCHRAGER, J.A.

PETITIONERS	COUNSEL
<b>CALLIDUS CAPITAL CORPORATION</b>	Mtre PATRICE BENOIT Mtre GENEVIÈVE CLOUTIER <i>(Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.)</i>
<b>INTERNATIONAL GAME TECHNOLOGY DELOITTE S.E.N.C.R.L. LUC CARIGNAN FRANÇOIS VIGNEAULT PHILIPPE MILLETTE FRANCIS PROULX FRANÇOIS PELLETIER</b>	Mtre JOCELYN PERREAULT <i>(McCarthy Tétrault s.e.n.c.r.l., s.r.l.)</i>

RESPONDENTS	COUNSEL
<b>9354-9186 QUÉBEC INC. (formerly BLUBERI GAMING TECHNOLOGIES INC.)</b> <b>9354-9178 QUÉBEC INC. (formerly BLUBERI GROUP INC.)</b>	Mtre ARI YAN SOREK Mtre ROGER P. SIMARD <i>(Dentons Canada LLP)</i>
IMPLEADED PARTIES	COUNSEL
<b>ERNST &amp; YOUNG INC.</b>	Mtre JOSEPH REYNAUD <i>(Stikeman Elliott s.e.n.c.r.l., s.r.l.)</i>
<b>IMF BENTHAM LIMITED</b> <b>BENTHAM IMF CAPITAL LIMITED</b>	Mtre NEIL PEDEN <i>(Woods s.e.n.c.r.l.)</i>
<b>SMT HAUTES TECHNOLOGIES</b>	<b>ABSENT</b>

**DESCRIPTION: Application for leave to appeal from a judgment rendered on March 16, 2018 by the Honourable Jean-François Michaud of the Superior Court, District of Montreal.**  
(Sec. 13, 14 C.C.A.A., 30(2), 357 C.C.P.)

Clerk: Mihary Andrianaivo	Courtroom: RC.18
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HEARING

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11:22 Beginning of the hearing.

Submission by Mtre Patrice Benoit.

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11:45 Submission by Mtre Ari Yan Sorek.

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12:10 Submission by Mtre Joseph Reynaud.

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12:17 Submission by Mtre Neil Peden.

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12:19 Rebuttal by Mtre Benoit.

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12:20 Comments by the Judge.

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12:22 Exchanges between the Judge and Counsel.

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12:25 Recess.

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12:35 Resumption of the hearing.

BY THE JUDGE: Judgment – See page 3.

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12:39 Exchanges between the Judge and Counsel pertaining to the case management.

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12:43 End of the hearing.

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Clerk

**BY THE JUDGE**

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**JUDGMENT**

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[1] Applicant seeks leave to appeal from the judgment rendered on March 16, 2018 by the Superior Court, District of Montreal, Commercial Division (the Honourable Jean-François Michaud) in a matter under the *Companies' Creditors Arrangement Act*<sup>1</sup>.

[2] While the conclusions of the judgment deal with various matters, those raised in the motion concern: (i) the right of Applicant to vote on a plan of arrangement sponsored by it and; ii) the authorization of financing and a secured charge to enable the debtor to continue litigation against the Applicant; iii) certain provisions of the financing operation approved by the judge.

[3] I would frame the most significant issues as follows:

- (i) Can a debtor, all of whose assets have been sold and is no longer actively carrying on business and whose sole asset is a litigious claim, seek court approval to obtain financing of the litigation with a view to continuing the litigation to generate monies (by a judgment or a settlement) to eventually fund a plan of arrangement or does such a course of action itself constitute a plan which should be submitted to and subject to the vote of the creditors?
- (ii) Does a creditor who sponsors a plan of arrangement have the right to vote its claim on such plan? Specifically, in this case, the plan would in effect settle a litigious claim by the debtor against the Applicant which the debtor wishes to pursue and for which it has sought approval of financing from the court;

[4] I glean other possible subsidiary issues from the materials which may be raised on appeal but I leave to the parties to frame these as they deem appropriate in their written submissions to the Court on the merits. For the time being, suffice to say that the fourfold test<sup>2</sup> for leave to appeal a C-36 matter is satisfied. The proposed appeal is not *prima facie* frivolous and the issues raised are important for this file, if not fundamental. The issues are of importance to the practice and indeed raise relatively novel questions. The debtor is not operating and given the importance of the issue to the resolution of the file, this appeal will not operate to unduly delay the progress of the C-36 matter. The presumption of the proposed litigation may be an issue but there are ways to interrupt prescription to eliminate such risk.

[5] After examining the file and hearing the parties;

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<sup>1</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

<sup>2</sup> *Aviva compagnie d'assurances du Canada v. Béton Brunet 2001 inc.*, 2016 QCCA 1837 (Schrager, J.A.); *Statoil Canada Ltd. (Arrangement relatif à)*, 2012 QCCA 665, (Hilton, J.A.).

[6] Given articles 30 and 357 *C.C.P.*;

[7] Given that the appeal should proceed by memoranda pursuant to section 36 of the *Civil Practice Regulation*, which reads as follows:

**36.** *Leave to Appeal from a Judgment (art. 357) that Terminates a Proceeding (art. 30).* A judge who grants leave to appeal from a judgment that terminates a proceeding may manage the conduct of the appeal (art. 367 & 373), save with respect to the establishment of a date of hearing.

**THEREFORE, THE UNDERSIGNED:**

[8] **GRANTS** the motion for leave to appeal;

[1] **GRANTS** leave to appeal from the judgment rendered on March 16, 2018 by the Superior Court, District of Montreal, Commercial Division (the Honourable Jean-François Michaud) in file 500-11-049737-154;

[9] **ORDERS** the appellant Callidus Capital Corporation ("Callidus") and International Game Technology, Deloitte s.e.n.c.r.l., Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx et François Pelletier (the "Creditors"), after having notified a copy upon all other parties, to file in the Office of the Court, no later than **May 30, 2018** five copies of a written argument not exceeding **30 pages** in the case of Callidus and 20 pages in the Creditors case. All documents necessary for the adjudication of the appeal (*judgment under appeal, pleadings, excerpts from depositions, etc.*) shall be attached;

[10] **ORDERS** the respondents, after having notified a copy upon all the other parties, to file in the Office of the Court, no later than **June 29, 2018**, five copies of a written argument not exceeding **30 pages** and of their supplementary documents;

[11] **ORDERS** the impleaded party Ernst & Young Inc., after having notified a copy upon all the other parties, to file in the Office of the Court, no later than **June 29, 2018**, five copies of a written argument not exceeding **20 pages** and of its supplementary documents;

[12] **ORDERS** the impleaded parties Imf Bentham Limited Bentham and Imf Capital Limited, after having notified a copy upon all the other parties, to file in the Office of the Court, no later than **June 29, 2018**, five copies of a written argument not exceeding **10 pages** and of their supplementary documents;

[13] **DIRECTS** the parties' attention to section 376 *C.C.P.* and article 55 of the *Civil Practice Regulation*, which read as follows:

**376.** The appeal lapses if the appellant does not file a brief or a memorandum within the time limit for filing. The appellate clerk issues a certificate of lapse of appeal, unless an appellate judge is seized of an application for an extension.

A respondent or any other party that does not make a timely filing of its brief or memorandum is precluded from filing and cannot be heard at the hearing unless so authorized by the Court of Appeal.

**55. *Format.*** The memorandum shall include a title page, a table of contents and be paginated consecutively.

The provisions relating to briefs (*including the final requirements*) apply to memoranda with the necessary adaptations.

[14] **REFERS** the file to the Master of the Rolls to determine the date of a hearing of **180 minutes** in duration, divided as follows: overall 90 minutes for the appellants, 60 minutes for the respondent and 15 minutes each for the impleaded parties.

[15] **DIRECTS** the parties' attention to Practice Direction G-3 (last amendment: February 27, 2017) encouraging them to attach a technological version to each paper copy of their brief, memorandum and book of authorities. Such technological version should preferably be in Word format but may also be in PDF format enabling key-word searches. The USB drive is the format preferred by the Court, but CD / DVD-ROM are also accepted;

[16] **THE WHOLE**, legal costs to follow.

  
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MARK SCHRAGER, J.A.