CITATION: Infor v. CentriLogic, 2023 ONSC 2396
COURT FILE NO.: CV-20-643083
DATE: 20230419

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
INFOR FINANCIAL INC. Plaintiff	*Matthew P. Gottlieb, Michael Currie*, for the Plaintiff
– and –	
CENTRILOGIC INC. Defendant	*Anthony Scane, Luigi Iantosca*, for the Defendant
	HEARD: January 9-12, 2023

KOEHNEN J.

REASONS FOR JUDGMENT

[1] This action concerns the interpretation of an agreement pursuant to which the plaintiff provided investment banking services to the defendant. The agreement called on the plaintiff to find financing of approximately $77 million to replace approximately $35 million of financing that the defendant had in place with HSBC Canada.

[2] Shortly before the plaintiff was about to begin detailed negotiations with potential lenders, the defendant terminated the agreement in favour of continued financing with HSBC. HSBC syndicated[1] the loan it provided to two banks that the plaintiff had already contacted pursuant to the agreement and with whom it had begun discussing the transaction.

[3] The plaintiff says it is owed $600,000 under the agreement. The defendant says it owes the plaintiff nothing because the agreement specifically excluded the payment of any fee owing if the financing was provided by HSBC. The plaintiff says that clause is inapplicable

[1] Syndication refers essentially to sharing a larger lending risk among a number of lenders.

on a proper interpretation of the term “Financing” in the agreement and because a “tail provision” in the agreement provided that if, within 12 months after expiry or termination of the agreement, any financing is provided by a party that was “contacted to” the defendant by the plaintiff, the financing fee would be payable. The plaintiff says financing of approximately $45 million was provided by two parties that the plaintiff had “contacted to” the defendant which triggered the fee provision.

[4] On my interpretation of the agreement in the factual context of this case, the financing fee is payable. The defendant admits that the work the plaintiff did was valuable. It provided a copy of that work to HSBC contrary to another term of the agreement which prohibited the defendant from sharing the plaintiff’s work with anyone without the plaintiff’s permission. HSBC was able to syndicate the loan as quickly as it did because it used the plaintiff’s work. That removed significant risk from HSBC. The fee provision in the agreement calls for a fee of 1% with a minimum fee of $600,000. The financing provided by the two banks that the plaintiff had contacted was $45 million. The fee on that amount would come to $450,000. Given that the agreement provided for a minimum fee of $600,000, that amount is owing by the defendant to the plaintiff.

A. The Facts

[5] The plaintiff, Infor Financial Inc, is an independent Canadian investment bank which provides services with respect to, among other things, raising capital, mergers and acquisitions, and restructurings. Its principal witness at the trial was Paul Liebovitz, a partner of Infor during the material time.

[6] The defendant, CentriLogic, is a corporation that specializes in providing management of cloud services, management of applications, data centres, and connectivity services. Its witness at trial was Michael Vivaldi, the Chief Financial Officer of CentriLogic during the material time.

[7] Up until 2019, CentriLogic’s principal source of debt financing was its bank, HSBC. At that time, its debt to HSBC and others was approximately $38.8 million. By the end of 2019, its relationship with HSBC had become difficult because HSBC refused CentriLogic any further access to its revolving credit facility. This made it difficult for CentriLogic to manage its business. HSBC took this position because CentriLogic had failed to provide certain deliverables under its agreements with HSBC, including audited financial statements for 2018.

[8] The lack of financing at that point was critical because CentriLogic was about to close two significant acquisitions that were vital to its future. The first was ManageForce which involved a purchase price of approximately $5 million. The second was ObjectSharp which involved a purchase price of approximately $43 million. In total, CentriLogic required $77 million in replacement financing. That was a challenging ask because it reflected CentriLogic’s annual revenue after consolidation of the two new acquisitions.

[9] Closing dates for both acquisitions were looming. As a result, CentriLogic sought new financing to replace HSBC. To do so it formed what it referred to internally as the "Debt Replacement Committee."

[10] The Debt Replacement Committee ultimately recommended that CentriLogic retain Infor, which it did by agreement dated November 19, 2019 (the "Agreement"). The Agreement provided, among other things, that:

i. CentriLogic could not share Infor's work product with anyone without Infor's permission.

ii. CentriLogic would pay Infor a fee equal to the greater of 1% and $600,000 on any financing except one with an existing lender.

iii. The financing fee was also payable if CentriLogic completed a financing within 12 months of the agreement's termination with "any party contacted to the Company by Infor" during Infor's engagement.

[11] Infor began working on the retainer upon signing the Agreement. As part of its services, Infor was to provide a lender presentation and vet financial model.

[12] The lender presentation is a PowerPoint deck that presents the company and the financing opportunity to lenders. The value add from investment bankers to lender presentations is to take information from a financial model and present it in a more summary way that will appeal to lenders. Infor's lender presentation was approximately 55 pages long.

[13] As noted, the lender presentation is based on a financial model. The financial model was described at trial as a complex Excel document with various tabs and hundreds or thousands of data points.[2] The data points connect to each other. Each data point is based on a mathematical calculation and formula. Mr. Vivaldi delivered the initial model to Infor. Mr. Liebovitz testified that he and his team spent hundreds of hours reviewing the financial model, verifying each data cell, its underlying formula, and the way it related to other elements of the model. Infor sought additional information from CentriLogic when necessary to perfect the model. It was important to ensure there were no inconsistencies or errors in the model because their presence would cause potential lenders to lose confidence in the borrower. Mr. Leibowitz described the task as painstaking, detail oriented work.

[14] According to Mr. Liebovitz there was a dramatic difference between the starting financial model that CentriLogic provided and the final product that Infor returned.

[15] It is clear that Mr. Liebovitz and his team worked long and hard on the matter. The record discloses regular emails and meetings before 9 AM and after 6 PM on weekends.

[2] Mr. Liebovitz described it as hundreds, Mr. Vivaldi described it as thousands.

[16] There were two significant challenges associated with the financial model. The first was that the model had to incorporate two new acquisitions, ManageForce and ObjectSharp. That involved integrating historical information about the target companies with that of CentriLogic and creating future projections based on that consolidated historical information. The second challenge was that CentriLogic's finance department was materially understaffed. Mr. Vivaldi had only joined CentriLogic a few months before Infor was retained. Mr. Vivaldi described CentriLogic's finance department as being "significantly understaffed" and described the company as "a bit of a mess financially." Staff within the finance department was inadequate and required more of Mr. Vivaldi's time to manage than should have been the case. That was hindering CentriLogic's progress on key projects. As part of the discussions leading to the Agreement, Mr. Liebovitz spoke with CentriLogic how it could lighten the burden on Mr. Vivaldi.

[17] In late December 2019, Mr. Vivaldi advised Infor that HSBC would provide financing for the ManageForce acquisition. There was no indication at that time that HSBC would provide financing for ObjectSharp, the larger of the two acquisitions.

[18] By early January 2020 Infor was ready to send a teaser letter to potential lenders. As part of that approach Infor spoke to contacts it had at TD Bank and CWB Financial Group.

[19] After HSBC had funded the ManageForce acquisition in December 2019, CentriLogic and HSBC began having discussions in early January 2020 about the possibility of HSBC's continued involvement with the company. CentriLogic asked Infor for advice on how to deal with HSBC and asked Infor to draft talking points for a meeting with HSBC, which Infor did. The thrust of Infor's advice to CentriLogic was to communicate openly and candidly with HSBC in a way that left the potential for continued involvement by HSBC as a lender on the table. The talking points emphasized that CentriLogic would be happy to continue to deal with HSBC but that it was prudent for the company to have a plan B and look for new lenders in light of the uncertainty surrounding HSBC's continued involvement. Once HSBC expressed interest, Infor advised CentriLogic that this was a good news story for CentriLogic because HSBC's continued involvement would send a message to other potential lenders that the company's existing lender had confidence in it. This was contrary to Infor's self-interest. It is clear from my perspective that Infor and Mr. Liebovitz were giving CentriLogic advice that was in CentriLogic's interest, not advice that was in Infor's self-interest. CentriLogic did not ask Infor to put pens down at this point.

[20] During January, Infor also sent nondisclosure agreements to TD, CWB and other potential lenders. Infor negotiated the nondisclosure agreements with both. There were so many comments on the nondisclosure agreement that CentriLogic outsourced its internal approval process for those changes to outside counsel. Mr. Liebovitz testified that he had many discussions with TD and CWB about the nondisclosure agreements. He used these negotiations as an opportunity to "sell" the deal.

[21] On January 14, 2020 Mr. Vivaldi had a meeting with HSBC. HSBC indicated that it was interested in funding the ObjectSharp acquisition and that it would be syndicating the loan. HSBC indicated that its own syndication desk was large enough to accommodate the deal

and that it did not need Infor's assistance. Mr. Vivaldi does not recall if he told Infor that. There is no other evidence that he did. I therefore find that he did not.

[22] On January 19, 2020 Mr. Vivaldi circulated the Infor financial model within CentriLogic. In doing so he stated:

> As an aside, this is the fully vetted model from Infor so has been put through the ringer.

[23] On February 4, 2020 Mr. Vivaldi sent an internal email within CentriLogic discussing the termination of Infor's assignment. Among other things he stated:

> We can convert the existing PDF lender presentation to help facilitate HSBC.

[24] The lender presentation was the one prepared by Infor. Mr. Vivaldi described the purpose of sending the presentation to HSBC as not being to help it decide to fund the loan but "definitely to help them to the finish line in an expedited way."

[25] On February 6, 2020 Mr. Vivaldi sent HSBC the lender presentation and financial model that Infor had prepared. Mr. Vivaldi said he did so:

i. for purposes of "expediency;"

ii. because it would be a waste of time for HSBC to repeat the work Infor had done; and

iii. to give HSBC a "Head start" because it was operating on "a very tight timeline".

[26] CentriLogic did not seek Infor's consent to sharing the lender presentation or financial model nor did it advise Infor that it was sending those documents to HSBC.

[27] The following day, on February 7, 2020, Mr. Vivaldi sent Mr. Liebovitz an email indicating that CentriLogic would be terminating the Agreement with Infor with the 30 days notice required by the Agreement for an effective termination date of March 7, 2020.

[28] Joseph McClellan the Senior Vice President Specialty Finance of CWB was called as a witness by Infor at trial. Mr. McClellan testified that he had obtained internal approval for the loan on March 3, 2020. He did not know whether the information necessary to obtain the approval came from Infor, HSBC or CentriLogic.

[29] On March 10, 2020 HSBC sent an email to Mr. Vivaldi confirming a meeting with TD on March 12 and attaching a lender presentation which HSBC had "updated slightly" to reflect dates, term sheet changes and closing leverage. The email asked CentriLogic to refer to the "slightly updated" lender presentation at the meeting with TD. That presentation was almost identical to the one Mr. Liebovitz sent to Mr. Vivaldi, and even used Infor's colour

scheme. The face of the document indirectly acknowledged Infor's contribution. Although the disclaimer in the document was Infor's standard form disclaimer which stated that the presentation was prepared by a financial advisor, HSBC revised the phrase to say that "this presentation was prepared by a financial advisor and HSBC." The financial advisor was Infor.

[30] HSBC lent funds to CentriLogic on March 13, 2020. CWB took part in the syndication as of April 1, 2020. Mr. McClellan testified that was a short timeframe. He also indicated that HSBC anticipated syndicating down when it put the financing agreement into place on March 13, 2020. This is equally clear from the HSBC email to CentriLogic dated March 10 which referred to the meeting with TD on March 12. TD became a lender on May 19, 2020.

B. Legal Analysis

[31] The facts set out above give rise to the following legal issues:

i. Did CentriLogic breach section 8 of the Agreement?

ii. Is the HSBC syndicated financing a "Financing" under the Agreement?

iii. Is the HSBC financing an alternative transaction under section 4 of the Agreement.?

[32] The parties agree on the fundamental principles of contractual interpretation:

(a) Courts "must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract."[3]

(b) The surrounding circumstances must never be allowed to overwhelm the words of the agreement.[4] Evidence of "surrounding circumstances" should consist only of objective evidence of the background facts at the time of the execution of the contract.[5]

(c) The parties' subjective intentions are not relevant to contractual interpretation[6] because they undermine the goal of certainty.[7]

---

[3] *Creston Moly Corp. v. Sattva Capital Corp.,* 2014 SCC 53 at para 47.
[4] *Creston Moly Corp. v. Sattva Capital Corp*., 2014 SCC 53 at para 57.

[5] *Creston Moly Corp. v. Sattva Capital Corp*., 2014 SCC 53 at para 58.
[6] *S.A. v. Metro Vancouver Housing Corp*., 2019 SCC 4 at para. 30
[7] *Thunder Bay (City) v. Canadian National Railway Company*, 2018 ONCA 517 at para 42.

(d) Commercial reasonableness and business efficacy further govern the exercise of interpreting a contract. Contracts ought to be interpreted "in accordance with sound commercial principles and good business sense."[8]

i. Did CentriLogic Breach Section 8 of the Agreement?

[33] As noted above, CentriLogic shared with HSBC, the financial model and lender presentation that it received from Infor. Infor submits that this breaches section 8 of the Agreement which provides:

> The Company acknowledges and agrees that **all written and oral opinions, advice, analysis and materials provided by INFOR** Financial in connection with the engagement hereunder **are intended solely for the benefit of the Company** and the Company's internal use and the Company covenants and agrees that **no such** opinions, advice or **materials shall be** used for any other purpose whatsoever or reproduced, **disseminated**, quoted from or referred to in whole or in part at any time, in any manner or for any purpose, **without the prior written consent of INFOR** Financial in each specific instance. [Emphasis added.]

[34] CentriLogic denies that it breached s. 8 because it submits that the financial model belonged to CentriLogic and was one that CentriLogic created. I do not accept that submission and find that CentriLogic breached the Agreement by sharing the financial model and lender presentation without Infor's consent.

[35] CentriLogic contests its breach of s. 8 by arguing that much of the information in the model came from CentriLogic and that CentriLogic owns the model.

[36] In my view this misconceives the question. The question is not whether the model contains information from CentriLogic or who owns the model as such. The question is whether the documents CentriLogic shared with HSBC contain "opinions, advice, analysis and materials provided by Infor." I find that they do.

[37] I accept that a great deal of the information contained in the financial model and the lender presentation came from CentriLogic. That is inevitable. Both documents focus on financial information about CentriLogic. That information must of necessity, come from the company. I also accept that Mr. Vivaldi prepared the initial model that Infor worked with and that the finished product features substantially the same structure and characteristics of the model that Mr. Vivaldi provided. That, however, is not the issue.

[38] The value that Infor brought to the model was, as Mr. Vivaldi himself put it, that Infor had "fully vetted" it and "put it through the ringer." Those exercises were essential to ensure that potential lenders would not be scared off by an unreliable model. Mr. Vivaldi agreed

---

[8] *Resolute FP Canada Inc. v. Ontario (Attorney General),* 2019 SCC 60 at para 79 (Côté and Brown JJ., in dissent but not on this point).

that CentriLogic could not afford to have lenders find problems with the financial model. CentriLogic expected Infor to look for errors in the model. Mr. Vivaldi was familiar with Infor personnel before hiring them. He had a lot of respect for them and viewed having Infor review and sign off on the model as a very good thing.

[39] As Mr. Vivaldi admitted, vetting the model involves the painstaking, detail oriented work of checking each of thousands of entries in it for accuracy and ensuring that the formulas underlying each of those thousands of entries work cohesively with the balance of the model. Mr. Liebovitz testified that the final model he delivered to CentriLogic was fundamentally different from what Mr. Vivaldi had sent initially. Mr. Vivaldi says it was substantially the same and that Infor found no material errors. I prefer Mr. Liebovitz's evidence in this regard. The whole point of retaining Infor was because CentriLogic's finance department was understaffed and overburdened. It could not even meet the deliverable requirements of its lending agreements with HSBC. It clearly needed help. The quality of Infor's work on the model is perhaps best illustrated by Mr. Vivaldi's request that he continue to be able to work with Infor staff even after he had terminated the retainer agreement. If Mr. Vivaldi had not been impressed with the work Infor did, I doubt that he would have asked them to continue to work after their retainer was terminated.

[40] Mr. Vivaldi admitted on cross-examination that Infor's work was of high quality and that it was of great assistance to himself and CentriLogic. Mr. Vivaldi could not think of a single instance where he had asked Infor for something that they did not do.

[41] If CentriLogic wanted to maintain the position that the model belonged to it or that Infor's work on it was not of material assistance, it could easily have sent HSBC the original model that Mr. Vivaldi had prepared. It did not do so. Mr. Vivaldi himself explained why not. It was more "expedient" to give HSBC the Infor model because it would give HSBC a "head start" in the "very tight timeline" on which it was operating.

[42] With respect to the lender presentation, that was a document that Infor created from scratch. When Mr. Vivaldi was asked what parts of the lender presentation came from CentriLogic he pointed to approximately 5 of 55 pages that came from the financial model he says CentriLogic created.

[43] CentriLogic also argues that it derived no benefit from sharing the model or lender presentation with HSBC. It says any benefit accrued only to HSBC. I do not accept that submission. Recall that the ObjectSharp closing was looming. If CentriLogic did not have financing, it would lose that transaction. Giving Infor's work product to HSBC allowed HSBC to syndicate the loan more quickly. That was of benefit to CentriLogic because it decreased the risk to HSBC and would have made the loan more acceptable to it. Mr. Liebovitz says that HSBC was motivated to use the Infor work product because it wanted to syndicate the loan quickly and could not have done so without using the Infor work product. There was no evidence to the contrary.

[44] Next, CentriLogic points to an email Mr. Leibowitz circulated internally at Infor on February 1, 2020 which contemplated the possibility that CentriLogic might terminate the Agreement and that CentriLogic and HSBC might use Infor's material if that occurred.

CentriLogic argues that this demonstrated that Infor knew its work product would be used by HSBC. While the email might indicate that Mr. Liebowitz is an accurate predictor of human behaviour, it does not mean that he or Infor consented to the use of its materials by others.

[45] Had CentriLogic adhered to its Agreement, it would have sought Infor's consent before sending the model and the lender presentation to HSBC. Mr. Liebovitz testified that Infor was prepared to share both documents with HSBC, as long as Infor was working together with HSBC in finding the syndicate partners. Recall that HSBC refused to work with Infor because it took the view that it had its own syndication desk and did not need Infor's help. That was plainly wrong. HSBC did need Infor's help in the form of the financial model and the lender presentation if it wanted to syndicate the loan in the time it did.

[46] CentriLogic would no doubt say that HSBC could have and would have completed the syndication at a slightly later stage had it used the original CentriLogic model and had it created its own lender presentation. That might or might not be true. CentriLogic called no witness from HSBC to testify to that effect. If it were true, the solution was simple. As already noted, CentriLogic could have given HSBC the original, unvetted, model and could have had HSBC create its own lender presentation.

ii. Is the HSBC Financing a "Financing"?

[47] The event that triggers an obligation on CentriLogic to pay Infor under the Agreement is a "Financing." This is set out in s. 3 of the Agreement which calls for a "financing fee" equal to the greater of $600,000 and 1% of total funds raised on the Financing.

[48] CentriLogic argues that the capital raise here does not amount to a "Financing" under the agreement. The concept of "Financing" is found in the preamble to the agreement which provides:

> The purpose of this letter agreement (the "Agreement") is to confirm the appointment of INFOR Financial Inc. ("INFOR Financial"") as financial advisor to CentriLogic, Inc. (the "Company") in respect of a contemplated debt financing (the "Financing"). It is understood by the parties hereto that **the Financing may include multiple debt tranches and/or credit facilities to be advanced to the Company in one or more separate transactions, but will not include** (1) any vendor-take-back or other form of unsecured promissory note, loan or other financing arrangement granted in connection with an acquisition of shares or assets by the Company or any of its affiliates and (ii) **any** junior or senior **financing arrangement with** DCZB Holdings and or **any** other **existing** shareholder of, or **lender to, to the Company** or its affiliates. [Emphasis added.]

[49] CentriLogic first argues that if the Infor mandate did not materialize in any material respect, then no "Financing" has occurred. CentriLogic submits that two aspects of the Infor

mandate did not occur, namely, that HSBC was not replaced and that the DCZB Holdings[9] debt was not repaid. I do not accept that argument. Those events are not set out as pre-conditions to any obligation to pay Infor in the Agreement.

[50] Next, CentriLogic argues that the loans at issue here constitute a "financing arrangement" between CentriLogic and "an existing lender to the company" (i.e., HSBC), as described in the second bolded portion of the quotation above and are, as a result, excluded from concept of a "Financing." I do not accept that argument.

[51] I start my analysis with the circumstances surrounding the Agreement that were known to the parties when the Agreement was formed and the concepts of commercial reasonableness and business efficacy.

[52] When the contract was formed, the parties clearly contemplated the possibility that HSBC would continue to participate in the financial affairs of CentriLogic. That is presumably why they included the concept in the preamble to the agreement.

[53] Mr. Liebovitz says he recognized the possibility that HSBC might remain a lender but was not concerned about that because even if HSBC remained a lender, it would in all likelihood syndicate the loan. As Mr. Liebovitz explained, the company was looking for debt almost equal to its revenue line. Lenders usually would not assume that level of risk single handedly but would want to syndicate it with between two and four other parties. Mr. Liebovitz was not concerned about syndication because he envisaged that, while Infor would not be earning a fee on the amount that HSBC advanced, it would earn a fee on the amounts that other lenders advanced provided that it was Infor that had put the other lenders into contact with CentriLogic.

[54] It is this concept that is captured by the language in the preamble to the effect that the:

> …Financing may include multiple debt tranches and/or credit facilities to be advanced to the Company in one or more separate transactions…

[55] The participation by TD and CWB amounts to multiple tranches or credit facilities that were advanced to CentriLogic in one or more separate transactions.

[56] CentriLogic argues that this is not the case because HSBC initially advanced all of the money to CentriLogic to close the ObjectSharp acquisition. When HSBC syndicated the loan, CWB and TD paid money to HSBC, not to CentriLogic.

[57] At this point, the concepts of commercial reasonableness and business efficacy come into play.

[58] Although CentriLogic's description of the flow of funds is correct, it is important to note that Infor had started discussions with TD and CWB before HSBC did and before

[9] Another existing lender to the company.

CentriLogic terminated its retainer agreement with Infor. HSBC then also held discussions with TD and CWB before it actually advanced funds to Infor on March 13. It was clear before HSBC advanced any additional funds that it intended to syndicate. At the same time, recall that CentriLogic and HSBC approached at least TD with Infor's financial model and lender presentation. They therefore used Infor's work and analysis to persuade TD to participate. While there is no specific evidence that they used Infor's work with CWB, recall that CWB had approved the loan internally on March 3 while the Agreement was still live.

[59] Mr. McClellan testified about how the syndication worked mechanically. Although all interest on the loan was paid to HSBC and HSBC distributed interest between itself, CWB and TD, the loan relationship was directly between CWB and CentriLogic. If CentriLogic defaulted, CWB would have an action against CWB directly. The arrangement was similar with TD.

[60] In these circumstances, a purposive interpretation of the retainer agreement would view those parts of the loan taken up by TD and CWB as amounting to a Financing under the agreement. Those two loans are separate facilities that were advanced to the company. While HSBC may have advanced a global amount first, it did so knowing that it would syndicate and knowing that it would do so using the analysis that Infor carried out. The purpose of the retainer agreement was to have Infor provide services and to have CentriLogic pay for those services if Infor's efforts led to a financing. That is what transpired. Infor provided services, it had regular contact with TD and CWB about the loan. After CentriLogic shut Infor out of the picture, it gave HSBC Infor's work product which HSBC then used to finalize arrangements with TD and CWB. To hold that the TD and CWB tranches are not Financings under the retainer agreement would put form over substance. It would also make it far too easy to deprive good faith service providers like Infor of the fruits of their labour by taking their work and using it for someone else's benefit. That would not be consistent with commercial reasonableness or business efficacy.

[61] I take additional comfort from the fact that Mr. Vivaldi confirmed in evidence that Infor was supposed to be paid a 1% fee, not on money that HSBC advanced but on money that new lenders advanced. Indeed, after CentriLogic terminated its relationship with Infor, it revised the sources and uses tab of the financial model to indicate that CentriLogic would be using part of the loan proceeds to pay a 1% fee to Infor on the new debt of $45 million. The sources and uses tab would have been available for the lenders to see. While I appreciate that this is subjective evidence of a party's interpretation of the contract, I use it not to interpret the contract but to take some comfort that my interpretation of the contract is not commercially unreasonable. I note that Mr. Vivaldi's interpretation here is also materially consistent with that of Mr. Liebovitz. The only way in which they differ is that Mr. Liebovitz calculates the fee as does section 3 of the Agreement. That is to say, the greater of 1% of new financing and $600,000. Given that 1% of the new financing would come to $450,000, the minimum fee of $600,000 would apply.

iii. Is the Financing an Alternative Transaction Under Section 4?

[62] In addition to the loans with TD and CWB amounting to a "Financing" under the preamble

to the Agreement, those loans also trigger the payment of a financing fee under section 4 of the Agreement.

[63] Under section 4, a Financing fee is also payable if, within 12 months of its termination, CentriLogic enters into a lending agreement with a lender that Infor had “contacted to” the company. The full text of the provision reads:

> In recognition of the fact that INFOR Financial has agreed to act as the Company's financial advisor, the Company expressly acknowledges and agrees that, in the event that the Financing is not announced during the Term, and the Company or any of its affiliates completes the Financing or enters into a definitive agreement in respect thereof, with any party **contacted to the Company by INFOR** over the course of INFOR Financial's engagement, within twelve (12) months following the expiry or termination of this Agreement (other than a termination by the Company due to a breach by INFOR Financial of its obligations under this Agreement), then the Company shall pay INFOR Financial a cash fee in connection with such transaction calculated on the same basis as the Financing Fee. For clarity, such fee shall also apply to any subsequent increases in total funds committed under the Financing following the Closing of the Financing. [Emphasis added.]

[64] The triggering language is “contacted to.” That is a low threshold. As Mr. Vivaldi testified, the more typical language is “introduced to.” A “contact” implies a lesser degree of relationship than an introduction. The use of that lesser relationship in section 4 makes good commercial sense in light of the purpose of the section which is to protect Infor against a situation where it has initiated contact between CentriLogic and lenders, CentriLogic then terminates the Agreement, following which CentriLogic consummates a financing with one of the parties with whom Infor has put CentriLogic into contact.

[65] Infor put CentriLogic in contact with both TD and CWB.

[66] This is not a situation where the contact that Infor created was fleeting. The plaintiff’s Aide Memoire to closing argument sets out 23 contacts that Infor had with TD about the financing transaction[10] and eight contacts with CWB.[11] Mr. Liebowitz testified that CentriLogic was kept apprised of all communications with TD and CWB. Neither CWB nor TD had any knowledge of the opportunity before Infor contacted them.

[67] On February 20, 2020 Mr. Liebovitz received an email from TD saying:

> Paul: following up with you to reiterate TD's interest in an opportunity to participate in this loan. Not sure where you are at in

---

[10] Aide Memoire para. 51.
[11] Aide Memoire para. 52.

> terms of invitations or due diligence but we would like to be included in your process!

[68] The tone of that email suggests that Infor's contact with TD was more than simply a casual contact. Mr. Vivaldi had instructed Mr. Liebovitz to pass any enquiries like this on to HSBC which Mr. Liebovitz did.

[69] It is also worth noting here that Infor did not propose to send out teasers to a broad swathe of the market and then take the position that this amounted to "contact." Indeed, Infor proposed a narrow, focused approach to potential lenders. It was CentriLogic who insisted on a broader approach to approximately 90 different lenders. Once again, Infor was not acting in its own interest but in its client's interest. Regardless of whether the approach to lenders was narrow or broad, Infor clearly had a focussed approach on both TD and CWB and had engaged in meaningful contact with both in relation to CentriLogic. In those circumstances, a purposive approach to the section and the Agreement would characterize the involvement of both TD and CWB in the syndication as alternative transactions under s. 4 of the retainer agreement. Even more so when CentriLogic shared Infor's work product with HSBC which the latter then used to finalize a transaction with at least TD.

Conclusion and Costs

[70] For the reasons set out above, CentriLogic is obligated to pay Infor a financing fee of $600,000. Given that it already paid a fee of $25,000 on signing the Agreement, judgment shall go in against CentriLogic in favour of Infor in the amount of $575,000.

[71] Any party seeking costs as a result of these reasons may deliver submissions within 2 weeks of their release. The responding party shall have two weeks to answer with a further 1 week for reply.

Digitally signed by Markus Koehnen
Date: 2023.04.19 14:07:00 -04'00'

Koehnen J.

Released: April 19, 2023

CITATION: Infor v. CentriLogic, 2023 ONSC 2396
COURT FILE NO.: CV-20-643083
DATE: 20230419

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

INFOR FINANCIAL INC.

Plaintiff

– and –

CENTRILOGIC INC.

Defendant

REASONS FOR JUDGMENT

Koehnen J.

Released: April 19, 2023