

COURT OF APPEAL FOR ONTARIO

CITATION: Infor Financial Inc. v. CentriLogic, Inc., 2024 ONCA 849

DATE: 20241121

DOCKET: COA-23-CV-0565

Miller, Zarnett and Thorburn JJ.A.

BETWEEN

Infor Financial Inc.

Respondent

and

CentriLogic, Inc.

Appellant

Marco P. Falco and Harris Khan, for the appellant

Matthew P. Gottlieb and Michael A. Currie, for the respondent

Heard: June 5, 2024

On appeal from the order of Justice Markus Koehnen of the Superior Court of Justice, dated April 19, 2023.

**Thorburn J.A.:**

**A. OVERVIEW**

[1] CentriLogic, Inc., (“CentriLogic”) appeals the order that it pay the respondent, Infor Financial Inc., (“Infor”) damages in the sum of \$689,375.85 made up of a financing fee of \$600,000 (the “Financing Fee”) (less \$25,000 already paid), prejudgment interest and HST, and costs of the trial in the amount of \$511,762.22.

[2] The appeal concerns the proper interpretation of the engagement agreement between CentriLogic and Infor (the “Agreement”), and whether Infor is entitled to the Financing Fee pursuant to the Agreement.

[3] CentriLogic claims the trial judge:

- a) erred in concluding that CentriLogic breached s. 8 of the Agreement by providing a copy of Infor’s proprietary information to CentriLogic’s lender, HSBC bank;
- b) failed to give any weight to the factual matrix and commercial purpose underlying the Financing Fee based on the services Infor provided to CentriLogic pursuant to the Agreement; and
- c) erred in principle in granting an excessive award of costs.

[4] For the reasons that follow, I would dismiss the appeal.

[5] I begin with a brief overview of the relevant facts followed by my analysis of the trial judge’s decision.

## **B. BACKGROUND**

[6] CentriLogic is an IT solutions provider that specializes in providing management services, management of applications, data centres, and connectivity services.

[7] Infor is an investment bank that provides various services to corporations including the raising of capital.

[8] In 2019, CentriLogic needed to raise capital to close two acquisitions important to its future success: the ManageForce and ObjectSharp acquisitions.

[9] CentriLogic's usual lender was HSBC bank ("HSBC"). At the time of the acquisitions, however, HSBC refused CentriLogic any further access to its revolving credit facility as it claimed that CentriLogic had failed to provide several deliverables under their agreement.

[10] CentriLogic therefore engaged Infor's investment banking services to help it obtain \$77 million in financing for these two acquisitions.

### (1) The Relevant Terms of the Agreement

[11] The preamble to the Agreement described the event that would trigger payment of the Financing Fee to Infor, referred to as "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** (i) 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, the Company or its affiliates.** [Emphasis added.]

[12] Infor's responsibilities under the Agreement included conducting outreach to lenders, preparing a "comprehensive financial model", and "assisting in the preparation of marketing materials for the Financing".

[13] In return, Infor was to receive the Financing Fee, which was to be “equal to the greater of \$600,000 and 1% of total funds raised in connection with the Financing”.

[14] Section 8 of the Agreement provided that all materials provided by Infor in connection with its engagement were:

... intended solely for the benefit of [CentriLogic] and the [CentriLogic]'s internal use and [CentriLogic] 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]** in each specific instance. [Emphasis added.]

[15] Section 4 of the Agreement provided that even if the Financing was not “announced” during the term of the Agreement (12 months), Infor was nevertheless entitled to the Financing Fee if:

[CentriLogic] or any of its affiliates **completes the Financing** or enters into a definitive agreement in respect thereof, **with any party contacted to [CentriLogic] by [Infor] over the course of [Infor's] engagement, within twelve (12) months following the expiry or termination of this Agreement ...** [Emphasis added.]

## (2) Preparation of the Lender Presentation

[16] In late December 2019, CentriLogic advised Infor that HSBC would provide financing for the ManageForce acquisition. Infor continued its work as financing was still required for the ObjectSharp acquisition.

[17] Infor prepared a lender presentation to market the financing opportunity to potential lenders (“the Lender Presentation”). The Presentation was based on a financial model prepared by CentriLogic which Infor reviewed and “vetted” to ensure accuracy.

[18] Although the financial model in the Lender Presentation was provided by CentriLogic, the trial judge accepted the testimony of Infor’s representative that Infor “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.” The trial judge found that Infor had to both integrate the historical information and create future projections based on consolidated historical information.

[19] The final financial model prepared by Infor was referred to by CentriLogic in its internal communication as having been “put through the ringer.” Infor used this final version of the model for the Lender Presentation, which was essentially a summary of the information displayed in a format that would appeal to lenders.

[20] By early January 2020, Infor was ready to send a “teaser letter” to potential lenders and proceeded to send the letter to its contacts at TD Bank (“TD”) and CWB Financial Group (“CWB”). In addition to the letters, Infor extensively negotiated non-disclosure agreements with these and other potential lenders and maintained regular contact with their representatives.

### **(3) The Termination of Infor's Financing Agreement**

[21] While Infor was preparing the Lender Presentation, CentriLogic was in discussions with HSBC about the possibility of doing future business with HSBC. At CentriLogic's request, Infor assisted with these discussions by providing advice and drafting talking points for meetings with HSBC.

[22] In mid-January, HSBC told CentriLogic they were interested in funding the ObjectSharp acquisition by way of a loan syndication, meaning HSBC would share the lending risk with other lenders. HSBC told CentriLogic they would not require Infor's assistance with the deal.

[23] On February 6, 2020, CentriLogic sent HSBC the Lender Presentation and financial model that Infor had prepared. This was done without Infor's knowledge or consent. The next day, CentriLogic terminated its relationship with Infor effective March 7, 2020. CentriLogic did so because HSBC expressed a renewed interest in financing the ObjectSharp acquisition.

[24] In mid-February, CentriLogic circulated an internal email discussing the termination of the Agreement with Infor stating, "[w]e can convert the existing PDF Lender Presentation to help facilitate HSBC."

[25] On March 3, 2020, CWB gave internal approval to provide financing to CentriLogic for the ObjectSharp acquisition. CWB did not know whether the information to obtain the approval came from Infor, HSBC, or CentriLogic.

[26] On March 10, 2020, HSBC sent an email to TD confirming a meeting to discuss funding and included a lender presentation that was “slightly updated” from the one prepared by Infor. The disclaimer in the updated lender presentation stated that the “presentation was prepared by a financial advisor and HSBC”. Infor was the financial advisor.

[27] On March 13, 2020, HSBC lent funds to CentriLogic with the expectation that it would syndicate the loan. CWB took part in the syndication as of April 1, 2020, and TD took part on May 19, 2020. In total, CWB and TD provided approximately \$45 million.

[28] Importantly, the loan relationship among the three lenders and CentriLogic, was direct; that is, if CentriLogic defaulted, CWB and TD would have an action against CentriLogic.

### **C. THE TRIAL JUDGE’S DECISION**

[29] Infor commenced legal proceedings claiming payment of the \$600,000 Financing Fee and damages for breach of contract resulting from the fact that CentriLogic shared Infor’s work product without its consent.

#### **(1) Breach of Section 8 of the agreement**

[30] Infor claimed that CentriLogic breached s. 8 of the Agreement by sharing the financial model and Lender Presentation created by Infor with HSBC. CentriLogic claimed no breach had occurred because both materials were its work

product, as CentriLogic owned the information that formed the basis of the materials. CentriLogic took the position that Infor's work "consisted almost exclusively in formatting, style and overall presentation".

[31] The trial judge held that CentriLogic breached s. 8 of the Agreement by sharing the Lender Presentation with HSBC. He held that what mattered was "the value that Infor brought to the model" not where the source information in the materials "came from". He found that Infor's Lender Presentation was not "substantially the same" as the model provided by CentriLogic and that Infor's review process was "essential to ensure that potential lenders would not be scared off by an unreliable model".

[32] Given the value added by Infor and the material benefit to CentriLogic in sharing these materials with HSBC, the trial judge concluded that CentriLogic had a legal obligation to obtain Infor's consent before sharing the materials. By failing to do so, CentriLogic breached the Agreement.

## **(2) The Financing Fee**

[33] Infor also claimed it was entitled to the Financing Fee pursuant to s. 4 of the Agreement, which provided for payment of the Financing Fee if financing was obtained from a lender contacted by Infor within one year of the termination of the Agreement. CWB and TD were both contacted by Infor and provided financing to CentriLogic within one to two months of the termination of the Agreement.



[34] CentriLogic took the position that Infor was not entitled to the Financing Fee for two reasons:

[35] First, there was no “Financing” as defined by the Agreement. Under the Agreement, “Financing” “[could] include multiple debt tranches and/or credit facilities to be advanced to the Company in one or more separate transactions” but excluded any “financing arrangement with” an “existing...lender”. CentriLogic argued that the financing for the ObjectSharp acquisition constituted a financing arrangement with an “existing lender” since HSBC advanced the loan. Moreover, when TD and CWB took part in the syndication of the loan, they paid HSBC and not CentriLogic. Since CentriLogic only ever received money from an existing lender (HSBC), the financing was outside the scope of Agreement and the obligation to pay the Financing Fee was not triggered.

[36] Second, Infor was retained to fulfill objectives referred to as the “Infor Mandate”. CentriLogic argued that its obligation to pay the Financing Fee was contingent on the fulfillment of the Mandate in its entirety, including “replacing” HSBC as a lender and repaying existing debt owed to a particular company, DCZB Holdings.

[37] The parties agreed that neither event occurred and CentriLogic argued that as a result, its obligation to pay the Financing Fee had not been triggered.

[38] The trial judge did not accept CentriLogic's argument that fulfillment of the "Infor Mandate" in its entirety was a precondition to payment of the Fee.

[39] The trial judge further held that the syndicated loan constituted a Financing as defined by the preamble of the Agreement. He held that to interpret the Agreement to exclude the syndicated loan by HSBC, would be to hold "form over substance" and that on a "purposive interpretation" of the Agreement, the parts of the loan "taken up by TD and CWB" amounted to a Financing under the Agreement. While it was true that the money given directly to CentriLogic came from HSBC, the money was given with the knowledge that HSBC would receive money from other lenders in the near term.

[40] The trial judge also agreed with Infor that its communication with TD and CWB constituted "putting [CentriLogic] into contact" with the lenders. Thus the loan, which occurred within a year of termination of the Agreement, triggered the obligation to pay the Financing Fee under s. 4 of the Agreement.

[41] In light of his finding that Infor was entitled to the Financing Fee, the trial judge considered the amount owed under the Agreement. He found that Infor was owed \$600,000, given that 1% of the "total funds raised" by Infor (those funds provided by TD and CWB) was less than \$600,000. Since a "work fee" of \$25,000 had already been paid to Infor and was "creditable against any Financing Fee", the

trial judge granted judgment for \$575,000 against CentriLogic. Together with prejudgment interest and HST, the total damages award was \$689,375.85.

#### **D. STANDARD OF REVIEW**

[42] CentriLogic appeals the trial judge's findings that (1) CentriLogic breached s. 8 of the Agreement by providing HSBC with a copy of the Lender Presentation and financial model prepared by Infor; (2) the loan from HSBC for the ObjectSharp acquisition constituted Financing under the Agreement thus entitling Infor to the Financing Fee; and (3) Infor was entitled to costs of the trial in the amount of \$511,762.22.

[43] The first two issues are questions of interpretation of the Agreement. They are issues of mixed fact and law for which the standard of review is palpable and overriding error: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, 2 SCR 633, at paras. 50-52.

#### **E. ANALYSIS**

##### **(1) No error in Holding that CentriLogic breached s. 8 of the Agreement**

[44] The trial judge did not err in finding that CentriLogic breached s. 8 of the Agreement by providing the Lender Presentation and financial model prepared by Infor to HSBC. There was ample evidence to support his finding.

[45] First, Infor added significant value to the financial model through its “vetting” process which involved “detail-oriented work of checking each of thousands of entries for accuracy and ensuring that the formulas underlying each of those thousands of entries work cohesively with the balance of the model”. CentriLogic admitted “that the work [Infor] did was valuable” as it “could not afford to have lenders finding problems with the financial model.” As noted by the trial judge, although CentriLogic could have sent its own model, it elected to send Infor’s Lender Presentation as it would give HSBC a “head start” given the “very tight timeline” on which it was operating.

[46] Second, CentriLogic could point to only 5 out of 55 pages of the Lender Presentation that came from the financial model CentriLogic created.

[47] These findings were sufficient to support the trial judge’s conclusion that CentriLogic required Infor’s consent to share the Lender Presentation and financial model with third parties. CentriLogic’s failure to do so was in breach of the Agreement.

[48] In any event, the trial judge did not award damages for breach of s. 8. He awarded damages for failure to pay the Financing Fee that had been earned.

**(2) No error in finding that Infor was entitled to the Financing Fee**

[49] Nor do I see any error in the trial judge’s conclusion that Infor was entitled to the Financing Fee and that CentriLogic’s proposed interpretation of the

Agreement, namely, that the syndicated loan did not constitute Financing under the agreement, is inconsistent with “sound commercial principles and good business sense”.

[50] First, as noted by the trial judge, the preamble to the Agreement demonstrates that the parties “clearly contemplated the possibility that HSBC would continue to participate in the financial affairs of CentriLogic”. Moreover, the Tail Provision in the Agreement provides that the Financing Fee is payable where lenders were “contacted to” CentriLogic within twelve months of the termination of the Agreement. It would not make commercial sense for Infor to enter into an agreement under which it would not be entitled to compensation if HSBC participated in the funding in any way. Rather, the commercially reasonable interpretation is that Infor “would earn a fee on the amounts that other lenders advanced”, as long as Infor put these lenders in “contact with CentriLogic.”

[51] This interpretation is consistent with this Court’s “interpretative principle of commercial reasonableness” set out in *Prism Resources Inc. v. Detour Gold Corporation*, 2022 ONCA 326, wherein the court interpreted the word “financing” by looking at the parties’ relationship and took into account commercial reasonableness.

[52] Second, CentriLogic admitted that Infor was to be paid the fee “not on money that HSBC advanced but on money that new lenders advance[d]” and the trial

judge accepted the evidence of Infor's representative that CentriLogic revised the financial model to indicate that it would be using part of the loan proceeds to pay Infor's fee.

[53] Third, it was open to the trial judge to find that CWB and TD were parties "contacted to" CentriLogic by Infor given the "meaningful contact" between Infor and the two lenders, CWB and TD. The trial judge found that "contacted to" was to be interpreted as a low threshold, given that "the purpose of the section [was] to protect Infor against a situation where it has initiated contact between CentriLogic and lenders" and then CentriLogic entered into a financing arrangement with the lenders after the termination of the Agreement therefore disentitling Infor from collecting the Financing Fee.

[54] For these reasons, I see no error in the trial judge's conclusion that Infor was entitled to the Financing Fee as TD and CWB provided Financing to CentriLogic as defined by the Agreement. I would therefore dismiss the appeal and uphold the order to pay the Financing Fee in the amount of \$600,000, less the \$25,000 already paid, plus prejudgment interest and HST as determined by the trial judge.

**(3) No error in the costs award**

[55] Finally, I see no error in principle in respect of the costs award.

[56] Given Infor's success at trial as well as its unsuccessful offer to settle prior to trial, the trial judge ordered payment of costs in the amount of \$511,767.22. The

costs order included partial indemnity costs of \$88,422.90 up to July 12, 2021 and substantial indemnity costs thereafter as on that date, Infor had offered to settle the action for \$595,000. At trial, Infor was awarded damages (including prejudgment interest and HST that exceeded that amount. While the trial judge noted that the cost award was high, he held that it reflected CentriLogic's hard-nosed approach to the litigation.

[57] Leave to appeal cost orders is granted only when there are "strong grounds upon which the appellate court can find that the trial judge erred in exercising his discretion", including errors in principle or an award that is plainly wrong: *McFlow Capital Corp v. James*, 2021 ONCA 753 at para. 50. Leave to appeal costs is granted "sparingly and only where the order is tainted by palpable and overriding error or error of law": *Shaulov v. Law Society of Ontario*, 2023 ONCA 95, at para. 24.

[58] In this case, the judgment was more favourable than Infor's Rule 49 offer of \$595,000, inclusive of principal, interest, taxes and costs. The trial judge properly exercised his discretion in concluding that the costs award was proportionate and in the interests of justice as the directing minds of CentriLogic were "highly sophisticated ... venture capital players" who "should not be surprised by the rates charged by Infor's lawyers". The trial judge rejected CentriLogic's argument that Infor "spent excessive time on various tasks in the litigation", highlighting that the matter was "of more importance" to Infor than it was to CentriLogic given the

smaller size of the company, and that awarding costs on a partial indemnity scale “would entirely ignore Rule 49.10”.

[59] There are no strong grounds upon which to grant leave and in any event, there is no error in principle such that the appeal of the costs order should be granted. As such, I would refuse to grant leave to appeal the cost order.

**F. CONCLUSION**

[60] For the above reasons, I would dismiss the appeal with costs payable by CentriLogic to Infor. I would award costs of the appeal to Infor in the amount of \$30,000 all inclusive.

Released: November 21, 2024 “B.W.M.”

“Thorburn J.A.”

“I agree. B.W. Miller J.A.”

“I agree. B. Zarnett J.A.”