



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

**COURT FILE
NO.:**

CV-24-00717178-00CL

DATE: April 4, 2024

NO. ON LIST: 5

**TITLE OF
PROCEEDING:**

In the Matter of CURO Canada Corp. and LendDirect Corp.

BEFORE:

Justice Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicant, CURO Parent, in its capacity as Foreign Representative of itself as well as the other Debtors, seeks an order pursuant to section 49 of the *CCAA* recognizing and enforcing in Canada six orders of the United States Bankruptcy Court for the Southern District of Texas (the “US Bankruptcy Court”) in the Chapter 11 Cases commenced by the Debtors under Chapter 11 of the United States Bankruptcy Code:
 - a. Interim Order (I) Authorizing Certain Debtors to Enter into Amendments to the Securitization Transaction Documents and (II) Granting Related Relief (the “Securitization Amendment Order”);
 - b. Interim Order (I) Authorizing the Debtors to Pay Certain Critical Vendor Claims and (II) Granting Related Relief (the “Critical Vendor Order”);
 - c. Order (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment for Future Utility Services; (II) Approving Adequate Assurance Procedures; (III) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; and (IV) Granting Related Relief (the “Utilities Order”);
 - d. Order (I) Authorizing Payment of Certain Taxes and Fees and (II) Granting Related Relief (the “Final Taxes Order”);
 - e. Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally approving the Disclosure Statement; (III) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures; (IV) Approving the Solicitation Procedures; (V) Approving the Combined Notice; (VI) Extending the Time by which the U.S. Trustee Convenes a Meeting of Creditors and (VII) Granting Related Relief (the “Disclosure Statement Order”); and
 - f. (f) Revised Order (I) Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers and Continue Certain Customer Programs in the Ordinary Course of Business, (II) Dispensing with Customer Noticing Requirements and (III) Granting Related Relief (the “Revised Customer Programs Order”).
2. The Service List has been served with the motion materials. The relief sought today is unopposed, is strongly supported by the Lenders and is recommended by the Information Officer.

3. Defined terms in this Endorsement have the meaning given to them in my Endorsements made in this proceeding dated March 25, 2024 and March 26, 2024, respectively. The background to, and context for, the relief sought today is informed substantially by those two Endorsements, and I have not repeated here the content thereof.
4. The Foreign Representative relies today on the affidavit of Alec Hoy sworn March 25, 2024, together with exhibits thereto, the Initial Clark affidavit, the Second Affidavit of Douglas Clark sworn April 1, 2024 and the exhibits thereto, together with the First Report of the Information Officer dated April 3, 2024.
5. The Securitization Amendment Order would approve the entry by the Debtors into an amendment to the Canada SPV I Facility, and certain related documents entered into after the Petition Date. Those are necessary and provide for the continued operation of the Securitization Facilities during the Restructuring Proceedings, and following the emergence of the Debtors therefrom.
6. The US Bankruptcy Court conducted an emergency hearing in respect of the Securitization Amendment Order on April 1, 2024, granted the relief requested and entered that order. Recognition is sought today to satisfy the conditions precedent under the DIP Facility and to facilitate access by the Debtors to the liquidity provided thereunder and under the Securitization Facilities.
7. The Supplemental Order recognized certain other orders entered by the US Bankruptcy Court but the other orders in respect of which recognition is sought today were either not available when the Foreign Representative was earlier before this Court, or were subsequently amended. These include the:
 - a. Critical Vendor Order, which permits the Debtors to continue to make certain prepetition payments to vendors who are critical to the operations of the business. This order was entered by the US Bankruptcy Court on March 26, 2024;
 - b. Utilities Order, which permits the Debtors to implement certain procedures necessary to provide utility providers with adequate assurances, thereby ensuring continued access to ongoing utilities during the Chapter 11 Cases. Recognition of this order will allow the Canadian Debtors to provide assurance of payment to utility providers. This order was similarly entered by the US Bankruptcy Court on March 26, 2024;
 - c. Final Taxes Order, which approves the relief previously granted by the US Bankruptcy Court pursuant to the Interim Taxes Order, on a final basis with minor amendments. This order was entered by the US Bankruptcy Court on April 1, 2024;
 - d. Disclosure Statement Order, the hearing in respect of which was rescheduled at the First Day Hearing in the US Bankruptcy Court to March 27, 2024, on which date it was granted with certain minor amendments. It was entered by the US Bankruptcy Court on April 1, 2024; and
 - e. Revised Customer Programs Order, which is substantially similar to the Initial Customer Programs Order recognized by the Supplemental Order, as amended to reflect certain amendments required in turn by the US Bankruptcy Court. It was entered by the US Bankruptcy Court on April 1, 2024. Recognition here is consistent with the relief granted in the Supplemental Order and the principle of comity.
8. I am satisfied that the Recognition Order, the effect of which would be to recognize the US Orders in Canada, should be granted pursuant to section 49 of the *CCAA*.

9. The purpose of Part IV of the *CCAA* is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada: *Zochem Inc., (Re)*, 2016 ONSC 958 at para. 15.
10. As is clear from section 44 of the *CCAA*, Part IV is intended to promote cooperation between Canadian courts and courts in foreign jurisdictions; fair and efficient administration of cross-border insolvencies which protects the interests of debtors, creditors and other interested persons; and the protection and maximization of the value of the debtor's property.
11. Pursuant to the Initial Recognition Order, I recognized the Chapter 11 Cases of the Canadian Debtors as a foreign main proceeding within the meaning of section 47 of the *CCAA*.
12. When that has occurred, section 49 provides the Court with broad jurisdiction to grant any order that it considers appropriate with respect to such foreign proceedings if the Court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors. The Court is to cooperate, to the maximum extent possible, with the foreign representative and the foreign court so long as the requested relief is not inconsistent with the *CCAA* and does not raise concerns regarding public policy.
13. Many of the same considerations that underpinned my Initial Recognition Order similarly underpin the appropriateness of the relief sought today in recognition of the additional orders.
14. When deciding whether to recognize a foreign order, Canadian courts have considered, among other factors:
 - a. the promotion of comity and cooperation between the courts;
 - b. respect of the "overall thrust of foreign bankruptcy and insolvency legislation in any analysis," unless it diverges radically from the process in Canada;
 - c. the equitable and, to the extent reasonably possible, equal treatment of common or like stakeholders regardless of their location;
 - d. permitting the enterprise to reorganize as a global entity, including allowing for one jurisdiction to take charge of the principal administration of the enterprise's reorganization; and
 - e. the notice given to creditors.

See: *Babcock & Wilcox Canada Ltd., Re*, 2000 CanLII 22482 (ONSC) at para 21; *Xerium Technologies Inc., Re*, 2010 ONSC 3974 at paras 26 & 27; and *Paladin Labs Canadian Holding Inc.*, 2024 ONSC 539 at para 22.

15. As set out below, considering these factors and the principles of Part IV outlined above, the Recognition Order should be granted as requested. The US Bankruptcy Court granted the orders in each case on the basis that they were necessary for the Debtors to continue to operate in the ordinary course during the Chapter 11 Cases and preserve the value of the Debtors' business.
16. Recognition of these orders is consistent with prior orders of this Court and these orders ought to be recognized on the same basis and in furtherance of the principle of comity: *YRC Freight Canada Company, (Re)*, 2023 ONSC 5513 at paras 5 & 17; and the Second Supplemental Order dated September 29, 2023, *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at para 3.

17. I am satisfied that, similarly, recognition of the Critical Vendor Order and the Utilities Order is necessary to permit the Canadian Debtors to make certain payments and provide assurances necessary to enable the continued provision of services from the counterparties and ensure that the Canadian Debtors are able to continue operating in the ordinary course.
18. Recognition of the Final Taxes Order and the Revised Customer Programs Order is consistent with the relief previously granted here and is not anticipated to impair any general unsecured creditor of the Canadian Debtors.
19. Recognition of the Disclosure Statement Order will facilitate the emergence of the Debtors from the Restructuring Proceedings. This Court has previously recognized orders entered in Chapter 11 cases establishing a schedule for the approval of a Chapter 11 plan of arrangement. See, for example: *Instant Brands Acquisition Holdings Inc., et al.*, 2024 ONSC 1204 at paras 10 & 23; Order (Confirmation Order Recognition and Ancillary Relief) dated February 26, 2024, *Instant Brands Acquisition Holdings Inc. et al.*, Court File No. CV-23-00701159-00CL at para 3.
20. I am satisfied that the Disclosure Statement Order should be recognized here. The evidence establishes that the Plan has substantial support among the lenders of the Debtors, as evidenced in part by the Restructuring Support Agreement, and does not propose to impair general unsecured creditors in Canada.
21. Recognition of the Disclosure Statement Order is consistent with the overall objective of the Restructuring Proceedings. While the Plan itself remains subject to further approval by the US Bankruptcy Court and by this Court, solicitation of votes on the Plan is an important step forward in the coordinated restructuring of the business.
22. For all of these reasons, the relief sought is granted.
23. Recognition Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering, although the Foreign Representative may take out the order if and as necessary through the Commercial List Registry.

Olson, J.