

CITATION: Extreme Fitness (Re), 2013 ONSC 987
COURT FILE NO.: CV-13-1000-00CL
DATE: 20130215

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EXTREME FITNESS, INC.

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

BEFORE: C.L. CAMPBELL J.

HEARD: February 7, 2013

ENDORSEMENT

[1] Having read the Application Record, and heard from counsel for the applicant, the proposed monitor and various secured creditors and being satisfied of the urgency of this matter:

- (a) I am satisfied that appropriate notice has been given in accordance with s.11.52 of the *CCAA*;
- (b) That as described in the records filed that the applicant is insolvent;
- (c) That based on the information in the Hutchens Affidavit that liquidation and sale of the applicant's property on an asset basis would not enable payment of an obligations now due and accruing without the aid of further funding; and
- (d) That sale of the business as contemplated in the transaction for which a Letter of Intent (LOI) dated January 13, 2013 provides the best prospect for maximization of value for all stakeholders in the timely fashion envisaged in the LOI.

[2] I am satisfied therefore that the criteria have been met for the court to:

- (a) grant protection to the applicant under the *CCAA*;
- (b) approve the DIP Facility and grant the DIP Charge;

- (c) grant the Administration Charge;
- (d) grant the D&O Charge; and
- (e) seal the confidential appendices to the Hutchens Affidavit.

[3] The stay provided for in s.11.02 of the *CCAA* is appropriate to enable the applicant to achieve the proposed transaction which if completed will maximize stakeholder value; that to enable the applicant to carry out the negotiations to bring to conclusion the proposed transaction that the criteria as set out in s.11.2(1) of the *CCAA* appear to be met (in terms as set) taking into account the factors in s.11.2(4) particularly given the proposed length of the process.

[4] For the same reason I conclude the circumstances for approval of the Administration Charge as set out in s.11.50 of the *CCAA* as elaborated on in *CanWest*¹ have been met and for the same reason the D&O Charge which is supported by the monitor and not opposed by any party appearing. It does not appear that there is any secured party who has not received notice of this application.

[5] Given the commercial sensitivity of information that the sealing order set out in paragraph 47 of the draft initial order is appropriate.

[6] Finally that the draft initial order in the form approved shall issue.

“ C. CAMPBELL J. ”

Date: February 15, 2013

¹ Re *Canwest Publishing Inc./Publications Canwest Inc.* (2010), 63 C.B.R. (5th) 115 (Ont. S.C.J. [Commercial List])