

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	MONDAY, THE 29TH
)	
JUSTICE CONWAY)	DAY OF JUNE, 2020

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
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT
LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL
NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL
HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE
SIXTH AVENUE ASSOCIATED, LTD., GNC CANADA HOLDINGS, INC., GNC
GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC
PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC.,
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

CONSULTING AGREEMENT APPROVAL ORDER

THIS MOTION, made by GNC Holdings, Inc. (“GNC”, in its capacity as the foreign representative of the Debtors (as defined below, and GNC, in such capacity, the “**Foreign Representative**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Order among other things, approving the consulting agreement entered into between, on the one hand, General Nutrition Centres Company (“**GNC Canada**”) and on the other hand, a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the “**Consultant**”) dated as of June 18, 2020

(the “**Consulting Agreement**”), and other related relief was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the affidavit of Tricia Tolivar, sworn June 24, 202 (and the Exhibits thereto) (collectively, the “**Tolivar Affidavit**”), the affidavit of Suzan Mitchell-Scott, affirmed June 26, 2020 (and the Exhibits thereto), and the pre-filing report of FTI Consulting Canada Inc. in its capacity as proposed Information Officer dated June 28, 2020 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for the Foreign Representative and the other entities listed on Schedule “A” hereto (collectively, the “**Debtors**”); counsel for FTI Consulting Canada Inc. in its capacity as court-appointed Information Officer (the “**Information Officer**”), counsel for the DIP Lenders and the Ad Hoc Group of Crossover Lenders; counsel for the Canada Consultant (as defined in the GNC Affidavit); counsel for JPMorgan Chase Bank, N.A., in its capacity as ABL Facility Agent; counsel for Cushman & Wakefield Asset Services ULC, Ivanhoe Cambridge Inc., Morguard Investments Limited, RioCan Real Estate Investment Trust, SmartCentres Real Estate Investment Trust, Blackwood Partners Management Corporation, Brookfield Office Properties and Cominar REIT; and counsel for Oxford Properties and Crombie REIT; and no one appearing for any other person on the service list, although properly served as appears from affidavits of service of Cathy Pellegrini and Tina Woo sworn June 24, 2020, and the affidavits of service of Cathy Pellegrini, Tina Woo and Kunalan Shelvarajah and affirmed June 26, 2020;

Service

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein, shall have the meaning ascribed thereto in the Tolivar Affidavit.

Recognition of Chapter 11 Store Closings Order

3. THIS COURT ORDERS that the Chapter 11 Store Closings Order, a copy of which is attached as Schedule “B” hereto, of the United States Bankruptcy Court for the District of

Delaware (the “**Bankruptcy Court**”) made in the bankruptcy cases commenced by the Debtors under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”, and such cases, the “**Bankruptcy Case**”) is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA, and, while this Order provides additional guidance in terms of dealing with Property (as defined below) in Canada, in the event of any conflict between the terms of the Chapter 11 Store Closings Order and this Order, the Chapter 11 Store Closings Order shall govern.

Approval of the Consulting Agreement

4. THIS COURT ORDERS that the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines attached thereto as **Schedule “A”** (the “**Canadian Sale Guidelines**”), and the transactions contemplated under the Consulting Agreement, are hereby approved with such minor amendments to the Consulting Agreement (but not the Canadian Sale Guidelines) as the Debtors, with the consent of the Information Officer, the Ad Hoc Group of Crossover Lenders, and the Consultant may deem necessary and agree to in writing. The Debtors, and each of them are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines, and the transactions contemplated therein.

The Sale

5. THIS COURT ORDERS that the Debtors, or any of them, with the assistance of the Consultant, are authorized and directed to conduct the Sale in accordance with the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement and to advertise and promote the Sale within the Stores in Canada, all in accordance with the foregoing. If there is a conflict between the Chapter 11 Store Closings Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement, the order of priority of documents to resolve each conflict is as follows: (1) the Chapter 11 Store Closings Order; (2) this Order; (3) the Canadian Store Closing Procedures; (4) the Canadian Sale Guidelines; and (5) the Consulting Agreement. For greater certainty, the reference to Orders of the Bankruptcy Court in section 1 of the Canadian Sale

Guidelines is limited to Orders entered by the Bankruptcy Court in respect of the Sale or any related store closing process, the Canadian Store Closing Procedures and Canadian lease rejections or lease claims.

6. THIS COURT ORDERS that the Debtors, with the assistance of the Consultant, are authorized to market and sell the Merchandise and, subject to the Canadian Sale Guidelines, the Offered FF&E, free and clear of all liens, claims, encumbrances, security interests, hypothecs, prior claims, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the the Supplemental Order dated June 29, 2020, each made in the within proceedings, and any other charges hereinafter granted by this Court in the within proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), which Claims will attach instead to the proceeds received from the Merchandise and the Offered FF&E, other than amounts due and payable to the Consultant pursuant to the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

7. THIS COURT ORDERS that, subject to the terms of the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures and the Canadian Sale Guidelines, the Consultant shall have the right to use the Stores in Canada and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Stores in Canada, and other assets of the Debtors as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings provided for in the Initial Recognition Order, as applicable and as such stay may be extended from time to time.

8. THIS COURT ORDERS that until the Sale Termination Date which, for greater certainty, shall be the earlier of September 30, 2020, and the effective date of a lease rejection in the Bankruptcy Case, the Consultant shall have access to the Stores in Canada in accordance with the applicable leases and the Canadian Store Closing Procedures and the Canadian Sale Guidelines on the basis that the Consultant is assisting the Debtors and the Debtors have granted the right of access to the applicable Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of the the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines, the terms of the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures and the Sale Guidelines shall govern.

9. THIS COURT ORDERS that GNC Canada shall pay rent at any leased Store in Canada that is used for the Sale as required by the Bankruptcy Code until the effective date of the rejection of such applicable lease pursuant to an Order of the Bankruptcy Court.

10. THIS COURT ORDERS the landlords of the twenty-nine (29) Canadian leased premises identified in the First Omnibus Lease Rejection Motion and the Third Omnibus Lease Rejection Motion (together, the **“Pending Lease Rejection Motions”**) filed in the Bankruptcy Case shall be authorized to take possession of, and have access to, such leased premises and re-let the leased premises without prejudice to any rights and/or positions that GNC Canada or the applicable landlord may have in the Pending Lease Rejection Motions

11. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Stores in Canada. Nothing contained in this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease.

12. THIS COURT ORDERS that nothing herein is, or shall be deemed to be, a consent by any Landlord to the sale, assignment or transfer of any lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable lease.

13. THIS COURT ORDERS that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the trademarks of the Debtors, or any of them, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Debtors, or any of them, to use the trade names, and logos of third parties, relating to and used in connection with the operation of the Stores in Canada solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Chapter 11 Store Closings Order , this Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement.

Consultant Liability

14. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to the Debtors and that it shall not be liable for any claims against the Debtors, or any of them, other than as expressly provided for in the Chapter 11 Store Closings Order, Consulting Agreement, the Canadian Sale Guidelines and the Canadian Store Closing Procedures, and more specifically:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores in Canada or the assets located therein or associated therewith or of the employees of the Debtors, or any of them, located at the Stores in Canada or any other property of the Debtors, or any of them;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) the Debtors shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores in Canada during and after the term of the Consulting

Agreement, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

Consultant as Unaffected Creditor

15. THIS COURT ORDERS that, subject only to paragraph 7 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of the Debtors, or any of them, and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the “**Consultant’s Claims**”).

16. THIS COURT ORDERS that notwithstanding the terms of any order issued by this Court in the within proceedings, the Debtors, or any of them, shall not be entitled to repudiate, disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

17. THIS COURT ORDERS that the Debtors, or any of them, are hereby authorized and directed to remit, in accordance with the Consulting Agreement, or any other agreement contract or arrangement in relation thereto, all amounts that become due to the Consultant thereunder.

18. THIS COURT ORDERS that subject to any order made in the Bankruptcy Case, no Claims shall attach to any amounts payable by the Debtors, or any of them, to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by the Debtors, or any of them, to the Consultant, and the Debtors, or any of them, shall pay any such amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

19. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”), in respect of the Debtors, or any of them, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors, or any of them; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with

respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (each, an “**Agreement**”) that binds the Debtors, or any of them, the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines, and the transactions contemplated thereby, including, without limitation, the payment of amounts due to the Consultant, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

20. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors, or any of them, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors, or any of them; (d) the provisions of any federal or provincial statute; or (e) any Agreement that binds the Debtors, or any of them, any obligation to clean up or repair any of the leased premises contained in this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, or any of them, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

General

21. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

Conway J.

Schedule “A”

List of Debtors

GNC Holdings, Inc.

General Nutrition Centres Company

GNC Parent LLC

GNC Corporation

General Nutrition Centers, Inc.

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding Inc.

GNC International Holdings Inc.

GNC China Holdco, LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associated, Ltd.

GNC Canada Holdings, Inc.

GNC Government Services, LLC

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

Schedule “B”

Chapter 11 Store Closings Order

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**CONSULTING AGREEMENT APPROVAL
ORDER**

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