



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00730212-00CL

DATE: 29 October 2024

NO. ON LIST: 1

TITLE OF PROCEEDING:

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CHESSWOOD GROUP LIMITED, CASE FUNDING INC., CHESSWOOD HOLDINGS LTD., CHESSWOOD US ACQUISITIONCO LTD., PAWNEE LEASING CORPORATION, LEASE-WIN LIMITED, WINDSET CAPITAL CORPORATION, TANDEM FINANCE, INC., CHESSWOOD CAPITAL MANAGEMENT INC., CHESSWOOD CAPITAL MANAGEMENT USA INC., RIFCO NATIONAL AUTO FINANCE CORPORATION, RIFCO INC., WAYPOINT INVESTMENT PARTNERS INC. and 1000390232 ONTARIO INC.

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Kelly Bourassa	Applicant, Royal Bank of Canada	kelly.bourassa@blakes.com
Milly Chow		milly.chow@blakes.com
Jake Harris		jake.harris@blakes.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Lisa S. Corne	Huntington Bank	lcorne@dickinsonwright.com
Sanea Tanvir	Chesswood Group	stanvir@mccarthy.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Dave Rosenblat	Counsel to the Monitor, FTI Consulting	drosenblat@osler.com
Marc Wasserman		mwasserman@osler.com
Jeffrey Rosenberg	Monitor, FTI Consulting	Jeffrey.rosenberg@fticonsulting.com

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] This application is brought by the Royal Bank of Canada (“RBC”), in its capacity as administrative agent and collateral agent (the “Agent”) on behalf of a group of first secured lenders to the Chesswood Group under existing Credit Facilities. These lenders are: RBC, The Toronto-Dominion Bank, The Huntington National Bank, M&T Bank, Canadian Imperial Bank of Commerce, and Laurentian Bank of Canada (collectively, the “Existing Lenders”).
- [2] The Agent seeks an initial order and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").
- [3] The Chesswood Group are the named CCAA Parties. This group of companies is comprised of a Canadian public TSX-listed parent company and various affiliated holding and operating companies.
- [4] The Chesswood Group does not oppose the Initial Order under the CCAA sought by the Existing Lenders. Other lenders with registered security against the property of the CCAA Parties received little if any advance notice of this motion and no other stakeholders appeared.
- [5] The Proposed Monitor, FTI Consulting Canada Inc. ("FTI" or the "Proposed Monitor") recommends in its October 29, 2024 pre-filing report that the court grant the proposed Interim Order.
- [6] The facts with respect to this Application are summarized in the Agent's factum filed in support of this motion and more fully set out in the affidavit of Wenwei (Wendy) Chen sworn October 28, 2024 (the “Chen Affidavit”). Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Agent's factum. The summary of background facts below has been largely extracted from the Agent's factum.

Background to this Application**Obligations of the CCAA Parties**

- [7] As at October 24, 2024, the Chesswood Group owed the Existing Lenders US\$66,254,723.30 and C\$92,797,926.72 (the “Indebtedness”) under their Credit Facilities.

In addition, there are outstanding letters of credit of US\$4,000,000 and C\$6,600,000 issued under the Existing Credit Agreement.

- [8] The Chesswood Group is in default of its obligations to the Existing Lenders under the Existing Credit Agreement. This Indebtedness is secured by all of the existing undertaking and property of the Chesswood Group. Some of the members of the Chesswood Group have provided guarantees of the Indebtedness that are fully secured (collectively, the "Existing Guarantees").
- [9] Certain members of the Chesswood Group are servicers of equipment loans and leases that have been sold to securitization vehicles or directly to third-party funders to generate funding (i.e., the upfront payment or purchase price) that the Chesswood Group then redeployed to grow its business. Two members of the Chesswood Group, Pawnee and Rifco, along with certain special purpose securitization vehicles not subject to these proceedings ("SPVs"), are party to certain securitization agreements (the "Securitization Agreements") with the various Securitization Funders.
- [10] None of the CCAA Parties are SPVs. The Securitization Agreements generally contemplate that the applicable Chesswood Group entity is required to continue to administer or "service" the loans and leases. The Securitization Agreements generally also permit the Securitization Funders to replace the applicable Chesswood Group entity as servicer if specified events occur, including in some instances, an insolvency of the applicable servicer or the Borrower.
- [11] Counsel for the Agent advises that the proposed Initial Order is structured so as to minimally interfere with the normal operations of the Chesswood Group in connection with these Securitization Agreements and the Securitization Funders. The Initial Order is not intended to affect the existing rights of those stakeholders, although there does need to be some co-ordinated cash management that the Monitor is aware of. The Securitization Funders will have the opportunity to satisfy themselves of this in advance of the comeback hearing. The Monitor intends to prioritize discussions with the stakeholders involved in that aspect of the business.

Events and Defaults Leading to the CCAA Filing

- [12] A special committee of Chesswood directors (the "Special Committee") was appointed in January 2024 to review the Chesswood Group's strategic options. On June 14, 2024, Chesswood announced that the Special Committee had come to the view that it was in the Chesswood Group's best interests to actively pursue a sale of one or more of its business units or the company as a whole, and failing such sale (or sales), to commence an orderly

winddown of one or more of its business units. Also on June 14, 2024, after reviewing an annual external audit of its Borrowing Base, Chesswood announced that it was in breach of its borrowing base covenants contained in the Existing Credit Agreement (the “Borrowing Base Event of Default”).

- [13] Other Events of Default (together with the Borrowing Base Event of Default, the “Events of Default”) have occurred. The Existing Lenders agreed to agreed to waive certain Events of Default for a limited period (the “Waiver Period”) to allow the Chesswood Group to sell certain of its assets to pay down the Indebtedness. However, the sale efforts have not solved the financial challenges that the Chesswood Group is facing. To date, it has been unable to effect sales of a large part of its business. The Waiver Period ended on October 16, 2024.
- [14] On October 28, 2024, the Agent formally demanded payment from the Chesswood Group via written notices (the “Demands”) in accordance with the Existing Credit Agreement. The Agent also delivered notices of intention to enforce security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada).
- [15] The Chesswood Group is insolvent, unable to meet its obligations as they come due, unable to repay the Existing Lenders and does not have the cash flow to fund its operations in the ordinary course. The Chesswood Group has over US\$800 million of loan and lease assets securitized with the Securitization Funders. Some Securitization Funders are, in accordance with the provisions of the related Securitization Agreements, holding back funds owing to the Chesswood Group as a result of loan asset performance issues. Other assets are tied up because the Securitization Funders have already terminated the Chesswood Group entity as the service provider due to loan asset performance issues.
- [16] The Ontario Securities Commission issued a failure to file cease trade order (the “Cease Trade Order”) against Chesswood on or about August 15, 2024. The Cease Trade Order has not been lifted.
- [17] The Existing Lenders are prepared to provide necessary interim financing to the Chesswood Group on the conditions that Chesswood Group be granted protection under the CCAA and that the Monitor be granted expanded powers to oversee and manage the Chesswood Group’s business and financial affairs. The proposed Initial Order is designed to satisfy these conditions.

Analysis of Issues for Granting the Initial Order

The Agent's Standing and Status of the CCAA Parties: the CCAA Applies

- [18] The Agent and the Existing Lenders are creditors of the Chesswood Group pursuant to the Existing Credit Agreement and the Existing Guarantees and are therefore empowered by section 5 of the CCAA to bring the Application. There is precedent for creditor led CCAA orders. See for example, *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 CanLII 2172 and *Miniso International Hong King Limited v. Migu Investments Inc.*, 2019 BCSC 1234 at para 45.
- [19] Section 9(1) of the CCAA provides that an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its “head office or chief place of business.” The Chesswood Group is headquartered in Toronto, Ontario.
- [20] The Chesswood Group entities do business in Canada and have liabilities in excess of \$5,000,000 and are insolvent within the meaning of s. 2 of the CCAA and the definition of insolvency under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “BIA”). The Chesswood Group does not have the cash flow to fund its operations in the ordinary course. The Chesswood Group entities need immediate access to funds, which are only available under the DIP Facility including the Initial Advance to be funded on October 31, 2024.
- [21] The Proposed Monitor is of the view that the CCAA Parties are insolvent and that the Chesswood Group will require interim financing to continue their operations during these CCAA proceedings.
- [22] I am satisfied that the CCAA Parties (Chesswood Group entities) are debtor companies to which the CCAA applies.

The Stay

- [23] Given the Chesswood Group’s current financial position and lack of liquidity, a stay of proceedings under s. 11.02 (1) of the CCAA is necessary to maintain the *status quo* and to give the Chesswood Group breathing space to allow the Monitor to stabilize operations for the benefits of all of the stakeholders of the Chesswood Group. The stay during the Initial Stay Period until the come-back hearing, scheduled for November 7, 2024 is appropriate in the circumstances. The Agent has acted with due diligence and in good faith to bring forward this application after the expiry of the extended Waiver Period on October 16, 2024.
- [24] The Agreed Budget (as defined in the DIP Financing Term Sheet) indicates that the Chesswood Group will have sufficient funds to continue to operate during the Initial Stay Period, provided that the DIP Financing Term Sheet is approved, and the Interim DIP Charge is granted by the Court.

[25] The Proposed Monitor has reviewed the consolidated cash flow projection of the CCAA Parties which confirms this.

The Proposed Monitor and its Enhanced Powers

[26] FTI consents to act as the Monitor of the Chesswood Group if the court approves its appointment. It is a trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may act as a monitor as set out in section 11.7(2) of the CCAA. Its pre-filing work has provided it with important background and insight into the Chesswood Group and its prior experience acting as a court officer in insolvency and restructuring proceedings renders it qualified to be appointed as the Monitor in this CCAA proceeding.

[27] The Monitor needs the enhanced powers proposed under the draft order because all of the directors are resigning today. Someone needs to ensure that the operations of the Chesswood Group continue to be carried on for the benefit of all stakeholders.

[28] Further, since the Chesswood Group has operations, assets and valuable relationships in the U.S., contemporaneously with the commencement of these CCAA proceedings, it is intended that the Monitor, as foreign representative for the Chesswood Group (in such capacity, the "Foreign Representative"), will seek recognition and enforcement of these CCAA proceedings pursuant to an order by the United States Bankruptcy Court for Delaware under Chapter 15 of the United States Bankruptcy Code (the "Chapter 15 Case").

[29] Sections 11 and 23(1)(k) of the CCAA provide jurisdiction to this Court to grant the Monitor enhanced powers as part of the Initial Order. While these powers are not frequently granted at the stage of an Initial Order, they can be when they are needed in a particular case. I find it the proposed enhanced powers are "appropriate in light of what is needed in the circumstances" and specifically to allow the Monitor to better manage the debtor companies for the benefit of all stakeholders: see *Re Harte Gold Corp*, 2022 ONSC 653, at paras. 91 and 92, *Re Urbancorp Cumberland 2 GP Inc.*, 2017 ONSC 7649, at para 20 and *Re Inca One Gold Corp/*, 2024 BCSC 1478, at para. 36.

[30] There is no indication that any other creditors may be prejudiced by the granting of those expanded powers, but they will have a chance to be heard at the comeback hearing if there are any concerns in this regard.

The Administration Charge

[31] The Agent is seeking an Administration Charge over the property of the Chesswood Group in favour of the Monitor and its counsel to secure payments of their reasonable fees and disbursements incurred both before and after filing in the maximum amount of \$2,000,000.

[32] These Professionals will have extensive involvement with the conduct of the CCAA proceedings and the Chapter 15 Case, including the oversight of the Chesswood Group during the proceedings. The Professionals have contributed and will continue to contribute to an orderly sale or wind down of the Chesswood Group's business.

[33] The criteria to be considered in determining whether to grant this super-priority charge for the fees and expenses of financial, legal and other advisors and experts under s. 11.52 of the CCAA favour the granting of the proposed Administration Charge in this case.

The DIP Financing and Charge

[34] Section 11.2 of the CCAA allows the court to approve the DIP Facility and an Interim DIP Charge that ranks in priority to the Chesswood Group's secured creditors, on notice to those secured creditors that would be affected, and in an amount that this Court considers appropriate having regard to the Agreed Budget. Secured creditors who were not on notice of the motion for the Initial Order will be given the opportunity to raise any objections to this at the comeback hearing.

[35] Having considered the factors under section 11.2(4) of the CCAA, I find the proposed DIP Facility and DIP Charge to be reasonable and appropriate in the circumstances. The terms of the loan are limited to those terms that are reasonably necessary for the CCAA Parties' continued operations in the ordinary course of business during the initial Stay Period. The Monitor has reviewed the terms of the DIP Facility and confirmed that they are within the range of reasonable market terms in comparable circumstances. The Monitor has also reviewed and confirmed the consolidated cash flow forecast that establishes the need for and intended use of these funds in the short and long term.

[36] There are some particular characteristics of the DIP Facility Terms and DIP Charge that are a function of the particular nature of these insolvency proceedings.

- a. The DIP Facility will be primarily used to fund operating expenses while anticipated receipts will be used to fund past and continuing interest accruing under the Existing Credit Facilities. Payment of that interest was a condition of the agreement of the Existing Lenders to provide the DIP Facility. The DIP Facility Terms contemplate an overall combined maximum total of pre-filing debt and DIP draws of approximately \$165 million. The Monitor considers this to be reasonable in the circumstances. The Proposed Monitor has the benefit of a preliminary pre-filing security review and believes that those interest payments would have been paid to the Existing Lenders in priority to other secured and unsecured creditors of the CCAA Parties in any event.
- b. The DIP Facility will be used to fund the pre and post-filing fees of the Agent, the Proposed Monitor and their legal fees and those of the CCAA Parties.

- c. The maximum permitted borrowing amount at this time is more than what is needed to sustain the Chesswood Group's operations through the initial Stay Period because it is also intended to cover an extended period beyond given that the final recognition order in the United States will not be considered until later in November. Providing for a higher cap now will avoid the time and expense of multiple motions in the United States.
- d. While the Initial Advance to be funded during the initial Stay Period is limited to US\$4,000,000, with an Interim DIP Charge in the same amount, approval of the full Interim DIP Charge, set at US\$18,500,000, is necessary so that amount is available up until the issuance of the Final Recognition Order (as defined in the DIP Financing Term Sheet) in the Chapter 15 Case.

[37] The Monitor has reviewed these and the other DIP Facility Terms and recommends their approval.

Suspending Securities Reporting and Filing Requirements

[38] Due to the issuance of the Cease Trade Order and the Chesswood Group's financial condition, the Agent is seeking authorization from this Court to dispense with certain securities reporting and filing requirements of Chesswood during the length of the stay of proceedings.

[39] In circumstances where such filing requirements would cause the debtor and the monitor to incur significant costs in order to prepare the necessary filings, this Court has dispensed with the requirement to make such filings, particularly because the monitor makes detailed financial information available publicly on its website: see *Humble & Fume Inc. et al*, Endorsement of Honourable Justice Cavanagh dated 5 January 2024 (ONSC [Commercial List]), Court File No CV-24-00712366-00CL (Initial Order) at paras 15-16.

[40] The Monitor will be posting detailed financial information in respect of the Chesswood Group on its website for these CCAA proceedings. As a result, dispensing with the filing requirements is appropriate in the circumstances.

[41] The proposed language has been adapted to correspond with language approved by the OSC in other proceedings where such relief has been granted.

Initial Order and Comeback

[42] The Agent has worked with the CCAA Parties and the Proposed Monitor to limit the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of the business of the CCAA Parties within the

initial stay period as required by s. 11.001 of the CCAA, recognizing that there is more uncertainty because of the enhance role that will be granted to the Monitor from the outset.

[43] I am satisfied that the requested relief is necessary for the immediate stabilization of their businesses and to protect it and the interests of its various stakeholders. The proposed order is consistent with the Commercial List Model Order (with some additions representative of the specific circumstances of this case).

[44] For the foregoing reasons, the Initial Order is granted, in the revised form signed by me today.

[45] The come-back hearing has been scheduled before me on November 7, 2024 commencing at 2:00 p.m. on zoom.

A handwritten signature in cursive script that reads "Kimmel J." with a period at the end.

KIMMEL J.