



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: November 7, 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:

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ENDORSEMENT OF JUSTICE KIMMEL:

- [1] Royal Bank of Canada, in its capacity as administrative agent and collateral agent (the "Agent") to the lenders (the "Lenders") under a second amended and restated credit agreement dated as of January 14, 2022, as amended (the "Existing Credit Agreement"), seeks an Amended and Restated Initial Order (the "ARIO") and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C- 36, as amended (the "CCAA") in respect of the named CCAA Parties who are part of the Chesswood Group.
- [2] For the reasons set out in the First Report of the Monitor dated November 6, 2024, the Monitor is of the view that the relief requested by the Agent pursuant to the proposed ARIO is both appropriate and reasonable and recommends that the court grant the requested ARIO.
- [3] The background to these CCAA proceedings is described in the court's October 29, 2024 endorsement. An Initial Order was granted under the CCAA on October 29, 2024. It was not opposed by the CCAA Parties and was supported by the Monitor.
- [4] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the court's October 29, 2024 endorsement and the Agent's factum filed in support of this motion.

Update on Events Since the Initial Order

- [5] On October 30, 2024, the Monitor, in its capacity as Foreign Representative, commenced the Chapter 15 Proceedings for each of the CCAA Parties with the U.S. Bankruptcy Court for the district of Delaware (the "U.S. Court"). On October 31, 2024, the U.S. Court entered, among others, an Order Granting Petitioner's Motion for Provisional Relief (the "Provisional Relief Order"), which, on a provisional basis, among other things, recognized the CCAA Proceedings as a foreign main proceeding and gave effect to the Initial Order in the U.S. A hearing has been scheduled before the U.S. Court on November 25, 2024, at which the Foreign Representative will seek, among other things, a final order ("Final Recognition Order") recognizing the CCAA Proceedings as a foreign main proceeding and giving effect to the Initial Order and ARIO in the U.S.
- [6] Since the Initial Order was granted, the directors have resigned (as was expected, which is why the Monitor was granted enhanced powers). The Monitor has been working to

stabilize the operations of the CCAA Parties, as described in its First Report. It intends to work with the Agent and the CCAA Parties and other stakeholders and make a recommendation concerning the sale (and any corresponding sale process) or winding-up of the business and operations of the CCAA Parties before the end of the proposed extended Stay Period. The DIP Term Sheet includes a December 16, 2024 milestone date by which the CCAA Parties must provide a plan regarding one or more sale and solicitation investment processes ("SISPs") in respect of the Business or Property of the CCAA Parties or other wind-down options of the CCAA Parties to the DIP Agent, which the increased borrowings under the DIP Facility will facilitate.

The ARIO

- [7] Much of the relief sought in the ARIO was contained in or anticipated by the Initial Order. Certain changes have been made that are clean up or administrative in nature. The reasons and authority for granting the Initial Order and approving the Stay, the Monitor's enhanced powers, the Administration Charge, the DIP Facility and DIP Charge, among the other provisions, are set out in the court's October 29, 2024 endorsement and continue to apply.
- [8] The Monitor supports the requested changes to the Initial Order that are reflected in the ARIO. Some select changes or additional features not previously considered are discussed below.

Stay Extension

- [9] The ARIO provides for an extension of the Stay Period to January 31, 2025. The Monitor supports extending the Stay Period, for the reasons detailed in paragraphs 27 to 29 of its First Report.
- [10] The extension of the Stay Period will afford the Chesswood Group the time to assess how to best deal with its assets and property in the best interests of all stakeholders as well as to formulate the SISP(s). Given the Chesswood Group's current financial position and liquidity crisis, a stay of proceedings is necessary to maintain the *status quo* and to give the Chesswood Group the breathing space required to stabilize operations for the benefit of all of the stakeholders.
- [11] The extended Stay Period is supported by the updated cash flow projection prepared by the Chesswood Group in consultation with the Monitor. This projection demonstrates that the Chesswood Group will, with the approval of additional borrowings under the DIP Term Sheet, have sufficient liquidity to fund operations during the requested extension of the Stay Period. The need for this additional liquidity was anticipated at the time of the Initial Order.

[12] The CCAA Parties who are benefitting from the Stay are co-operating with the Monitor and acting with good faith and due diligence. The requested extension of the Stay Period is appropriate in the circumstances. The requirements for an extension of the Stay Period under s. 11.02(1) of the CCAA are satisfied.

DIP Facility

[13] The s.11.2 CCAA factors for the approval of the increased DIP Facility and corresponding DIP Charge have been satisfied, for the same reasons outlined in the court's October 29, 2024 endorsement when the Initial DIP Facility and corresponding DIP Charge were approved and as further detailed in the Agent's factum filed on this motion.

[14] The Monitor also supports the requested increase of the DIP Facility and corresponding DIP Charge, up to an initial maximum of US\$18,500 pending the US court's decision on the request for the Final Recognition Order and then up to a maximum of US\$65 million (the maximum amount permitted under the DIP Term Sheet) through to the end of the extended Stay Period, all subject to the specific provisions of the DIP Term Sheet.

[15] The proposed increases to the maximum DIP Borrowings and the DIP Charge will help advance the purposes of the CCAA by allowing the Chesswood Group to access the liquidity it needs to stabilize its operations while the Monitor formulates the SISP or the SISPs. The Monitor has confirmed that the additional DIP financing is required to maintain the *status quo* and stabilize the business operations of the CCAA Parties through to the end of the extended Stay Period based on the cash flow forecasts. The Monitor is of the view that the proposed increased amounts which the Borrower may borrow under the DIP Facility and a corresponding increase to the DIP Charge are reasonable in the circumstances.

[16] The structure of the DIP Facility is a "creeping roll-up" facility pursuant to which excess cash from post-filing receipts is used to pay down the obligations of the Chesswood Group in connection with the Existing Credit Agreement while the DIP Borrowings are used to fund post-filing expenses (with a combined maximum borrowing cap). This feature of the DIP Facility, to be approved by the court, is a condition of the DIP Term Sheet.

[17] Creeping roll-ups have been approved by Canadian courts and found not to contravene the provisions of section 11.2 of the CCAA. See *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238, at paras. 45-47 and *Comark Inc., Re*, 2015 ONSC 2010, at para. 29. The Agent has outlined in paragraph 37 of its factum for this motion the factors that courts have considered in determining whether to approve a DIP facility with a creeping roll-up structure. The factors that favour the approval of the creeping roll-up structure in this case include that:

- a. A consensus exists among interested parties, including the CCAA Monitor, for the creeping roll-up structure: see *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645, at para. 63; *Essar Steel Algoma Inc.*, 2017 ONSC 4652, at para. 10; *Re: Performance Sports Group Ltd.*, 2016 ONSC 6800, at para. 21; *Comark*, at paras. 27-28.
- b. The creeping roll-up DIP Facility does not alter the pre-filing *status quo* by subordinating the security of any secured parties or statutory deemed trusts: See *BZAM*, at para. 56; *Mountain Equipment Co-Operative*, 2020 BCSC 1586, at para. 54; *Performance*, at para 22; *Comark* at para 40.
- c. The court-ordered charge is not being used to improve the security of the pre-filing lender or fill gaps in the pre-filing lender's security package. The DIP Facility and the increased maximum DIP Borrowings and DIP Charge do not alter the pre-filing *status quo* as the Lenders already have been granted security pursuant to the Existing Credit Agreement that counsel to the Monitor has verbally confirmed is valid and enforceable with respect to the mandatory repayments under the DIP Term Sheet that make up the creeping roll-up structure: see *Performance*, at para.22.
- d. The pre-filing Lenders and the DIP Lenders are the same: see *Angiotech Pharmaceuticals Ltd. (Re)*, 2011 BCSC 115 (CanLII), (Initial Order).
- e. The terms of the DIP Facility in question would not be available to the debtors as alternative DIP financing without a creeping roll-up structure. The Monitor is of the view that alternative DIP financing on terms more favourable than those contemplated by the DIP Term Sheet would not be available to the Chesswood Group on the timeline needed to fund these CCAA proceedings: see *Comark*, at para 22; *Performance*, at para 21; *MEC*, at para 61.
- f. The term DIP Term Sheet expressly prohibits using the advances under the DIP Facility to pay pre-filing obligations unless permitted by court order: see *Performance*, at para. 22.

Additional Provisions and Reservations

[18] The Monitor and the Agent reconfirmed that the proposed Initial Order, and now the ARIO, have been structured so as to minimally interfere with the normal operations of the Chesswood Group in connection with its Securitization Agreements and not to impair or effect the existing rights of the Securitization Funders. The Monitor continues to prioritize discussions with the stakeholders involved in that aspect of the business.

[19] Wafra, one of the Securitization Funders, requested the inclusion of paragraph 11 of the ARIO (confirming that the cash, legal title, assets, or any other property of the Securitization Lenders under their Securitization Agreements do not form part of the Property of the CCAA Parties), but has some other reservations and potential exclusions that it is seeking to negotiate with the Agent and the Monitor. Another Securitization Lender, Versabank, is not yet satisfied that paragraph 11 of the ARIO addresses its situation and has requested that the endorsement reflect its reservation of existing rights as a condition of not opposing the ARIO.

[20] In addition to the language added in paragraph 11 of the ARIO, the Agent, the Monitor, and Wafra and Versabank have agreed, and the court endorses, as follows:

Section 11 of the Order is made without prejudice to the rights of Versabank to return before the Court to seek to vary it in the event that agreement is not reached as between Versabank, the Applicant, and the Monitor with respect to the scope and wording of section 11.

The Charges granted pursuant to the ARIO attach to the equity interests in Bishop Holdings LLC (“Bishop”) held by Pawnee Leasing Corporation (“Pawnee”) (the “Bishop Units”). The Court is advised by counsel to Wafra Inc. (“Wafra”), the indirect owner of W-Bishop S LLC (“Bishop Majority Owner”) which owns 90% of the equity interests in Bishop, that the granting of a lien or encumbrance in respect of the Bishop Units is not permitted under the terms of the limited liability company agreement entered into between Pawnee and Bishop Majority Owner (the “LLC Agreement”). The Court is advised that Wafra and the Agent will engage in discussions regarding consensual arrangements in respect of the interaction of the Charges and the Bishop Units. In the event that consensual arrangements cannot be achieved, Wafra is entitled to seek relief from this Court in respect of the Bishop Units (including an Order that the Charges do not attach to the Bishop Units), and the determination of such issue by the Court shall be treated as a comeback matter in respect of the ARIO without prejudice to Wafra, the Applicant or the Monitor as a result of the granting of the ARIO. Bishop Majority Owner has not prejudiced, waived or altered its rights under the LLC Agreement as a result of consenting to the granting of the ARIO.

[21] An additional term has been included in paragraph 47 of the ARIO to protect persons acting under and in reliance upon the ARIO in the event that any provisions of the ARIO of subsequently stayed, modified, varied, amended, reversed or vacated in whole or in part

("Variation"). This provisional execution of the ARIO is not opposed. While not typically expressly provided for in the context of CCAA proceedings, US counsel to the Monitor (acting in its capacity as foreign representative) has indicated that this type of provision would be requested in the Final Recognition Order in the US. I have determined that it is appropriate to include it in the ARIO for consistency.

[22] An additional term has been included in paragraph 45 of the ARIO to restrict reliance upon the ARIO and the DIP Lenders' consent to it (and to the permitted Charges against their Collateral that the ARIO allows for) as an evidentiary foundation for any future charges against the DIP Lenders' Collateral. This too is a provision that has been requested at the suggestion of US counsel for the Monitor (acting in its capacity as foreign representative), because it will be requested in the Final Recognition Order in the US, and has been included in the ARIO for consistency.

[23] The Initial Order contained a provision to extend the limitation period during the Stay Period. This is continued in the ARIO. The Agent has now provided a precedent for this having been done in a previous CCAA proceeding before this court. McEwan J. concluded in *The Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, v. C-36, As Amended and In The Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp.*, 2019 ONSC 2222, at para. 27, that:

I also accept Imperial's submission that I have jurisdiction to extend any prescription, time or limitation period relating to any proceeding for or against the applicants or related entities that may expire. Such provisions are common in CCAA proceedings and have been granted in initial orders in a number of decisions: *Muscletech Research and Development Inc. (Re)*, 2006 CanLII 20084 (Ont. S.C.J.), at para. 5; *ScoZinc Ltd. (Re)*, [2009] N.S.J. No. 217, 2009 NSSC 162, 277 N.S.R. (2d) 246 (Claims Officer), at para. 5; and *Scaffold Connection Corp. (Re)*, [2000] A.J. No. 69, 2000 ABQB 35, 79 Alta. L.R. (3d) 144, at para. 26. In my view, this result is sensible and desirable. Since all proceedings and future proceedings, including those brought by or against the applicants, are stayed, the interests of all stakeholders are protected

[24] I agree that such relief is sensible and protective of the interests of all stakeholders since it preserves their ability to bring proceedings once the stay no longer applies.

Order and Next Steps

[25] For these reasons, and for the more detailed grounds set out in the Agent's factum for this motion, the ARIO is granted in the revised form signed by me today.

[26] If the parties are not able to work out the matters that are the subject of the reservations in paragraph 20 of this endorsement, or if other matters arise, a scheduling appointment may be requested in the normal course to book a case conference or motion, as directed by the court. The parties shall ensure that sufficient court time is booked well in advance to address any matters that they intend to bring back before the court prior to the expiry of the extended Stay Period on January 31, 2025.

A handwritten signature in black ink that reads "Kimmel J." with a stylized flourish at the end.

KIMMEL J.