

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**


THE HONOURABLE MR.) THURSDAY, THE 19TH
)
JUSTICE McEWEN) DAY OF SEPTEMBER, 2019

**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 PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

MEETINGS ORDER



THIS MOTION, made by Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (collectively, the "**Applicants**", and together with Payless ShoeSource Canada LP, the "**Payless Canada Entities**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**"), for an order, *inter alia*, (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record and validating service thereof; (b) accepting the filing of a Plan of Compromise and Arrangement (the "**Plan**") pursuant to the CCAA filed by the Payless Canada Entities dated September 17, 2019 and attached hereto at **Schedule "A"**; (c) authorizing the Payless Canada Entities to establish two (2) voting classes: (i) the General Unsecured Creditors class, and (ii) the Landlords class for the purpose of considering and voting on the Plan; (d) authorizing the Payless Canada Entities to call, hold and conduct a meeting of the General Unsecured Creditors and a meeting of the Landlords (together, the "**Creditors' Meetings**") to consider and vote on a resolution to approve the Plan (the "**Plan Resolution**"); (e) approving the procedures to be followed with respect to the calling and conduct of the Creditors' Meetings; (f) setting the date for the hearing of the Payless Canada Entities'

motion seeking an order to sanction the Plan (the “**Sanction Order**”); and (g) approving a claims resolution procedure, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Adrian Frankum sworn on September 10, 2019 (the “**Frankum Affidavit**”), including the exhibits thereto, the fifth report of FTI Consulting Canada Inc. in its capacity as court-appointed monitor (“**Monitor**”) dated September 12, 2019 (the “**Fifth Report**”), the supplement to the Fifth Report (the “**Supplemental Report**”), the Affidavit of Stephen Marotta sworn on September 17, 2019 (the “**Supplemental Marotta Affidavit**”), and upon hearing the submissions of counsel for the Payless Canada Entities and the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the affidavits of service of Taschina Ashmeade, sworn September 10, 2019, September 11, 2019 and September 17, 2019, filed.

SERVICE

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion and the Motion Record herein is hereby validated so that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Meetings Order shall have the meanings ascribed to them in the Plan, the Order of the Ontario Superior Court of Justice (Commercial List) dated April 24, 2019 (the “**Claims Procedure Order**”), Supplemental Marotta Affidavit or the Frankum Affidavit.

PLAN OF COMPROMISE AND ARRANGEMENT

3. **THIS COURT ORDERS** that the Plan is hereby accepted for filing, and the Payless Canada Entities are hereby authorized and directed to call the Creditors' Meetings for the purpose of having the Eligible Voting Creditors vote on the Plan in the manner set out herein.

4. **THIS COURT ORDERS** that the Payless Canada Entities may, at any time and from time to time prior to or after the Creditors' Meetings, amend, restate, modify and/or supplement the Plan, in accordance with the terms of the Plan.

FORMS OF DOCUMENTS

5. **THIS COURT ORDERS** that the Notice of Creditors' Meetings and Sanction Motion substantially in the form attached hereto as **Schedule "B"** (the "**Notice of Creditors' Meetings and Sanction Motion**"), the Proxy substantially in the form attached hereto as **Schedule "C"** (the "**Proxy**"), and the form of Plan Resolution substantially in the form attached hereto as **Schedule "D"**, are each hereby approved and the Payless Canada Entities, with the consent of the Monitor, are authorized to make such changes to such forms of documents as it considers necessary or desirable to conform the content thereof to the terms of the Plan or this Meetings Order.

CLASSIFICATION OF CREDITORS

6. **THIS COURT ORDERS** that for the purposes of considering and voting on the Plan, there shall be two (2) classes: (i) the General Unsecured Creditor class; and (ii) the Landlord class.

NOTICE OF CREDITORS' MEETINGS

7. **THIS COURT ORDERS** that in order to effect notice of the Creditors' Meetings, as soon as practicable after the granting of this Meetings Order and, in any event, no later than September 24, 2019, the Monitor shall cause to be sent by email, regular pre-paid mail, or courier, copies of

(i) the Notice of Creditors' Meetings and Sanction Motion, referring to the Fifth Report, the Supplemental Report, this issued Meetings Order, the Plan, the U.S. Disclosure Statement and the Information Memorandum and (ii) the Proxy, (the "**Information Package**"), which shall be posted on the Monitor's Website, to each known Eligible Voting Creditor, at the address for such Eligible Voting Creditor set out in the books and records of the Payless Canada Entities, as noted on the Notice of Dispute of Claim Statement or Proof of Claim filed by the Eligible Voting Creditor, or to such other address subsequently provided to the Monitor by such Eligible Voting Creditor.

8. **THIS COURT ORDERS** that the Monitor shall forthwith following the granting of this Meetings Order post an electronic copy of the Information Package (and any amendments made thereto in accordance with paragraph 7 hereof) on the Monitor's Website, send a copy of the Information Package to the Service List and provide a written copy to any Eligible Voting Creditor upon request.

9. **THIS COURT ORDERS** that on or before October 1, 2019 the Monitor shall cause the Notice of Creditors' Meetings and Sanction Motion to be published for a period of two (2) Business Days in *The Globe and Mail* (National Edition) and *La Presse*.

10. **THIS COURT ORDERS** that the delivery, posting and sending of the Information Package in the manner set out in paragraphs 7, 8 and 9, shall constitute good and sufficient service of this Meetings Order, the Plan and the Sanction Motion, and good and sufficient notice of each of the Creditors' Meetings on all Persons who may be entitled to receive notice thereof in these proceedings or who may wish to be present in person or by Proxy at any Creditors' Meeting or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons.

11. **THIS COURT ORDERS** that no later than five (5) Business Days before the Creditors' Meetings or such shorter period as may be agreed by the Monitor and the Supporting Term Loan

Lenders, the Payless Canada Entities shall serve a supplement to the Plan (the “**Plan Supplement**”), in form and substance acceptable to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders, on the Service List and the Monitor shall cause the Plan Supplement to be posted on the Monitor’s Website.

12. **THIS COURT ORDERS** that no later than three (3) Business Days before the Creditors’ Meetings, the Monitor shall serve a report regarding the Plan on the Service List and cause such report to be posted on the Monitor’s Website.

13. **THIS COURT ORDERS** that the posting and sending of the Plan Supplement in the manner set out in paragraph 11 shall constitute good and sufficient service of the Plan Supplement, and no other form of notice or service need be made in respect of the Plan Supplement.

CONDUCT AT THE CREDITORS’ MEETINGS

14. **THIS COURT ORDERS** that the Payless Canada Entities are hereby authorized to call, hold and conduct the meeting of the General Unsecured Creditors on October 23, 2019 at 10:00 a.m. (Toronto time) and the meeting of the Landlords on October 23, 2019 at 10:15 a.m. (Toronto time) respectively, at the offices of Cassels Brock & Blackwell LLP, for the purpose of considering, and if deemed advisable by the General Unsecured Creditor class and Landlord class, voting in favour of, with or without variation, the Plan Resolution to approve the Plan.

15. **THIS COURT ORDERS** that a representative of the Monitor, designated by the Monitor in consultation with the Payless Canada Entities, shall preside as the chair of each of the Creditors’ Meetings (the “**Chair**”) and, subject to any further Order of this Court, shall decide all matters relating to the conduct of the Creditors’ Meetings.

16. **THIS COURT ORDERS** that the Chair, in consultation with the Payless Canada Entities, is authorized to accept and rely upon Proxies, or such other forms as may be acceptable to the Chair.

17. **THIS COURT ORDERS** that the quorum required at each of the Creditors' Meetings shall be one (1) Eligible Voting Creditor with a Voting Claim present at such meeting in person or by Proxy (the "**Requisite Quorum**").

18. **THIS COURT ORDERS** that the Monitor may appoint in its sole discretion scrutineers for the supervision and tabulation of the attendance at, Requisite Quorum at and votes cast at each of the Creditors' Meetings (the "**Scrutineers**"). A Person designated by the Monitor shall act as secretary at each of the Creditors' Meetings (the "**Secretary**").

19. **THIS COURT ORDERS** that if (a) the Requisite Quorum is not present at each of the Creditors' Meetings, or (b) either of the Creditors' Meetings is postponed by the request of the Payless Canada Entities in consultation with the Supporting Term Loan Lenders or by vote of the majority in value of General Unsecured Creditors or Landlords holding Voting Claims in person or by Proxy at the applicable Creditors' Meeting, then the Creditors' Meetings shall be adjourned by the Chair to such time and place as the Chair deems necessary or desirable with the consent of the Payless Canada Entities.

20. **THIS COURT ORDERS** that the Chair, with the consent of the Payless Canada Entities, and in consultation with the Supporting Term Loan Lenders, be, and is hereby, authorized to adjourn, postpone or otherwise reschedule the Creditors' Meetings on one or more occasions to such time(s), date(s) and place(s) as the Chair with the consent of the Payless Canada Entities and in consultation with the Supporting Term Loan Lenders, deems necessary or desirable (without the need to first convene such Creditors' Meetings). None of the Payless Canada Entities,

the Chair or the Monitor shall be required to deliver any notice of the adjournment of either of the Creditors' Meetings or adjourned Creditors' Meetings, provided that the Monitor shall:

- (a) announce the adjournment of either of the Creditors' Meetings or adjourned Creditors' Meetings, as applicable;
- (b) post notice of the adjournment at the originally designated time and location of each of the Creditors' Meetings or adjourned Creditors' Meetings, as applicable;
- (c) forthwith post notice of the adjournment on the Monitor's Website; and
- (d) provide notice of the adjournment to the Service List forthwith.

21. **THIS COURT ORDERS** that any Proxies validly delivered in connection with either of the Creditors' Meetings shall be accepted as Proxies in respect of any adjourned Creditors' Meetings.

22. **THIS COURT ORDERS** that the only Persons entitled to attend and speak at either of the Creditors' Meetings are Eligible Voting Creditors (or their respective duly appointed proxyholder), representatives of the Monitor and the Payless Canada Entities, the Supporting Term Loan Lenders and the Term Loan Agent, the Chair, the Secretary and Scrutineers, and all such parties' respective legal counsel and advisors. Any other Person may be admitted to either of the Creditors' Meetings on invitation of the Payless Canada Entities or the Chair.

VOTING PROCEDURE AT THE CREDITORS' MEETINGS

23. **THIS COURT ORDERS** that, after consultation with the Payless Canada Entities, the Chair and the Monitor be and are hereby authorized to direct a vote by confidential written ballot

or by such other means as the Chair or Monitor may consider appropriate, with respect to the Plan Resolution to approve the Plan.

24. **THIS COURT ORDERS** that any Proxy for a General Unsecured Creditor and Landlord must be (a) received by the Monitor by 10:00 am (Toronto time) on October 21, 2019, or 48 hours (excluding Saturdays, Sundays and statutory holidays) prior to any adjourned, postponed or rescheduled Creditors' Meeting (the "**Proxy Deadline**").

25. **THIS COURT ORDERS** that, in the absence of instruction to vote for or against the approval of the Plan Resolution in a duly signed and returned Proxy, the Proxy shall be deemed to include instructions to vote for the approval of the Plan Resolution, provided the Proxy holder does not otherwise exercise its right to vote at the applicable Creditors' Meetings.

26. **THIS COURT ORDERS** that to the extent that the Monitor is in receipt of more than one Proxy in respect of the same Eligible Voting Creditor, the last submitted duly signed and returned Proxy, shall be deemed to be such Eligible Voting Creditor's instructions with respect to the Plan.

27. **THIS COURT ORDERS** that each Eligible Voting Creditor shall be entitled to one vote equal to the aggregate dollar value of its Voting Claim plus its Disputed Voting Claim, if any. For greater certainty, each Eligible Voting Creditor that casts a vote at the applicable Creditors' Meeting in accordance with this Order shall be counted as an individual Eligible Voting Creditor for the purposes of that Creditors' Meeting, even if that Eligible Voting Creditor is an Eligible Voting Creditor in respect of multiple Affected Claims.

28. **THIS COURT ORDERS** that only General Unsecured Creditors (other than holders of Intercompany Claims) and Landlords shall be entitled to vote on the Plan.

29. **THIS COURT ORDERS** that notwithstanding anything to the contrary in this Order, (i) the Term Loan Lenders and the Term Loan Agent shall not be entitled to vote in respect of any portion

of the Term Loan Claims, and shall not be taken into account in determining whether the Required Majorities are obtained; and (ii) holders of Intercompany Claims and Equity Claims shall not be entitled to vote in respect of their Intercompany Claims or Equity Claims and shall not be taken into account in determining whether the Required Majorities are obtained.

30. **THIS COURT ORDERS** that a Voting Claim or Disputed Voting Claim shall not include fractional numbers and shall be rounded down to the nearest whole Dollar amount.

31. **THIS COURT ORDERS** that an Eligible Voting Creditor may transfer or assign the whole of its Claim prior to the applicable Creditors' Meeting, provided that none of the Payless Canada Entities nor the Monitor shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof, including allowing such transferee or assignee of an Eligible Voting Creditor to vote at the applicable Creditors' Meeting, unless and until written notice of such transfer or assignment, together with evidence satisfactory to the Monitor, in its sole discretion, of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Claim, no later than 10:00 am (Toronto time) on the date that is two (2) Business Days prior to the Creditors' Meetings. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Procedure Order and this Meetings Order, constitute an "Eligible Voting Creditor" in respect of such Claim, and shall be bound by any and all notices given to the transferor or assignor and steps taken in respect of such Claim. Any such transferee or assignee is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such transferee or assignee to the Payless Canada Entities. Where a Claim has been transferred or assigned in part, the transferor or assignor shall retain the right to vote at the applicable Creditors' Meeting in respect of the full amount of the Claim as determined for voting purposes in accordance with this Meetings Order,

and the transferee or assignee shall have no voting rights at the Creditors' Meetings in respect of such Claim.

32. **THIS COURT ORDERS** that an Affected Creditor may transfer or assign the whole of such Claim after the applicable Creditors' Meeting provided that none of the Payless Canada Entities nor the Monitor shall be obligated to make any distributions to any such transferee or assignee or otherwise deal with such transferee or assignee as an Affected Creditor, in respect thereof unless and until written notice of such transfer or assignment, together with evidence satisfactory to the Monitor, in its sole discretion, of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Claim. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Procedure Order, this Meetings Order and the Plan, constitute an Affected Creditor, and shall be bound by any notices given or steps taken in respect of such Claim.

DISPUTED VOTING CLAIMS

33. **THIS COURT ORDERS** that the dollar value of a Disputed Voting Claim of an Eligible Voting Creditor for voting purposes at the applicable Creditors' Meeting shall be (i) for Creditors who filed a Notice of Dispute of Claim Statement, the dollar value of such Disputed Voting Claim as set out in such Eligible Voting Creditor's Notice of Dispute of Claim Statement previously delivered to the Monitor pursuant to the Claims Procedure Order or (ii) for creditors who have filed a Proof of Claim, the dollar value set out in the Proof of Claim, in each case, without prejudice to the determination of the dollar value of such Eligible Voting Creditor's Claim for distribution purposes in accordance with the Claims Procedure Order and this Meetings Order.

34. **THIS COURT ORDERS** that the Monitor shall keep a separate record of votes cast by Eligible Voting Creditors in respect of Disputed Voting Claims and shall report to the Court with respect thereto at the Sanction Motion.

APPROVAL OF THE PLAN

35. **THIS COURT ORDERS** that in order to be approved, the Plan must receive an affirmative vote by each of the Required Majorities.

36. **THIS COURT ORDERS** that following the votes at the Creditors' Meetings, the Monitor shall tally the votes and determine whether the Plan has been approved by each of the Required Majorities.

37. **THIS COURT ORDERS** that the results of all votes provided at each of the Creditors' Meetings shall be binding on all Affected Creditors, whether or not any such Affected Creditor was present or voted at the applicable Creditors' Meeting.

SANCTION MOTION

38. **THIS COURT ORDERS** that the Monitor shall serve on the Service List and file a report to the Court as soon as practicable after the Creditors' Meetings (the "**Monitor's Report Regarding the Creditors' Meetings**") with respect to:

- (a) the results of voting on the Plan Resolution at each of the Creditors' Meetings;
- (b) whether each of the Required Majorities has approved the Plan;
- (c) the separate tabulation for Disputed Voting Claims required by paragraph 34 herein; and
- (d) in its discretion, any other matter relating to the Payless Canada Entities' motion seeking the Sanction Order (the "**Sanction Motion**").

39. **THIS COURT ORDERS** that an electronic copy of the Monitor's Report Regarding the Creditors' Meetings, the Plan, including any Plan modifications, and a copy of the materials filed

in respect of the Sanction Motion shall be posted on the Monitor's Website prior to the Sanction Motion.

40. **THIS COURT ORDERS** that in the event the Plan is approved by each of the Required Majorities, the Payless Canada Entities may bring the Sanction Motion before this Court on October 29, 2019, or such later date as the Monitor may advise the Service List in these proceedings, provided that such later date shall be acceptable to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders.

41. **THIS COURT ORDERS** that any Person intending to oppose the Sanction Motion shall (i) file or have filed with the Court a Notice of Appearance and serve such Notice of Appearance on the Service List at least seven (7) Business Days before the date set for the Sanction Motion; and (ii) serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used to oppose the Sanction Motion that are available at least seven (7) Business Days before the date set for the Sanction Motion, or such shorter time as the Court, by Order, may allow.

42. **THIS COURT ORDERS** that in the event that the Sanction Motion is adjourned, only those Persons appearing on the Service List as of the date of service shall be served with notice of the adjourned date.

43. **THIS COURT ORDERS** that, subject to any further Order of the Court, in the event of any conflict, inconsistency, ambiguity or difference between the provisions of the Plan and this Meetings Order, the terms, conditions and provisions of the Plan shall govern and be paramount, and any such provision of this Meetings Order shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

ADJUDICATION OF CLAIMS FOR DISTRIBUTION PURPOSES

44. **THIS COURT ORDERS** that any acceptance, revision or rejection of any Claim by the Payless Canada Entities in accordance with this Meetings Order and the Claims Procedure Order will be solely for the purposes of voting and/or receiving a distribution under any plan of arrangement or compromise put forward by the Payless Canada Entities in these proceedings, and, for greater certainty, the claims adjudication process contained in this Meetings Order does not apply to the Term Loan Claims.

45. **THIS COURT ORDERS** that, notwithstanding anything to the contrary contained in this Meetings Order, the Claims Procedure Order, or any other order of the Court in these proceedings, the Payless Canada Entities and the Monitor shall not accept, reject, revise or settle any Claim ranking or purporting to rank *pari passu* with, or in priority to, the Term Loan Claims without the consent of the Supporting Term Loan Lenders or further Order of this Court.

46. **THIS COURT ORDERS** that if the Payless Canada Entities, in consultation with the Monitor, intend to revise or reject a Claim, the Monitor shall notify the Claimant who has delivered such Proof of Claim or Notice of Dispute of Claim Statement that such Claim has been revised or rejected, and the reasons therefore, by sending a notice substantially in the form attached as **Schedule "E"** hereto (a "**Notice of Revision or Disallowance**") to the Claimant, and in the case of a Director/Officer Claim, with a copy to the applicable Director or Officer, unless otherwise ordered by this Court on application by the Monitor.

47. **THIS COURT ORDERS** that where a Claimant to whom a Notice of Revision or Disallowance has been delivered in accordance with paragraph 46 hereof does not file a completed notice of dispute substantially in the form attached as **Schedule "F"** (a "**Notice of Dispute**") by the time set out in paragraph 48, such Claimant's Claim, shall be deemed to be as

set out in the Notice of Revision or Disallowance issued to such Claimant and no Person shall have any further right to dispute same.

48. **THIS COURT ORDERS** that any Claimant to whom a Notice of Revision or Disallowance has been delivered in accordance with paragraph 46, and who intends to dispute such notice, shall:

- (a) deliver a completed Notice of Dispute, along with the reasons for the dispute, together with any additional material upon which the Claimant intends to rely, to the Monitor by no later than fifteen (15) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Payless Canada Entities in writing, and in such event the Payless Canada Entities, in consultation with the Monitor, shall attempt to settle the dispute raised in the Notice of Dispute through consensual negotiations; and
- (b) in the event that a dispute raised in a Notice of Dispute is not settled within a time period or in a manner satisfactory to the Payless Canada Entities and the Monitor, the Payless Canada Entities in consultation with the Monitor shall refer the dispute raised in the Notice of Dispute to a claims officer or the Court (at the Payless Canada Entities' election in consultation with the Monitor) for adjudication.

49. **THIS COURT ORDERS** that the Payless Canada Entities, in consultation with the Monitor, may attempt to consensually resolve any Claim (including any Claim for which a Notice of Dispute of Claim Statement, Proof of Claim, or Notice of Revision or Disallowance has been delivered) and may refer any Claim to a claims officer, subject to further order of the Court, or the Court for adjudication by sending written notice to the Claimant at any time.

50. **THIS COURT ORDERS** that the Payless Canada Entities shall not be required to review, reject or accept any Claim and may, in consultation with the Monitor, deem any Disputed Claim to be a Proven Claim or a Proven Priority Claim in the amount asserted by the Claimant.