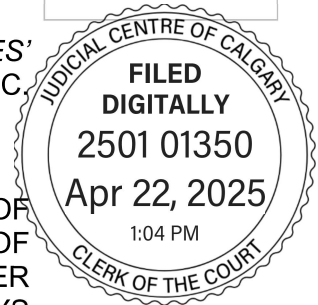


COURT FILE NUMBER 2501 01350
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's stamp

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
PEAVEY INDUSTRIES GENERAL PARTNER
LIMITED, TSC STORES GP INC., GUYS
FREIGHTWAYS LTD., and PEAVEY
INDUSTRIES LIMITED



APPLICANTS PEAVEY INDUSTRIES GENERAL PARTNER
LIMITED, TSC STORES GP INC., GUYS
FREIGHTWAYS LTD., and PEAVEY
INDUSTRIES LIMITED

DOCUMENT **BRIEF**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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INTRODUCTION

1 This Bench Brief is submitted by the Applicants, Peavey Industries General Partner Limited (**Peavey GP**), TSC Stores GP Inc. (**TSC GP**), Guys Freightways Ltd. (**Guys**), and Peavey Industries Limited (**Peavey Industries**). The non-applicant entities in this matter are Peavey Industries LP (**Peavey**) and Peavey Industries Mutual Fund Trust (**MFT**) (collectively, the **Peavey Group**).

2 Capitalized terms used but not defined herein take their meaning from the First Affidavit of Douglas Anderson, sworn on January 27, 2025.

3 The Applicants seek approval of the following:

- (a) Amending Order, which would amend the Amended and Restated Initial Order, granted February 6, 2025, to extend the stay of proceedings and provide other relief;

- (b) Sale Approval and Vesting Orders in respect of the Guys SPA, the Turtle Mountain SPA, and the Peavey APA (defined below);
- (c) Assignment Order in respect of the former Peavey Mart store premises in Mount Forest, Ontario (the **Mount Forest Lease**);
- (d) Domain Registrant Disclosure Order in respect of certain domain registrant information for tractorsupply.ca;
- (e) Restricted Court Access Order with respect to the Confidential Supplement to the Fourth Report.

FACTS

4 On January 27, 2025, the Applicants applied for and obtained an Initial Order under the *Companies' Creditors Arrangement Act, RSC 1985, c C-36* (**CCAA**), which, among other things:

- (a) declared that the Applicants are companies to which the CCAA applies;
- (b) confirmed that Peavey and MFT are bound by the Initial Order, and enjoy the benefits and protections thereunder, including the stay of proceedings;
- (c) granted an initial stay period (the **Stay Period**) in favour of the Peavey Group up to and including February 6, 2025, subject to the Stay Exemption;
- (d) appointed FTI Consulting Canada Inc. as the Monitor in this CCAA Proceeding;
- (e) confirmed that the Peavey Group shall remain in possession and control of its property and that it shall be entitled to continue to carry on business in a manner consistent with the preservation of value;
- (f) authorized the Peavey Group to continue to use its cash management system;
- (g) authorized the application of receipts and deposits against indebtedness owing under the 1903 Credit Agreement;
- (h) granted an Administration Charge, Interim Lender's Charge and D&O Charge; and
- (i) authorized continued performance under the SC Consulting Agreement, the RE Consulting Agreement and the Consignment Agreement.

5 The Applicants returned to Court on February 6, 2025 to seek and obtain an Amended and Restated Initial Order which, among other things:

- (a) extended the Stay Period up to and including April 30, 2025, again subject to the Stay Exemption;
- (b) limited the application of receipts and deposits against indebtedness under the 1903 Credit Agreement to a maximum aggregate amount of \$66,414,413.41;
- (c) increased the amounts of the Administration Charge, Interim Lender's Charge, and the D&O Charge; and
- (d) approved a Key Employee Retention Plan (**KERP**) and Key Employee Incentive Plan (**KEIP**), and granted a priority charge on the property in respect of same (the **KERP/KEIP Charge**, and collectively with the Administration Charge, Interim Lender's Charge and D&O Charge, the **Court Charges**).

- 6 Certain further Orders have been granted in the within CCAA proceedings, including:
- (a) an Order, dated March 19, 2025, authorizing the application of receipts and deposits against indebtedness under the 1903 Credit Agreement to a maximum aggregate amount of \$85,516,297 plus certain other fees, costs and expenses under the 1903 Credit Agreement;
 - (b) Orders, dated April 2, 2025, in respect of:
 - (i) the sale approval and vesting of certain intellectual property assets to Tractor Supply Company (**TSC**), which assets include trademarks and domain names associated with the TSC brand, as well as Peavey's rights and obligations pursuant to a settlement agreement made effective as of August 14, 2012 between Peavey (as successor in interest to TSC Stores L.P.) and Tractor Supply Co. of Texas LP (the **TSC Settlement**); and
 - (ii) the approval of the Peavey Group's entry into and performance under the Amended RE Consulting Agreement with Gordon Brothers Canada ULC (**GBC**).

7 The Peavey Group has taken significant steps to advance these proceedings, as reported primarily in the Third and Fourth Reports of the Monitor. These steps include:

- (a) Undertaking a store closure process, which involved working with the Monitor and GBC to enter lease termination agreements or assignment agreements with landlords. This process resulted in two lease terminations and one Assignment of Lease, dated April 11, 2025 (the **Assignment Agreement**), as between Peavey and Shoppers Realty Inc. (**Shoppers**), which is the subject of the proposed Assignment Order and is discussed further below. The remaining leases were disclaimed on a rolling basis.¹
- (b) Undertaking an inventory and furniture, fixture and equipment (**FF&E**) liquidation process in consultation with the Monitor and GBC. This process resulted in greater recoveries than anticipated. FF&E sales were approximately \$5.5 million as at the date of the Fourth Report.²
- (c) Undertaking a sale process for the Peavey Group's intellectual property assets, being all intellectual property rights of the group apart from the TSC-related intellectual property (the **IP SISP**). The IP SISP concluded on March 28, 2025 and the transaction with the successful bidder, 2607781 Alberta Inc. (**2607781**), is discussed in further detail below.³
- (d) Undertaking a separate stalking horse sale process for the TSC-related intellectual property (the **TSC IP SISP**). This process concluded on March 24, 2025, leading to the definitive agreement between Peavey and TSC dated March 24, 2025 and approved by this Court on April 2, 2025. The transaction closed shortly thereafter (the **TSC Sale**).⁴
- (e) Downsizing employees as store closures are completed and assisting eligible employees with Wage Earner Protection Program claims. Additional terminations are anticipated in coming weeks.⁵

8 The Peavey Group, together with the Monitor, has also negotiated various sale agreements.

¹ Third Report of the Monitor, filed March 27, 2025 (**Third Report**) at paras 21-30; Fourth Report of the Monitor, dated April 17, 2025 (**Fourth Report**) at para 16.

² Third Report, paras 35-40; Fourth Report, paras 16(f) and 81.

³ Third Report, paras 43-46; Fourth Report, paras 34-55.

⁴ Third Report, paras 47-53.

⁵ Third Report at paras 54-63; Fourth Report at para 16.

9 The first agreement is a share purchase agreement (the **Guys SPA**) in respect of the purchase and sale of all issued and outstanding common shares of Guys (the **Guys Shares**) from Peavey to Fire & Flood.

10 The key terms of the Guys SPA include:

- (a) the purchase price for the Guys Shares is comprised of a base purchase price, subject to a working capital adjustment (a Restricted Court Access Order is being sought in respect of, among other things, the purchase price in the Guys SPA);
- (b) Fire & Flood is to pay \$150,000 of the purchase price to the Monitor to be held in escrow pending completion of the working capital adjustment, with the remainder of the purchase price to be paid to Norton Rose Fulbright Canada LLP in trust for the Peavey Group;
- (c) the Guys SPA is conditional on the Peavey Group obtaining a sale approval and vesting order (the **Guys SAVO**);
- (d) the Guys Shares are to be conveyed to Fire & Flood free and clear of the Court-ordered charges granted in the within proceedings and any claims or security of or in favour of either 1903P Loan Agent or Royal Bank of Canada.⁶

11 The Guys SAVO also contemplates the vesting off of certain claims and encumbrances against Guys and its assets, in particular, the Court Charges and the claims and encumbrances of 1903P Loan Agent, LLC. In that way, Guys will be acquired by Fire & Flood without liability to the beneficiaries of the Court Charges and free and clear of the Peavey Group's pre-filing indebtedness to 1903P Loan Agent, LLC.

12 The second and third agreements, which include an Asset Purchase Agreement, dated April 15, 2025 (the **Peavey APA**), and a Share Purchase Agreement (the **Turtle Mountain SPA**), arose in part from the IP SISF. By the bid deadline, the Monitor received six offers to purchase all or select intellectual property assets of the Peavey Group. The offer from 2607781 was the only offer to purchase all of the intellectual property (apart from the previously-sold TSC intellectual property).⁷

13 2607781 is a company owned by the CEO of the Peavey Group, Doug Anderson. Mr. Anderson did not participate in the review or assessment of the offers received in the IP SISF and appropriate confidentiality measures were taken. The Monitor, in consultation with the Interim Lender, reviewed all offers and determined that the 2607781 offer was the best.⁸

14 The 2607781 offer is for all of the Peavey intellectual property, in addition to:

- (a) certain furniture, fixtures and equipment in select Peavey stores and one of the distribution centres;
- (b) select forklifts; and
- (c) all of the issued and outstanding Class "A" common shares of Turtle Mountain Seed Co. Ltd. (**Turtle Mountain and Turtle Mountain Shares**).⁹

⁶ Fourth Report at paras 17-33 and Appendix "A"; Confidential Supplement to the Fourth Report, dated April 17, 2025 (the **Confidential Supplement**) at para 7 and Appendix "A".

⁷ Fourth Report at paras 37-38.

⁸ Fourth Report at paras 40-42.

⁹ The Class "A" common shares of Turtle Mountain are held by Peavey; however, Turtle Mountain is not itself an Applicant nor otherwise party to the CCAA proceeding.

15 The Peavey Group, in consultation with the Monitor, negotiated the Peavey APA in respect of the assets portion of the 2607781 offer, and the Turtle Mountain SPA in respect of the Turtle Mountain Shares. The key terms of the Peavey APA and Turtle Mountain SPA are:

- (a) the purchase price of the Peavey assets is \$1,097,000 and the Turtle Mountain Shares is \$50,000;
- (b) the assets and shares are being sold on an “as is where is” basis;
- (c) the transactions are conditional on the Peavey Group obtaining approval and vesting orders from the Court.¹⁰

16 The Monitor has conducted an analysis of the Turtle Mountain capital structure in its assessment of the Turtle Mountain SPA. Among other things, the Monitor noted that Turtle Mountain has existing secured debt of \$1.2 million and that Mr. Anderson indirectly owns approximately \$5.7 million of preferred shares of the company, resulting in an approximate \$6.9 million threshold before any value could be attributed to the Turtle Mountain Shares. In addition, Turtle Mountain has seen declining business performance, and with the loss of the Peavey Group as a key customer, is expected to be a loss-making business going forward. Given these and other factors, including that the Turtle Mountain SPA contemplates a going-concern sale that would allow Turtle Mountain to attempt to restart its business, the Monitor has expressed its support for the Turtle Mountain SPA. The Interim Lender also supports the transaction as proposed.¹¹

17 A further issue that has arisen in these CCAA proceedings relates to the domain name tractorsupply.ca. In late March 2025, as the Peavey Group was completing the TSC Sale and preparing for a Court hearing for the sale approval, it came to the Peavey Group’s attention that the tractorsupply.ca domain, which the Peavey Group had previously owned, had been transferred. Following investigation of the matter with TSC, the Peavey Group learned that:

- (a) some time in 2023, the domain name was transferred to an unknown party; and
- (b) on March 26, 2025, on the eve of the TSC Sale being signed and approved, the domain name was further transferred to another unknown party.

18 Although the tractorsupply.ca domain name was not one of the domain names expressly transferred to TSC pursuant to the agreement for the TSC Sale, it nevertheless relates to the TSC IP that was sold as having previously vested with Peavey under the TSC Settlement. The TSC Settlement, and all rights and obligations thereto, was in turn transferred to TSC pursuant to the TSC Sale. Had Peavey owned the tractorsupply.ca domain name, which until very recently, it understood that it did, the rights to that domain name would have been included in the TSC Sale.¹²

19 The Peavey Group and TSC are seeking the Domain Registrant Disclosure Order in order to better understand the identity of the transferors and transferees in the 2023-2025 time period, which would assist TSC in assessing its options going forward.¹³

ANALYSIS

Amending Order – Stay Extension and Other Relief

20 The CCAA provides the Court with the discretion to extend a stay of proceedings for any period that the Court considers necessary, provided (a) the applicants satisfy the Court that circumstances exist

¹⁰ Fourth Report at paras 38-39, and Appendix “B”.

¹¹ Fourth Report at paras 49-55.

¹² Fourth Report at paras 72-74.

¹³ Fourth Report at para 75.

that make the order appropriate; and (b) the applicants satisfy the Court that they have acted, and are acting, in good faith and with due diligence.¹⁴

21 The courts will consider a number of factors in determining whether the extension of a stay of proceedings is appropriate and for how long the stay should be extended. Courts should allow flexibility to the parties and endeavour to arrive at a stay extension date that is appropriate in the circumstances.¹⁵

22 In this case, the Applicants have made significant strides in liquidating the business for the benefit of their stakeholders.

23 The Applicants are seeking an extension of the Stay Period up to and including July 25, 2025, which will provide the Applicants with adequate time to complete the wind-down and liquidation of their operations. The requested stay extension is supported by the Monitor and is consistent with its latest cash flow statement.¹⁶

24 The Applicants submit that they have acted, and continue to act, in good faith and with due diligence, as confirmed by the Monitor,¹⁷ and that an extension of the Stay Period is warranted in the circumstances.

25 Further, the activities of the Peavey Group, in conjunction with the Monitor and GBC, has included sales of FF&E. FF&E has principally been sold at the store-level to individual purchasers, such that any given sale is relatively immaterial, although aggregate sales are greater than expected, totalling \$5.5 million (approximately \$58,000 / store).¹⁸ Under the ARIO, the Peavey Group was authorized to dispose of up to \$3.0 million in FF&E without court approval, which has proved inadequate. The Applicants therefore apply to amend that sales threshold to \$7.0 million.

26 Authority is also sought to make interim distributions to holders of registered security interests in FF&E at the direction of the Monitor.

Sale Approval and Vesting Orders

27 The granting of approval and vesting orders under the CCAA is driven by the factors set out in the statute:¹⁹

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

¹⁴ CCAA at [ss 11.02\(2\) and \(3\)](#) [Tab 1].

¹⁵ *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, 2017 BCSC 808 at [para 21](#) [Tab 2].

¹⁶ Fourth Report at paras 63, 64, 82 and Appendix "E".

¹⁷ Fourth Report at para 82.

¹⁸ Fourth Report at para 81.

¹⁹ CCAA at [ss 36\(3\)](#) [Tab 1].

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

28 Courts also have regard to the factors set out by the Ontario Court of Appeal in *Soundair*.²⁰

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

29 For the reasons that follow, the Applicants submit that these factors are satisfied in respect of each of the Guys SPA, the Peavey APA, and the Turtle Mountain SPA.

The Guys SPA

30 Guys was a standalone legal entity that provided trucking and logistics services to the Peavey Group.²¹

31 The assets of Guys were marketed by GBC as parts of its FF&E marketing efforts. It follows that efforts were duly made to obtain the best price. While GBC focussed on marketing the assets of Guy, Fire & Flood made its unsolicited offer to acquire Guys on a “going concern” basis by way of a share transaction.²²

32 The Confidential Supplement to the Fourth Report includes an Appraisal of the Guys assets and the Monitor’s analysis of same. The Monitor has reported that the cash consideration from Fire & Flood’s proposed share transaction is consistent with the Estimated Net Recovery of the Guys assets and represents the highest and best possible outcome for the Peavey Group’s stakeholders. Furthermore, the Guys SPA would result in Guys retaining most of its assets, liabilities and employees, including under equipment financing agreements, and retaining permits in the name of Guys. That would allow Guys to continue operating as a going concern, which is in the interests of all parties and is preferable to a series of transactions to liquidate the saleable assets of Guys.²³

33 The Monitor has reported that it supports the Guys Revised Offer and the Guys SAVO.²⁴

34 The Guys SPA therefore satisfies the section 36(3) and *Soundair* factors and the Guys SAVO should be granted.

The Peavey APA and Turtle Mountain SPA

35 2607781 is the proposed purchaser under two separate but related transactions: (a) for the IP of the Peavey Group (excluding the TSC IP) and certain FF&E, IT systems, and forklifts, and (b) for the Turtle Mountain Shares.²⁵

²⁰ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) [[Soundair](#)] [Tab 3], at para 16. See also *Re Sanjel Corp.*, 2016 ABKB 257, at [paras 54-56](#) [Tab 4].

²¹ Fourth Report at para 17.

²² Fourth Report at paras 20, 25.

²³ Fourth Report at paras 24-32; Confidential Supplement at paras 7-10.

²⁴ Fourth Report at para 32.

²⁵ Fourth Report at para 38.

36 The combined purchase price of 2607781 is \$1,1470,000, which is allocated between the IP (\$1,004,460), FF&E and IT assets (\$92,540) and the Turtle Mountain Shares (\$50,000).²⁶

37 2607781 is not an arm's length purchaser. It is owned by the Peavey Group's CEO, Douglas Anderson. Mr. Anderson was not involved in reviewing competing bids.²⁷

38 The Monitor has reported that it supports all aspects of the 2607781's proposed transactions.²⁸

39 The IP was broadly marketed pursuant to a structured sales process. In excess of 40 parties were contacted and the Sales Process was also distributed to the service list. Six offers were received; however, only 2607781's offer was for the totality of the IP (excluding the TSC IP). 2607781's offer was for more than the "sum of the pieces" of the other five offers. The IP offers are detailed in the Appendix C to the Confidential Supplement to the Fourth Report.²⁹

40 2607781 allocated \$92,540 to FF&E and IT assets at eight locations, plus five serial numbered forklifts. This allocation reflects less than the store average for FF&E (approximately \$58,000 / store) because the majority of the FF&E at the eight locations was sold before 2607781 made its offer. 2607781 is only purchasing the FF&E that was not sold to others through the FF&E sales process. The Monitor and GBC have concluded that 2607781's allocated purchase would provide a better recovery than normal course liquidation.³⁰

41 The assets to be acquired by 2607781 include enterprise resource planning (**ERP**) systems and servers, which have only nominal value in a liquidation scenario.³¹

42 2607781 is also seeking to purchase the Turtle Mountain Shares. Mr. Anderson already holds (indirectly) approximately \$5.7 million of preferred shares of Turtle Mountain.

43 Turtle Mountain is not a party to the CCAA proceeding; however, the Turtle Mountain Shares are owned by (and are an asset of) Peavey.

44 The Class "A" common shares of Turtle Mountain were not specifically marketed—though anyone could have made an unsolicited bid at any time—because they are of nominal or no value. Turtle Mountain was experiencing declining performance even before the CCAA proceeding, is in covenant violation and has defaulted on its own secured indebtedness (\$1.2 million), and has lost Peavey as its largest customer (representing approximately 45% of total sales). The combined effect of creditor claims against Turtle Mountain and the outstanding preferred shares are such that a threshold of \$6.9 million would have to be reached before any value could be attributed to the Class "A" common shares. 2607781's purchase price of \$50,000 for the Turtle Mountain Shares reflects more than fair value. The 2607781 transaction would also allow 2607781 to re-invest in Turtle Mountain in an effort to restart operations and continue as a going concern.³²

45 Under section 36(4) of the CCAA, a sale or disposition to a related party may only be approved if good faith efforts were made to sell the assets to unrelated parties and the consideration is superior to what would be paid by an unrelated purchaser:

Additional factors — related persons

²⁶ Fourth Report at para 38.

²⁷ Fourth Report at paras 40-41.

²⁸ Fourth Report at para 42.

²⁹ Fourth Report at paras 44-45; Confidential Supplement at paras 11-12 and Appendix "C".

³⁰ Fourth Report at paras 46-47 and 81(c).

³¹ Fourth Report at para 48.

³² Fourth Report at paras 49-55.

36 (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

46 In *Target*, Morawetz J. (as he then was) held that section 36(4) should be applied purposively, not formulaically, and that a marketing process does not necessarily have to be run before assets are sold to a related party under section 36(4). It may be enough to establish that the price offered by the related party exceeds a reasonable valuation of the assets.³³ Sufficient safeguards may be established through efforts of the applicants and the monitor to evaluate the saleability of the assets to potential unrelated purchasers,³⁴ and through careful consideration and analysis by the monitor.³⁵

47 Similarly, in *OEL Projects*, Grosse J. (as she then was) applied the equivalent provision of section 36(4) under the proposal provisions of the *Bankruptcy and Insolvency Act*—section 65.13(5)—to approve a related party transaction without a sales process because running a sales process was not feasible in the circumstances. The Court approved the sale to the related party based on financial information and value estimates from the proposal trustee.³⁶

48 This case is analogous to *Target* and *OEL Projects*, and stands in marked contrast to *McEwan Enterprises*. In that last case, Morawetz C.J. noted that the Monitor had not been involved in the decision to forego a sales process and had expressed concerns about the lack of marketing to unrelated purchasers. There was no evidence that good faith efforts to sell the assets were made and there was reason to believe that superior offers were available.³⁷

49 Here, the related party, 2607781, is proposing to acquire the Turtle Mountain Shares for \$50,000. While those shares were not specifically marketed, any party could have made an unsolicited offer to purchase them at any time. That no such offers were made reflects the Monitor's conclusion that the Turtle Mountain Shares have only "nominal, if any value" to the Peavey Group's stakeholders and that it is reasonable to accept 2607781's offer for the shares in the circumstances. The alternative would be to run a stalking horse sales process for the shares; however, that is not reasonably feasible in the circumstances. A stalking horse sales process would add administrative costs that would significantly diminish (if not overwhelm) any proceeds that could be anticipated to be realized from the Turtle Mountain Shares. Sufficient safeguards exist through the Monitor's analysis and support—to say nothing of the support of GBC and the Interim Lender—to justify the approval of 2607781's purchase of the Turtle Mountain Shares and the granting of the Turtle Mountain SAVO.

Order Assigning Real Property Lease

50 The Applicants also seek approval of the Assignment Order.

51 Section 11.3 of the CCAA provides the statutory basis for approval of the assignment of agreements in CCAA proceedings. The relevant subsections read:

Assignment of agreements

³³ *Target Canada Co. (Re)*, 2015 ONSC 2066, 2015 CarswellOnt 5211 (Sup Ct J) at paras 10-11 [Tab 5].

³⁴ *Ibid* at para 16.

³⁵ *Ibid* at para 18.

³⁶ *OEL Projects Ltd. (Re)*, 2020 ABQB 365 at para 35 [Tab 6].

³⁷ *McEwan Enterprises Inc. (Re)*, 2021 ONSC 6878 at paras 52, 59-64 [Tab 7].

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

...

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

...

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

52 The Applicants submit that the assignment of the Mount Forest Lease to Shoppers should be approved by the Court because:

- (a) the Monitor approves the assignment, which arose following a comprehensive process to derive value from the Peavey Group's real property leases;³⁸
- (b) the proposed assignee, Shoppers, is a member of the Shoppers-Loblaws group of companies and is financially capable of performing the obligations under the lease;³⁹
- (c) the Assignment Agreement and proposed Assignment Order provide that monetary defaults, if any, owing to the landlord, will be paid upon the closing of the transaction contemplated in the Assignment Agreement;⁴⁰
- (d) the landlord is supportive of the relief being sought.⁴¹

Domain Registrant Disclosure Order

53 The Peavey Group and TSC are seeking the Domain Registrant Disclosure Order, which would require the Canadian Internet Registration Authority (**CIRA**) to disclose the following information:

- (a) the identity and contact information of the domain name registrant for tractorsupply.ca;

³⁸ Third Report, paras 21-30; Fourth Report, para 59.

³⁹ Fourth Report, para 58 and Appendix "D".

⁴⁰ Fourth Report, Appendix "C", at clause 7 (Cure Costs); proposed Assignment Order, para 3(d).

⁴¹ Fourth Report, para 58.

- (b) the name of the administrative and technical contacts for the registrant;
- (c) the contact information for the administrative and technical contacts as at January 27, 2025, March 26, 2025, and the date of the Order and thereafter (if the domain name is subsequently transferred).

54 CIRA is the organization responsible for maintaining the Canadian .ca domain registry. It holds information regarding the ownership and transfer of .ca domain names. CIRA's database of registered domain names, WHOIS, can in some instances disclose the identity of registrants and transfer information of domain names. In this case, however, WHOIS does not disclose the current identity of the tractorsupply.ca domain registrant.⁴²

55 CIRA publishes its Rules and Procedures for the Request for Disclosure of Registrant Information (the **Rules**), which includes a process for a person to request and potentially obtain identifying information and contact information for the current registrant of a given domain name. It does not, however, provide for the disclosure of historical information of prior domain name transfers. The Rules provide that any party seeking to obtain further information, above and beyond the current registrant information provided for under the Rules, must be done by way of a court order.⁴³

56 As such, given the proximity of the information being sought to the assets transferred under the TSC Sale and this Court's remedial jurisdiction under the CCAA and the unavailability of the information from CIRA without a Court order, the Applicants and TSC respectfully seek the Domain Name Registrant Disclosure Order.

Restricted Court Access Order

57 The Applicants seek a Restricted Court Access Order in respect of the Confidential Supplement to the Fourth Report, which contains:

- (a) an unredacted copy of the Guys SPA (the redacted version submitted with the Fourth Report has purchase price and employee personal information redacted);
- (b) the Monitor's analysis of the Guys SPA; and
- (c) a summary of the results from the IP SISP and the Monitor's evaluation of the same.⁴⁴

58 The leading authority for restricted court access orders is *Sierra Club*,⁴⁵ which focused on the confidentiality of commercially sensitive information, and *Sherman Estate*,⁴⁶ which focused on sensitive personal information. The two-fold test set out by the Court is such that a restricted court access order may be granted, as follows:

- (a) such an order is necessary to prevent a serious risk to an important interest in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to

⁴² Fourth Report, paras 76-77 and Appendix "F".

⁴³ Fourth Report, para 79 and Appendix "G", p 1. The complete text of this portion of the policy reads, "Except as expressly specified herein or in the Policy, any other request for disclosure of information of Registrants must be by way of an order, ruling, decision, subpoena, warrant, or judgment."

⁴⁴ Fourth Report, paras 24 and 37.

⁴⁵ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 [[Sierra Club](#)] [Tab 8].

⁴⁶ *Sherman Estate v. Donovan*, 2021 SCC 25 [[Sherman Estate](#)] [Tab 9].

free expression, which in this context includes the public interest in open and accessible court proceedings.⁴⁷

59 With respect to the first branch of the test, the following elements are to be considered:

- (a) the risk must be real and substantial, well grounded in evidence, posing a serious threat to the commercial interest in question;
- (b) the important commercial interest must be one which can be expressed in terms of a public interest in confidentiality, where there is a general principle at stake; and
- (c) the judge is required to consider not only whether reasonable alternatives are available to such an order but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.⁴⁸

60 The dissemination of the information in the Confidential Supplement into the public domain would cause irreparable harm to the Applicants and their employees. Disseminating the commercially sensitive purchase price and bid evaluation information would be harmful because, if either the Guys SPA or Peavey APA failed to close, those assets would need to be remarketed. Disseminating the private personal information about the Guys employees would cause harm to those individuals. The Restricted Court Access Order is limited only to redactions to those sensitive terms in the Guys SPA and the Monitor's analysis of the commercial transactions.


The proposed form of Restricted Court Access Order does not have an expiration date, as is customary for Commercial List matters. This is due to the fact that among the information proposed to be sealed from the Court record is personal information of identifiable individuals, including their compensation information. Unlike other types of sensitive or confidential information, the personal information of these individuals will never stop being personal or sensitive – put otherwise, disclosing this information at any time would cause harm to those individuals. As such, the Applicants submit that the Restricted Court Access Order as proposed, including the scope of the Order, is appropriate in the circumstances and ought to be granted.

CONCLUSION

61 The Applicants respectfully request that this Honourable Court grant the Orders sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF APRIL, 2025:

Norton Rose Fulbright Canada LLP



Per: _____
Howard A. Gorman, KC, D. Aaron Stephenson
and Meghan L. Parker,
Counsel for the Applicants

⁴⁷ *Sierra Club* at [para 53](#) [Tab 8]; *Sherman Estate* at [para 38](#) [Tab 9].

⁴⁸ *Sierra Club* at [paras 54-57](#) [Tab 8].

TABLE OF AUTHORITIES

1	<i>Companies' Creditors Arrangement Act</i> , RSC 1985, c C-36	ss 11.02(2) ss 11.02(3) ss 36(3)
2	<i>Sunrise/Saskatoon Apartments Limited Partnership (Re)</i> , 2017 BCSC 808	para 21
3	<i>Royal Bank of Canada v. Soundair Corp.</i> , 1991 CanLII 2727 (ON CA)	para 16
4	<i>Re Sanjel Corp.</i> , 2016 ABKB 257	paras 54-56
5	<i>Target Canada Co. (Re)</i> , 2015 ONSC 2066, 2015 CarswellOnt 5211 (Sup Ct J)	paras 10-11 para 16 para 18
6	<i>OEL Projects Ltd. (Re)</i> , 2020 ABQB 365	para 35
7	<i>McEwan Enterprises Inc. (Re)</i> , 2021 ONSC 6878	para 52 paras 59-64
8	<i>Sierra Club of Canada v. Canada (Minister of Finance)</i> , 2002 SCC 41	para 53 paras 54-57
9	<i>Sherman Estate v. Donovan</i> , 2021 SCC 25	para 38

2015 ONSC 2066

Ontario Superior Court of Justice [Commercial List]

Target Canada Co., Re

2015 CarswellOnt 5211, 2015 ONSC 2066, 251 A.C.W.S. (3d) 377, 30 C.B.R. (6th) 335

In the Matter of the Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36, as Amended

In the Matter of a Plan of Compromise or Arrangement of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC.

Morawetz R.S.J.

Heard: March 30, 2015

Judgment: April 2, 2015

Docket: CV-15-10832-00CL

Proceedings: full reasons to *Target Canada Co., Re* (2015), 2015 CarswellOnt 4745, Morawetz R.S.J. (Ont. S.C.J. [Commercial List])

Counsel: Shawn Irving, Robert Carson, for Applicants, Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC

Jay Swartz, for Target Corporation

Harvey Chaiton, for Directors and Officers

Alan Mark, Melaney Wagner, for Monitor, Alvarez & Marsal Inc.

Lad Kucis (Agent), for Pharmacy Franchisee Association Canada

Subject: Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency

[XIX Companies' Creditors Arrangement Act](#)

[XIX.4 Liquidation or sale of assets](#)

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous

Assets in issue consisted of certain goods bearing logos, trademarks and other proprietary elements — Applicants brought motion for approval of asset purchase agreement — Motion granted — Asset purchase agreement was approved and approval and vesting order was granted — Criteria for approval of purchased assets to related party was set out in [ss. 36\(3\) and \(4\) of Companies' Creditors Arrangement Act](#) — Applicants had established that price offered by related party, viewed in isolation, exceeded all three independent valuations of purchased assets obtained by applicants and monitor — In addition, related party would assume substantial costs associated with removing exterior signage on stores — Risk theoretically associated with related party transaction had been satisfactorily addressed through efforts of applicants and monitor to evaluate salability of purchased assets to unrelated party — Process was reasonable in light of unique assets involved — Monitor supported motion for approval of asset purchase agreement — Transaction was in best interests of stakeholders — Requirements of s. 36(7) of Act had been satisfied.

Table of Authorities

Cases considered by *Morawetz R.S.J.*:

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — followed

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 36 — considered

s. 36(3) — considered

s. 36(4) — considered

s. 36(7) — considered

FULL REASONS to judgment reported at *Target Canada Co., Re* (2015), 2015 CarswellOnt 4745 (Ont. S.C.J. [Commercial List]), concerning motion for approval of asset purchase agreement.

Morawetz R.S.J.:

1 The Applicants bring this motion for approval of the Asset Purchase Agreement (the "APA") among Target Canada Co. ("TCC"), Target Brands, Inc. ("Target Brands") and Target Corporation, and vesting TCC's right, title and interest in and to the Purchased Assets (as defined in the APA) in Target Corporation.

2 The requested relief was not opposed.

3 The Purchased Assets consist of certain goods bearing the Target logos, trademarks and other proprietary elements. The Applicants take the position that the Purchased Assets cannot be sold by the Agent in the Inventory Liquidation Process unless expressly designated by TCC, because of the rights of Target Brands (a subsidiary of Target Corporation) to control the use of the intellectual property (the "Target IP").

4 The criteria for approval of the Purchased Assets to Target Corporation, a related party, is set out in [sections 36\(3\) and \(4\) of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 \(CCAA\)](#).

36(3) Factors to be considered — In deciding whether to grant authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

36(4) Additional Factors — related persons — If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

5 All of the Purchased Assets represent various categories of Target Branded items, such as shopping carts, shopping baskets and the exterior signage on TCC stores. The Purchased Assets are unique in that they incorporate logos, trademarks or other indicia of TCC or its affiliates.

6 Target Brands views the Purchased Assets as using or displaying IP that is proprietary to Target Brands. Target Brands has not agreed to allow the Purchased Assets to be sold by the Agent. The Applicants are of the view that Target Brands would also likely contest any sale of the Purchased Assets to a third party purchaser.

7 The record establishes that the Applicants requested bids for the Purchased Assets from the liquidation firms which applied to be selected as agent. By following this process, the Applicants submit they sought good faith offers by which TCC could sell the assets to an unrelated third party. Only one bidder included some of the items in its bid.

8 Separately from the auction process, Target Corporation submitted an offer to purchase a number of the assets.

9 The Applicants and the Monitor formed the view that if a third party purchaser for the items could be found, such purchaser would likely discount its price to take into account the impact of the IP. That impact included the cost to remove brand or other IP elements and/or the litigation risks associated with a potential challenge by Target Brands to any unauthorized use of its IP.

10 The Applicants and the Monitor submit that it would not be beneficial to stakeholders as a whole to incur additional costs in seeking to market these unique assets. Instead, the Applicants and the Monitor sought to establish objective benchmarks to ensure that the price offered by Target Corporation was reasonable and fair, and exceeded any third party offer that might be made.

11 The Applicants have established that the price offered by Target Corporation, viewed in isolation, exceeds all three independent valuations of the Purchased Assets obtained by the Applicants and the Monitor. In addition, Target Corporation will assume the substantial costs associated with removing the exterior signage on TCC stores.

12 TCC, Target Brands and Target Corporation entered into the APA as of March 23, 2015. Under the Agreement, Target Corporation has agreed to purchase the Purchased Assets for U.S. \$2,215,020.

13 The Applicants are of the view that Target Corporation is effectively the only logical purchaser for the Purchased Assets due to their unique nature.

14 The Applicants submit that, taking into account the factors listed in [section 36\(3\) of the CCAA](#), the test set out in [section 36\(4\) of the CCAA](#), and the general interpretative principles underlying the [CCAA](#), the Court should grant the approval and vesting order. Further, the Applicants submit that in the absence of any indication that the Applicants have acted improvidently, the informed business judgment of the Applicants — which is supported by the advice and the consent of the Monitor, that the APA is in the best interests of the Applicants and their stakeholders and is entitled to deference by the Court.

15 I note that the factors listed in [section 36\(3\)](#) are not intended to be exhaustive, nor are they intended to be a formulaic check-list that must be followed in every sale transaction under the [CCAA](#). Further, I also note that the factors overlap, to a certain degree, with the factors set out in *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 (Ont. C.A.) ("*Soundair*"). The *Soundair* factors were applied in approving sale transactions under pre-amendment [CCAA](#) case law. Under [section 36\(4\) of the CCAA](#), the Court must be satisfied, overall, that sufficient safeguards were adopted to ensure that a related party transaction is in the best interests of the stakeholders of the Applicants and that the risk to the estate associated with a related party transaction have been mitigated.

16 I am satisfied that the risk theoretically associated with a related party transaction has been satisfactorily addressed through the efforts of the Applicants and the Monitor to evaluate the salability of the Purchased Assets to an unrelated party.

17 I am also satisfied that the process was reasonable in light of the unique assets involved. Whether or not a legal challenge by Target Brands would ultimately be successful, the litigation risks would, in my view, be expected to materially affect the value of the Purchased Assets to an unrelated third party. Further, the uniqueness of the Purchased Assets makes Target Corporation the only realistic purchaser. Only Hilco Global ("Hilco") submitted a bid with respect to some, but not all, of the assets included in the Initial Offer. None of the remaining bidders elected to submit an offer. Given that only one of the liquidation firms submitted a bid, the Applicants and the Monitor considered whether the proposed sale to Target Corporation was fair and reasonable. They came to the conclusion that the likely price to be obtained by an unrelated third party did not support the sale of the Purchased Assets to an unrelated third party.

18 As required by [section 36 of the CCAA](#), the Monitor has been involved throughout the proposed transaction. The Monitor's Seventh Report comments at length on the transaction, and specifically whether it would be fair and reasonable to accept the offer from Target Corporation. The Monitor supports the conclusion that the purchase price offered by Target Corporation far exceeds the estimated liquidation values obtained. The Monitor is of the opinion that the APA benefits the creditors of the Applicants. The Monitor supports the motion for approval of the APA.

19 I am satisfied that the transaction is in the best interests of stakeholders. The transaction does provide some enhanced economic value to the estate. Further, the APA Agreement allows the Monitor, TCC and Target Corporation to agree upon the timetable for delivery of the Purchased Assets. This flexibility is of assistance to TCC and its Inventory Liquidation Process. In addition, there are no fees or commission payable on the transaction and the Agreement does provide certain guaranteed value to TCC.

20 The Applicants submit that all of the other statutory requirements for obtaining relief under [section 36](#) have been satisfied. In particular, no parties have registered security interests against the Purchased Assets.

21 I am also satisfied that the requirements of [section 36\(7\)](#) have been satisfied. This section provides a degree of protection to employees and former employees for unpaid wages the employees would have been entitled to receive under the *Bankruptcy and Insolvency Act*, in addition to amounts that are owing for post-filing services to a debtor company. I also accept the Applicants' submissions that because they have been paying employees for all post-filing services and the Employee Trust will satisfy claims arising from any early termination of eligible employees, the requirements of [section 36\(7\)](#) have been satisfied.

22 For the foregoing reasons, the Asset Purchase Agreement is approved and the Approval and Vesting Order is granted.
Order accordingly.