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CANADA
PROVINCE DE QUÉBEC
District : Montréal
N° : 500-11-065405-256

PROCÈS-VERBAL D'AUDIENCE

☐ instruction ☐ contesté
☐ par défaut ☒ non contesté

☒ **COUR SUPÉRIEURE**

☐ **COUR DU QUÉBEC**

Chambre ☒ civile ☐ familiale

NATIONAL BANK OF CANADA

DEMANDE

PELICAN INTERNATIONAL INC ET AL

DÉFENSE

Division Pratique Salle n° 15.02

DATE : Le 19 mars 2025

PRÉSENT : L'Honorable Andres Garin, J.C.S. (JG3211)

RÉFÉRENCES

☒ REQUERANTE
☒ PRÉSENT(E) ☐ ABSENT(E)

Me Hugo Babos-Marchand (Présent)
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Me Frederique Drainville (Présente)
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DÉBUT 10h11

☒ DEMANDE
☒ PRÉSENT(E) ☐ ABSENT(E)

Me Sandra Abitan (Présente)
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Me Jack Little (Présent)
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FIN 11h48

☒ DÉBITRICES
☒ PRÉSENT(E) ☐ ABSENT(E)

Me Alain Riendeau (Présent)
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Me Brandon Farber (Présent)
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DÉBUT 16h13

☒
☒ PRÉSENT(E) ☐ ABSENT(E)

Me Kim Sheppard (Teams)
kim.sheppard@justice.qc.ca

FIN 16h29

☒
☒ PRÉSENT(E) ☐ ABSENT(E)

Me Sarah Pinsonnault (Teams)
sarah.pinsonnault@revenuquebec.ca

NATURE DE LA CAUSE
(et séquence) :

Application For The Issuance Of An
Initial Order, An Amended And
Restated Initial Order And A Sale And
Investment Solicitation Process
Ordere (N/C)

RÉFÉRENCES

GREFFIÈRE : Amira Nefnaf , g.a.C.S.

10h11

Ouverture de l'audience

10h11

Identification de la cause et des procureurs

10h13

Échange préliminaire entre le Tribunal et Me Babos-Marchand

10h18

ORDONNANCE

CONSIDÉRANT la demande introductive d'instance pour l'émission d'une ordonnance initiale;

PROCÈS-VERBAL D'AUDIENCE (suite)

RÉFÉRENCES

CONSIDÉRANT la demande de mise sous scellé de la pièce **R-13** ainsi que l'annexe A du Pre-filing Report to the Court of the Proposed Monitor (pièce **R-14**);

CONSIDÉRANT que cette pièce contient des informations nominatives à l'égard d'employés clés;

CONSIDÉRANT que la divulgation de ces informations pourrait affecter la rétention de ces employés clés, ce qui est essentiel pour le succès du processus entamé par les parties;

CONSIDÉRANT qu'il s'agit d'un intérêt légitime à protéger;

CONSIDÉRANT que la mise sous scellé de cette seule pièce représente une atteinte minimale au principe de la publicité et du débat;

LE TRIBUNAL :

MET sous scellé la pièce **R-13** ainsi que l'annexe A du Pre-filing Report to the Court of the Proposed Monitor (pièce **R-14**).

Andres Garin

Signature numérique de
Andres Garin
Date : 2025.03.21 13:54:31
-04'00'

L'Honorable Andres Garin, J.C.S.

10h23

Me Riendeau s'adresse au Tribunal

10h25

PREUVE EN DEMANDE

10h25

Témoin expert (Français) : Martin Franco
1000 Rue Sherbrooke Ouest
Montréal, QC H3A 3G4
Assermenté

10h26

Interrogé par Me Abitan

11h08

Représentation de Me Babos-Marchand

11h30

Me Riendeau s'adresse au Tribunal

11h34

Échange entre le Tribunal et Me Babos-Marchand

11h34

Me Babos-Marchand réfère à la pièce **R-2**

11h42

Me Abitan s'adresse au Tribunal

11h48

SUSPENSION DE L'AUDIENCE

16h14

REPRISE DE L'AUDIENCE

Identification de la cause et des procureurs

16h14

Voir jugement annexé au procès-verbal

16h29

Fin de l'audience


Amir Nefnaf, g.a.C.S.

ORAL JUDGMENT ON THE APPLICATION FOR ISSUANCE OF AN INITIAL ORDER

INTRODUCTION

[1] I am seized with an Application for the Issuance of an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC c C-36, or **CCAA**. The Application is brought by the National Bank of Canada who is acting as agent for a lending syndicate comprised of several Canadian financial institutions.

[2] The initial order is being sought in respect of a Canadian company, Pelican International Inc. and two U.S. subsidiaries, Pelican US Topco LLC, and Confluence Outdoor Inc. The primary purpose of the initial order is to obtain a 10-day stay of proceedings and to immediately launch a Sale and Investment Solicitation Process or **SISP**, which is aimed at selling the debtor companies as a going concern.

[3] For the reasons that follow, earlier today—pursuant to a hearing during which Mr. Martin Franco, a representative of the proposed monitor, FTI Consulting Canada Inc., testified—I signed a slightly modified version of the draft initial order presented to me. I also signed the draft SISP order presented for my consideration.

THE DEBTORS

[4] Pelican International Inc. was founded in 1968 and is in the business of designing and manufacturing kayaks, windsurfing boards, canoes, pedal boats, stand-up paddle boards, fishing boats and a variety of camping and water sports accessories. It is the ultimate parent company of the Pelican group. Its head office is located in Montreal, Québec, and it operates facilities in Laval, Québec, Valleyfield, Québec, and a warehouse in Varennes, Québec. Pelican International Inc. currently employs approximately 294 employees, many of whom are unionized.

[5] On February 28, 2025, Pelican International Inc. filed a notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act*.

[6] Pelican US Topco LLC is a wholly owned subsidiary of Pelican International Inc. It is a holding company without commercial activities or operations with a registered office in Wilmington, Delaware. Notably, Pelican US Topco LLC owns all the issued and outstanding shares of Confluence Outdoor Inc.

[7] Confluence Outdoor Inc. manufactures premium paddle sports equipment and accessories. Its operations are based out of Greenville, South Carolina. Confluence currently employs approximately 111 employees.

[8] Unless I specify otherwise, in these reasons, I will use Pelican to refer to the three debtor entities.

THE APPLICATION OF THE CCAA

[9] The evidence before me satisfies me that the statutory criteria for the application of the CCAA are met here.

[10] To begin with, Pelican is insolvent. Not only did Pelican International Inc. file a notice of intention to file a proposal under the *Bankruptcy and Insolvency Act*, the testimony of Mr. Franco and the Proposed Monitor's Pre-filing Report (Exhibit R-14) establish that Pelican is unable to meet its obligations as they become due.

[11] In particular, the Pre-Filing Report shows pre-tax losses of \$6.3 million in 2023 and \$23.2 million in 2024. Moreover, in the two-month period leading up to the end of the 2024 calendar year, Pelican incurred a pre-tax loss of \$4.8 million.

[12] It would appear that Pelican experienced significant and unforeseen growth during the Covid-19 pandemic, but since 2023 the water sports market in Canada and in the United States has experienced a significant slowdown. Retailers have accumulated excess inventory affecting the volume of Pelican's orders. Inflationary pressure has also resulted in decreased consumer demand for recreational products. Most recently, tariff threats have created further market uncertainty.

[13] Moreover, Pelican's debt far exceeds the \$5 million statutory threshold. Notably, it has \$130 million in secured debt owed to the lenders represented by the National Bank. Pelican's unsecured debt owed to suppliers, landlords, employees (in the form of unpaid vacation) and to the EDC is in the amount of approximately \$18.7 million.

[14] In the present matter, the Application pursuant to the CCAA is brought by Pelican's creditors. While debtor-initiated proceedings are more typical, the case law recognizes that creditors have standing to bring CCAA applications. I find that a creditor initiated CCAA is appropriate here.

[15] Indeed, as discussed below, an offer has been received from a party related to Pelican. To ensure the transparency and the integrity of the SISF process, I find that this is a proper case for creditor-led CCAA proceeding, as opposed to a proceeding led by the debtor itself which, some might think, could be inclined to prefer its related party.

[16] As noted, Pelican has filed a notice of intention to file a proposal under the *Bankruptcy and Insolvency Act*. No proposal has been filed. In accordance with section 11.6 CCAA it is appropriate to continue the proceedings initiated pursuant to the *Bankruptcy and Insolvency Act* under the CCAA and to issue an initial 10-day stay of proceedings.

THE PROPOSED MONITOR

[17] FTI Consulting Canada Inc. is the proposed Monitor. I find that it has the requisite skills, qualifications and experience to act as Monitor in these proceedings.

THE INTERIM FINANCING & CHARGES

[18] The Pre-Filing Report shows projected cash flow shortfalls of approximately \$3.3 million over the next two-weeks. In his testimony, Mr. Franco estimates a weekly "cash burn" of approximately \$1 million.

[19] In this context, Pelican's secured creditors have agreed to advance \$4 million as interim DIP funding in order to maintain Pelican as a going concern during the SISF process. I find that such funding is necessary and appropriate. The terms of the interim financing are also commercially reasonable and appropriate in the circumstances.

[20] To secure the interim financing, the Application requests that an interim lender charge of \$4.8 million be placed on all of Pelican's property and assets and that it rank above any other charge, with the exception of an administration charge and a KERF charge, which I will address in a moment. The interim lender charge is necessary for the interim funding to go forward and appropriate.

[21] The success of these CCAA proceedings will require the services of the Monitor, counsel for the Monitor, counsel for the Applicant, counsel for Pelican, as well as a SISF advisor. It is necessary and appropriate to ensure that these professionals are remunerated for their services and to grant an administration charge of \$1 million on Pelican's property that will rank in priority to all other charges.

[22] The Application further proposes a Key Employee Retention Plan or **KERF**, aimed at ensuring that certain identified key employees remain with Pelican throughout the CCAA process. The employees so identified are necessary both for the continued operation of Pelican as a going concern and for the success of the SISF process that is contemplated. Accordingly, a KERF charge in the amount of \$495,000 will be placed on Pelican's property to ensure the retention of such key employees. The KERF charge will rank below the administration charge, but above the interim lender charge.

[23] Finally, the Application requests that a D&O charge be placed on Pelican's property. It appears that the current Directors and Officers insurance policy will lapse on May 1, 2025. To ensure that Pelican's directors and officers remain in their current positions and assist with the CCAA process, it is appropriate to offer them an indemnity as against personal liability as directors or officers and to secure that indemnity by creating a D&O charge of \$1.3 million ranking below the interim lender charge.

THE SISP PROCESS

[24] As noted, following Pelican's notice of intention to file a proposal under the *Bankruptcy and Insolvency Act*, on March 13, 2025, the National Bank received an offer to purchase Pelican's business from a party related to Pelican.

[25] The Applicant and the proposed Monitor believe that a sale of Pelican's business as a going concern will maximize the value of the business for all stakeholders, including Pelican's approximately 400 employees. In this context, however, the Monitor is aware of the existence of other interested parties and wishes to test the value of the related party offer by going to the market in the context of a SISP.

[26] Although the possibility of an eventual liquidation cannot be excluded, I agree that a sale of the business as a going concern is likely to optimize value for all concerned. I further agree that a SISP is appropriate in order to seek the greatest value for the business that the market can support.

[27] However, two aspects of the SISP merit further consideration.

[28] The first is the duration of the process. The Applicant proposes that the SISP last for three weeks and that the deadline for receipt of offers be April 10, 2025. This is a very short period. As noted by Mr. Franco, it's not ideal.

[29] On the other hand, Mr. Franco believes that the proposed duration of the SISP is nonetheless sufficient. The short duration of the SISP is a function of Pelican's cash burn of approximately \$1 million per week. The interim lenders are willing to advance additional funds until the comeback hearing in 10 days and then to increase the amount of their interim funding. That said, there is a limit to how far these lenders are willing to go. This limit signifies that the SISP must be completed within the constraints imposed by the interim lenders.

[30] Ultimately, the SISP perches on a delicate balance between maximizing value for all stakeholders and the cost that the interim lenders are willing to assume in order to maximize that value. In the circumstances I find that the proposed three-week process is appropriate.

[31] The second aspect that merits additional consideration is the fact that the Monitor proposes to launch the SISP immediately, rather than awaiting the comeback hearing, which would be customary. For the reasons given a moment ago relating to Pelican's cash burn and the constraints imposed by the interim lenders, I find that it is appropriate to launch the proposed SISP immediately.

COMI

[32] The final matter I wish to address relates to the international aspect of Pelican's business. As mentioned, two of the debtors are US corporations. The Monitor therefore wishes to institute chapter 15 proceedings in the United States to have this Court's order recognized.

[33] I will grant the Monitor authorization to act as foreign representative in order to seek appropriate relief before foreign jurisdictions.

[34] Moreover, I find that it is appropriate to declare that the province of Québec is Pelican's "centre of main interest" or **COMI**. That Québec is the COMI of all three debtors may notably be observed from the following facts:

➤ With respect to Pelican International Inc.:

- its facilities are located in the Province of Québec;
- all senior management is located in Québec;
- all strategic decisions, human resources decisions, management meetings, key accounting decisions, marketing and business development initiatives are taken by, overseen, or otherwise approved by senior management in Québec;

➤ With respect to Pelican US Topco LLC:

- Pelican US Topco has no operations and is essentially a holding company;
- all of the decisions for Pelican US Topco are made in Québec by the senior management of Pelican International Inc.; and

➤ With respect to Confluence Outdoor Inc.:

- the management of Confluence reports directly to senior management in Québec;
- all strategic decisions are made by senior management in Québec;
- Pelican International Inc. provides operational and administrative function support for Confluence, notably: operational oversight, sales, communications and marketing support; most enterprise-wide information technology services; enterprise-wide support for finance functions; oversight for the legal, regulatory and compliance functions; enterprise-wide

human resources functions; enterprise-wide health and safety oversight; annual budgeting; and supply planning services.

- all of Confluence's long-term contracts and major expenses are subject to the approval of senior management in Québec;
- corporate governance and regulatory compliance are overseen by the management team in Québec;
- meetings for management and senior staff are in the majority overseen by management in Québec;
- key accounting decisions and all plans, budgets and financial projections are made by management in Québec;
- marketing and business development initiatives are overseen by Pelican International Inc.'s marketing team in Québec;
- all human resources decisions, including management of payroll budgets and augmentation or reduction of employee headcount as per approved budget are made by management in Québec;
- Pelican International Inc.'s credit facilities are being used to fund the operations of the Confluence; and
- Confluence has guaranteed Pelican International Inc.'s obligations and that guarantee is governed by the Québec law.

[35] Moreover, the credit advanced by the lenders to the three debtors has been consolidated in Pelican International Inc. in Canada. That credit is used to fund the operations of Pelican generally.

[36] For these reasons I have signed an Initial Order under the CCAA and a Sale and Investment Solicitation Process Order


ANDRÉS C. GARIN, J.S.C.