



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00720567-00CL DATE: September 10, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: **RED LOBSTER MANAGEMENT LLC et al**
BEFORE JUSTICE: **JUSTICE CAVANAGH**

PARTICIPANT INFORMATION

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For Defendant, Respondent, Responding Party, Defence:

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Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] Red Lobster Management LLC (“RL Management”) in its capacity as foreign representative (the “Foreign Representative”) of itself, Red Lobster Hospitality LLC (“RL Hospitality”) and Red Lobster Canada, Inc. (“RL Canada and, together with RL Management and RL Hospitality, the “Canadian Debtors”) moves for an order, among other things:
- a. recognizing and giving full force and effect to certain orders of the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the “U.S. Court”) in the Chapter 11 Cases (as defined in the motion materials);
 - b. ordering that the compromises, arrangements, releases, discharges and injunctions contained and referenced in the Plan (as defined in the materials) and as approved by the Confirmation Order are valid and that, effective on the Plan Effective Date, all such releases, discharges and injunctions are recognized that given full force and effect in all provinces and territories of Canada;
 - c. authorizing the Canadian Debtors to take such steps and execute such additional documents as may be necessary or desirable for the implementation of the Plan;
 - d. permanently staying and dismissing all court actions and proceedings commenced against the Canadian Debtors in Canada on a with prejudice and without costs basis as of the Plan Effective Date; and
 - e. terminating the stay of proceedings and other restrictions on the business of the Canadian Debtors as set out in the Supplemental Order (Foreign Main Proceeding) dated May 28, 2024 (the “Supplemental Order”) and Initial Recognition Order (Foreign Main Proceeding) dated May 28, 2024 (the “Initial Recognition Order”).
- [2] At the hearing Ernest Guiste, counsel for two persons who are plaintiffs in Ontario wrongful dismissal suits, appeared and requested an adjournment of this hearing. These persons have unsecured claims. The Information Officer wrote to counsel for these claimants on June 14, 2024 to notify him of the orders made in this CCAA proceeding and advised that if he wished to receive more information or to receive copies of the orders, he may visit the Information Officer’s website, a link to which was included in each letter. Counsel for these claimants was able to obtain information concerning this process and take steps to preserve his clients’ rights. I decline to grant the requested adjournment because, in my view, no purpose will be achieved by delaying this hearing. To the extent that the two claimants may need relief in relation to their claims, this must be sought from the US Court. My decision on this motion is without prejudice to the rights of these persons to seek relief in the US Court.
- [3] The Joint Chapter 11 Plan of Red Lobster Management LLC and its Debtor Affiliates, as amended (the “Plan”) confirmed by the Confirmation Order of the US Court is the culmination of the Chapter 11 Cases (defined in the materials). From the outset of the Chapter 11 Cases, the Debtors have worked to

devise a going-concern solution for their business. The Plan, when effective, will implement that going concern solution. The Plan effects the sale of the Debtors' business and will continue the operation of all 27 Red Lobster restaurants in Canada. The transaction contemplated by the Plan will continue the employment of RL Canada's employees and maintain the value of RL Canada's business for the benefit of its broad cross-section of stakeholders including landlords, suppliers and customers. The Plan also provides a potential path to recovery for unsecured creditors, including Canadian unsecured creditors, through the establishment of the GUC Trust (as defined in the materials).

- [4] Recognition of the Confirmation Order is a condition precedent to implementation of the Plan. The Foreign Representative believes that the Plan and Confirmation Order represents the best possible outcome in the circumstances for its stakeholders. The Information Officer supports the granting of the requested order and the relief provided for therein.
- [5] The relevant facts in connection with this motion are set out in the affidavit of Nicholas Haughey, Red Lobster's Chief Restructuring Officer, on September 3, 2024. These background facts are summarized in the Foreign Representative's factum, at paragraphs 5-34. Capitalized terms used in this endorsement but not otherwise defined have meanings ascribed to them in this affidavit.
- [6] The Plan is described in the materials. On the Plan Effective Date, the Reorganized Debtors will issue new Reorganize Equity to the Purchaser without the need for any further corporate action or further notice to the U.S. Court. The existing equity of the Reorganize Debtors owned by RL Management will be cancelled for no consideration. The current equity in RL Management will be cancelled and the reorganized equity in RL Management will be issued to the Plan Administrator or its designee. The Plan Administrator will cause the reorganized RL Management to conduct its business consistent with the Plan, Purchase Agreement and Transition Services Agreement.
- [7] The Plan establishes a comprehensive classification of Claims and Interests. The Plan does not distinguish between Canadian and U.S. creditors. Canadian creditors are entitled to and will receive the same treatment as their U.S. counterparts. The Plan also contemplates the establishment of a general unsecured creditor trust (the "GUC Trust"). On the Plan Effective Date, the GUC Trust shall be established to receive the GUC Fund and Equity Litigation Claims after adequate reserve for the payment of all (i) Allowed Priority Tax Claims, (ii) Allowed Other Priority Claims, and (iii) Allowed Administrative Expense Claims that are not Assumed Liabilities.
- [8] The Purchaser has designated certain Executory Contracts and Unexpired Leases for assumption by the Reorganized Debtors or assumption and assignment to the Purchaser. To the extent that an Executory Contract or Unexpired Leases been designated for assumption or assumption and assignment, the Debtors or the Purchaser shall pay all cure costs in respect thereof on emergence from the Chapter 11 Cases. At this time, the Debtors anticipate that all Canadian leases will be designated for assumption by RL Canada as a Reorganized Debtor. Similarly, the Debtors anticipate that Canadian contractual arrangements in relation to key food and beverage suppliers, distributors, employee benefit plan providers, gift card services, financial services and IT vendors will be assumed.
- [9] It is anticipated that litigation claims and certain employee amounts will not be assumed by the Purchaser and will form part of the general unsecured creditor class under the Plan. Certain service providers in Canada, will likewise not have their contractual arrangements assumed. Claimants whose executory contracts are not assumed may have a claim for rejection damages that forms part of the general unsecured creditor class under the Plan. Pursuant to the Plan, after the Plan Effective Date, the general unsecured creditor class will have recourse only to the GUC Trust.

Should the Foreign Orders be Recognized?

- [10] The Foreign Representative is seeking the Third Supplemental Order pursuant to section 49 of the CCAA. On May 28, 2024 this Court recognized the Chapter 11 Cases as “foreign main proceedings”. Section 49 of the CCAA provides that, if an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative, make any order that it considers appropriate if the court is satisfied that such order is necessary for the protection of the debtor companies’ property or the interests of a creditor or creditors. Such an order may be made on any terms and conditions that the court considers appropriate in the circumstances.
- [11] The principles of comity, cooperation and accommodation with foreign courts guide CCAA courts in their exercise of discretion in cross-border insolvency cases. In such cases, comity requires that Canadian courts recognize and enforce judicial acts of other jurisdictions, provided that those other jurisdictions have assumed the jurisdiction on a basis consistent with the principles of order, predictability and fairness. See *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238, at para. 41. A Canadian court will typically only refuse to recognize an order granted in the primary jurisdiction of a cross-border insolvency proceeding where such order is contrary to Canadian public policy. Canadian courts have held that the public-policy exception should be interpreted narrowly. See *Hartford Computer Hardware Inc. (Re)*, 2012 ONSC 964, at para. 17.
- [12] This Court has the jurisdiction to grant the requested relief.
- [13] I am satisfied that the Confirmation Order should be recognized by this Court. The Confirmation Order confirms the Plan, which is the outcome of extensive negotiation between the Debtors and their stakeholders and provides a going-concern sale of the Debtors’ business for the benefit of their stakeholders. In *Re Xerium Technologies Inc.*, 2010 ONSC 3974, this Court set out a non-exhaustive list of factors that weighed in favour of recognition of the U.S. confirmation order in that case. I accept the submission of the Foreign Representative that these factors weigh in favour of recognition of the Confirmation Order in this case. In this respect, I accept the submissions made on behalf of the Foreign Representative at paragraph 43 of its factum.
- [14] The Plan was accepted by the majority of creditors by number in both voting classes of creditors, including a majority of unsecured creditors voting and Class 4. The creditors voting in favour of the Plan in Class 4, however, did not represent at least two-thirds in value of voting claims. Unlike the CCAA, a plan of reorganization may be confirmed under the Bankruptcy Code notwithstanding that every affected class did not vote to approve the Plan with the requisite majorities, so long as the “cramdown” requirements of the Bankruptcy Code are met.
- [15] Pursuant to the cramdown provisions of the Bankruptcy Code, a U.S. court may confirm a plan of reorganization notwithstanding a rejection by a dissenting class of claims or interests if the plan has been accepted by at least one impaired class of creditors and does not discriminate unfairly against and is fair and equitable with respect to each dissenting class of claims or interests.
- [16] I am satisfied that this Court should recognize the Confirmation Order. In this respect, I accept the submissions made on behalf of the Foreign Representative at paragraphs 46-48 of its factum. I accept that such recognition supports the goal of Part IV proceedings to promote comity, cooperation and the fair and efficient administration of cross-border insolvencies.
- [17] The Confirmation Order contains provisions that authorize the Reorganized Debtors, including RL Canada, to continue to use any liquor licenses or permits necessary for the sale of alcohol at Retained

Locations (as defined therein) until such time as set liquor licenses and permits are transferred to the Reorganized Debtors for the Purchaser as applicable, or the Reorganized Debtors or the Purchaser as applicable obtain replacement licenses and permits, subject to reasonable, timely and good faith efforts to obtain such transfer or new liquor licenses.

- [18] In granting the Confirmation Order, the U.S. Court found that the purchase and sale of alcohol is an important component of the operation of the Retained Locations and that, accordingly, it is in the best interests of the Debtors' estates and all other parties in interest for alcohol purchases and sales to continue uninterrupted during the transition of operation of Retained Locations pursued and (except to the extent that governmental and regulatory agencies exercise their police powers under applicable law). The Confirmation Order is consistent with Canadian law practice in plenary CCAA cases where maintaining regulatory licenses is critical to preserve the going-concern value of an enterprise. The relief requested is confirmatory in nature and intended to provide stability and certainty during the period of transition following implementation of the Plan.
- [19] The Plan includes certain release, injunctive and exculpatory provisions. The definition of "Releasing Party" the Plan includes, without limitation, holders of Prepetition Term Loan Claims and General Unsecured Claims that vote to accept the Plan. Upon the Plan Effective Date, except as otherwise provided in the Plan, the Debtors (excluding the Wind-Down Debtors) shall be discharged to the fullest extent permitted by the Bankruptcy Code from claims, provided, however, that such discharge shall exclude Assumed Liabilities. The plan also includes certain releases in favour of "Released Parties", which include the DIP Lender's and the DIP Agent, the Prepetition Term Loan Parties and the Committee.
- [20] In the Confirmation Order, the U.S. Court specifically found that the release and exculpation provisions in the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code. The U.S. Court found that the Released Parties (as defined in the Plan) made significant concessions and contributions to the Chapter 11 Cases that justify the releases in the Plan. The U.S. Court found that such third-party releases are, among other things (i) consensual, (ii) in exchange for good and valuable consideration, (iii) a good faith settlement and compromise of claims, (iv) mutually beneficial to and in the best interests of the Debtors, their estates and their stakeholders and important to the overall objectives of the Plan, (v) fair, equitable and reasonable, and (vi) consistent with the Bankruptcy Code.
- [21] I am satisfied that the third-party releases contained in the Plan are consistent with the approach to granting third-party releases in the context of a plenary CCAA plan, as set out by the Court of Appeal for Ontario in *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, being (a) the parties to be released are necessary and essential to the restructuring of the debtor, (b) the claims to be released are rationally related to the purposes of the Plan and necessary for it, (c) the Plan cannot succeed without the releases, (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan, (e) the Plan will benefit not only the debtor companies but creditors generally, (f) devoting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases, and (g) the releases are fair and reasonable and not overly broad or offensive to public policy.
- [22] I am satisfied that recognition and enforcement of the third-party releases contained in the Plan is not contrary to Canadian public policy. I am satisfied that it is appropriate to give full force and effect to the releases, injunctions and exculpatory provisions contained in the Plan and Confirmation Order in Canada.

- [23] The Bar Date Order approved the Bar Date Notice which establish the General Bar Date of July 28, 2024 by which non-governmental creditors were required to file proofs of claim. The Claims Objection Order established a comprehensive process for resolving disputes in relation to proofs of claim that were filed in the Chapter 11 Cases.
- [24] All creditors identified in the books and records of the Debtors, including creditors of RL Canada, were sent the Bar Date Notice and provided with information regarding the process for filing proofs of claim. Additionally, the Information Officer included a copy of the Bar Date Notice in its First Report dated June 17, 2024 and provide Canadian creditors with information regarding the General Bar Date. I am satisfied that Canadian creditors were given the opportunity to participate in the claims process and the Chapter 11 Cases and did participate in such process by asserting total claims of \$45,297,156.32 against RL Canada.
- [25] I am satisfied that recognition of the Bar Date Order is appropriate to confirm and further evidence the binding nature of the Bar Date Order and the general Bar Date in Canada, which has now passed. Recognition of the Claim Objection Order is necessary to give effect in Canada to the claims dispute resolution process being carried out in the Chapter 11 Cases. Canadian creditors are actively engaged in that process.

Should the ancillary relief the granted?

- [26] The Plan, by releasee and discharging Claims and Causes of Action against the Debtors, has the practical effect of permanently staying and dismissing pending litigation actions against the Canadian Debtors in Canada (the “Canadian Actions”).
- [27] The proposed Third Supplemental Order includes provisions designed to reduce any ambiguity regarding the effect of the Plan on Canadian litigation actions by explicitly directing the registrars of relevant courts to dismiss the Canadian Actions and authorizing the Foreign Representative to take any steps necessary and appropriate to obtain the dismissal of the Canadian Actions. The proposed Third Supplemental Order does not create any new releases or discharges that are not already contained in the Plan. In *Re Instant Brands Acquisition Holdings Inc. et al.* (decision of Osborne J. dated February 26, 2024 in Court File No. CV-23-00701159-00CL), this Court granted similar relief in similar circumstances.
- [28] All known counterparties to litigation against the Canadian Debtors in Canada were provided with notice of this motion. Other than from Mr. Guiste’s clients, no objections from those parties were received to date.
- [29] I am satisfied that the requested relief in this respect should be granted.
- [30] After occurrence of the Plan Effective Date, it is intended that the stay a proceeding and any restrictions on doing business in the Chapter 11 Cases will be lifted as against the Reorganized Debtors. The Reorganized Debtors will, however, continued to participate in the Chapter 11 Cases until such Chapter 11 Cases have been fully administered and the Reorganized Debtors have satisfied all other administrative obligations.
- [31] The proposed Third Supplemental Order provides that on the Plan Effective Date:
- a. all stays in effect pursuant to the Initial Recognition Order in Supplemental Order shall terminate, other than the stay in respect of the Information Officer;
 - b. the D&O Charge and the DIP Charge shall terminate; and

- c. the restriction on the Canadian Debtors contained in paragraph five of the Initial Recognition Order related to the sale of assets and indemnification obligations contained in paragraph 21 of the Supplemental Order relating to directors and officers shall terminate.

Disposition

[32] Order to issue in form of Order signed by me today.

Justice CAVANAGH

DATE: September 10, 2024