



SUPERIOR COURT OF JUSTICE

**ENDORSEMENT**

**COURT FILE NO.:** CV-720567-00CL **DATE:** June 18, 2024

**NO. ON LIST:** 3

**TITLE OF PROCEEDING:** In the matter of the RED LOBSTER MANAGEMENT LLC, et al.

**BEFORE:** JUSTICE PENNY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Caitlin McIntyre	Lawyer for the Applicant, Red Lobster Management LLC et al.	Caitlin.mcintyre@blakes.com
Linc Rogers		<a href="mailto:Linc.rogers@blakes.com">Linc.rogers@blakes.com</a>
Jeff Dutson	Lawyer for US Counsel to the Applicant /Foreign Representative, Red Lobster Management LLC	<a href="mailto:jdutson@kslaw.com">jdutson@kslaw.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Mitch Stephenson	Lawyer for the Information Officer	<a href="mailto:mstephenson@fasken.com">mstephenson@fasken.com</a>
Stuart Brotman		<a href="mailto:sbrotman@fasken.com">sbrotman@fasken.com</a>
Scott Bomhof	Counsel for the DIP Lender/Stalking Horse Bidder	<a href="mailto:sbomhof@torys.com">sbomhof@torys.com</a>
Vanessa L. Ford	Lawyer for the Landlord, Fima Development	<a href="mailto:VFord@dickinson-wright.com">VFord@dickinson-wright.com</a>
Samir Silvestri	Lawyer for United Food and Commercial Workers Canada Local 1006A	<a href="mailto:silvestris@caleywray.com">silvestris@caleywray.com</a>
Nicholas Haughey	Alvarez & Marsal North	<a href="mailto:nhaughey@alvarezandmarsal.com">nhaughey@alvarezandmarsal.com</a>

	America, LLC	
Adsaran Vithiyananthan	Proposed Information Officer, FTI Consulting Canada Inc.	adsaran.vithiyananthan@ fticonsulting.com
Hrvoje Muhek		hrvoje.muhek@fticonsulting.com
Jeffrey Rosenberg		Jeffrey.rosenberg@fticonsulting.com
Mark Drake	Self Represented	marksdrake@gmail.com

**ENDORSEMENT OF JUSTICE PENNY:**

[1] The Foreign Representative moves for a second supplementary recognition order in these cross border proceedings. The Information Officer recommends approval of this order.

[2] I find that the Foreign Representative’s request for recognition of the Second Day Orders of the US Court is reasonable and should be granted. In coming to this conclusion, I have considered that:

(a) Canadian and U.S. stakeholders are treated in the same manner under each of the Second Day Orders for which recognition is sought, including in the Sale Procedures Order;

(b) the granting of the Second Supplemental Order is consistent with the principles of comity and facilitate the efficient coordination of the Chapter 11 proceedings and these Recognition Proceedings;

(c) the Second Day Orders for which recognition is sought are primarily procedural or administrative in nature, commonplace in the context of complex Chapter 11 proceedings, and generally consistent with the form of such orders frequently recognized by Canadian courts in large cross-border insolvency proceedings. These orders have already been recognized by this court, in their interim form as part of the First Day Orders. These orders include the Final DIP Order, the Final Wages and Benefits Order, the Final Cash Management Order and the Final Tax Order;

(d) the Second Day Orders are necessary to allow the Canadian business to operate in the ordinary course while a going-concern sale is pursued in the Chapter 11 proceedings which is anticipated to result in continued employment for the debtors’ Canadian employees;

(e) the procedures and timelines set forth in the Second Day Orders are reasonable and appropriate in the circumstances;

(f) RL Canada relies on certain other debtors for business functions critical to its ongoing operation of the Canadian restaurants and the debtors require the DIP Facility to continue to provide those business functions;

(g) whereas a “roll-up” of pre-filing indebtedness would not be permitted in plenary proceedings under the CCAA, Canadian courts have recognized and given effect to “roll-ups” in ancillary proceedings under Part IV of the CCAA where approved by the supervising court in the foreign proceeding;

(h) the Second Day Orders were supported by the debtors’ key stakeholders, including the DIP Lenders;

(i) the Second Day Orders were supported by the U.S. Trustee and the unsecured creditor committee (UCC), each of which had initially objected to the entry of certain Second Day Orders, including the Final DIP Order and Final Cash Management Order, but whose concerns were addressed in negotiated resolutions with the debtors. The Information Officer is not aware of any objection having been filed in

the Chapter 11 proceedings by a Canadian stakeholder in respect of the Second Day Orders for which recognition is now being sought.

[3] Regarding the Sale Procedures Order in particular, it was granted by the US Court following a full hearing on notice to interested parties. The Sale Procedures Order will enable the debtors to undertake a comprehensive marketing process for substantially all of the debtor's assets, including the Canadian business.

[4] When consummated, a sale transaction will preserve the value of the Canadian business as a going concern and will maximize the value of the Canadian business.

[5] The Stalking Horse Bid provides a baseline transaction and certainty to stakeholders regarding the go forward operations of the debtors' business, including the Canadian business. Through the Sale Procedures, the Stalking Horse Bid will be market-tested to determine if a higher or otherwise better bid or combination of bids can be identified.

[6] In *Paladin Labs Inc.*, when considering a bidding procedures order that, like the Sale Procedures Order, was underpinned by a stalking horse bid, Chief Justice Morawetz found that "approval of the Bidding Procedures is not against Canadian public policy, and in fact is consistent with similar relief typically granted in Canadian restructuring proceedings."

[7] As was the case in *Paladin*, the Sale Procedures Order here is not contrary to Canadian public policy and, in fact, is consistent with similar relief frequently granted in Canadian restructuring proceedings. Canadian courts regularly approve sales processes, including sales processes that incorporate a stalking horse bid and have, in fact, found that "the use of a sale process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sale process".

[8] Neither the Foreign Representative nor the Information Officer are aware of any opposition to the order being sought today. No one appeared to raise any such opposition.

[9] Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a period.

Penny J.