

Court File No.

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF RED LOBSTER MANAGEMENT LLC,
RED LOBSTER HOSPITALITY LLC and RED LOBSTER CANADA, INC.**

**APPLICATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED**

**FACTUM OF THE APPLICANT
(Application for Interim Stay Order)**

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PART 1 – INTRODUCTION

1. This factum is filed in support of an application under Part IV of the *Companies' Creditors Arrangement Act* (the "**CCAA**") and section 106 of the *Courts of Justice Act* (the "**CJA**") by Red Lobster Management LLC ("**RL Management**") as the proposed foreign representative of itself, Red Lobster Hospitality LLC ("**RL Hospitality**") and Red Lobster Canada, Inc. ("**RL Canada**") and, together with RL Management, the "**Canadian Debtors**", for an interim stay of proceedings in connection with proceedings (the "**US Proceedings**") under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") commenced by RL Management, RL Hospitality and RL Canada, as well as Red Lobster Restaurants LLC, RLSV, Inc., RL Kansas LLC, Red Lobster Sourcing LLC, Red Lobster Supply LLC, RL Columbia LLC, RL of Frederick, Inc., Red Lobster of Texas, Inc., RL Maryland, Inc., Red Lobster of Bel Air, Inc., RL Salisbury LLC and Red Lobster International Holdings LLC (the "**Debtors**") in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the "**US Court**").

2. The Debtors are part of a leading seafood restaurant unit operator in the United States and Canada, which is one of the largest sustainable seafood purchasers worldwide (“**RL Group**”) and is headquartered in the US, where the majority of its operations are carried out.¹

3. Due to significant operational headwinds, the RL Group is facing significant liquidity challenges.² The RL Group is intending to conduct a sales process for all or substantially all of its assets that will maximize the return for all stakeholders. To this end, RL Group has been working with its existing senior lenders and entered into a Restructuring Support Agreement, dated May 9, 2024 (the “**RSA**”). Pursuant to the RSA, the Debtors are required to conduct a marketing process for their assets.³

4. Consistent with the RSA, and to preserve the value of the business for the benefit of stakeholders, the Debtors commenced the US Proceedings on May 19, 2024 (the “**Petition Date**”) by filing voluntary petitions for relief (the “**Petitions**”) under the Bankruptcy Code in the US Court.⁴ At the First Day Hearing, scheduled for May 21, 2024, the Debtors will seek various first day orders pursuant to the US Code (the “**First Day Orders**”), including, among other things, an order appointing RL Management as the foreign representative for the Debtors (in such capacity, the “**Foreign Representative**”).⁵

5. At this time, RL Management, as the proposed Foreign Representative of the Canadian Debtors, is requesting an order from this Court granting an interim stay of proceedings (the

¹ Affidavit of Jonathan Tibus, sworn May 20, 2024 (the “**Tibus Affidavit**”) at para. 15.

² Tibus Affidavit at paras. 16 and 19.

³ Tibus Affidavit at paras 47-51.

⁴ Tibus Affidavit at para. 3.

⁵ Tibus Affidavit at para. 5.

“**Interim Stay**”) in respect of the Canadian Debtors in Canada (the “**Interim Stay Order**”). If the US Court grants the requested First Day Orders, RL Management anticipates returning before this Court to seek two additional orders, namely:

- (a) an order (the “**Initial Recognition Order**”), among other things:
 - (i) recognizing RL Management as the Foreign Representative in respect of the US Proceedings;
 - (ii) recognizing the US Proceedings as a “foreign main proceeding” in respect of the Canadian Debtors; and
 - (iii) granting a stay of proceedings in respect of the Canadian Debtors in Canada; and

- (b) an order (the “**Supplemental Order**”), among other things:
 - (i) recognizing certain of the interim and final orders issued by the US Court in the US Proceedings, including, among others, an order approving a debtor-in-possession facility (the “**DIP Facility**”).
 - (ii) granting a stay of proceedings in respect of the Canadian Debtors, and their respective directors and officers, in Canada;
 - (iii) appointing FTI Consulting Canada, Inc. as information officer in respect of these proceedings (in such capacity, the “**Information Officer**”);
 - (iv) granting a Court-ordered charge over the assets and property of the Canadian Debtors, in Canada in favour of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer;

- (v) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure the DIP Facility; and
- (vi) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure the indemnity obligations of the Canadian Debtors to their directors and officers in respect of the obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers.

PART II – SUMMARY OF THE FACTS

A. THE BUSINESS

6. The Debtors are part of a leading seafood restaurant unit operator in the United States and Canada, which is one of the largest sustainable seafood purchasers worldwide. The RL Group is headquartered in Orlando, Florida and operates approximately 551 restaurants in the United States and 27 restaurants in four provinces in Canada (Ontario, Alberta, Manitoba and Saskatchewan).⁶

7. All of the Debtors are indirect wholly owned subsidiaries of Red Lobster Master Holdings, L.P., (“**RL Master LP**”) which operates RL Group in partnership with its General Partner, Red Lobster Master Holdings GP, LLC (“**RL Master GP**”). RL Master GP is wholly owned by the RL Group’s equity sponsor, Thai Union Group Public Company Limited. RL Management is an

⁶ Tibus Affidavit at para. 15.

indirect subsidiary of RL Master LP and wholly owns and operates the other Debtors, including RL Hospitality and RL Canada.⁷

B. THE CANADIAN BUSINESS

8. RL Canada is a Delaware corporation that is also a wholly owned subsidiary of RL Management. RL Canada operates all RL Group restaurants located in Canada. RL Canada does not have any subsidiaries. RL Canada is registered on an extra-jurisdictional basis in Ontario, Alberta, Manitoba and Saskatchewan. The registered office of RL Canada is located at 450 S Orange Avenue, 800, Orlando, Florida, 32801.⁸

9. As of the Petition Date, RL Canada had approximately 2000 employees, all of whom are employed by RL Canada. RL Canada's employees are employed in Ontario, Alberta, Saskatchewan and Manitoba.⁹

10. Approximately 155 of these employees are unionized through collective bargaining units in place at two of RL Canada's restaurants (one located in Ontario and one in Alberta).¹⁰

11. RL Canada owns two properties in Canada, one located in Brantford, Ontario and the other located in Etobicoke, Ontario.¹¹

⁷ Tibus Affidavit at para. 20.

⁸ Tibus Affidavit at para. 24.

⁹ Tibus Affidavit at para. 28.

¹⁰ Tibus Affidavit at para. 29.

¹¹ Tibus Affidavit at para. 25.

12. RL Canada leases 26 properties in Canada. The commencement of the US Proceedings potentially constitutes an event of default under each of the leases (the “**Leases**”) in respect of the Leased Properties.¹²

C. THE DEBTORS

13. The Debtors include RL Management, RL Hospitality and RL Canada. RL Management and RL Hospitality are both corporations incorporated under the laws of Delaware. RL Management is the sole shareholder and direct parent of RL Hospitality and RL Canada.¹³

14. RL Hospitality is the registered owner of various Red Lobster related intellectual property in Canada.¹⁴

15. The remaining Debtors do not directly carry on a business in Canada, and do not have any employees in Canada.¹⁵

16. As of the Petition Date, the Debtors’ outstanding third-party funded debt obligations totalled approximately \$295.6 million, which are summarized in the table below and described in detail in the First Day Declaration:¹⁶

¹² Tibus Affidavit at paras. 26 and 27.

¹³ Tibus Affidavit at paras. 33-34.

¹⁴ Tibus Affidavit at para 12.

¹⁵ Tibus Affidavit at para. 34.

¹⁶ Tibus Affidavit at para. 35.

Funded Debt	Maturity	Approximate Outstanding Principal Amount as of the Petition Date
Secured Debt		
Prepetition ABL Revolving Facility	January 2025	\$29.3 million (of issued letters of credit)
Prepetition Term Facility	January 2026	\$264.7 million
	Total Funded Debt	\$293.8 million

D. FINANCIAL CHALLENGES

17. RL Group has suffered in recent years from a large number of financial challenges, including disruptions to its supply chain, hyperinflation affecting food, labor, and delivery costs, substantial increases in the cost of capital and real property leases, and shifts in casual dining trends that were occurring prior to and as a result of the COVID-19 pandemic.¹⁷

18. In light of these challenges, RL Group launched a plan to improve its operations through key initiatives intended to promote growth, reduce spend and waste, and procure high quality products.¹⁸

19. Despite the efforts to improve operations over the previous twelve months, RL Group has continued to face significant liquidity and operational challenges, which were exacerbated and

¹⁷ Tibus Affidavit at para. 16.

¹⁸ Tibus Affidavit at para. 18.

accelerated by significant over-market and under-performing leases and poor operational and marketing decisions by prior management.¹⁹

E. US PROCEEDINGS

20. As set out above, on May 19, 2024, the Debtors commenced the US Proceedings by filing Petitions under the Bankruptcy Code in the US Court. At the First Day Hearing, the Debtors will seek various First Day Orders, including an order formally appointing the Foreign Representative and an order approving the DIP Facility on an interim basis.²⁰

21. If the First Day Orders are granted, the Foreign Representative intends to return to this Court to seek the Initial Recognition Order and Supplemental Order.

PART III - ISSUES

22. The sole issue to be considered on this application is whether this Court should grant the Interim Stay Order providing for the Interim Stay in Canada.

23. For the reasons set out herein, the Applicant submits that the Interim Stay Order should be granted.

PART IV – THE LAW AND ARGUMENT

A. INTERIM STAY ORDER

(i) Jurisdiction to Grant an Interim Stay

24. Section 106 of the CJA provides that:

¹⁹ Tibus Affidavit at para. 19.

²⁰ Tibus Affidavit at paras. 3 and 5.

A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

25. This Court frequently grants interim orders providing for a temporary stay of proceedings in Canada following the initiation of proceedings under the Bankruptcy Code in recognition of the fact that such a stay is necessary to protect the assets on an interim basis pending a hearing to recognize the proceedings commenced under the Bankruptcy Code.²¹

26. Most recently, this Court in *Hornblower Cruises and Events Canada Ltd.* granted a similar interim stay. Chief Justice Morawetz concluded that granting the interim stay and other relief as proposed in the interim stay order was within the Court's jurisdiction and "consistent with this Court's practice in recent Part IV recognition proceedings". The Court concluded that the relief was both necessary and appropriate.²²

(ii) *An Interim Stay is Appropriate*

27. The Debtors commenced the US Proceedings in the US Court by filing the Petitions, resulting in an automatic stay of proceedings in respect of the Debtors. As noted above, the Debtors expect to be before the US Court imminently to seek entry of the First Day Orders, including an order appointing RL Management as the Foreign Representative in respect of the US Proceedings.²³ Accordingly, there will be a period of time between the effectiveness of the automatic stay, and the time when the Foreign Representative is able to file and serve the certified

²¹ See: *Lightsquared LP, Re*, [2012 ONSC 2994](#) at para. 3; *Paladin Labs Canadian Holding Inc.*, [2022 ONSC 4748](#) at para. 20 [Paladin Interim Stay Endorsement] and *YRC Freight Canada Company (Re)*, [2023 ONSC 4492](#) (Yellow).

²² *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1094](#) at paras. 19-21.

²³ Tibus Affidavit at paras. 3-5.

materials contemplated by subsection 46(2) of the CCAA and return to this Court to seek the relief contemplated by the proposed Initial Recognition Order and the Supplemental Order.

28. It is important for the Canadian Debtors to be immediately protected by a stay of proceedings and immediately protected from enforcement rights in Canada pursuant to a Canadian court order. As set out above, the commencement of the US Proceedings potentially constitutes an event of default under the Leases. Absent a stay of proceedings, the landlords under the Leases could purport to terminate the Leases, jeopardizing the viability of the Canadian Business on a go-forward basis. RL Canada also has a number of supply arrangements in Canada. Absent a stay of proceedings, suppliers may purport to terminate these arrangements or withhold supply, which would materially prejudice the Canadian Business.²⁴

29. Accordingly, the granting of the Interim Stay Order is critical to preserve the value of the Canadian Business and ensure that the RL Group's efforts to effect a global restructuring are not jeopardized by creditors in Canada purporting to exercise their rights and enforcement remedies against the Canadian Debtors, notwithstanding the automatic stay arising from the filing of the Petitions.²⁵

30. The Interim Stay Order requested is consistent with interim stay orders granted by this Court in similar circumstances.²⁶

²⁴ Tibus Affidavit at paras. 57-60.

²⁵ Tibus Affidavit at para 60.

²⁶ In the Matter of Lightsquared LP, [Order of Chief Justice Morawetz, dated May 15, 2012](#); In the Matter of Paladin Labs Canadian Holdings Inc, [Order of Chief Justice Morawetz, dated August 17, 2022](#); In the Matter of YRC Freight Canada Company, [Order of Chief Justice Morawetz, dated August 8, 2023](#); In the Matter of Hornblower Cruises and Events Canada Ltd. [Order of Chief Justice Morawetz, dated February 21, 2024](#).

31. The granting of the requested Interim Stay is within the Court's jurisdiction, consistent with this Court's practice in recent recognition proceedings under Part IV of the CCAA and important for the preservation of the value of the Canadian Business as part of the Debtors' restructuring efforts.

PART V – RELIEF REQUESTED

32. The Applicant request that the Court grant the Interim Stay Order in the form included at Tab 3 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of May, 2024.



Blake, Cassels & Graydon LLP
Lawyers for the Applicant

**SCHEDULE “A”
LIST OF AUTHORITIES**

<u>Cases</u>	
1.	<i>Lightsquared LP, Re</i> , 2012 ONSC 2994
2.	<i>Paladin Labs Canadian Holding Inc.</i> , 2022 ONSC 4748
3.	<i>YRC Freight Canada Company (Re)</i> , 2023 ONSC 4492
4.	<i>Hornblower Cruises and Events Canada Ltd.</i> , 2024 ONSC 1094
5.	In the Matter of Lightsquared LP, Order of Chief Justice Morawetz, dated May 15, 2012
6.	In the Matter of Paladin Labs Canadian Holdings Inc, Order of Chief Justice Morawetz, dated August 17, 2022
7.	In the Matter of YRC Freight Canada Company, Order of Chief Justice Morawetz, dated August 8, 2023
8.	In the Matter of Hornblower Cruises and Events Canada Ltd. Order of Chief Justice Morawetz, dated February 21, 2024

SCHEDULE "B"

RELEVANT STATUTES AND RULES

Courts of Justice Act, R.S.O. 1990, c. C.43

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

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

Jurisdiction of courts

General power of court

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Other orders

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Windingup and Restructuring Act in respect of the debtor company.

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Proceeding Commenced at Toronto

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