



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00720567-00CL

DATE: May 21, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: RED LOBSTER MANAGEMENT LLC et al.

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

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ENDORSEMENT OF JUSTICE PENNY:

Overview

This is an application under Part IV of the *Companies' Creditors Arrangement Act* and s. 106 of the *Courts of Justice Act* 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”). The Applicants seek 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”).

The Debtors are part of a seafood restaurant chain in the United States and Canada (the “RL Group”). Their headquarters are in Orlando, Florida, where the majority of operations are carried out.

The RL Group is facing significant liquidity challenges. It 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, the RL Group has been working with its existing senior lenders and entered into a Restructuring Support Agreement, dated May 9, 2024 (the “RSA”). Under the RSA, the Debtors are required to conduct a marketing process for their assets. It is contemplated that the senior lenders (Fortress) will be providing DIP financing to enable the debtors to continue in business and will be a stalking horse bidder in the sales process.

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. A hearing before the US Court is scheduled for later today (the “First Day Hearing”), at which time the Debtors will seek various first day orders under the US Code (the “First Day Orders”), including, among other things, an order appointing RL Management as the foreign representative for the Debtors.

It is in this context that RL Management, as the proposed Foreign Representative of the Canadian Debtors, is requesting an order from this Court granting an interim stay of proceedings 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”) which would, among other things:

(i) recognize RL Management as the Foreign Representative in respect of the US Proceedings;

(ii) recognize the US Proceedings as a “foreign main proceeding” in respect of the Canadian Debtors; and

(iii) grant a stay of proceedings in respect of the Canadian Debtors in Canada; and

(b) an order (the “Supplemental Order”) which would, among other things:

(i) recognize 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) grant a stay of proceedings in respect of the Canadian Debtors, and their respective directors and officers, in Canada;

(iii) appoint FTI Consulting Canada, Inc. as information officer in respect of these proceedings;

(iv) grant 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) grant a Court-ordered charge over the assets and property of the Canadian Debtors to secure the DIP Facility; and

(vi) grant 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.

Background

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 in Orlando, Florida.

As of the Petition Date, RL Canada had approximately 1,900 employees, all of whom are employed by RL Canada. RL Canada's employees are employed in Ontario, Alberta, Saskatchewan and Manitoba. 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).

RL Canada owns two properties in Canada, one located in Brantford, Ontario and the other located in Etobicoke, Ontario. RL Canada leases 26 properties in Canada, most of which are located in Ontario. The commencement of the US Proceedings potentially constitutes an event of default under the leases (the "Leases").

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. RL Hospitality is the registered owner of various Red Lobster related intellectual property in Canada. The remaining Debtors do not directly carry on a business in Canada, and do not have any employees in Canada.

As of the Petition Date, the Debtors' outstanding third-party funded debt obligations total approximately \$295 million.

Circumstances Giving Rise to the Insolvency Filings

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.

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

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

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

The Interim Stay

The sole issue to be considered on this application is whether this Court should grant the Interim Stay Order.

Section 106 of the CJA provides that:

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.

This Court has frequently granted 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: *Lightsquared LP, Re*, 2012 ONSC 2994 at para. 3; *Paladin Labs Canadian Holding Inc.*, 2022 ONSC 4748 at para. 20 and *YRC Freight Canada Company (Re)*, 2023 ONSC 4492.

Recently, in *Hornblower Cruises and Events Canada Ltd.*, 2024 ONSC 1094 at paras. 19-21, Chief Justice Morawetz granted a similar interim stay. He 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 found that the relief was both necessary and appropriate.

Here, 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 in the US. As noted above, the Debtors expect to be before the US Court today to seek entry of the First Day Orders, including an order appointing RL Management as the Foreign Representative in respect of the US Proceedings. However, absent relief from this court today, there will be a period of time between the Petitions and First Day Orders and the time when the Foreign Representative is able to file and serve the certified 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.

It is important for the Canadian Debtors to be protected immediately by a stay of proceedings by virtue of 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.

Accordingly, the granting of the Interim Stay Order is critical to preserve the value of the Canadian Business and to 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 while those efforts are under way. The relief sought is, in substance, consistent with the language of the standard Supplemental Order. There is no evidence of any opposition. The application is supported by the senior secured lenders and the proposed Information Officer.

For these reasons, the application for an interim stay is granted. Order to issue in the form signed by me this day.

This matter will return before me on May 28, 2024 (via videoconference) at 10:00 AM for one hour, at which time it is expected that the Canadian Debtors will seek an Initial Recognition Order and Supplemental Order under Part IV of the CCAA.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.