



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00734339-00CL

DATE: January 7, 2025

NO. ON LIST: None

**TITLE OF PROCEEDING:** In the Matter of a Plan of Compromise or Arrangement of Comark Holdings Inc., Bootlegger Clothing Inc., Cleo Fashions Inc. and Ricki's Fashions Inc.

**BEFORE:** JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info

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**ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] The Applicants, Comark Holdings Inc. (“Comark”), Ricki’s Fashions Inc. (“Ricki’s”), cleo fashions Inc. (‘cleo’), and Bootlegger Clothing Inc. (“Bootlegger”), (together, the “Applicants”) have commenced this application under the *CCAA*. They seek an Initial Order to be in effect until the comeback hearing on January 17, 2025.
- [2] At the conclusion of the hearing, I granted the requested relief, with reasons to follow. These are the reasons.
- [3] The Applicants operate a fashion clothing retail and e-commerce business with a nationally recognized portfolio of banners and exclusive private label brands. The Applicants consist of Comark, a privately held corporation that has operated in Canada since 1976, and its three distinct subsidiaries, Ricki’s, cleo, and Bootlegger, which have operated as retail clothing stores in Canada since 1939, 1994 and 1971, respectively.
- [4] In June 2020, the Comark Group obtain *CCAA* protection due to, among other things, the effects of the COVID-19 pandemic on the Comark Group’s business.
- [5] Over the past several years, the Comark Group has experienced a series of further challenges which have negatively impacted profitability and severely strained liquidity. The effects of the COVID-9 pandemic continued. A 2021 cyber incident significantly disrupted business operations and created long-lasting inventory management issues. Certain ultra low-cost fashion retailers entered the market and attracted consumers. Additionally, supply chain and vendor issues caused material delays in the receipt of seasonal merchandise.
- [6] The Applicants are now insolvent. Their cash flow and liquidity constraints have resulted in approximately \$60 million in accounts payable and accrued liabilities, including approximately \$44 million owed to vendors of merchandise and approximately \$5 million owing to landlords. The Applicants do not have sufficient funds to pay these outstanding arrears, and certain vendors have commenced claims against them for outstanding amounts and damages.

- [7] The Applicants are currently in breach of certain financial covenants under the credit agreement with their senior secured lender, CIBC. On January 5, 2025, the Applicants (and the parent company of Comark) receive demand and acceleration notices from CIBC's legal counsel declaring all amounts outstanding under the CIBC credit facilities immediately due and payable and demanding repayment. As a result of the CIBC demands, Comark is unable to obtain further advances under its credit agreement with CIBC.
- [8] CIBC, as interim lender, has advised the Applicants that it is prepared to permit Comark to continue to borrow under the existing CIBC revolving loan facility during the Initial Stay Period (as defined in the materials) pursuant to the CIBC credit agreement. Such interim borrowings shall be in accordance with an agreed-upon two week cash flow forecast and each interim borrowing is subject to prior approval pursuant to a draw request in form and substance satisfactory to CIBC as interim lender, and subject to the requirements set out in the Initial Order. Without the interim borrowings, the Applicants are unable to fund payroll, pay rent and finance other critical operating expenses.
- [9] The Applicants expect that, without *CCAA* protection, critical vendors may take potentially damaging enforcement steps, including the termination of agreements which are vital to the Applicants' continued operations. The Applicants have determined that commencing the *CCAA* proceeding is their best path forward to allow them to explore available options to address their current financial challenges.
- [10] The Applicants intend to seek an Amended and Restated Initial Order at the comeback hearing, among other things, extending the stay of proceedings, approving a DIP facility, and granting other customary relief, including a charge to secure the DIP facility and increasing the maximum amount secured by the Administration Charge and the Directors' Charge. The Applicants also intend to move for additional relief including (i) approval to conduct a liquidation of inventory and an orderly wind-down of Ricki's business and cleo's business, (ii) approval to allow Bootlegger to disclaim leases for underperforming stores and the liquidation of some or all of the inventory of Bootlegger, and (iv) approval to conduct a potential sale of the remaining business or assets of the Applicants through a court supervised sale and investment solicitation process.
- [11] The facts in support of this application are fully set out in the Affidavit of Shamsh Kassam sworn January 6, 2025. These facts are summarized in the Applicants' factum, at paragraphs 13-54.

### **Are the Applicants entitled to seek protection under the *CCAA*?**

[12] I am satisfied that the Applicants are entitled to seek protection under the *CCAA*. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 56-57 of their factum.

### **Should an interim stay of proceedings granted?**

[13] Section 11.02(1) of the *CCAA* permits the Court to grant an initial stay of up to 10 days on an application for an initial order, provided such a stay is appropriate and the Applicants have acted with due diligence and in good faith. Under s. 11.001, other relief granted pursuant to this Court's powers under section 11 of the *CCAA* at the same time as an order under section 11.02(1) must be limited to "relief that is reasonably necessary for the continued operation of the debtor company in the ordinary business during that period."

[14] I am satisfied that the stay will provide breathing space to allow the Applicants to attempt to restructure the Bootlegger business on a going concern basis, consistent with the accepted objectives of the *CCAA*. I accept that each aspect of the relief sought by the Applicants during the Initial Stay Period is interdependent, and collectively the relief is necessary to allow the Applicants to properly respond to the circumstances in which they find themselves.

### **Should the Interim Borrowings and the Interim Lender's Charge be approved?**

[15] The Applicants have no further ability to draw under the CIBC credit facilities. In order to avoid an abrupt shutdown of the Applicants' business, CIBC in its capacity as interim lender (in such capacity, the "Interim Lender") has agreed to make interim borrowings available. Pursuant to section 11.2 of the *CCAA*, the Applicants seek an interim financing charge to secure the interim borrowings (the "Interim Lender's Charge"). The Interim Lender's Charge is secured by all of the present and future assets, property and undertaking of the Applicants, and to rank behind the Administration Charge, but ahead of the Directors' Charge and all other security interests, charges and liens.

[16] I have considered the factors in section 11.2(4) of the *CCAA* and I am satisfied that approval of the interim borrowings and the Interim Lender's Charge should be granted. The interim borrowings arrangement is the only available option for the Applicants to fund operations for a temporary period and preserve the Applicants' business while they consider next steps in these proceedings. I accept that the interim borrowings arrangement is designed to preserve value, to the benefit of the Applicants' stakeholders.

### **Should authority be granted to permit pre-filing payments to critical third parties?**

[17] The Applicants are seeking authority to pay certain pre-filing amounts owing to keep participants in the Applicants' distribution network, and other critical suppliers, with the consent of the proposed Monitor and the Interim Lender, and in accordance with the Cash Flow Forecast or otherwise as may be agreed to with the Interim Lender.

[18] I am satisfied that the requested authorization should be granted.

### **Should the administration charge be granted?**

[19] Pursuant to section 11.52 of the *CCAA*, the Applicants are requesting an Administration Charge in favour of the Proposed Monitor, its Canadian counsel, and Canadian counsel to the

Applicants, as security for their respective fees and disbursements up to a maximum of \$750,000, which amount covers the time period until the Comeback Hearing. The amount of the Administration Charge was developed in consultation with the Proposed Monitor and is proposed to be secured by the Applicants' property and to have first priority over all charges and security interests.

[20] I am satisfied that the requested amount is fair and reasonable, and appropriate to the size and complexity of the business being restructured.

**Should the Directors' charge be granted?**

[21] The Applicants also seek a Directors and officers charge in the amount of \$6.2 million during the Initial Stay Period (the "Directors' Charge"). The Directors' Charges proposed to be secured by the Applicants' property and ranked behind the Administration Charge, the Interim Lender's Charge and the existing security granted with respect to the CIBC credit facilities, and ahead of all other security interests, charges and liens.

[22] The Applicants' present and former directors and officers are not beneficiaries under liability insurance. Accordingly, there is no coverage for the potential liability that the directors and officers could include in relation to the *CCAA* proceedings. I accept that a successful restructuring of the Applicants will only be possible with the continued participation of its directors, officers, management, and employees. The requested Directors' Charge should be approved.

[23] For these reasons, the requested Interim Order was granted.