

**CITATION:** Target Canada (Re) ONSC 6069  
**COURT FILE NO.:** CV-15-10832-00CL  
**DATE:** 20191018

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET  
CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP.,  
TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA  
PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., TARGET  
CANADA PROPERTY LLC.

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *Patrick Bernard*, for Pharmacy Franchisee Association of Canada

*Melaney Wagner and Francys Kussner*, for Alvarez and Marsal Canada Inc., as  
Monitor

*Jeremy Dacks*, for Target Canada Entities

*Robin Schwill*, for Target Corporation

**HEARD:** October 18, 2019

**ENDORSEMENT**

[1] Pharmacy Franchisee Association of Canada ("PFAC") brings this motion seeking an order approving its fees and disbursements incurred during these CCAA proceedings.

[2] The CCAA proceedings were commenced in 2015.

[3] PFAC, which was founded by Mr. Dimovski and Mr. Gavrilidis, as the representatives of the pharmacy franchisees operating in Target Canada locations, has been involved in the CCAA proceedings from the outset.

[4] It is acknowledged that PFAC received notice of all of the numerous motions that have been brought in the CCAA proceedings.

[5] On June 2, 2016, a Sanction and Vesting Order approved the Plan of Arrangement of Target Canada. The Plan included broad releases in paragraph 7.1(a), of all claims related in any way to these CCAA proceedings.

[6] Counsel to PFAC, who was recently retained for this motion, submits that this Plan release does not include the claim now being made by PFAC.

[7] The wording of the release does not accord with this submission. The language of the release is specific and covers any type of claim which any Creditor or other Person may be entitled to assert.

[8] The Plan Implantation Date which triggered the release was June 28, 2016. In my view, PFAC's claim has been barred, released and out of time for more than three years. Counsel acknowledged that this claim was first raised in this motion.

[9] In the event that my interpretation of the Plan release is in error, the issue of a potential PFAC claim for fees and disbursements was also covered in the Settlement Agreement and Release in respect of the T. Pharma claim which was assigned to PFAC. The Settlement Agreement and Release was executed by PFAC, T. Pharma, Mr Dimovski, Mr Gavrilidis and Yorktown Pharmacy Ltd. and contains language which releases the Target Canada Entities, the Monitor and other parties from all claims arising out of or in connection with the business and affairs of the Target Canada Entities.

[10] In my view, the Settlement and Release Agreement is also a bar to this claim of PFAC.

[11] PFAC asks this court to grant it equitable relief. This request is ill conceived.

[12] Not only has the claim of PFAC been extinguished by either or both of the releases, the Plan has been implemented and a Final Distribution has been made to creditors. The Monitor has filed its Plan Completion Certificate.

[13] Counsel for PFAC submitted that the court could exercise its inherent jurisdiction and somehow order that PFAC be compensated at this late date.

[14] Counsel to PFAC submitted that Target Corporation (the parent corporation) could make funds available. I reject this submission. Target Corporation contributed in significant and tangible ways to the Plan and received a full release of all claims that could be made against it.

[15] Counsel to PFAC acknowledged that the Monitor's entitlement to fees was not being challenged by way of a reallocation.

[16] This would leave the creditors as the only source of funds. Counsel could not direct me to any authority that would result in the distribution to creditors being disturbed at this late date. Indeed, this would clearly be prejudicial to all creditors.

[17] PFAC did not raise the subject of its claim for compensation until the morning that the Monitor's motion for its final fee approval and discharge was to be heard.

[18] In waiting until the last possible moment to bring this motion, when it had full knowledge of the releases previously granted, the sanction of the Plan and the distributions made to creditors, PFAC is not in a position to request equitable relief.

[19] The remaining funds in the Estate are all accounted for. There is a certain amount reserved for fees and disbursements of the Monitor. The reserve will go to compensating the Monitor and its counsel for having to respond to what I consider to be a frivolous motion.

[20] There may be some unclaimed distributions but in light of the fact that there have been interim distributions, the Monitor has current records of creditors and expects that this amount will be minimal.

[21] Finally, with the passage of time, the Monitor does not expect any further asset realizations or proceeds for the Estate.

[22] In light of the foregoing, I see no reason to comment on the observations made by the Monitor, in its written submissions, with respect to the bona fides of the compensation request.

[23] In the result, the motion of PFAC is dismissed. The Monitor did not seek any costs.



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Chief Justice Geoffrey B. Morawetz

**Date:** October 18, 2019