



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00717340-00CL

DATE: OCTOBER 19, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: PRIDE GROUP HOLDINGS INC. V CWB MAXIMUM FINANCIAL INC.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Rachel Nicholson	CSL for the Applicant Pride Group Holdings Inc.	rnicholson@tgf.ca
Abir Shamim	CSL for employees of Pride Group Logistics Ltd	ashamim@kmlaw.ca
Ines Ferreira	CSL for the Applicants	iferreira@tgf.ca
Puya Fesharaki	CSL for the Applicants	pfesharaki@tgf.ca
James Harnum	CSL for the Applicants	jharnum@kmlaw.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Raj Sahni	CSL for the Directors	SahniR@bennettjones.com

Aubrey Kauffman	CSL to Royal Bank of Canada, in its capacity as the Financial Services Agent	akauffman@fasken.com
Ben Muller	CSL to Royal Bank of Canada, in its capacity as the Financial Services Agent	bmuller@osler.com
Caroline Descours	CSL to Regions Bank and Regions Equipment Finance Corporation	Cdescours@goodmans.ca
Trevor Courtis	CSL for Bennington Financial Corp	tcourtis@mccarthy.ca
John Salmas	CSL to Bank of Montreal	John.salmas@dentons.com
Lee Nicholson	CSL to Move Trust	leenicholson@stikeman.com
Daniel Richer and Aubrey Kauffman	CSL for the DIP/Syndicate Lenders	dricher@fasken.com akauffman@fasken.com
Kelly Bourassa	CSL for the Monitor	kelly.bourassa@blakes.com
Shayne Kukulowicz	CSL for A&M	skukulowicz@cassels.com
Mark Freake	CSL for Daimler Truck	mark.freake@dentons.com
Esther Mann	CSL for Alvarez & Marsal	
Chris Burr	CSL for the Monitors	chris.burr@blakes.com
Heather Meredith	CSL for National Bank	hmeredith@mccarthy.ca

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] RBC, in its capacity as administrative agent for the Syndicate Lenders, moves for two orders:
- a. a Syndicate Collateral Management Order appointing Alvarez & Marsal Canada Inc. as an officer of this Court in the capacity of Manager of those assets of the Syndicate/DIP Borrowers including proceeds thereof, and lifting the stay of proceedings in these CCAA Proceedings to give effect thereto; and
 - b. a Sale Agreement and Sale Approval Order, as fully described in the motion materials, and which effectively would give the Manager, if appointed, necessary powers to sell the Management Property, vest title thereto in any purchaser, account for the Net Proceeds, and provide for other ancillary relief.

[2] The Syndicate relies upon the affidavits of Brad D. Newton sworn August 2, 2024, together with exhibits thereto, and the affidavit of Mr. Newton sworn October 16, 2024, together with exhibits thereto.

[3] Defined terms in this Endorsement have the meaning given to them in the motion materials, the Reports of the Monitor, and/or earlier Endorsements made in this *CCAA* Proceeding, unless otherwise stated.

[4] The relief sought on this motion in principle was unopposed, but certain parties, and in particular the Applicants, counsel to certain employees and the Court-appointed Monitor, objected to the scope of the powers for the proposed Manager as contemplated in the draft orders.

[5] At the conclusion of the hearing of the motion, I granted the two orders with certain amendments, additions and deletions for reasons to follow. These are those reasons.

[6] The context within which this motion is brought is fully set out in the materials and need not be restated here. There is no issue that the Syndicate/DIP Borrowers are indebted to the Syndicate Lenders on a secured basis in an aggregate principal amount that exceeds CAD \$391,200,000 and USD \$105,800,000 plus accrued interest and costs, all of which Indebtedness is due and payable. The DIP Indebtedness matured on July 31, 2024 and was not extended or renewed. The DIP Facility of CAD \$36,300,000 is virtually fully drawn.

[7] On October 10, 2024, I granted a Wind-down, Liquidity Contribution Alternative and Turnover Order (the “Turnover Order”). That Turnover Order provides a comprehensive mechanism for the turnover of Remaining Assets and imposes certain obligations related thereto on the Pride Entities, the CRO and the Monitor, all with a view to treating equitably and fairly the Recourse Lenders through the fair and equitable turnover of Remaining Assets with the oversight of the CRO and Monitor.

[8] The proposed relief sought on this motion is intended to facilitate and operationalize the relief granted in the Turnover Order and is expressly subject to the terms thereof. Effectively, the orders now sought would appoint A&M as Manager of the Remaining Assets that would be turned over to that firm. The proposed order is based on the model Receivership Order of the Commercial List, and in some but not all respects is similar to the order granted in this *CCAA* Proceeding on September 24, 2024 appointing BDO Canada Limited as manager over certain assets.

[9] The Syndicate Lenders have selected A&M as its proposed Manager, and submit that, in their view, the vehicle sales channel of the Pride Group is not maximizing the value of the vehicles included in the Management Property as they believe that the proposed Manager will be able to achieve. Accordingly, the proposed Syndicate Collateral Management Order allows for the proposed Manager to manage and realize on that Management Property within this *CCAA* Proceeding, and transfer to the Syndicate Lenders the cost of such management and realization.

[10] The Syndicate Agent and the Proposed Manager have entered into some agreements and are negotiating others, all subject to the relief being granted on this motion, pursuant to which the Manager will place Management Vehicles with various third-party vehicle dealers on a consignment basis, transition Management Leases to replacement servicer and address other mechanical matters.

[11] I am satisfied that this Court has the jurisdiction to grant the order sought pursuant to the broad discretion given in section 11 of the *CCAA*. A&M is well qualified to act in the Court officer capacity of Manager and has consented to do so.

[12] I am further satisfied that, as amended, the orders are consistent with the Turnover Order and the objectives of that Turnover Order as set out above of providing for the turnover of Remaining Assets, as all of the Recourse Lenders desire, but to do so in a manner that is fair and equitable and will not give any creditor or group of creditors an unfair advantage over another.

[13] This is achieved both through the terms of the proposed orders and in particular through the fact that they are, as confirmed by counsel to the Syndicate Agent in submissions, expressly subject to the paramountcy of the Turnover Order and other earlier orders. Simply put, the Syndicate Collateral Management Order would allow the Syndicate Lenders, through their selected Manager, to sell their vehicles, free and clear of encumbrances and at their cost, with attendant obligations to maintain Net Proceeds and report back to the CRO and the Court appointed Monitor with respect thereto. I am satisfied that that approach is appropriate and will give further practical effect to the Turnover Order.

[14] I am further satisfied that the proposed draft orders are generally consistent with the Model Receivership Order of the Commercial List. That, however, is not the end of the matter, as the Manager here is not acting in the capacity of a straightforward receiver in the usual sense. The circumstances of the appointment of this Court officer are unique and require some refinement and nuance to the scope of powers in order to ensure fairness and consistency in the treatment of all stakeholders, balanced against the necessity to give the Manager the powers it does require to fulfil the obligations that it has agreed to undertake as an officer of the Court.

[15] Submissions were made with respect to certain provisions of the draft order. In particular, the Applicants objected to paragraph 12, 13 and 14, and subparagraph 5(o), which would effectively impose a duty on Persons (as defined in the draft order, and including but not limited to the Monitor and the CRO) to provide access and cooperation to the Manager with respect to any Management Property, including Records of the Pride Entities and other potentially very significant assistance. They would also allow the Manager or its agents to take certain steps in the name of the Pride Entities, such as with respect to vehicle permits and licenses.

[16] In my view, these paragraphs are not necessary or appropriate at this time, and I directed that they be deleted. They are not included in the BDO appointment order. The objective of the relief being sought and granted is to provide for the mechanical turnover of vehicles comprising the Remaining Assets, while avoiding duplicative or overlapping processes being undertaken by

multiple professional teams. I am not persuaded at this time that these powers are necessary for the Manager to fulfil its core functions. If there are issues and disputes that cannot be resolved between and among the affected parties on a consensual basis, any affected party may seek further advice and directions from the Court as may be required.

[17] Further extensive submissions were made about paragraph 21 of the draft order which would confirm that all employees of the Pride Entities shall remain such, and paragraph 22 which deals with the Canada *Personal Information Protection and Electronic Documents Act* (*PIPEDA*) issues.

[18] The Applicants submitted that these paragraphs were not necessary and should be deleted. I am satisfied that they are appropriate and can remain in the order. They are consistent with the Turnover Order and the basis upon which all parties have been proceeding (i.e., there is no dispute that employees remain employees of the Pride Entities until that employment may be terminated).

[19] With respect to *PIPEDA*, I am satisfied that personal information of employees will be protected. What the Manager needs is information such as by way of example, counterparty information where vehicles forming part of the inventory being turned over are subject to continuing leases. That is going to be necessary to effect the sale of such vehicles. The parties and the proposed Manager are well aware of their statutory obligations under *PIPEDA*.

[20] Finally, extensive submissions were made about Schedule “B” to the Syndicate Collateral Management Order which is a list of vehicles covered by the scope of the order identified by, among other things, VIN. Issues have arisen because the parties, and in particular, the Syndicate Agent on the one hand and the Pride Entities, the CRO and the Monitor on the other hand, are not in agreement with respect to which specific vehicles should be included or excluded.

[21] This is a function, in part, of the disarray of the books and records of the Pride Entities as described in previous Endorsements. There are issues arising what have been described as multiple collateral vehicles, or MCVs, in respect of which the same collateral appears to have been pledged to different lenders with the same or overlapping purported priority.

[22] I am now advised that there are further issues where certain vehicles said by various Recourse Lenders to have been pledged to them as collateral for financing either cannot be located at all and do not appear as assets on the books and records of the Pride Entities, or were sold by the Pride Entities prior to the commencement of this *CCAA* Proceeding without the consent of the relevant Recourse Lender(s), and without any accounting for proceeds thereof. There are still other vehicles in respect of which investigations remain ongoing. No party yet has complete certainty with respect to the status or location of such vehicles. I make no determination today about what has occurred with respect to these issues, or what flows therefrom.

[23] I pause to observe that various other Recourse Lenders advised the Court that they are facing the same issues as is the Syndicate Agent with respect to vehicles pledged to them.

[24] Accordingly, I directed the parties, and particularly the Syndicate Agent on the one hand and the Pride Entities, the CRO and the Monitor on the other hand, who are already in discussions about finalizing Schedule “B”, to attempt to reach agreement on the VINs to be included and provide me with a revised version of the draft order within two days. That has now been done, and the parties are in agreement that the order can issue with the current version of the Schedule “B”.

[25] However, and to be clear, investigations and therefore discussions with respect to various vehicles, remain ongoing. Accordingly, and as I advised the parties at the conclusion of the hearing of this motion, that Schedule “B” may be updated or amended by agreement among the Manager, the Monitor and the CRO, or by further order of the Court. Again, my objective is to ensure fairness and transparency, but to do so in a manner that minimizes transaction costs, professional fees, and the necessity to bring formal motions to this Court to deal with issues that can and should be sorted out among the Court officers.

[26] In the same way, submissions were made by counsel for BMO about paragraph 11 of the proposed order. To be clear, if there are errors, and/or inadvertent inclusions or omissions of vehicles, the parties will sort those out and reconcile them, and if they are unable to do so, advice and directions can be sought from this Court.

[27] The Applicants, with the support of the Monitor, proposed that an additional paragraph 7B added to deal with tax liability and CRA issues. This paragraph is appropriate and is to be added. The objective is to ensure that where the Manager or its agents sells a vehicle, reporting and remittance obligations to the CRA are fulfilled and accounted for.

[28] For all of these reasons, I am satisfied that the proposed relief is appropriate and should be granted.

[29] Orders to go in the form signed by me today which are effective immediately and without the necessity of issuing and entering.

A handwritten signature in black ink, appearing to read "Owen, J.", is positioned in the lower right area of the page.