

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Ted Baker Canada Inc., *et al.*,¹

Debtors in a foreign proceeding.

Chapter 15

Case No. 24-10699 (MEW)

(Joint Administration Requested)

Re: Docket No. 7

**REVISED ORDER GRANTING PROVISIONAL RELIEF PURSUANT
TO SECTION 1519 OF THE BANKRUPTCY CODE**

Upon the motion for certain provisional and injunctive relief (the “Motion”)² filed by Ted Baker Canada Inc. as the foreign representative (the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”) seeking entry of an order granting provisional relief (the “Order”) pursuant to sections 105(a), 362, 363, 364, 365(a), 365(e), 1517, 1519, 1521, and 1522 of the Bankruptcy Code to protect the Debtors and their property within the territorial jurisdiction of the United States pending recognition of the Debtors’ proceedings currently pending in Canada pursuant to the CCAA (the “Canadian Proceedings”); and upon this Court’s review and consideration of the Motion, Verified Petition, and the Adams Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: (i) Ted Baker Canada Inc. (BN 3889), (ii) OSL Fashion Service Canada Inc. (“Fashion Canada”) (BN 7745), (iii), OSL Fashion Services, Inc., a Michigan Corporation (“Fashion Services”) (FEIN 1225), and Ted Baker Limited, a New York Corporation (FEIN 3341).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion, if not defined therein, the Initial CCAA Order; provided that “Interim Lender’s Charge” shall be as defined in the Initial CCAA Order, not the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and appropriate, sufficient and timely notice of the Motion and the hearing thereon having been given; and upon the record established at such hearing, it appearing that the relief set forth herein is necessary and appropriate to avoid immediate and irreparable harm to the Debtors; and no objections or other responses having been filed; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such.

B. The statutory bases for the relief set forth herein are sections 1519, 1521(a)(7), 105, 362 and 365 of the Bankruptcy Code.

C. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the Canadian Proceedings are "foreign main proceedings" as that term is defined in section 1502(4) of the Bankruptcy Code or, alternatively, with respect to certain Debtors, the Canadian Proceedings are "foreign nonmain proceedings" as defined in section 1502(5) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the Canadian Proceedings will be satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The provisional relief set forth herein is appropriate to protect the assets of the Debtors and the interests of their creditors pending the Court's consideration of the petition to recognize the Canadian Proceedings.

E. Irreparable harm could and likely would result in the absence of the application of the automatic stay. In the absence of such relief, creditors could take action in the United States that would interfere with the conduct of the Canadian Proceedings to the detriment of the Debtors and of the creditor body as a whole.

F. Irreparable harm could and likely would result if section 365(e) of the Bankruptcy Code were not immediately made applicable, as parties in the United States could and likely would purport to terminate important contracts.

G. Application of the automatic stay, and of section 365(e) of the Bankruptcy Code, on an interim and provisional basis will preserve the status quo and will not result in any significant harm or prejudice to other parties. Any harm that conceivably could result to other parties as a result of such relief is less than the irreparable harm to the Debtors that would likely result if such relief were not granted.

H. Application of the automatic stay, and of section 365(e) of the Bankruptcy Code, will serve the public interest in that, among other things, such relief is necessary to realize the intent and objectives of chapter 15 in this case.

I. The Initial CCAA Order, among other things, authorizes the Debtors to borrow from the Interim Lender an additional amount up to USD\$7,000,000 under its Existing Credit Facility on the terms and condition set forth in paragraph 34 to 38 of the Initial CCAA Order and provides that the Property of the Debtors is subject to the Interim Lender's Charge as security for the Interim Facility as set forth in paragraph 37 of the Initial CCAA Order.

J. The Interim Lender has asked that this Court approve the financing terms that are set forth in paragraphs 34 to 38 of the Initial CCAA Order. As stated on the record at the hearing today, it is not clear that the approval of this Court is required at this stage of these proceedings,

as no recognition order has been entered. However, the Foreign Representative has shown that the businesses of the Debtors would suffer immediate and irreparable harm if the Interim funding authorized in the Initial CCAA Order is not available, and the Lender has indicated that it is unwilling to take the risk that loans secured by US assets might be treated later as having not been authorized by appropriate judicial action in the United States.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Beginning immediately upon the entry of this Order, and continuing through a ruling by the Court on the petition for recognition of the Canadian Proceedings, section 362 of the Bankruptcy Code shall apply to the Debtors and their property within the territorial jurisdiction of the United States, subject to such exceptions to the automatic stay as are set forth in the Bankruptcy Code. For the avoidance of doubt, the application of the automatic stay prohibits the termination or alteration of contracts or leases to which the Debtors are parties, or the enforcement of remedies under such contracts or leases, in the absence of an Order of this Court granting relief from the stay.
3. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code, (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed or (c) enjoining any rights or remedies provided to the Interim Lender pursuant to the Initial CCAA Order.
4. In addition, the application of the automatic stay pursuant to this Order shall not bar or enjoin the performance of any act authorized by the Canadian court in the Canadian

Proceedings, including without limitation the borrowing of funds and the grant and confirmation of liens and security interests as specified in paragraphs 34 through 38 of the Initial CCAA Order.

5. Beginning immediately upon the entry of this Order, and continuing through a ruling by the Court on the petition for recognition of the Canadian Proceedings, section 365(e) of the Bankruptcy Code shall apply to all US contracts to which the Debtors are parties.

6. Any party in interest may make a motion seeking relief from or modifying this Order by motion or application to this Court, which may be heard on shortened notice if the circumstances so warrant.

7. No security shall be required pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure.

8. To the extent that this Court's approval is required, the Debtors are authorized to obtain funding under the Interim Facility subject to and secured by the Interim Lender's Charge, to apply the Interim Lender's Charge to the Debtors' assets located in the United States, and to confirm that the Interim Lender's existing liens and security interests shall apply with respect to the funding obtained under the Interim Facility, in each case in accordance with the terms set forth in paragraphs 34 to 38 of the Initial CCAA Order. To the extent that this Court's approval is required, the Debtors are authorized to execute, and the Interim Lender may file or record, any financing statements, mortgages, other instruments or any other document to further evidence the liens authorized, granted, and perfected hereby and by the Initial CCAA Order. In addition, to the extent this Court's approval is required, the Debtors are authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive documents as are contemplated by the Interim Facility or as may be reasonably required by the Interim Lender pursuant to the terms thereof, provided that the failure to execute any such documentation does not invalidate any loans under the Interim Facility or the validity or priority of the Interim Lender's Charge, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees,

liabilities, and obligations to the Interim Lender under and pursuant to the Interim Facility and Initial CCAA Order (and in accordance with the cash flow forecast filed in connection with the Initial CCAA Order) including, but not limited to, the fees and expenses of the Interim Lender's Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed. If and when recognition of the Canadian Proceedings is granted, and if and when the Initial CCAA Order is made enforceable in the United States, the Lender shall be entitled to the protections of section 364(e) of the Bankruptcy Code.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the Interim Lender are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

10. Nothing in this Order shall be deemed to waive, release, extinguish or estop the Foreign Representative or the Debtors from asserting, or otherwise impair or diminish, any right, claim, cause of action, defense, offset or counterclaim in respect of any asset or interest with respect to, among other things, the License Agreements with ABG, any lease for real property and the warehousing of any property of Debtors or Prepetition Collateral.

11. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
April 26, 2024

s/Michael E. Wiles
Honorable Michael E. Wiles
United States Bankruptcy Judge