

COURT FILE NO.: CV-25-00738613-00CL

DATE: 20250319

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC
BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.,
Applicants

BEFORE: Peter J. Osborne J.

COUNSEL: *Ashley Taylor, Elizabeth Pillon, Maria Konyukhova, Britnney Ketwaroo, Philip Yang and Nick Avis, for the Applicants*
Davis Bish, for Cadillac Fairview
Evan Cobb, for Bank of America
Linc Rogers and Caitlin McIntyre for Restore Capital LLC
Chad Kopach, for EY in the Receivership of Woodbine Mall Holdings Inc.
Lou Brzezinski, Alexandra Teodorescu and Nadav Amar, for TK Elevator (Canada) Ltd.
Haddon Murray, for Cominar Real Estate Investment Trust & Chanel ULC
Andrew Winton and Annecy Pang, for KingSett Capital Inc.
Sean Zweig, Michael Shakra and Thomas Gray, for the Court-appointed Monitor
Trevor Courtis and Heather Meredith, for Bank of Montreal and Desjardins Financial Security Life Assurance Company
Gilles Benchaya and Mandy Wu, for Restore Capital LLC and Bank of America
James D. Bunting, for Ivanhoe Cambridge Inc.
Robert J. Chadwick, Joseph Pasquariello and Andrew Harmes, for RioCan Real Estate Investment Trust
Tushara Weerasooriya, Jeffrey Levine and Guneev Bhinder, for B.H. Multi Com Corporation, B.H. Multi Color Corporation & Richline Group Canada Inc.
Gregg Galardi, US Counsel for File Agent (Restore Capital LLC) as DIP Lender
Isaac Belland, for LVMH Moet Hennessy Louis Vuitton SA
Jake Harris, for the DIP Lenders
Matthew Cressatti, for the Trustees of the Congregation of Knox's Church, Toronto
D.J. Miller and Andrew Nesbitt, for Oxford Properties Group, OMERS Realty Management Corporation, Yorkdale Shopping Centre Holdings Inc., Scarborough Town Centre Holdings Inc., Montez Hillcrest Inc., Hillcrest Holdings Inc., Kingsway Garden Holdings Inc. Oxford Properties Retail Holdings Inc., Oxford

Properties Retail Holdings II Inc., OMERS Realty Corporation, Oxford Properties Retail Limited Partnership, CPPIB Upper Canada Mall Inc., CPP Investment Board Read Estate Holdings Inc.

Calvin Horsten, for Toronto-Dominion Bank

George Benchetrit, for Nike Retail Services Inc. and PVH Canada Inc.

Linda Galessiere, for Ivanhoe Cambridge II Inc./Jones Lang LaSalle Incorporation, Morguard Investments Limited and Salthill Property Managements Inc.

Steven Weitz and Dilina Lallani, for Ferragamo Canada Inc.

David Ullman and Brendan Jones, for Bentall Green Oak, Primaris REIT, Quadreal Property Group

David Preger and Stephen Posen, for 100 Metropolitan Portfolio, Mantella & Sons

Shayne Kukulowicz and Monique Sassi, for the Proposed Liquidator

Andrew J. Hatnay, Robert Drake and Abir Shamim, for certain HBC Employees and Retirees

Ken Rosenberg, Max Starnino, Emily Lawrence and Evan Snyder, for The Financial Services Regulatory Authority of Ontario

Sam Rogers, for Investment Management Corporation of Ontario

Kelly Smith Wayland, for the Department of Justice (Canada)

Jodi Nesbitt, for UNIFOR Local 240

HEARD: March 19, 2025

ENDORSEMENT

OSBORNE J.

1. This is further to my Endorsement made in this matter on March 17, 2025, and further to the continuation of the comeback hearing yesterday, March 19, 2025.
2. Counsel for the Applicants advised the Court that good faith discussions between the Applicants on the one hand, and creditors, landlords and other stakeholders on the other hand, were continuing as facilitated by the Court-appointed Monitor.
3. Counsel advised that the parties were attempting to resolve a number of the matters that were contested at the hearing earlier this week related to the scope of relief sought by the Applicants at the comeback hearing. As a result, the Applicants requested, with the concurrence and support of other parties and with the recommendation of the Monitor, a further brief adjournment of this matter to conclude those discussions.
4. The Service List has been served. No party opposes the request, and several parties actively support it.

5. Defined terms in this Endorsement have the meaning given to them in my earlier Endorsements made in this proceeding or the motion materials unless otherwise stated.
6. In the circumstances, I am prepared to grant a brief adjournment. As indicated in Court at the conclusion of the hearing today, this matter will be continued on **Friday, March 21, 2025 at 10:00 AM at the Courthouse.**
7. As with earlier hearings in this matter, and with a view to maximizing accessibility and minimizing cost, those parties unable to attend in person at the Courthouse tomorrow may attend remotely via Zoom link (the same zoom link used for the hearing yesterday).
8. The continuation of the stay of proceedings and the balance of the relief sought on the motions summarized above will be addressed at that time.
9. In the interim, the Applicants request certain relief by way of amendments to the Initial Order. All of the relief sought is included in the prayer for relief in the Notice of Motion of the Applicants returnable March 17, 2025, supported by the Affidavit of Jennifer Bewley sworn March 14, 2025 (the “Second Bewley Affidavit”) on which the Applicants rely, and is fully described in the First Report of the Monitor dated March 16, 2025.
10. This relief is also unopposed by any party, supported by many stakeholders and recommended by the Monitor.
11. First, the stay of proceedings is extended to including March 21, 2025 or such later date as this Court may order, pursuant to sections 11.02(2) and (3) of the *CCAA*. The present circumstances are such that the proposed extension is appropriate. I am satisfied that the Applicants have acted and continue to act in good faith and with due diligence. The Applicants and the Monitor confirm that the Company has sufficient liquidity to fund operations through the proposed stay extension period.
12. Second, the quantum of the Directors’ Charge is increased to \$49,200,000 pursuant to sections 11.51 and 11.52 of the *CCAA*. While this amount is significant, it reflects, to a very large extent, the business of the Applicants as a major national retailer with the attendant HST remittance obligations, as well as payroll deduction remittance obligations in respect of the approximately 9,400 employees, and the maximum potential exposure related thereto. The Monitor supports the proposed increase and the quantum.
13. Third, the relative priorities of the Administration Charge, the Directors’ Charge and the DIP Charge as established in the Initial Order at paragraph 40, are amended, such that they shall be as follows:
 - a. with respect to Property other than the Loan Parties’ Property, the Administration Charge shall rank first to a maximum amount of \$2,800,000, and the Directors’ Charge shall rank second to a maximum amount of \$49,200,000; and
 - b. with respect to the Loan Parties’ Property, subject in all cases to the Priority Waterfall (as defined in the DIP Term Sheet), as amongst themselves, the priorities of the Charges shall be as follows:

Priority Ranking	ABL Priority Collateral	Pathlight Priority Collateral	Other Collateral (as defined in the DIP Agreement)
1 st	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).
2 nd	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	All amounts owing under the Pathlight Credit Facility (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).
3 rd	Directors' Charge (to the maximum amount of \$13,500,000).	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	DIP Lenders' Charge.
4 th	DIP Lenders' Charge.	Directors' Charge (to the maximum amount of \$13,500,000)	Directors' Charge (to the maximum amount of \$35,700,000).
5 th	Directors' Charge (to the maximum amount of \$35,700,000).	DIP Lenders' Charge.	
6 th	Term Loan Obligations (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$35,700,000).	

14. Third, the proposed engagement of Reflect Advisors, LLC ("Reflect") as financial advisor to Hudson's Bay, according to the terms of the proposed Reflect Engagement Agreement, is approved, and the Applicants are authorized to enter into and perform that Agreement. Paragraph 31 of the Initial Order is amended to include Reflect within the existing Administration Charge as a beneficiary thereof.
15. The Court has the discretion pursuant to section 11 of the *CCAA* to permit debtor companies to enter into arrangements to facilitate a restructuring. Such arrangements may include the retention of expert advisors where necessary to assist with restructuring efforts: *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371 at para. 27.
16. Such agreements are often approved in the context of *CCAA* proceedings, where the Court is satisfied that such is appropriate, upon consideration of the following factors, among others:

- a. whether the debtor and the court officer overseeing the proceedings believe that the quantum in nature of the remuneration are fair and reasonable;
- b. whether the financial advisor has industry experience and/or familiarity with the business of the debtor;
- c. whether any proposed success fee is necessary to incentivize the financial advisor; and
- d. the complexity of the debtor's business, and whether that complicates any monetization or restructuring efforts.

See: *Just Energy Corp., Re*, 2021 ONSC 1793 at para 113; *Danier Leather Inc. Re*, 2016 ONSC 1044 at para 47, citing *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 at paras 46–47; and *Colossus Minerals Inc (Re)*, 2014 ONSC 514 at paras 30–36.

17. Courts have considered similar factors when determining whether to grant a charge to secure the fees of a financial advisor: *Payless ShoeSource Canada Inc and Payless ShoeSource Canada GP Inc (Re)*, 2019 ONSC 1215 at paras 30–33; and *Target Canada Co., Re*, 2015 ONSC 303 at paras. 72-75.
18. Here, the Monitor supports the engagement of Reflect and its inclusion as a beneficiary in the Administration Charge. There will be no increase to the quantum of that Charge as a result thereof.
19. Reflect has worked extensively with the Company since its engagement in February, 2025 and has been involved in the consideration of strategic alternatives and restructuring options and the development of pro forma financial models.
20. I note that, as set out at paragraphs 86 – 90 of the Second Bewley Affidavit and Exhibit “F” thereto (being an unredacted copy of the Reflect Engagement Letter), the proposed Reflect Engagement Letter includes a monthly flat fee for the first two months and hourly fees thereafter, but Reflect does not earn any success fees or other fees contingent on certain milestones being achieved in any restructuring.
21. I am satisfied that, in the challenging and rapidly evolving circumstances of this case, its work will be accretive to the efforts of the Applicants, and that the above-noted factors are satisfied here.
22. For all of these reasons, the relief sought today is granted.
23. Order to go in the form signed by me which has immediate effect without the necessity of issuing and entering.


Justice Peter Osborne

