

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 18TH
JUSTICE OSBORNE) DAY OF AUGUST, 2022

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

AND IN THE MATTER OF SUNGARD AVAILABILITY
SERVICES (CANADA) LTD./SUNGARD, SERVICES DE
CONTINUITE DES AFFAIRES (CANADA) LTEE

APPLICATION OF SUNGARD AVAILABILITY SERVICES
(CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE
DES AFFAIRES (CANADA) LTEE UNDER SECTION 46 OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

**ORDER
(Recognizing Foreign Order and Lifting the Stays of Proceedings)**

THIS MOTION, made by Digital Toronto Nominee, Inc. ("**Digital Realty**") for an order substantially in the form enclosed in the motion record, was heard this day by video conference.

ON READING the notice of motion, the affidavit of James Zografos sworn August 11, 2022 (the "**Zografos Affidavit**"), the affidavit of Mitchell Stephenson sworn August 11, 2022 and the supplementary affidavit of Mitchell Stephenson sworn August 15, 2022, each filed, and upon hearing the submissions of counsel for Digital Realty, counsel for Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuité des Affaires (Canada) Ltée ("**Sungard AS Canada**"), counsel for Alvarez & Marsal Canada Inc., in its capacity as court-appointed information officer in respect of these proceedings, and such other counsel that appeared on the

motion, no one else appearing although duly served as appears from the affidavits of service of Raajan Aery sworn August 11, 2022 and August 15, 2022, each filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. THIS COURT ORDERS that the order on Digital Realty's emergency motion for limited relief from the automatic stay granted on August 12, 2022 (the "**Lift Stay Order**") by the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") in the case under Chapter 11 of title 11 of the United States Code commenced by Sungard AS Canada, among other debtors, including the reservation of rights provided in paragraph 4 of the Lift Stay Order, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA. A copy of the Lift Stay Order entered by the U.S. Bankruptcy Court is attached hereto as **Schedule "A"**.

LIFTING STAY OF PROCEEDINGS

3. THIS COURT ORDERS that the stays of proceedings against Sungard AS Canada provided for in paragraph 4 of the initial recognition order (foreign main proceeding) of the Honourable Justice Conway made April 14, 2022 (the "**Initial Recognition Order**") and paragraphs 6 and 7 of the supplemental order (foreign main proceeding) of the Honourable Justice Conway made April 14, 2022 (the "**Supplemental Order**") in the within proceedings are hereby lifted solely to authorize Digital Realty to serve Sungard AS Canada with a notice of default under

the turn key flex datacenter lease between Digital Realty, as landlord, and Sungard AS Canada, as tenant, for premises located at the property municipally known as 371 Gough Road, Markham, Ontario dated May 30, 2013 and to make a claim on the Lease Bond. For the avoidance of doubt, the Initial Recognition Order and the Supplemental Order shall be otherwise unaffected by this Order and continue to stay all other actions in accordance with their terms.

GENERAL

4. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America to give effect to this order and to assist Digital Realty in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Digital Realty as may be necessary or desirable to give effect to this order, or to assist Digital Realty in carrying out the terms of this order.

5. THIS COURT ORDERS that Digital Realty shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this order and for assistance in carrying out the terms of this order.

6. THIS COURT ORDERS AND DECLARES that this order shall be effective as of 12:01 AM on the date of this order.

SCHEDULE "A"
TO ORDER (RECOGNIZING FOREIGN ORDER, ETC.)

ENTERED

August 12, 2022

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

SUNGARD AS NEW HOLDINGS, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 22-90018 (DRJ)

(Jointly Administered)

(Docket No. 518)

**ORDER ON DIGITAL REALTY'S EMERGENCY MOTION
FOR LIMITED RELIEF FROM THE AUTOMATIC STAY**

THIS MATTER having come before the Court on *Digital Realty's Emergency Motion for Limited Relief from the Automatic Stay* [Dkt. No. 518] (the "**Motion**"),¹ the Court having reviewed the Motion, supporting declarations, and any responses thereto, and finding that proper notice of the Motion has been given, and finding that good cause exists to grant relief from the automatic stay as requested in the Motion, determines that the Motion should be granted. Therefore, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The automatic stay is modified to authorize Digital Realty to submit a notice of default and opportunity to cure to Debtor pursuant to Exhibit G and Section 15.1.1 of the Lease.
3. For the avoidance of uncertainty, the automatic stay does not preclude Digital Realty from submitting a claim against the Surety (as defined below) under the Lease Bond or the taking of any further steps necessary for seeking payment under the Lease Bond (collectively, "**Potential Claim**").

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

4. Notwithstanding anything in this Order or the Motion to the contrary, each of the following entities' rights, remedies, claims and defenses are preserved with respect to the Potential Claim under the Lease Bond: Westchester Fire Insurance Company, Chubb Insurance Company of Canada, Federal Insurance Company, each as surety in their role as an issuer of bonds, individually and collectively, and together with their respective direct and indirect subsidiaries, parent companies, and affiliates, whether in existence previously, now, or formed or acquired hereafter, co-sureties, fronting companies, companies which any of them may procure to issue or deliver any bonds and/or related instruments and/or similar instruments issued, executed or delivered by the "Surety" (as defined below) on behalf, at the request or with the consent of any of the Debtors and/or their non-debtor affiliates, and reinsurers, and the successor and assigns of each of them (individually and collectively, the "Surety"). Nothing in this Order or the Motion shall constitute a waiver or estoppel, in whole or in part, of any and all defenses which have accrued or which may in the future accrue with respect to the Potential Claim or otherwise, and the foregoing reservations of the Surety shall remain in full force and effect unless and until waived, in writing, by an authorized representative of the Surety. To the extent there is a conflict between terms used in this Order and/or the Motion ("Motion Documents") and the subject Lease Bond (including its related instruments and/or documents), the Lease Bond and its related instruments and/or documents shall govern.

5. Notwithstanding Bankruptcy Rule 4001(a)(3), this Order shall be effective immediately upon entry of it by the Court.

Signed: August 12, 2022.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

ORDER

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