

CITATION: Nordstrom Canada Retail, Inc., 2023 ONSC 1814
COURT FILE NO.: CV-23-00695619-00CL
DATE: 2023-04-20

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 NORDSTROM CANADA RETAIL INC., NORDSTROM CANADA
HOLDINGS INC., LLC AND NORDSTROM CANADA HOLDINGS II, LLC

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Jeremy Dacks, Tracy Sandler, Martino Calvaruso and Marleigh Dick*, for the
Applicants

Susan Ursel, Emily Home, for the Employee Representative Counsel

Brad Wiffen and Andrew Harmes, for the Monitor

Aubrey Kauffman, for Nordstrom, Inc. (U.S.)

D.J. Miller, for Yorkdale Shopping Centre Holdings Inc.

Linda Galessiere, for Ivanhoe Cambridge Orlando Group

Monique Sassi, Consultant JV

Adam Slavens, for Cadillac Fairview

Scott Bomhof, for First Capital Realty

Harvey Chaiton, for Directors and Officers

Saneea Tanvir, for Valentino

Matilda Lici, for National Logistics Services (2006) Inc.

HEARD: March 20, 2023

ENDORSEMENT

[1] The Applicants, Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC, and Nordstrom Canada Holdings II, LLC, brings this motion for a Sale Approval Order:

- (a) approving a Consulting Agreement between Nordstrom Canada and Canada Leasing LP (together, the “Merchant”) and a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC and Gordon Brothers Canada, ULC (the “Consultant”) dated March 14, 2023 (the “Consulting Agreement”);
- (b) approving the proposed sale guidelines (the “Sale Guidelines”) for the orderly liquidation of certain Merchandise and furniture, fixtures and equipment (“FF&E”) at each of the Merchant’s stores and at a third-party distribution centre (the “Distribution Centre”) through a “store closing”, “everything must go”, “everything on sale” or similar themed sale (the “Sale”);
- (c) authorizing the Merchant to undertake a liquidation process in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines; and
- (d) extending the Stay Period, the Parent Stay and the Co-Tenancy Stay to June 30, 2023.

[2] The evidence to support the requested relief consists of the Affidavit of Misti Heckel, sworn March 8, 2023, the Affidavit of Misti Heckel, sworn March 14, 2023, and the Second Report of the Monitor.

[3] The Monitor supports the requested relief.

[4] The Nordstrom Canada Entities have given notice of these *Companies’ Creditors Arrangement Act* (“CCAA”) proceedings to stakeholders including, all landlords, employees, and an extensive number of vendors and suppliers, and customers.

[5] Counsel to the Applicants reports that after service of the motion, the Monitor and the Nordstrom Canada Entities continued to engage in discussions with counsel for certain landlords and/or the Consultant. As a result of those discussions, the Nordstrom Canada Entities revised the Sale Guidelines, the Sale Approval Order, and the Consulting Agreement. At the hearing, there was no opposition to the requested relief.

[6] This court has jurisdiction to approve a sale process authorizing the liquidation of a debtor’s assets and has done so in the context of retail liquidations. (See: *Target Canada Co. (Re)*, 2015 ONSC 846 at paras. 2-5 (“*Target Canada*”); *Sears Canada, Inc. (et al.)*, Court File No. CV-17-11846-00CL; and *Forever XXI ULC*, Court File No. CV-19-00628233-00CL).

[7] In prior cases involving the approval of liquidation processes, courts have considered the following factors set out in *Nortel Networks Corp. (Re)* 2009 CanLII 39492, for determining whether a Sale Process is appropriate and should be approved.

- (a) is a sale transaction warranted at this time?
- (b) with the sale benefit the whole economic community?

- (c) do any of the debtor's creditors have a *bona fide* reason to object to a sale?
and
- (d) is there a better viable alternative?

[8] I am satisfied that a sale process is warranted and that the Sale will benefit the stakeholders as a whole by realizing proceeds to be applied against the claims of creditors of the Nordstrom Canada Entities. Based on the record, there is no reasonable alternative in the circumstances.

[9] I am also satisfied that the process to select the Consultant to oversee and implement the proposed liquidation was both fair and reasonable. The Monitor has been consulted and was directly involved throughout the process.

[10] I note that the terms of the Consulting Agreement, Sale Guidelines and Sale Approval Order are similar to or are typical of agreements and orders for liquidation sales that have been approved in a number of other retail insolvencies including *Sears Canada Inc. (Re)* (2017) ONSC 6235, and *Target Canada*.

[11] Counsel to the Nordstrom Entities emphasized that the Merchant intends to work cooperatively with each landlord throughout the Sale and has already undertaken significant discussions with counsel for certain landlords in an effort to address questions or comments respecting the Sale.

[12] These discussions resulted in the consensual order being sought today. Potential issues relating to such subjects as augmented inventory and the status of indemnities need not be addressed at this time.

[13] I am satisfied that the record establishes that the *Nortel* criteria and the additional criteria referenced section 36(3) of the CCAA have been satisfied. In my view, it is appropriate to approve both the Consulting Agreement and the Sale Guidelines.

[14] The Applicants also seek to extend the Stay Period, the Parent Stay and the Co-Tenancy Stay up to and including June 30, 2023, to allow the Applicants to complete the Sale Process as planned. I am satisfied that the Applicants have acted and are acting in good faith and with due diligence in pursuing the orderly wind down of their business and that an extension of the Stay Period to June 30, 2023, which is the targeted Sale Termination Date, is appropriate in the circumstances. In arriving at this conclusion, I note that the required cash flow forecast has been filed and indicates that the Applicants will have sufficient liquidity to operate through to June 30, 2023. In my view it is also appropriate to extend the Co-Tenancy Stay to the same date.

[15] Finally, I am also prepared to extend the Parent Stay to June 30, 2023. This extension is granted on the understanding that there is no opposition from any landlord and that such extension has no precedential value.

[16] The motion is granted and the order has been signed in the form presented.


Chief Justice G.B. Morawetz

Date: March 20, 2023