

**CITATION:** Nordstrom Canada Retail, Inc., 2023 ONSC 1631  
**COURT FILE NOS.:** CV-23-00695619-00CL  
**DATE:** 20230310

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**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** Justice Thomas J. McEwen

**COUNSEL:** *Jeremy Dacks and Marleigh Dick*, for the Applicants

*Brad Wiffen and Andrew Harmes*, for the Monitor

*Susan Ursel and Karen Ensslen*, Employee Representative Counsel

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

*Adam Slavens*, for Cadillac Fairview

*Harvey Chaiton*, for the Directors and Officers of the Nordstrom Canada Entities

**HEARD:** March 10, 2023

**ENDORSEMENT**

[1] On March 2, 2023, Nordstrom Canada Retail, Inc., together with the other applicants (collectively, the "Applicants") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36 (the "CCAA") pursuant to an Initial Order. The Initial Order provided for a stay of proceedings up to March 10, 2023.

[2] Today, at the comeback hearing, the Applicants seek an Amended and Restated Initial Order (the "AIRO"). The AIRO seeks limited and tailored relief pending the next hearing in this matter scheduled for March 20, 2023.

[3] Primarily, the relief sought is as follows:

- (a) extending the Stay Period and the Parent Stay to March 20, 2023;

- (b) approving a Key Employee Retention Plan (the “KERP”) and related charge (the “KERP Charge”) as security for payments under the KERP; and
- (c) increasing the Administration Charge to \$1.5 million and the Directors’ Charge to \$13.25 million.

[4] In support of the requested relief, the Applicants relied upon the affidavit of Misti Heckel sworn March 1, 2023, filed in support of the request for the Initial Order, and the second affidavit of Ms. Heckel sworn March 8, 2023. Additionally, the Monitor has filed its First Report dated March 8, 2023.

[5] The motion was unopposed and supported by the Monitor. At the hearing, counsel advised that the form of the order requested had been negotiated with the various relevant stakeholders.

[6] For the reasons that follow, I granted the AIRO.

[7] First, I am satisfied that the Stay Period and Parent Stay ought to be extended to March 20, 2023. Section 11.02(2) of the CCAA provides that the court may extend a stay order for any period necessary, if the court is satisfied that (a) circumstances exist to make the order appropriate, and (b) the applicant has acted, and is acting, in good faith and with due diligence. Based on the filed materials and the submissions of counsel, I accept that the Applicants have acted in good faith and with due diligence in pursuing the orderly wind-down of their business since the date of the Initial Order. There has been extensive stakeholder engagement including employees, landlords, merchandise vendors and customers. I accept that the Applicants, with the assistance of the Monitor, intend to continue to engage with the various stakeholders leading up to the March 20, 2023 hearing date. At that time, the Applicants will be seeking further orders of this Court and are currently developing a “realization process” with an aim to complete store closings and achieve a consensual resolution of the issues involving landlords.

[8] Further, insofar as the landlords are concerned, the Applicants and the landlords, supported by the Monitor and unopposed by any other party, agreed to the following endorsement which I have approved:

The landlord parties, whether in attendance today or not, reserve their rights with respect to any relief sought on March 20, 2023 and also reserve their rights to deal with substantive issues involving the landlords on March 20, 2023. This reservation of rights does not apply to the relief granted today in the Amended and Restated Initial Order with respect to the increases in the Administration Charge, the Directors’ Charge and the approval of the KERP and the KERP Charge.

[9] Second, the basis for and the scope of the proposed KERP are appropriate. In making this finding I have taken into account the factors previously considered by the courts in approving a KERP in *Walter Energy Canada Holdings Inc. (Re)*, 2016 BCSC 107, and in *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980. The Applicants, in their business judgment, have determined that the KERP is both objectively reasonable in scope and quantum as well as being necessary to carry out the restructuring.

[10] Third, it is also appropriate to increase the quantum of the Administration Charge to a maximum of \$1.5 million and the Directors' Charge to a maximum of \$13.25 million for the reasons set out in the materials. The increases are relatively modest and well-supported in the record. The increases also reflect the greater potential obligations and liabilities that may arise during these CCAA proceedings, and in particular during the proposed realization process.

[11] I have also reviewed the related and ancillary relief set out in the AIRO and find it to be fair and reasonable. I have particularly had regard to the issues raised in the First Report including the priority of the Charges and the increase of the amount to pay third party providers. I am also satisfied that there is sufficient liquidity during the Stay Period and Parent Stay Period.

[12] The motion is therefore granted and I have signed the AIRO.



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McEwen J.

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**HEARD:** March 10, 2023

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**ENDORSEMENT**

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**McEwen J.**

**Released: March 10, 2023**