



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00718993-00CL

DATE: **01-AUG-2024**

NO. ON LIST: 2

TITLE OF PROCEEDING: TED BAKER CANADA INC. et al v. YORKDALE SHOPPING CENTRE HOLDINGS INC et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Alvarez & Marsal Canada Inc.	zweigs@bennettjones.com
Jesse Mighton	Alvarez & Marsal Canada Inc.	mightonj@bennettjones.com
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Andrew Harmes	Authentic Brands Group	aharmes@goodmans.ca

ENDORSEMENT OF JUSTICE STEELE:

- [1] The applicants seek an order extending the stay to January 31, 2025, and a declaration that the *Wage Earner Protection Program Act* (“WEPPA”) applies.
- [2] There is no opposition to the relief sought by the applicants on this motion.
- [3] The Monitor recommends that the Court grant the relief requested by the applicants.
- [4] The applicants seek to extend the stay period to January 31, 2025. Section 11.02(2) of the *Companies’ Creditors Arrangement Act* empowers the court to grant a stay extension where the court is satisfied that circumstances exist that make such an order appropriate, and the applicants have acted and continue to act in good faith.
- [5] The applicants have acted in good faith and with due diligence; there is no evidence to the contrary. In addition, I am satisfied that circumstances exist such that it is appropriate to extend the stay. As noted by the applicants, additional time is needed to, among other things complete the sale of the merchandise and FF&E, vacate the applicants’ retail stores, implement post-closing matters in relation to the United Legwear transaction, pursue certain tax refunds in the US, and proceed with the orderly wind-down of the business.
- [6] The applicants also ask the Court to declare that pursuant to ss. 5(1)(b)(iv) and 5(5) of the WEPPA, the applicants meet the criteria prescribed by s. 3.2 of the *Wage Earner Protection Program Regulations* (“WEPP Regulation”) and that their former employees in Canada are eligible to receive payments under and in accordance with WEPPA following the termination of their employment.
- [7] Under s. 5(1) of the WEPPA, an individual is entitled to receive WEPPA payments if, among other things, (i) the individual’s employment is ended for a reason prescribed by regulation; (ii) the former employer is subject to proceedings under the CCAA; (iii) the individual is owed eligible wages by a former employer; and (iv) a court determines under s. 5(5) of the WEPPA that the prescribed criteria are met.
- [8] The criteria that must be satisfied are set out in s. 3.2 of the WEPP Regulation. Under s. 3.2 of the WEPP Regulation, the Court “may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”
- [9] The applicants state that they have sent notices to all Canadian store employees, advising of the date of their respective store closures, and providing notice of their termination on that date. The applicant is selling off its merchandise and FF&E and closing its stores. Notices of disclaimer have been delivered to all landlords in Canada and the U.S. and the latest exit from the applicants’ lease is August 7, 2024. After the sale is complete, a small group of the applicants’ corporate employees will remain to assist with the completion of the wind-down of the applicants’ business.

- [10] As noted by the applicants, declaratory relief in relation to WEPP payments is commonly granted in CCAA proceedings: *Bed Bath & Beyond Canada Ltd. (Re)*, 2023 ONSC 1230, at para. 16; *DCL Corporation (Re)*, (May 8, 2023), Ont. S.C.J. [Commercial List], Court File No. CV-22-00691990-00CL (Endorsement of Justice Osborne).
- [11] The requested declaration is supported by the Monitor. The Monitor has indicated that it will work with Ted Baker Canada to identify all eligible employees and will assist those employees in their claim submissions to Service Canada.
- [12] I am satisfied that the applicants meet the criteria prescribed by s. 3.2 of the WEPP Regulation and that the declaration sought should be granted.
- [13] Order to go in the form signed by me today, which is effective immediately and without the necessity of issuing and entering.

A handwritten signature in blue ink, appearing to be "J. Stille", is located in the lower right quadrant of the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.