

CITATION: Nordstrom Canada Retail, Inc., 2023 ONSC 5450

COURT FILE NO.: CV-23-00635619-00CL

DATE: 2023-10-04

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, LLC and NORDSTROM CANADA HOLDINGS II, LLC

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Jeremey Dacks, Martino Calvaruso and Marleigh Dick*, for the Applicants

Brendan O'Neill, Brad Wiffen, for the Monitor, Alvarez & Marsal Canada Inc.

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

Aubrey Kaufman, for Nordstrom Inc. (US parent)

David Bish, for Cadillac Fairview

HEARD and

DETERMINED: September 27, 2023

REASONS: October 4, 2023

ENDORSEMENT

[1] At the conclusion of the hearing, the motion was granted with brief reasons to follow. These are the reasons.

[2] The Applicants, Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC bring this motion for an order:

- (a) extending the Stay Period (and by extension, the Co-Tenancy Stay) until December 22, 2023;
- (b) approving the wind-up and termination of the Employee Trust and granting certain releases related thereto; and
- (c) discharging the KERP charge.

[3] The evidentiary basis for the relief is set out in the Affidavit of Misti Heckel sworn September 20, 2023 and the Sixth Report of the Monitor.

[4] There was no opposition to the motion.

[5] The Applicants have completed the Liquidation Sale.

[6] The Applicants have also completed the wind-down of their retail operations across Canada, including the termination of their employees, and disclaiming or otherwise terminating all leases not subject to transactions pursuant to the Lease Transaction Process.

[7] The Applicants, in consultation with the Monitor, have implemented a Claims Process and are working to resolve creditor claims.

[8] The Applicants also report that they have reached agreements in principle with certain landlords and is continuing to work, in consultation with the Monitor, to resolve the claims of remaining landlords.

[9] The Applicants seek an extension of the Stay Period in order to continue to work towards, in consultation with the Monitor, a resolution of claims filed in the Claims Process and to develop and finalize a plan of arrangement.

[10] The Applicants are not seeking a further extension of the Parent Stay granted in the Initial Order.

[11] The Applicants and the Monitor have confirmed that the Applicants will have sufficient liquidity to fund the CCAA proceedings during the proposed Stay Extension.

[12] The Monitor supports the proposed Stay Extension.

[13] I am satisfied that the Applicants have been and continue to work in good faith and with due diligence, such that the request to extend the Stay period is reasonable in the circumstances and is granted.

[14] The Initial Order approved the creation of the Employee Trust for the benefit of employees of Nordstrom Canada, funded by Nordstrom U.S. The purpose of the Trust has now been satisfied and it is anticipated that the Employee Trust will be wound up and terminated by mid-November 2023. It is proposed that the Employee Trust will be terminated upon the Monitor delivering a Certificate to the affected parties. No further actions are required pursuant to the terms of the Employee Trust.

[15] The Nordstrom Canada Entities are seeking a release of the Monitor as Administrator, Gale Rubenstein as Trustee, and Nordstrom U.S., as Settlor of the Employee Trust (together, the "Employee Trust Released Parties") from their respective obligations under the Trust Agreement and from any claims relating to the activities as Administrator, Trustee and Settlor, respectively.

[16] The court has the jurisdiction under section 11 of the CCAA to grant the requested releases.

[17] Third-party releases covering parties responsible for an Employee Trust were granted as part of the CCAA Plan for *Target Canada Co. (Re)*, 2016 ONSC 3651 (“*Target*”). In that case, the court concluded that “each of the Released Parties has contributed in tangible and material ways to the orderly wind-down of the Target Canada Entities’ business”. The “Released Parties” included the employee trust released parties. The Applicants submit that the Employee Trust in these proceedings was generally modelled on the employee trust in *Target*.

[18] The test for granting third-party releases in a CCAA proceeding is well-established. The court must ask: (a) whether the parties to be released were necessary to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and (e) whether the releases benefit the debtor as well as the creditors generally. (See: *Arrangement relative à Black Rock Metals Inc.*, 2022 QCCS 2828 at para 130, citing *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587)

[19] I am satisfied and accept the Nordstrom Canada Entities’ submission that the Employee Trust has played a key role in the Nordstrom Canada Entities orderly wind-down, the Employee Trust Released Parties have made a tangible contribution to this proceeding, the claims to be released are rationally connected to the wind-down and the releases are appropriately limited in scope. Accordingly, I am satisfied that the releases of the Employee Trust Released Parties are appropriate in the circumstances and are granted.

[20] With respect to the KERP, Nordstrom Canada, in consultation with the Monitor, has made all applicable KERP payments to eligible employees and no further payments are remaining under the terms of the KERP. Accordingly, it is appropriate to grant an order that the KERP charge be terminated, released, and discharged.

[21] The motion is granted and an order giving effect to the foregoing has been signed.



Chief Justice Geoffrey B. Morawetz

Date: October 4, 2023