

CITATION: YRC Freight Canada Company (Re), 2023 ONSC 5513

COURT FILE NO.: CV-23-00704038-00CL

DATE: 2023-10-05

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 YRC FREIGHT CANADA COMPANY, YRC
LOGISTICS INC., USF HOLLAND INTERNATIONAL SALES CORPORATION
AND 1105481 ONTARIO INC.**

**APPLICATION OF YELLOW CORPORATION UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED**

Applicant

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Caroline Descours, Andrew Harmes, Brennan Caldwell and Rob Chadwick*, for
Yellow Corporation

Natalie Levine, for Alvarez & Marsal Canada Inc. (Information Officer)

Sanee Tanvir and Roger Jaipargas, for United States of America

Aryo Shalviri and Linc Rogers, for MFN Partners, L.P.

David Rosenblat and Ben Muller, for Citadel Advisors LLC

Alex St. John, for Teamsters (Local Union 938)

Anthony Dale, for Unifor (Local 4209)

Kathryn Esaw, for Estes Express Lines

HEARD and

DETERMINED: September 29, 2023

REASONS: October 5, 2023

ENDORSEMENT

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

[2] Yellow Corporation (the “Applicant” or the “Yellow Parent”), in its capacity as Foreign Representative (the “Foreign Representative”) in respect of the proceedings commenced by the Yellow Parent and certain of its affiliates, including by YRC Freight Canada Company, YRC Logistics Inc., USF Holland International Sales Corporation and 1105481 Ontario Inc. (collectively, the “Canadian Debtors” and each a “Canadian Debtor”), under Chapter 11 of the United States Code (the “Chapter 11 Cases”) brought this motion for an order (the “Second Supplemental Order”) recognizing and enforcing the U.S. Orders (defined below) entered by the United States Bankruptcy Court for the District of Delaware (the “U.S. Bankruptcy Court”) pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (“CCAA”).

[3] The motion was not opposed.

[4] The evidentiary basis for the relief is set out in the Affidavit of Matthew A. Doheny dated September 22, 2023 and in the First Report of the Information Officer.

[5] The Foreign Representative seeks recognition of the following Final First Day Orders:

- (a) the Final DIP Order;
- (b) the Final UST Cash Collateral Order;
- (c) the Final Cash Management Order;
- (d) the Final Wages Order;
- (e) the Final Critical Vendors Order;
- (f) the Final Utilities Orders;
- (g) the Final Insurance and Surety Bond Order;
- (h) the Final Taxes Order;
- (i) the Final Customer Collections Order;
- (j) the Final Creditor Matrix Order; and
- (k) the Final Equity Trading Procedures Order.

[6] The Foreign Representative also seeks recognition of the following additional orders:

- (a) the Bar Date Order;
- (b) the Omnibus Rejection Order;

- (c) the Rejection Procedures Order;
- (d) the De Minimis Assets Order;
- (e) the Bidding Procedures Order; and
- (f) the Real Estate Stalking Horse Order.

[7] The orders to in [5] and [6] are collectively referred to as the “U.S. Orders”.

[8] The issue on this motion is whether the court should grant the Second Supplemental Order recognizing the U.S. Orders pursuant to section 49 of the CCAA.

[9] The Applicant submits it is necessary and appropriate for the court to grant the relief sought in order to preserve the value of the Canadian Debtor and the Canadian Business while the Company pursues its wind-down and sale efforts pursuant to the Chapter 11 Cases.

[10] This court previously recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order, granted on August 29, 2023.

[11] When a “foreign main proceeding” has been recognized, subsection 49(1) provides the court with jurisdiction to grant “any order that it considers appropriate” with respect to such foreign proceedings if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.

[12] Typically, a Canadian court will only refuse to recognize an order of another court in situations where subsection 61(2) of the CCAA is engaged. Subsection 61(2) provides that “nothing in this Part [IV] prevents the court from refusing to do something that would be contrary to public policy.” Canadian courts have held that this exception to recognition should be interpreted narrowly (*Hartford Computer Hardware, Inc., Re*, 2012 ONSC 964 at paras. 17 – 18).

[13] In considering whether to recognize a foreign order, including an order made in a Chapter 11 proceeding, Canadian courts have considered, among other things:

- (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions;
- (b) the need to respect foreign bankruptcy and insolvency legislation;
- (c) the equitable treatment of stakeholders, and, to the extent reasonably possible, the equal treatment of stakeholders regardless of the jurisdiction in which they reside; and
- (d) that the appropriate level of court involvement depends to a significant degree upon the court’s nexus to the enterprise.

(*Xerium Technologies Inc., Re.*, 2010 ONSC 3974 at paras. 26 – 27).

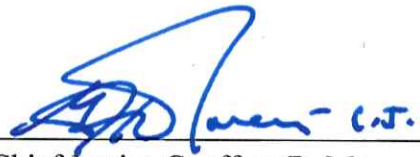
[14] The Applicant submits that the consideration of these factors supports the conclusion that this court should recognize the U.S. Orders.

[15] The Information Officer supports the position of the Applicant and advised that the requested relief did not give rise to any public policy concerns.

[16] Having reviewed the Record and hearing submissions, I accept the submissions of the Applicant.

[17] I am satisfied that the requested order is necessary for the protection of the Applicant's property and the interest of creditors.

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


Chief Justice Geoffrey B. Morawetz

Date: October 5, 2023