

CITATION: YRC Freight Canada Company, 2023 ONSC 7169
COURT FILE NO.: CV-23-00704038-00CL
DATE: 2023-12-21

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, Brennan Caldwell and Andrew Harmes*, for Yellow Corporation

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

Katy O'Rourke, for Teamsters (Local Union 879)

Natalie Levine, Stephanie Fernandes and Joshua Nevsky, for Alvarez & Marsal Canada Inc. (Information Officer)

Roger Jaipargas, for the Bank of New York Mellon, as Administrative Agent and Collateral Agent under the UST Credit Agreements

David Rosenblat, for Citadel Advisors LLC, as Postpetition B-2 Lender

Aryo Shalviri, for MFN Partners, L.P. as Junior DIP Lender

Sanee Tanvir, for United States of America

HEARD: December 19, 2023

ENDORSEMENT

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

[2] Yellow Corporation (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 YRC Freight Company Canada, YRC Logistics Inc., USF Holland International Sales Corporation and 1105481 Ontario Inc. (collectively, the “Canadian Debtors”), under Chapter 11 of the United States Code (the “Chapter 11 Cases”) brought this motion for an order (the “Sale Recognition and Vesting Order”), among other things:

- (a) recognizing the Sale Order (as defined below) made in the Foreign Proceeding;
- (b) approving the Sale Transaction (the “RGH Transaction”) and vesting in the RGH Purchaser all of YRC Freight Canada’s right, title and interest in and to the Acquired Assets (as defined in the RGH APA (the “RGH Acquired Assets”));
- (c) approving the Sale Transaction (the “Allstar Transaction”, and vesting in the Allstar Purchaser all of YRC Freight Canada’s right, title and interest in and to the Acquired Assets (as defined in the Allstar APA (the “Allstar Acquired Assets”, and together with the RGH Acquired Assets, the “Canadian Acquired Assets”)); and
- (d) vesting in the applicable Canadian purchaser of all of YRC Freight Canada’s right, title and interest in and to the RGH Acquired Assets and the Allstar Acquired Assets.

[3] Previous endorsements issued in these proceedings set out the basis for the jurisdiction of this court to recognize orders of the U.S. Bankruptcy Court and are not repeated in this endorsement. (See: *YRC Freight Canada Company (Re)*, 2023 ONSC 5513.).

[4] The motion was not opposed and the Information Officer supported the position of the Yellow Parent.

[5] The evidentiary basis for the requested relief is set out in the Affidavit of Matthew A. Doheny sworn December 13, 2023 (the “Fifth Affidavit”) and the Fourth Report of the Information Officer.

[6] The Fifth Doheny Affidavit establishes that the Debtors retained Ducera Partners LLC (“Ducera”) in February 2023 to serve as their investment banker and financial advisor. During the engagement, Ducera has worked with the Debtors’ management team to develop and implement a marketing process for the sale of the Debtors’ assets. The Fifth Doheny Affidavit also summarizes the extensive process undertaken by the Debtors to market their assets.

[7] On August 7, 2023 the Debtors filed the Bidding Procedures Motion and on September 15, 2023, the U.S. Bankruptcy Court entered the Bidding Procedures Order which was recognized by this court pursuant to the Second Supplemental Order on September 29, 2023.

[8] On September 13, 2023, the U.S. Bankruptcy Court entered the Real Estate Stalking Horse Order approving the \$1.525 billion Real Estate Stalking Horse Bid by Estes Express Lines, as the Real Estate Stalking Horse Bidder, for all the Debtors Owned Properties. The Real Estate Stalking Horse Order was recognized by this court pursuant to the Second Supplemental Order.

[9] In accordance with the Bidding Procedures, the Debtors designed the procedures governing bidding for the Initial Properties (the "Auction Procedures"). On December 4, 2023, the Debtors filed the Notice of Winning Bidders, announcing that the Debtors had received binding offers, pursuant to 21 Asset Purchase Agreements, to purchase the Initial Properties (collectively, the "Winning Bids") for an aggregate purchase price amount of \$1,882,637,655. The Winning Bids for the Initial Properties provide for an increase by approximately \$350,000,000 in aggregate sale proceeds for just the Initial Properties as compared to the Real Estate Stalking Horse Bid. Mr. Doheny states that the Winning Bids represent the highest or otherwise best offer for the initial properties.

[10] On December 12, 2023, the U.S. Bankruptcy Court approved the Order (I) Approving Certain Asset Purchase Agreements; (II) Authorizing and Approving Sales of Certain Real Property Assets of the Debtors Free and Clear of Liens, Claims, Interests and Encumbrances, in Each Case Pursuant to the Applicable Asset Purchase Agreement; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, in Each Case as Applicable Pursuant to the Applicable Asset Purchase Agreement; and (VI) Granting Related Relief (the "Sale Order").

[11] The Sale Order, among other things, (a) authorizes the Debtors to enter into the applicable Asset Purchase Agreement in connection with the Winning Bids (including with respect to the RGH Transaction and the Allstar Transaction) and approves the transactions contemplated thereby, (b) provides for the distribution of net proceeds (including, net of any Break Up Fee and Expense Reimbursement amounts payable to the Real Estate Stalking Horse Bidder) from the Sales to the applicable Secured Parties, and (c) grants certain related relief.

[12] The Sale Order was granted on a consensual basis.

[13] Two owned properties of YRC Freight Canada were included in the Initial Properties. One is located in Ontario and the other is located in Québec. Pursuant to the Real Estate Auction, the RGH Purchaser and Allstar Purchaser were determined to be the successful bidders of the two Canadian properties

[14] Pursuant to the RGH APA, the RGH Purchaser will acquire the Owned Property of YRC Freight Canada in Woodstock, Ontario for a purchase price that includes a cash payment of \$2,950,000.

[15] Pursuant to the Allstar APA, the Allstar Purchaser will acquire the Owned Property of YRC Freight Canada in Stanhope, Québec for a purchase price that includes cash payment of \$550,000.

[16] The material terms of both the RGH APA and the Allstar APA are summarized in the Fifth Doheny Affidavit.

[17] The Yellow Parent submits that the court should grant the Sale Recognition Vesting Order, recognizing the Sale Order in Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act* ("CCAA), approving the Canadian transactions and granting the other requested relief. The Yellow Parent submits that it is necessary and appropriate to grant the relief sought on the motion in order to maximize the value of the Canadian Debtors for the benefit of their stakeholders.

[18] The legal basis to support these submissions is set out in the Factum submitted by the Yellow Parent, at paragraphs 34 – 48. I accept these submissions.

[19] The Factum, commencing at paragraph 49, addresses the issue of distribution of Canadian Net Proceeds. The Sale Order requires the Debtors to distribute the net proceeds from the sales of the Acquired Assets to the Secured Parties in the order of priority of the Secured Parties' claim and liens against the Acquired Assets sold until such time as those Secured Parties' claims are paid in full. A security review has been conducted and confirms the proper registration of the security interests.

[20] As noted above, the Information Officer supports the position of the Yellow Parent and no party has raised any objection to the requested relief.

[21] Counsel to the Yellow Parent did advise that an issue had been raised with respect to a request by Teamsters Local Union No. 879 for a reservation of rights arising out of the Sale Recognition and Vesting Order. Counsel to Teamsters Local Union No. 879 requested that the following paragraph be included in this endorsement:

Teamsters Local Union No. 879 (the "Union") does not object to the court granting the Sale Recognition and Vesting Order to recognize and enforce the Sale Order by the U.S. Bankruptcy Court, which includes the approval of the sale transaction contemplated by the Asset Purchase Agreement dated December 11, 2023, by and among the Royal Group Holdings Inc. and the Yellow Parent and certain of its subsidiaries, including YRC Freight Canada Company. However, the Union reserves its right to file an application for successor rights under the Canada Labour Code if it learns that there is some continuity in the activities and nature of the work between the work formally carried out by YRC Freight Canada Company at the property at 1187 Welford Place, Woodstock, ON N4S 7Y5 and the activities and nature of the work that will be carried out by Royal Group Holdings Inc. or its related or successor companies.

[22] Counsel to Yellow Parent expressed no objection to the inclusion of language in this endorsement which is acceptable to me.

[23] I am satisfied that it is appropriate to recognize the Sale Order and to approve both the RGH Transaction and the Allstar Transaction and to grant the vesting order.

[24] The motion is granted and the order has been signed in the form submitted.


Chief Justice Geoffrey B. Morawetz

Date: December 21, 2023