

CITATION: YRC Freight Canada Company, 2024 ONSC 1245  
COURT FILE NO.: CV-23-00704038-00CL  
DATE: 2024-02-29

**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**

**BEFORE:** Chief Justice Geoffrey B. Morawetz

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

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

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

*Lawrence Deshenski*, for Teamsters (Local Union 362)

**HEARD and**

**DETERMINED:** February 28, 2024

**REASONS:** February 29, 2024

**ENDORSEMENT**

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

[2] Yellow Corporation (the "Yellow Parent"), in its capacity as the Foreign Representative in respect of the proceedings commenced by the Yellow Parent and certain of its affiliates (collectively, the "Debtors"), 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 "Fifth Supplemental Order"), among other things, recognizing and enforcing the following orders (collectively, the "U.S. Orders") granted by the U.S. Bankruptcy Court in the Chapter 11 Cases:

- (a) *Order Authorizing the Abandonment and Destruction of Documents and Records (the "Documents Order")*;
- (b) *Order Enforcing Sale Order and Compelling Specific Performance by All Star Investments Inc. Under the All Star Asset Purchase Agreement (the "Order to Compel")*; and
- (c) *Order (A) Authorizing the Debtors to Assume Certain Unexpired Leases and (B) Granting Related Relief (the "Lease Assumption Order")*.

[3] The Foreign Representative now seeks the Fifth Supplemental Order recognizing and enforcing the U.S. Orders.

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

[5] The basis for the requested relief is described in the Affidavit of Matthew A. Doheny, sworn February 21, 2024 (the Sixth Doheny Affidavit and the Fifth Report of the Information Officer" dated February 24, 2024 (the "Fifth Report)).

### **ISSUE**

[6] The issue on this motion is whether the Court should grant the Fifth Supplemental Order recognizing the U.S. Orders in Canada pursuant to section 49 of the CCAA.

[7] 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.).

### **Documents Order**

[8] On February 15, 2024, the U.S. Bankruptcy Court granted the Documents Order, among other things, authorizing the Debtors to abandon or destroy the Documents and Records.

[9] The Initial Recognition Order granted in these proceedings provides that "except with leave of this Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of: (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and (b) any of its other property in Canada." Accordingly, the Foreign Representative is seeking recognition of the Documents Order by this Court pursuant to the Fifth Supplemental Order to authorize the Canadian Debtors to abandon or destroy the Documents and Records located in Canada.

[10] This Court has granted similar relief to that set forth in the Documents Order in plenary CCAA proceedings. In *Nortel*, this Court granted an order that, among other things, authorized the applicants to dispose of certain records pursuant to those CCAA proceedings.

[11] The Foreign Representative submits that the Documents Order should be recognized in Canada because, among other things:



- (a) the vast majority of the Documents and Records are believed to be original copies or physical duplicates of documents held electronically by the Debtors;
- (b) with respect to Documents and Records in Canada, the Canadian Debtors have and will continue to maintain at least seven years' worth of Canadian income tax and sales tax (GST / PST) returns and supporting data, as well as employee records from the past 7 years;
- (c) either none or almost none of the Documents and Records are necessary for the Debtors to complete the sales and wind-down that the Debtors are currently pursuing through the Chapter 11 Cases;
- (d) the Debtors have no reason to believe that the Documents and Records are germane to any pending litigation and/or to any of the proofs of claim that have been filed with the U.S. Bankruptcy Court;
- (e) the Debtors are increasingly without manpower and storage space to continue storing the Documents and Records;
- (f) the costs of maintaining these records exceed their value; and
- (g) the limited comments and objections received by the Debtors in respect of the Documents Order were consensually addressed and resolved prior to the hearing in respect of the Documents Order and the Documents Order ultimately proceeded on certification of counsel.

### **Order to Compel**

[12] The U.S. Bankruptcy Court approved the terms and conditions governing the Allstar Transaction pursuant to the Sale Order, which was recognized by this Court pursuant to the Sale Recognition and Vesting Order.

[13] The U.S. Bankruptcy Court entered the Order to Compel, without objection on February 14, 2024.

[14] The Information Officer believes that the Order to Compel is fair and reasonable in the circumstances and recommends that this Court recognize the Order to Compel.

### **Lease Assumption Order**

[15] On February 25, 2024, the Debtors filed a revised proposed form of Lease Assumption Order on certification of counsel. On February 26, 2024, prior to the hearing, the U.S. Bankruptcy Court granted the Lease Assumption Order.

[16] The Information Officer believes that the Lease Assumption Order is fair and reasonable and recommends that this Court recognize the Lease Assumption Order.

[17] The Foreign Representative respectfully submits that it is appropriate for this Court to recognize the Lease Assumption Order pursuant to subsection 49(1) of the CCAA.

**DISPOSITION**

[18] Having reviewed the record and hearing submissions, I am satisfied that it is appropriate to grant the Fifth Supplemental Order.



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Chief Justice Geoffrey B. Morawetz

**Date:** February 29, 2024