

CITATION: YRC Freight Canada Company (Re), 2023 ONSC 6348
COURT FILE NO.: CV-23-704038-00CL
DATE: 2023-11-10

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., USE 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 and Brennan Caldwell*, for Yellow Corporation

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

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

Natalie Levine, 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

Stuart Brown, Rachel Albanese and Gregory Juell, for Ritchie Bros. and Nations Capital, as Agent under the Auction Agency Agreement.

Linc Rogers, for MFN Partners, L.P. as Junior DIP Lender

Saneea Tanvir, for United States of America

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

HEARD and

DETERMINED: November 8, 2023

RELEASED: November 10, 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 “Applicant”) in its capacity as the foreign representative (the “Foreign Representative”) in respect of the proceedings commenced by the Applicant 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”) brings this motion for an order (the “Third Supplemental Order”):

- (a) recognizing and enforcing the Rolling Stock Sale Order (as defined below) entered by the U.S. Bankruptcy Court for the District of Delaware (the “U.S. Bankruptcy Court”) pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (“CCAA”), provided that prior to the distribution of Net Proceeds (as defined in the Rolling Stock Sale Order) from the sale of any Canadian Rolling Stock Assets (the “Canadian Net Proceeds”) pursuant to the Rolling Stock Order, the Canadian Debtors shall hold back from the Canadian Net Proceeds an amount equal to the aggregate of the Administration Charge and the D&O Charge (as defined in the First Supplemental Order) (the “Holdback Amount”), which Holdback Amount shall be subject to further order of the Court; and
- (b) notwithstanding paragraph 5 of the Initial Recognition Order, authorizing the Canadian Debtors to sell, transfer or otherwise dispose of the Canadian Rolling Stock Assets in accordance with the Rolling Stock Sale Order and the Third Supplemental Order, and ordering that any sale, transfer or other disposal shall be free and clear of all the liens, claims, encumbrances, and other interests, provided that all such liens, claims, encumbrances and interests shall attach to the Net Proceeds of the applicable transfer and in priority as they existed prior to the transfer.

[3] The motion was not opposed and the Information Officer supported the position of the Applicant.

[4] The evidentiary support for the requested relief is set out in the Affidavit of Brennan Caldwell sworn November 2, 2023 and the Second Report of the Information Officer

[5] On October 27, 2023, the U.S. Bankruptcy Court entered the Order: (I) Approving Agency Agreement with Nations Capital, LLC, Ritchie Bros. Auctioneers (America) Inc., IronPlanet Inc., Ritchie Bros. Auctioneers (Canada) Ltd. and IronPlanet Canada Ltd., effective as of October 16, 2023; (II) Authorizing the Sale of the Rolling Stock Assets Free and Clear of Liens Claims Interests and Encumbrances; and (III) Granting Related Relief (the “Rolling Stock Sale Order”).

[6] The Rolling Stock Sale Order, among other things authorizes the Debtors and the Agent, without further order of the U.S. Bankruptcy Court, to take all steps they deem necessary or appropriate to sell the Rolling Stock Assets in accordance with the Agency Agreement. Further details with respect to the specifics of the Rolling Stock Sale Order are set out in the factum filed by the Applicant commencing at paragraph 29.

[7] The Foreign Representative seeks the Third Supplemental Order which, among other things, recognizes and enforces the Rolling Stock Sale Order pursuant to section 49 of the CCAA.

[8] 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.

[9] The Applicant submits that as the Rolling Stock Assets include Canadian Rolling Stock Assets, it is necessary for the efficient administration of the Chapter 11 Cases that the Canadian Rolling Stock Assets be dealt with alongside the rest of the Debtor's Rolling Stock Assets pursuant to the Agency Agreement.

[10] In considering whether a sale process is appropriate, this court has, on numerous occasions, considered the following *Nortel* factors for determining generally whether a sale process is appropriate and should be approved:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole economic community?
- (c) do any of the Debtors creditors have a *bona fide* reason to object to a sale?
- (d) is there a better viable alternative.

(See: *Nortel Networks Corp. (Re)* (2009), 55 CBR (5th) 229)

[11] Further, when considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, Canadian courts have considered the factors set out in subsection 36(3) of the CCAA, as well as the *Soundair* factors (*Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. 3(d) 1. The *Soundair* test considers:

- (a) whether sufficient efforts were made to obtain the best price and that the debtor has not acted improvidently;
- (b) whether the interests of all parties were considered;
- (c) the integrity and efficacy of that process; and
- (d) whether there was any unfairness in working out the process.

[12] The CCAA subsection 36(3) factors are:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approve the process leading to the proposed sale or disposition;
- (c) whether the monitor filed a report stating that in its opinion the sale or disposition would be more beneficial to creditors in a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on creditors and stakeholders; and
- (f) whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.

[13] The Foreign Representative has submitted that the relief pursuant to the proposed Third Supplemental Order is appropriate in the circumstances and that a consideration of the *Nortel* and *Soundair* factors and CCAA subsection 36(3) factors supports the court's recognition of the Rolling Stock Sale Order pursuant to the Third Supplemental Order.

[14] The Information Officer has advised that it is not aware of any public policy issues that would raise concern from the recognition of the Rolling Stock Sale Order.

[15] Having reviewed the evidence and hearing submissions, I accept the submissions of the Foreign Representative and the Information Officer.

[16] I am satisfied that it is appropriate to grant the Third Supplemental Order recognizing and enforcing the Rolling Stock Sale Order.

[17] In addition, I am satisfied that it is appropriate for the Debtors to distribute the Net Proceeds in the manner set out commencing at paragraph 50 of the factum.

[18] The motion is granted and the Third Supplemental Order has been signed.



Chief Justice Geoffrey B. Morawetz

Date: November 10, 2023