

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

APPLICANTS

FACTUM OF THE APPLICANTS
(STAY EXTENSION)

June 21, 2024

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TO: **SERVICE LIST**

PART I - NATURE OF THE MOTION

1. The Applicants obtained relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “**CCAA**”) pursuant to an Initial Order dated March 2, 2024 (the “**Initial Order**”). The stay of proceedings in the Initial Order was extended to Nordstrom Canada Leasing LP (together with the Applicants, the “**Nordstrom Canada Entities**”). This Court (the “**CCAA Court**”) subsequently granted an Amended and Restated Initial Order on March 10, 2023.
2. The Initial Order provided for an initial stay of proceedings until March 12, 2023, which has since been extended several times (as extended, the “**Stay Period**”). The current Stay Period will expire on June 28, 2024.
3. This factum is filed in support of a motion by the Applicants for an order (the “**June Stay Extension Order**”) granting relief including extending the Stay Period (and by extension, the Co-Tenancy Stay, discussed below) to and including December 20, 2024 (the “**Stay Extension**”).
4. Since the granting of the Initial Order, the Nordstrom Canada Entities have acted with due diligence and in good faith, making significant progress in effecting a responsible and orderly wind-down of their business in these CCAA proceedings. The Nordstrom Canada Entities have worked diligently to implement the Consolidated Plan of Compromise and Arrangement dated December 13, 2023 (as amended, the “**Plan**”), which will provide finality and certainty in these CCAA proceedings in a timely manner and provide meaningful recoveries to their creditors.
5. The Stay Extension is appropriate, and the requested Stay Extension period is necessary and reasonable to permit the Nordstrom Canada Entities to continue to implement the Plan, with the assistance of the Monitor, and prepare for the termination of these CCAA proceedings. The

Nordstrom Canada Entities currently intend to come back to Court before the end of 2024 to seek a Discharge and Termination Order.

PART II - SUMMARY OF FACTS

6. The facts underlying this motion are more fully set out in the Affidavit of Misti Heckel sworn June 19, 2024 (the “**Stay Extension Affidavit**”). Capitalized terms used but not defined herein have the meanings ascribed to them in the Stay Extension Affidavit. Facts relevant to the requested relief are highlighted in the sections below.

A. Background

7. On December 20, 2023, the CCAA Court granted an order (the “**Meeting Order**”) that, among other things: accepted the filing of the Plan; authorized the Nordstrom Canada Entities to call and hold the Creditors’ Meeting; and extended the Stay Period until and including April 5, 2024.¹

8. The Creditors’ Meeting to vote on the Plan was held on March 1, 2024. According to the Monitor’s tabulation, the Affected Creditors holding Proven Claims that were present in person or by proxy and voted (or were deemed to vote) at the Creditors’ Meeting voted unanimously to approve the Resolution in favour of the Plan.²

9. On March 19, 2024, the CCAA Court granted an order (the “**Sanction Order**”) which, among other things, sanctioned the Plan and authorized the Nordstrom Canada Entities and the

¹ Stay Extension Affidavit at para 7.

² Stay Extension Affidavit at para 8.

Monitor to implement it. At the same time, the Stay Period was extended until and including June 28, 2024.³

B. Implementation of the Plan

(a) Engagement of Kroll

10. Pursuant to paragraph 21 of the Sanction Order, the Nordstrom Canada Entities were authorized, with the consent of the Monitor, to retain a third-party payment agent to assist with and facilitate any distributions or payments to be made pursuant to the Plan. Following discussions with multiple firms, on April 17, 2024, the Nordstrom Canada Entities, with the consent of the Monitor, entered into a Disbursing Agent Agreement with Kroll. Pursuant to the Disbursing Agent Agreement, Kroll was authorized to establish bank accounts for the purpose of satisfying distributions pursuant to the Plan and facilitate disbursements from those accounts.⁴

11. On April 22, 2024, the Monitor advised certain Affected Creditors, including Employees, by email that Plan distributions would be administered by Kroll on behalf of the Nordstrom Canada Entities.⁵ Subsequently, on April 29, 2024 (for Affected Creditors within the US or Canada) or May 1, 2024 (for Affected Creditors located outside the US or Canada), Kroll sent an email with instructions to select a preferred payment method to receive distributions made pursuant to the Plan. The email advised that if a preferred payment method was not selected by May 8, 2024, all distributions would be sent by cheque to the address indicated on the recipient's Proof of Claim

³ Stay Extension Affidavit at para 9.

⁴ Stay Extension Affidavit at para 11.

⁵ Stay Extension Affidavit at para 12.

and that Creditors may be forever barred, without compensation, if they failed to cash their distribution before it became stale dated.⁶ Kroll sent a reminder email to all Affected Creditors on May 3, 2024.⁷

12. By the May 8, 2024 deadline, a total of 392 Creditors chose to be paid through electronic payments (i.e. ACH, EFT, Wire), and 124 Creditors chose to be paid by cheque. 196 Creditors did not select a preferred payment method by the deadline, and as a result, their initial distributions under the Plan were paid by cheque sent to the address on the recipient's Proof of Claim on or about the Initial Distribution Date. Payments to Landlords and payments on account of Intercompany Claims were made directly by Nordstrom Canada through wire transfer.⁸

(b) Creation of Accounts

13. On April 9, 2024, the Nordstrom Canada Entities sent a Letter of Direction to the Bank of Nova Scotia requesting creation of the Consolidated Cash Pool Account, NCL ITC Cash Pool Account, Administrative Reserve Account, and Disputed Claims Reserve Account.⁹ On April 18, 2024, the Monitor, in consultation with the Nordstrom Canada Entities, determined the amounts of the Disputed Claims Reserve and Administrative Reserve to be funded on the Plan Implementation Date. The Administrative Reserve amount was set at approximately \$5.6 million, and the Disputed Claims Reserve amount was set at approximately \$6.2 million.¹⁰

⁶ Stay Extension Affidavit at para 14.

⁷ Stay Extension Affidavit at para 15.

⁸ Stay Extension Affidavit at para 16.

⁹ Stay Extension Affidavit at para 20.

¹⁰ Stay Extension Affidavit at paras 20-21.

(c) Conditions Precedent

14. As discussed above, the CCAA Court granted the Sanction Order on March 19, 2024, and the 21-day appeal period for the Sanction Order expired on April 9, 2024.¹¹

15. On April 25, 2024, following its receipt of notice from the Nordstrom Canada Entities that all conditions precedent had been satisfied, the Monitor caused the Monitor's Plan Implementation Date Certificate to be provided to the Nordstrom Canada Entities, served on the Service List, and posted on the Monitor's Website. On April 26, 2024, the Monitor filed the Monitor's Plan Implementation Date Certificate with the CCAA Court.¹²

(d) Plan Implementation Date

16. On April 25, 2024, being the Plan Implementation Date, the Plan was implemented in accordance with the Plan Transaction Steps.¹³

17. In accordance with the Plan Transaction Steps and pursuant to an Assignment Agreement entered into between Canada Leasing LP and Yorkdale Shopping Centre Holdings Inc. ("YSCHI"), the Nordstrom Canada Entities assigned, set over and transferred to YSCHI, (a) any and all of NCL's right, title and interest in and to any amounts recovered by NCL pursuant to the Remaining Realty Tax Appeals; and (b) on an "as is, where is" basis, any and all of NCL's right,

¹¹ Stay Extension Affidavit at para 18.

¹² Stay Extension Affidavit at para 19.

¹³ The implementation of the Plan in accordance with the Plan Transaction Steps is described in detail at para 23 of the Stay Extension Affidavit.

title and interest in and to the Remaining Realty Tax Appeals, and all of NCL's benefits, burdens, obligations and liabilities related to such Remaining Realty Tax Appeals.¹⁴

18. In addition, all of the Nordstrom Canada Entities' right, title and interest in and to the Canada Customer Data vested absolutely in Nordstrom US free and clear of all Encumbrances pursuant to the Sanction Order.¹⁵ Canadian customers on the Nordstrom Canada marketing list who had made a purchase at a Nordstrom Canada store within two years prior to store closure were previously advised of the transfer of the Canada Customer Data by email on March 21, 2024.¹⁶

(e) Initial Distribution

19. With the consent of the Monitor, the Initial Distribution Date occurred on May 15, 2024, following finalization of the Disbursing Agent Agreement, creation of the accounts, and receipt of all other processing information required by Kroll to facilitate distributions to Creditors.¹⁷

20. On the Initial Distribution Date:

- (a) each Other Priority Claim Creditor received a distribution in the full amount of its Other Priority Claim;
- (b) each Convenience Class Creditor received a distribution in the full amount of its Convenience Class Claim; and

¹⁴ Stay Extension Affidavit at paras 24-26.

¹⁵ Stay Extension Affidavit at para 28.

¹⁶ Stay Extension Affidavit at para 29.

¹⁷ Stay Extension Affidavit at para 30.

- (c) each other Affected Creditor with a Proven Claim received an initial distribution in an amount equal to its Pro Rata Share of the Cash in the Consolidated Cash Pool Account on that date, with further distributions to Affected Creditors to be made in accordance with the Plan. Supporting Rack Landlords received the full amount required to be paid to such Supporting Rack Landlord pursuant to its Supporting Rack Landlord Settlement Agreement with no further distributions to be made to the Supporting Rack Landlords under the Plan.¹⁸

21. On the Initial Distribution Date, the following net initial distributions were made from the Consolidated Cash Pool, as facilitated by Kroll and Nordstrom Canada: \$716,882 to Other Priority Claim Creditors; \$2,271,075 to Convenience Class Creditors; \$8,834,965 to Supporting Rack Landlords; and \$127,037,404 to other Affected Creditors. With respect to such other Affected Creditors, these amounts represent a recovery of approximately 72% on the Proven Claims to date.¹⁹

22. Pursuant to the Plan, all claims for undeliverable or uncashed distributions in respect of Proven Claims must be made no later than four months following the Initial Distribution Date, after which date the Claims of such Creditor with respect to such unclaimed or uncashed distributions are forever discharged and barred, and the Cash amount held by Nordstrom Canada in relation to such Claims will be returned to the Consolidated Cash Pool Account. The Monitor and the Nordstrom Canada Entities have made reasonable attempts to deliver all distributions.²⁰

¹⁸ Stay Extension Affidavit at para 31.

¹⁹ Stay Extension Affidavit at para 32.

²⁰ Stay Extension Affidavit at para 35.

C. Progress of the CCAA Proceedings

23. The Applicants initiated these CCAA proceedings to effect a responsible and orderly wind-down of their business in Canada. Since the Sanction Order was granted on March 19, 2024, in addition to implementing the Plan and effecting distributions to Affected Creditors, the Nordstrom Canada Entities have made significant progress to complete the orderly wind down of their business as part of these CCAA proceedings, including the following:

- (a) Claims Process: The Nordstrom Canada Entities and the Monitor have continued to work to resolve the small number of remaining Claims filed in the Claims Process, and are actively working with the CRA, in consultation with the Monitor, to reconcile the CRA Marker Claim with the Nordstrom Canada Entities' accounts.²¹ All Employee Claims have now been resolved with the assistance of Employee Representative Counsel, and initial distributions to Employees were made on the Initial Distribution Date.²²
- (b) Termination of the Employee Trust: As of April 2, 2024, the Monitor and MNP LLP filed all tax forms required as a result of the termination of the Employee Trust, and the tax owing has been paid. Any remaining balance in the Employee Trust will be returned to Nordstrom US in accordance with its terms.²³

²¹ Stay Extension Affidavit at paras 36-37.

²² Stay Extension Affidavit at para 39.

²³ Stay Extension Affidavit at para 40.

- (c) Customs Bond: On June 14, 2024, Intact advised the Monitor's counsel that it had received the Bond from the CBSA and was in the process of returning the Cash Collateral to Nordstrom Canada. The Cash Collateral, once received by Nordstrom Canada, will be deposited into the Consolidated Cash Pool Account.²⁴

PART III - ISSUES AND THE LAW

24. The issue on this motion is whether this Court should grant the proposed Stay Extension.

A. The Stay Extension Should be Granted

25. This Court is authorized to extend a CCAA stay pursuant to section 11.02(2) of the CCAA, provided that the two considerations outlined in section 11.02(3) are satisfied. These are: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence. Both of the section 11.02(3) factors are satisfied here.

26. The Applicants are seeking to extend the Stay Period until and including December 20, 2024. The Stay Extension is appropriate in the circumstances. An extension of the Stay Period is necessary to permit the Nordstrom Canada Entities, with the assistance of the Monitor, to continue to implement the Plan, resolve the remaining Claims in the Claims Process including the CRA Marker Claim, make additional distributions to Affected Creditors, and prepare for the termination of these CCAA proceedings.

²⁴ Stay Extension Affidavit at para 43.

27. With respect to the Co-Tenancy Stay, no party has alleged any prejudice as a result the Co-Tenancy Stay. Maintaining the Co-Tenancy Stay while the Applicants are resolving Claims and implementing the Plan will continue to provide stability to the CCAA proceedings.²⁵

28. The Nordstrom Canada Entities have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings.²⁶ The Nordstrom Canada Entities have made significant progress in these CCAA proceedings, including by implementing the Plan, which is expected to provide finality and certainty in these CCAA proceedings in a timely manner and provide meaningful recoveries to Creditors. The initial distribution was in the amount of approximately 72% of Proven Claims of Affected Creditors (other than Other Priority Claim Creditors, Convenience Class Creditors and Supporting Rack Landlords, who were paid their entitlements under the Plan in full). It is still anticipated such Affected Creditors will receive a total distribution of 72-75% of their Proven Claims.²⁷

29. It is the current intention of the Nordstrom Canada Entities to bring a motion seeking a Discharge and Termination Order before the end of 2024.²⁸

30. The Monitor supports the proposed Stay Extension.²⁹ The Applicants and the Monitor are of the view that the Stay Extension is in the best interests of the Nordstrom Canada Entities and

²⁵ The Initial Order also provided for a co-tenancy stay (the “**Co-Tenancy Stay**”) of potential rights that may be asserted by third-party tenants and occupants in commercial properties where Nordstrom Canada stores are located that arise as a result of the making of the Initial Order, which will also expire on June 28, 2024. Stay Extension Affidavit at para 50. See also *Nordstrom Canada Retail Inc (Re)*, [2023 ONSC 1422](#) [*Nordstrom Initial Order Endorsement*] at paras 33-35.

²⁶ Stay Extension Affidavit at para 53.

²⁷ Stay Extension Affidavit at para 49.

²⁸ Stay Extension Affidavit at para 52.

²⁹ Stay Extension Affidavit at para 53.

their stakeholders. The Applicants and the Monitor have confirmed that the Nordstrom Canada Entities will have sufficient cash resources to continue their wind down during the proposed Stay Extension.³⁰

PART IV - NATURE OF THE ORDER SOUGHT

31. For the foregoing reasons, the Applicants submit that this Court should grant the June Stay Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of June, 2024:



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³⁰ Stay Extension Affidavit at para 51.

SCHEDULE "A": LIST OF AUTHORITIES

Cases

1. *Nordstrom Canada Retail Inc (Re)*, 2023 ONSC 1422

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS
COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.
C-36, AS AMENDED**

Court File No: CV-23-00695619-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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