

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)

December 4, 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, 2023 (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List). The stay of proceedings in the Initial Order was extended to Nordstrom Canada Leasing LP (together with the Applicants, the “**Nordstrom Canada Entities**”).
2. The Initial Order provided for an initial stay of proceedings until and including March 12, 2023, which has since been extended several times (as extended, the “**Stay Period**”). The current Stay Period will expire on December 20, 2024.
3. This factum is filed in support of a motion by the Applicants for an order (the “**December Stay Extension Order**”) granting relief including extending the Stay Period (except with respect to the Co-Tenancy Stay granted in the Initial Order) up to and including June 30, 2025 (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 (the “**Plan**”), make an initial distribution to their creditors and resolve the small number of remaining creditor Claims in the Claims Process.
5. The Stay Extension is appropriate, and the requested extended Stay Period is necessary and reasonable to permit the Nordstrom Canada Entities to continue to implement the Plan, resolve the remaining Claims in the Claims Process including the CRA Marker Claim (described below), and

make additional distributions to Affected Creditors while preparing for the termination of these CCAA proceedings. The Nordstrom Canada Entities currently intend to come back to Court before the expiry of the proposed extended Stay Period 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 December 2, 2024 (the “**Tenth Heckel Affidavit**”). Capitalized terms used but not defined herein have the meanings ascribed to them in the Tenth Heckel Affidavit. Certain facts relevant to the requested relief are highlighted in the sections below.

A. Background

7. On December 20, 2023, this Court granted the Meeting Order, which 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

¹ Tenth Heckel Affidavit at para. 7.

² Tenth Heckel Affidavit at para. 8.

9. On March 19, 2024, this Court granted that the Sanction Order, which sanctioned the Plan and authorized the Nordstrom Canada Entities and the Monitor to implement it. The Stay Period was also extended until and including June 28, 2024.³

10. The Plan was subsequently implemented on April 25, 2024. The Initial Distribution Date occurred on May 15, 2024, and 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).⁴

11. On June 26, 2024, the Court granted an order (the “**June Stay Extension Order**”) extending the Stay Period until and including December 20, 2024.⁵

B. Progress of the CCAA Proceedings

12. The Nordstrom Canada Entities, in close consultation with the Monitor, have made significant progress in these CCAA proceedings since the June Stay Extension Order was granted.

(a) Implementation of the Plan

13. Following the Initial Distribution Date, the Monitor and the Nordstrom Canada Entities have continued to make reasonable attempts to contact Creditors to ensure distribution cheques are cashed in a timely manner. Pursuant to the Plan, all claims for undeliverable or uncashed distributions in respect of Proven Claims that are made later than four months after the Initial Distribution Date are forever discharged and barred, and the Cash amount held by Nordstrom

³ Tenth Heckel Affidavit at para. 9.

⁴ Tenth Heckel Affidavit at para. 13.

⁵ Tenth Heckel Affidavit at para. 11.

Canada in relation to such Claims is to be returned to the Consolidated Cash Pool Account to be distributed to Affected Creditors. Communications were sent to Creditors who had not cashed their cheques on July 15, 2024, July 25, 2024, and August 15, 2024. The final communication was sent out as of August 30, 2024. As of December 2, 2024, five Creditors with Claims totaling approximately \$108,000 did not cash their distribution cheques.⁶ In accordance with the Plan, the Cash that would have been payable to those Affected Creditors will be returned to the Consolidated Cash Pool Account.

(b) Termination of Employee Trust

14. The Monitor is currently awaiting a clearance certificate from the CRA in respect of tax forms filed by April 2, 2024, in relation to the termination of the Employee Trust. Upon receipt of the clearance certificate, any balance in the Employee Trust will be returned to Nordstrom US in accordance with its terms.⁷

(c) Lease Monetization Transactions

15. On August 20, 2024, the Nordstrom Canada Entities received a clearance certificate from the CRA with respect to \$294,367 withheld by counsel to G2MC Inc. from the G2MC Transaction, confirming there was no tax liability. These funds have since been paid over to Canada Leasing LP and contributed to the Consolidated Cash Pool Account to be distributed to Affected Creditors.⁸

⁶ Tenth Heckel Affidavit at para. 14.

⁷ Tenth Heckel Affidavit at paras. 15-16.

⁸ Tenth Heckel Affidavit at para. 19.

16. On September 11 and 19, 2024, the Nordstrom Canada Entities received clearance certificates from the CRA confirming that there was no tax liability in respect of the transactions for the Vaughan Mills and Deerfoot Meadows Nordstrom Rack Leases. Once the CRA has paid the withheld amount of \$175,000 for these transactions to Canada Leasing LP, the funds will likewise be contributed to the Consolidated Cash Pool Account to be distributed to Affected Creditors.⁹

(d) The Claims Process

17. The Nordstrom Canada Entities and the Monitor have continued to work to resolve the small number of remaining Claims in the Claims Process.¹⁰ On May 3, 2024, \$703,052.02 was transferred from the Disputed Claims Reserve to the Consolidated Cash Pool to be included in the initial distribution. Since June 19, 2024, an additional \$229,000 has been transferred from the Disputed Claims Reserve to the Consolidated Cash Pool, representing Disputed Claims that became Proven Claims. Approximately \$5.2 million remains in the Disputed Claims Reserve. As Disputed Claims are resolved, the remaining balance of the Disputed Claims Reserve will be transferred to the Consolidated Cash Pool for distribution to Affected Creditors.¹¹

18. The CRA Marker Claim is the principal remaining matter to be resolved in these CCAA proceedings.¹² The Nordstrom Canada Entities have continued to actively work cooperatively with the CRA, in consultation with the Monitor, to reconcile the CRA Marker Claim with the Nordstrom

⁹ Tenth Heckel Affidavit at paras. 17-18.

¹⁰ Tenth Heckel Affidavit at para. 20.

¹¹ Tenth Heckel Affidavit at para. 21.

¹² Tenth Heckel Affidavit at para. 23.

Canada Entities' accounts and resolve outstanding audits for harmonized sales tax ("HST") compliance under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "ETA"). While the parties have agreed on pre- and post-filing amounts for each of the Nordstrom Canada Entities, remaining outstanding items include resolving a Claim amount for HST, which represents the portion of the CRA Marker Claim related to disallowed ITC claims in respect of accounts payable. The parties have been preparing an audit letter that will set out the final agreed position of the CRA on all tax matters once the CRA Marker Claim is resolved, with the intention that such letter will ultimately form part of a final settlement of all CRA Claims with the Department of Justice on behalf of the CRA.¹³

19. The Nordstrom Canada Entities have made significant progress with respect to this issue, and anticipate that matters with the CRA and all other outstanding matters will be resolved during the proposed extended Stay Period.¹⁴ Once the CRA Marker Claim is resolved, the Nordstrom Canada Entities intend to proceed with the Final Distribution under the Plan and seek an order terminating these CCAA proceedings. The Nordstrom Canada Entities and the Monitor remain of the view that the CRA Marker Claim, once resolved, will not materially affect the updated recoveries analysis in connection with the Plan.¹⁵

(e) Other Plan Matters

20. Pursuant to the Plan, from and after the Initial Distribution Date, as frequently as the Nordstrom Canada Entities and the Monitor may determine, Nordstrom Canada, on behalf of NCL,

¹³ Tenth Heckel Affidavit at para. 22.

¹⁴ Tenth Heckel Affidavit at para. 23.

¹⁵ Tenth Heckel Affidavit at paras. 24, 26-28.

is required to make a distribution to each FLS Landlord with a Proven Claim in an amount equal to the amount of Cash in the NCL ITC Cash Pool Account multiplied by the FLS Landlord ITC Share in respect of such FLS Landlord applicable to such distribution. The distributions to the FLS Landlords would be inclusive of HST. Under the terms of the FLS Landlord Settlement Agreements, the non-HST portion of such distributions are to be paid by the FLS Landlords to Nordstrom US. The HST portion of such distributions entitle NCL to claim and receive ITCs under the ETA of an equivalent amount. The FLS Landlord Settlement Agreements further provide that an amount equal to such ITCs (when the ITCs are received by NCL) are to be distributed by NCL to the FLS Landlords. These distributions would be treated in the same manner as the distributions described above, such that the non-HST portion would be paid to Nordstrom US and the HST portion would generate further ITCs. This cycle would continue until the value of the ITC amounts payable to NCL in respect of a distribution is negligible such that there would be no benefit from claiming them, which may take approximately four to six distribution cycles over the course of several months. The proposed extended Stay Period was chosen in light of this anticipated timing. The Nordstrom Canada Entities are working with the CRA and the Department of Justice in the hopes of agreeing upon a process to expedite this timeline and avoid delaying the termination of these CCAA proceedings.¹⁶

PART III - ISSUES AND THE LAW

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

¹⁶ Tenth Heckel Affidavit at para. 25.

A. The Stay Extension Should be Granted

22. 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.

23. The current Stay Period expires on December 20, 2024.¹⁷ The Applicants are seeking to extend the Stay Period until and including June 30, 2025. The Applicants are no longer seeking to extend the Co-Tenancy Stay included in the Initial Order in light of the status of these CCAA proceedings. The Stay Extension is appropriate and necessary in the circumstances to permit the Nordstrom Canada Entities to continue implementing the Plan, resolve the remaining Claims in the Claims Process (including the CRA Marker Claim), make additional distributions to Affected Creditors (including the Final Distribution), and prepare for the termination of these CCAA proceedings.¹⁸

24. The Nordstrom Canada Entities have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings.¹⁹ The Nordstrom Canada Entities have made significant progress in these CCAA proceedings since the granting of the June Stay Extension Order, including by continuing to work diligently to implement the Plan, which will provide finality and

¹⁷ Tenth Heckel Affidavit at para. 29.

¹⁸ Tenth Heckel Affidavit at paras. 30-31.

¹⁹ Tenth Heckel Affidavit at para. 34.

certainty in these CCAA proceedings in a timely manner and provide meaningful recoveries to Affected Creditors.²⁰

25. The Nordstrom Canada Entities, in conjunction with the Monitor, have refreshed the recovery analysis that was described in the Ninth Heckel Affidavit. At that time, it was anticipated that Affected Creditors would receive a total distribution of between 72-75% of their Proven Claims. Based on the progress made to date in these CCAA proceedings, it is currently anticipated that Affected Creditors will receive a total distribution of between 78% to 80% of their Proven Claims.²¹

26. The Nordstrom Canada Entities currently intend to come back to Court before the expiry of the extended Stay Period to seek a Discharge and Termination Order.²²

27. The Monitor supports the proposed Stay Extension. The Applicants are of the view that the Stay Extension is in the best interests of the Nordstrom Canada Entities and their stakeholders.²³ The Monitor has confirmed that the Nordstrom Canada Entities will have sufficient cash resources to continue their wind down through to June 30, 2025.²⁴

²⁰ Tenth Heckel Affidavit at para. 30.

²¹ Tenth Heckel Affidavit at para. 28.

²² Tenth Heckel Affidavit at para. 33.

²³ Tenth Heckel Affidavit at para. 34.

²⁴ Tenth Heckel Affidavit at para. 32.

PART IV - NATURE OF THE ORDER SOUGHT

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of December, 2024:



OSLER, HOSKIN & HARCOURT, LLP
per Marleigh Dick
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Lawyers for the Applicants

SCHEDULE "A": LIST OF AUTHORITIES

I certify that I am satisfied as to the authenticity of every authority.

Date December 4, 2024



Signature

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

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

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

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PROCEEDING COMMENCED AT TORONTO

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