

**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 BBB CANADA LTD.

APPLICANT

**FACTUM OF THE APPLICANT**

August 22, 2023

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West, 1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)  
Shawn Irving (LSO# 50035U)  
Dave Rosenblat (LSO# 64586K)  
Emily Paplawski (LSA# 17693)

Tel: (416) 362-2111  
Fax: (416) 862-6666

Counsel for the Applicant

**TO: SERVICE LIST**

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**PART I - NATURE OF THIS MOTION**

1. On February 10, 2023, BBB Canada Ltd. (the “**Applicant**”), along with Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”), was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**” and the within proceedings, the “**CCAA Proceedings**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in this CCAA proceeding (the “**Monitor**”).

2. The CCAA Proceedings are now nearing completion. All lease assignment transactions entered into by BBB Canada and approved by this Court have now closed, together with four additional transactions. The Liquidation Sale (as defined below) is now complete, and the final reconciliation of all funds realized in the Liquidation Sale has been finalized. BBB Canada has completed the wind down of its retail operations across Canada, terminated all of BBB Canada's employees, closed all of its stores, and disclaimed all leases not previously assigned or surrendered.

3. In order to complete the wind down of BBB Canada's business, on July 6, 2023, BBB Canada sought, and the Court granted, a D&O Claims Procedure Order establishing a process for ascertaining, determining and addressing the universe of claims against BBB Canada's Directors and Officers (the "**D&O Claims Procedure Order**"). One Proof of Claim was submitted by His Majesty the King in right of the Province of British Columbia against the previous directors of BBB LP for alleged outstanding provincial sales tax owing by BBB LP.

4. In addition, BBB Canada recently became aware that the Canada Revenue Agency ("**CRA**") commenced an audit of BBB Canada's GST/HST returns for the period from March 1, 2021 to February 28, 2023.

5. While BBB Canada had initially intended to seek an Order at the present motion terminating the CCAA Proceedings and discharging the Monitor, such relief is now premature in light of the filing of the D&O Claim and commencement of the GST/HST audit by the CRA. Such processes must conclude before BBB Canada can seek approval to distribute remaining funds in the BBB Canada estates and terminate the CCAA Proceedings.

6. Accordingly, BBB Canada is only seeking to extend the Stay Period at this time. A further motion for termination of the CCAA Proceedings and discharge of the Monitor will be brought by BBB Canada as soon as it is in a position to do so.

## **PART II - SUMMARY OF THE FACTS**

### **A. Background and Update on the CCAA Proceeding**

7. On February 10, 2023, BBB Canada was granted protection under the CCAA pursuant to the Initial Order. The Initial Order, among other things: (a) appointed the Monitor in the CCAA

Proceedings; and (b) granted a stay of proceedings in favour of the Applicant until and including February 21, 2023, or such later date as the Court may order (the “**Stay Period**”).<sup>1</sup>

8. On February 21, 2023, the Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, extended the Stay Period to May 1, 2023, approved a key employee retention plan, and granted a charge to secure the amounts expected to be paid thereunder. On the same day, the court granted a Sale Approval Order, which approved BBB Canada entering into a consulting agreement to complete the liquidation of all merchandise, and owned furnishings, trade fixtures, equipment and improvements to real property located in BBB Canada’s retail stores, warehouse, and corporate office in Mississauga (the “**Liquidation Sale**”).<sup>2</sup>

9. In accordance with the ARIO, on or about February 27, 2023, BBB LP entered into an Exclusive Listing Agreement with Retail Ventures CND to market and, where there was interest, facilitate the sale of BBB Canada's leases across Canada.<sup>3</sup>

10. This marketing process was ultimately successful, and on April 11, April 28 and May 15, 2023, the Court granted four Assignment, Approval and Vesting Orders (collectively, the “**Assignment, Approval and Vesting Orders**”) which, among other things, approved transactions related to the assumption of certain leases, and assigned certain leases to the respective purchaser pursuant to section 11.3 of the CCAA. Further, other agreements were entered into which provided for consideration below the defined monetary thresholds in the ARIO and so were completed without any additional Court approval (together with the transactions contemplated by the

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<sup>1</sup> Affidavit of Holly Etlin, sworn August 15, 2023 at paras. 5-6 [Etlin Affidavit].

<sup>2</sup> Etlin Affidavit at para. 7.

<sup>3</sup> Etlin Affidavit at para. 9.

Assignment, Approval and Vesting Orders, the “**Lease Assignments**”). Each of the Lease Assignments have since closed.<sup>4</sup>

11. The Liquidation Sale is now complete, and the final reconciliation of all funds realized in the Liquidation Sale has been finalized. BBB Canada has completed the wind down of its retail operations across Canada, terminated all of BBB Canada's employees, closed all of its stores, and disclaimed all leases not previously assigned or surrendered.<sup>5</sup>

12. In order to complete the wind down of BBB Canada's business and avoid the requirement for BBB Canada to maintain a reserve for potential claims on a go forward basis, on July 6, 2023, BBB Canada sought, and the Court granted, the D&O Claims Procedure Order.<sup>6</sup>

13. One Proof of Claim was received by BBB Canada on or before the Claims Bar Date. Specifically, His Majesty the King in right of the Province of British Columbia filed a Proof of Claim against the previous directors of BBB LP in the amount of \$489,528.95 for alleged outstanding provincial sales tax owing by BBB LP for the period ending December 31, 2022. BBB Canada is currently confirming the validity of this D&O Claim.<sup>7</sup>

14. In addition to the D&O Claim filed by the Province of British Columbia, BBB Canada recently became aware that the CRA commenced an audit of BBB Canada's GST/HST returns for the period from March 1, 2021 to February 28, 2023. Bed Bath & Beyond Inc. has retained Deloitte to assist it in responding to the audit.<sup>8</sup>

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<sup>4</sup> Etlin Affidavit at paras. 10-11.

<sup>5</sup> Etlin Affidavit at para. 11.

<sup>6</sup> Etlin Affidavit at para. 12.

<sup>7</sup> Etlin Affidavit at para. 14.

<sup>8</sup> Etlin Affidavit at para. 15.

15. Deloitte has now reviewed and confirmed all of BBB Canada's records for the 2022 taxation year and has reconciled all reported GST/HST with that accrued and paid by BBB Canada, resulting in a possible net amount of \$0 owing by BBB Canada for the 2022 taxation year (subject to review and validation by the CRA). Further, Deloitte recently received BBB Canada's records for 2021 and is in the process of reviewing same and, as a result, no conclusions regarding the 2021 taxation year have yet been formed by Deloitte. Deloitte intends to submit a response to the CRA regarding both the 2021 and 2022 taxation years (including its view that no amounts are outstanding with respect to the 2022 taxation year) on Friday, August 18, 2023.<sup>9</sup>

### **PART III - ISSUES AND THE LAW**

16. This factum addresses the following issue:

- (a) This Court should extend the Stay Period to November 22, 2023.

#### **A. Extension of Stay Period**

17. On an application other than an initial application, s. 11.02(2) of the CCAA provides that the Court may make a stay order for any period that the court considers necessary, if the applicant satisfies the Court (a) the circumstances exist that make the order appropriate, and (b) that the applicant has acted, and is acting, in good faith and with due diligence.

18. The current Stay Period expires on August 22, 2023. The Applicant is seeking to extend the Stay Period to November 22, 2023. The extension of the Stay Period is necessary and appropriate in the circumstances to maintain continued stability for BBB Canada while it: (a) works diligently, in good faith and in consultation with the Monitor, to ascertain the validity of,

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<sup>9</sup> Etlin Affidavit at para. 15.

and address, the one D&O Claim filed pursuant to the D&O Claims Procedure Order; and (b) participates in the CRA's ongoing GST/HST audit of BBB Canada.<sup>10</sup>

19. Costs of the CCAA Proceedings on a go forward basis are expected to be minimal given that BBB Canada has ceased operations, sold or disclaimed all assets and property, and terminated all employees. Almost all matters to be attended to in connection with the CCAA Proceeding have been completed. Both BBB Canada and the Monitor currently expect that all anticipated costs through the extended Stay Period will be funded by retainers provided by BBB Canada to its counsel, the Monitor, and Monitor's counsel prior to the Filing Date. To the extent that the professionals' respective existing retainers are insufficient, additional professional fees will be funded from BBB Canada's remaining cash.<sup>11</sup>

20. BBB Canada has acted, and continues to act, in good faith and with due diligence in these CCAA Proceedings. BBB Canada believes that the proposed extension of the Stay Period is appropriate and necessary in the circumstances.<sup>12</sup>

21. The Monitor supports the requested extension to the Stay Period.<sup>13</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

22. The Applicant therefore requests an Order substantially in the form attached at **Tab 3** to the Motion Record extending the Stay Period to November 22, 2023.

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<sup>10</sup> Etlin Affidavit at para. 18.

<sup>11</sup> Etlin Affidavit at para. 19.

<sup>12</sup> Etlin Affidavit at para. 20.

<sup>13</sup> Etlin Affidavit at para. 20.



**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of August, 2023.

A handwritten signature in dark ink, appearing to read 'Marc Wasserman', is positioned above a horizontal line.

Per Marc Wasserman / Shawn Irving / Dave  
Rosenblat / Emily Paplawski

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

Lawyers for the Applicant

## **SCHEDULE “A”: LIST OF AUTHORITIES**

## **SCHEDULE “B”: TEXT OF STATUTES, REGULATIONS & BY-LAWS**

### ***COMPANIES’ CREDITORS ARRANGEMENT ACT***

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

#### **Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(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.

#### **Stays, etc. — other than initial application**

**(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.

#### **Burden of proof on application**

**(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.

**Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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LTD.**

Court File No: CV-23-00694493-00CL

Applicant

***Ontario*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at: TORONTO

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Suite 6200, P.O. Box 50  
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