

CITATION: YRC Freight Canada Company (Re), 2023 ONSC 4834
COURT FILE NO.: CV-23-00704038-00CL
DATE: 2023-08-31

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**

Applicant

BEFORE: Chief Justice Geoffrey B. Morawetz

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

Jane Dietrich, Natalie Levine, and Michael Wunder, for Alvarez & Marsal
Canada Inc. (Proposed Information Officer)

Jamey Gage and Sanea Tanvir, for United States of America

Roger Jaipargas, Ron Silverman, and Chris Bryant, for The Bank of New York
Mellon

Aryo Shalviri, Linc Rogers, and Aimee Yee, for MFN Partners, L.P.

David Rosenblat and Ben Muller, for Citadel Advisors LLC

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

Anthony Dale, for Unifor (Local 4209)

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

Paul McKenna, for General Teamsters (Local Union 979)

HEARD AND DETERMINED: August 29, 2023

REASONS RELEASED: August 31, 2023

ENDORSEMENT

[1] This application was brought pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C 36, as amended (the "CCAA") and section 106 of the *Courts of Justice Act*, RSO 1990, as amended (the "CJA") by Yellow Corporation (the "Yellow Parent") as the foreign representative (the "Foreign Representative") of the YRC Freight Canada Company (the "YRC Freight Canada"), YRC Logistics Inc. ("YRC Logistics"), USF Holland International Sales Corporation ("USF") and 1105481 Ontario Inc. ("1105481") (collectively the "Canadian Debtors" and each a "Canadian Debtor") for recognition of the chapter 11 proceedings (the "Chapter 11 Cases") commenced by the Yellow Corporation (the "Applicant" or "Yellow Parent") and certain of its affiliates, including the Canadian Debtors (collectively, the "Debtors"), on August 6, 2023 (the "Petition Date") in the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court"), and recognition of certain orders of the U.S. Bankruptcy Court.

[2] On August 8, 2023, Yellow Parent, in its capacity as the proposed Foreign Representative, sought and obtained from this Court the Interim Stay Order, among other things, granting a stay of proceedings in respect of the Canadian Debtors and Yellow Parent, and their respective directors and officers, in Canada.

[3] On August 9, 2023, the U.S. Bankruptcy Court granted certain First Day Orders, including the Foreign Representative Order authorizing Yellow Parent to act as the Foreign Representative for purposes of these recognition proceedings. The U.S. Bankruptcy Court also entered certain additional First Day Orders and certain second interim orders (collectively with the First Day Orders, the "U.S. Orders").

[4] Yellow Parent, as the Foreign Representative, seeks the proposed Initial Recognition Order and the proposed Supplemental Order.

[5] The requested relief was not opposed.

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

Overview

[7] The facts are more fully set out in the Initial Affidavit of Matthew A. Doheny dated August 7, 2023, the First Day Declaration, and the Supplemental Affidavit of Mr. Doheny, sworn August 24, 2023.

[8] The Debtors are part of an approximately 100-year-old trucking and logistics company ("Yellow" or the "Company"), one of the largest less-than-truckload networks in North America. While Yellow operated an integrated, global business, by far its largest presence was in the United

States. The Canadian Debtors are members of the broader integrated Yellow corporate group, with the Canadian Business representing approximately 2% of the Company's overall business.

[9] Facing a liquidity shortfall and no prospects for the significant additional financing required to complete a turnaround of the business, Yellow, with the assistance of its advisors, determined that it was appropriate to clear the Debtors' freight network, close their facilities and commence layoffs of their workforce, and began taking the first steps towards implementing a full scale wind-down of their business operations in order to maximize value and minimize the impact of the shutdown for all stakeholders.

[10] The First Day Hearing of the U.S. Bankruptcy Court was heard by Judge Goldblatt on August 9, 2023. The Debtors obtained various First Day Orders from the U.S. Bankruptcy Court and adjourned certain of the other First Day Motions pending the Debtors advancing their DIP financing alternatives given two unsolicited proposals that had been received prior to the First Day Hearing, in addition to the DIP financing the Debtors had negotiated in connection with commencing the Chapter 11 Cases.

[11] Following a hearing on August 11, 2023, the U.S. Bankruptcy Court granted certain additional First Day Orders, and on August 18, 2023, the U.S. Bankruptcy Court granted the Interim DIP and Cash Collateral Order and the UST Cash Collateral Order. In addition, on August 21, 2023, the U.S. Bankruptcy Court granted certain second interim orders.

Requested Relief

[12] Yellow Parent, as Foreign Representative, seeks recognition of the Chapter 11 Cases as a "foreign main proceeding" in respect of the Canadian Debtors under Part IV of the CCAA.

[13] The Foreign Representative is seeking the same stay of proceedings granted under the Interim Stay Order pursuant to the proposed Supplemental Order.

[14] Pursuant to the proposed Supplemental Order, the Foreign Representative seeks this Court's recognition of the following U.S. Orders, each of which is described in the Supplemental Affidavit and attached as an Exhibit thereto: (a) Foreign Representative Order; (b) Interim DIP and Cash Collateral Order; (c) Interim UST Cash Collateral Order; (d) Interim Cash Management Order; (e) Second Interim Wages Order; (f) Second Interim Critical Vendors Order; (g) Interim Utilities Order; (h) Second Interim Insurance and Surety Bond Order; (i) Interim Taxes Order; (j) Interim Customer Collections Order; (k) Interim Creditor Matrix Order; (l) Joint Administration Order; and (m) Interim Equity Trading Procedures Order.

[15] Yellow Parent also seeks the appointment of Alvarez & Marsal Canada Inc., ("A&M") as the Information Officer in these recognition proceedings pursuant to the proposed Supplemental Order. A&M has consented to acting as Information Officer.

[16] The proposed Supplemental Order provides that Goodmans LLP, as counsel to the Canadian Debtors, the Information Officer and its counsel will be granted a charge in the maximum amount of CDN\$700,000 (the "Administration Charge") on the Collateral of the Canadian Debtors

(the “Canadian Collateral”) to secure the fees and disbursements of such professionals incurred in respect of these proceedings. The Administration Charge does not extend to the assets or property of any Debtors other than the Canadian Debtors.

[17] The Canadian Debtors submit that they require the continued support and involvement of their directors and officers. Accordingly, Yellow Parent, as the Foreign Representative, seeks the granting of a charge on the Canadian Collateral in favour of the Canadian Debtors’ directors and officers in the maximum amount of CDN\$3.5 million (the “D&O Charge”). The D&O Charge does not extend to the assets or property of any Debtors other than the Canadian Debtors.

[18] While the Canadian Debtors’ directors and officers are potential beneficiaries of the director and officer liability insurance maintained by Yellow Parent for itself and its subsidiaries (the “D&O Insurance”), such insurance may not provide sufficient coverage against the potential liability that the directors and officers of the Canadian Debtors could incur during these proceedings.

[19] The amount of the proposed D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors’ payroll, vacation pay, termination and severance, and federal and provincial sales tax liability exposure.

[20] The Canadian Debtors are each guarantors of the DIP Facilities. The DIP Term Sheet contemplates the granting of a court-ordered charge in favour of the DIP Secured Parties on the Canadian Collateral, other than the UST Tranche B Priority Collateral (the “DIP Charge”), to secure the obligations outstanding from time to time under the DIP Facilities. Approval of the DIP Charge is also requested.

Issues and the Law

[21] The issues to be considered on this application are:

- (a) whether this Court should grant the relief sought in the Initial Recognition Order, including:
 - (i) recognizing Yellow Parent as the Foreign Representative in respect of the Chapter 11 Cases; and
 - (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors; and
- (b) whether this Court should grant the relief sought in the Supplemental Order, including:
 - (i) recognizing certain U.S. Orders (including the Interim DIP and Cash Collateral Order),
 - (ii) granting a stay of proceedings in respect of the Canadian Debtors and Yellow Parent, and their respective directors and officers, in Canada;

- (iii) appointing A&M as Information Officer;
- (iv) granting the Administration Charge;
- (v) granting the D&O Charge; and
- (vi) granting the DIP Charge.

[22] Legal issues relating to “foreign proceeding”, “foreign representative” and “foreign main proceeding” were recently addressed in the proceedings commenced by Diebold Nixdorf, Incorporated, indexed as 2023 ONSC 4230 and will not be repeated herein.

[23] I am satisfied that the requirements for recognizing the Yellow Parent as “foreign representative” and the Chapter 11 Cases as a “foreign proceeding” pursuant to Sections 46 and 47 of the CCAA have been satisfied.

[24] As to whether the Chapter 11 Cases are a “foreign main proceeding”, the following elements of the Canadian Debtors and Canadian Business, among others, are integrated with the Yellow corporate group:

- (a) the Canadian Debtors are indirect, wholly-owned subsidiaries of the Yellow Parent, which is a Delaware company listed on the NASDAQ;
- (b) Yellow’s senior leadership located in the United States exercises primary strategic management and control of the corporate group, including the Canadian Debtors;
- (c) YRC Freight Canada’s operations are integrated with those of its U.S. parent, YRC Inc., as part of the larger “YRC Freight” brand to provide seamless cross-boarder service;
- (d) the revenue generated by the Canadian Business for the financial year ended December 31, 2022, represented approximately 2% of Yellow’s consolidated worldwide revenue for such period;
- (e) prior to the Petition Date, the Canadian Debtors employed approximately 2% of Yellow’s overall workforce;
- (f) all of the Company’s approximately \$1.2 billion in principal amount of funded indebtedness is advanced by United States-based lenders and the loan documentation is governed by United States law;
- (g) the Canadian Debtors are guarantors of the Company’s funded indebtedness and have granted security over their assets in respect thereof;
- (h) the Company’s overall financial position is managed on a consolidated basis principally from Yellow’s office in Nashville, Tennessee.

[25] Taking into account the factors referenced above, I am satisfied that the COMI of each Canadian Debtor is the United States and that the Chapter 11 Cases ought to be recognized as a “foreign main proceeding” pursuant to subsection 47(2) of the CCAA.

[26] Yellow Parent is seeking an Initial Recognition Order in substantially the form of the Ontario model order for a foreign main proceeding. The primary effect of the proposed Initial Recognition Order is to recognize the Chapter 11 Cases as a foreign main proceeding. I am satisfied that the granting of the Initial Recognition Order in the form requested is appropriate in these circumstances.

The Supplemental Order

(a) Stay Proceedings in Canada

[27] The proposed Supplemental Order provides for a stay of proceedings in respect of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada. I am satisfied that the record establishes that it is appropriate to give effect in Canada to the stay of proceedings pursuant to the Chapter 11 Cases and to preserve and protect the value of the Canadian Business.

(b) Recognition of Certain U.S. Orders

[28] The U.S. Orders for which the Yellow Parent is seeking recognition are listed at [14] above.

[29] Yellow Parent submits that it is appropriate for this Court to recognize the requested U.S. Orders given, among other things:

- (a) the U.S. Bankruptcy Court has assumed jurisdiction over the Chapter 11 Cases and comity will be furthered by this Court’s recognition of orders granted by the U.S. Bankruptcy Court in those proceedings;
- (b) as Yellow operates a global, integrated business that is predominantly in the United States, it is appropriate for the Chapter 11 Cases overseen by the U.S. Bankruptcy Court to be the primary forum for the Company’s insolvency proceedings; and
- (c) the U.S. Orders have been sought by the Debtors to enable them to carry on certain critical post-petition activities in connection with preserving the value of their assets and clearing freight from their network, to minimize the adverse effects of the Chapter 11 Cases, and to preserve value of the Debtors’ assets for the benefit of stakeholders as the Company advances its wind-down and sale efforts.

[30] Yellow Parent submits that recognition of the U.S. Orders is necessary for the protection of the Canadian Debtors, to preserve the value of the Canadian Business and facilitate Yellow’s overall efforts to implement an orderly wind-down of the business, including the Canadian Business, pursuant to the Chapter 11 Cases.

[31] I accept the submissions of Yellow Parent on this issue. The U.S. Orders are recognized.

(c) Recognition of the Interim DIP and Cash Collateral Order

[32] The DIP Facilities, which are being provided on a consensual basis will provide the Debtors with access to up to \$212.5 million of liquidity (taking into account the Additional Junior DIP Commitment, as needed). The terms of the DIP Facilities are described in further detail in the Supplemental Affidavit. As of August 21, 2023, the first \$60 million draw has been funded to the Debtors.

[33] The Canadian Debtors are each guarantors under the DIP Facilities, consistent with the Canadian Debtors also being guarantors of, and granting security in respect of, the Company's existing approximately \$1.2 billion of prepetition funded debt obligations.

[34] I am satisfied that the DIP Facilities are essential for the Debtors, including the Canadian Debtors, to effect an orderly wind-down of operations and conduct a value-maximizing sale process for their assets, thereby furthering the objectives of the CCAA. The Interim DIP and Cash Collateral Order is recognized.

(d) Appointment of the Information Officer

[35] Yellow Parent seeks the appointment of A&M as the Information Officer. The information officer's role is to help facilitate cooperation between the Canadian proceeding, the foreign representative, and the foreign court, including to keep the Court apprised of the status of the foreign proceeding and to act as a point of contact to respond to inquiries from interested parties in Canada. In these circumstances I agree that the appointment of A&M as Information Officer is appropriate.

(e) Administration Charge

[36] The proposed Supplemental Order provides for the Administration Charge on the Canadian Collateral in the maximum amount of CDN\$700,000 to secure the fees and disbursements of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer incurred in respect of these proceedings.

[37] Yellow Parent submits that the amount of the proposed Administration Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Canadian Debtors and the proposed Information Officer and its counsel. I am satisfied that the granting of the proposed Administration Charge is appropriate in the circumstances.

(f) D&O Charge

[38] The proposed Supplemental Order also provides for the D&O Charge in a maximum aggregate amount of CDN\$3.5 million on the Canadian Collateral as security for the indemnity obligations of the Canadian Debtors to their directors and officers under the proposed

Supplemental Order in respect of obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers. The D&O Charge would be subordinate to the proposed Administration Charge and rank in priority to the DIP Charge and all other encumbrances, except to the extent of any encumbrances in favour of any person that did not receive notice of the application for the Supplemental Order.

[39] While not directly applicable in the context of a Part IV recognition proceeding, section 11.51 of the CCAA expressly provides that the Court has the jurisdiction to grant a charge in favour of directors and officers. In deciding whether to grant a director's charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the debtor company could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.

[40] Yellow Parent submits that the D&O Charge is consistent with the purpose of the CCAA and is appropriate in the circumstances for the following reasons:

- (a) the Canadian Debtors require the continued support and involvement of their directors and officers in connection with effectuating an orderly wind-down of the Canadian Business;
- (b) the D&O Insurance may not provide sufficient coverage against the potential liability that the directors and officers of the Canadian Debtors could incur during these proceedings;
- (c) the D&O Charge does not cover willful misconduct or gross negligence;
- (d) the amount of the proposed D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, termination and severance, and sales tax liability exposure;
- (e) the secured creditors affected by the D&O Charge have been provided with notice of the proposed Supplemental Order; and
- (f) the Information Officer is supportive of the proposed D&O Charge.

[41] Taking into account the above factors, I am satisfied that the requested relief in connection with the D&O Charge is appropriate in the circumstances.

(g) DIP Charge

[42] The DIP Term Sheet contemplates the granting of the DIP Charge to secure the obligations outstanding from time to time under the DIP Facilities. The DIP Charge would be subordinate to the proposed Administration Charge and the D&O Charge.

[43] While not directly applicable in the context of a Part IV recognition proceeding, Section 11.2 of the CCAA provides the Court with express jurisdiction to grant a DIP financing charge. When considering whether to grant a DIP financing charge under Section 11.2 of the CCAA, the Court refers to the factors outlined in Section 11.2(4) of the CCAA.

[44] Taking into account the factors outlined in Section 11.2(4) of the CCAA, I am satisfied that the requested relief in connection with the DIP Charge is appropriate in the circumstances.

Teamsters Local Union 938 and Local Union 879

[45] Finally, counsel on behalf of Teamsters Local Union 938 and Local Union 879 raised an issue with respect to accrued unpaid vacation pay and its priority vis-à-vis the various secured charges. This issue was not raised prior to the hearing and given that the primary relief requested on this motion is to recognize certain U.S. Orders which have been negotiated by numerous parties, I am not prepared to entertain argument related to this issue, at this time. I note that the D&O Charge does address the vacation pay issue and this may satisfy the concerns raised by counsel to both Local Unions. I urge the Applicant and the Information Officer to dialogue with counsel on behalf of the Teamsters Local Unions 938 and 879 on this issue. If the issue cannot be resolved, a case conference can be scheduled.

Disposition

[46] The Initial Recognition Order and Supplemental Order are granted.



Chief Justice Geoffrey B. Morawetz

Date: August 31, 2023