



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00734339-00CL

DATE: JANUARY 17, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF COMARK HOLDINGS INC.,

BOOTLEGGER

CLOTHING INC., CLEO FASHIONS INC. AND RICKI'S  
FASHION INC.

BEFORE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

**For Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
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**For Other:**

Name of Person Appearing	Name of Party	Contact Info
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### **ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] On January 7, 2025, the Applicants were granted protection under the *CCAA* pursuant to an initial order of this Court (the “Initial Order”). Alvarez & Marsal Canada Inc. was appointed as monitor pursuant to the Initial Order (the “Monitor”).
- [2] On January 17, 2025, I heard the Applicants’ application for two orders. At the conclusion of the hearing, I advised that I was satisfied that the requested Realization Process Approval Order and Amended and Restated Initial Order should be made. I wrote in my endorsement that I would provide additional reasons in a supplementary endorsement.
- [3] The following are my reasons with respect to the issues raised.
- [4] Defined terms have the meanings assigned to them in the motion materials.

### **Should the Consulting Agreement and Sale Guidelines be approved?**

- [5] A *CCAA* court has jurisdiction to approve a sale process authorizing the realization of a debtor’s assets, and courts have frequently done so in the context of retail insolvencies. In other cases involving approval of inventory and goods, furniture, fixtures, equipment and/or improvements to the property (“FF&E”), courts have made use of the *Nortel* factors which generally apply in respect of sale process approvals.<sup>1</sup> In applying the *Nortel* test, the Court considers the following questions:
  - a. Is a sale transaction warranted at this time?
  - b. Will the sale benefit the whole economic community?

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<sup>1</sup> *Nortel Networks Corp (Re)*, 2009 CanLII 39492, at para. 49.

c. Do any of the debtors' creditors have a *bona fide* reason to object to a sale?

d. Is there a better alternative?

[6] Courts have also evaluated proposed retail realization processes in light of the criteria set out in section 36(3) of the *CCAA*, namely:

a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

b. whether the Monitor approved 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 than a bankruptcy;

d. the extent to which creditors were consulted;

e. 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.

[7] I am satisfied that the *Nortel* factors and the s. 36(3) factors are satisfied in respect of the proposed realization process.

[8] I am satisfied that the Sale is warranted at this time. Realization of the inventory and FF&E is an integral and urgent part of the realization process. Given the Applicants' limited liquidity and ongoing carrying costs, the Applicants require approval of an orderly realization of inventory and FF&E to commence as soon as possible. It is a condition of the DIP Term Sheet that the sale be commenced no later than January 18, 2025.

[9] The Applicants intend to conduct the Sale at all of the Liquidating Stores. However, the Consulting Agreement provides that the Applicants are entitled to remove any Liquidating Stores from the Sale at any time on or prior to January 31, 2025 or upon giving 14-days written notice after January 1, 2025. The Applicants may terminate the Consulting Agreement in the event they remove all Liquidating Stores from the Sale.

[10] I accept that retaining the services of the Consultant will produce better results than attempting to realize on the inventory and FF&E without the assistance of the Consultant, as the Consultant's services are necessary to facilitate a seamless and efficient large-scale store closing process and maximize the value of the inventory and FF&E.

- [11] I am satisfied that the process to select the Consultant was reasonable. The Monitor solicited to potential third-party liquidators, each of whom executed a non-disclosure agreement and submitted bids in accordance with the bidding instructions received from Monitor. The Consultant was selected following review and discussion of the proposals between the Applicants, the Monitor, and the DIP Lender. The selection of the Consultant was based both on the Consultant's expertise and knowledge of the Applicants' business, inventory and store operations and its extensive experience conducting retail realizations and other value-maximizing store realization processes.
- [12] The Monitor supports the selection of the Consultant.
- [13] I am satisfied that the manner in which the Sale will be conducted pursuant to the Consulting Agreement and the Sale Guidelines is fair and reasonable in the circumstances.
- [14] The realization process envisions a flexible structure, whereby the Sale will initially occur at the Liquidating Stores, with the Applicants having the ability to remove individual Liquidating Stores. The Consulting Agreement is supported by the Monitor as reasonable in the circumstances.
- [15] I accept that the structure outlined in the Consulting Agreement is designed to align Consultant's compensation with stakeholder outcomes. The Consulting Agreement is supported by the Monitor as reasonable in the circumstances.
- [16] The Sale Guidelines contain a number of other provisions designed to ensure that the sale takes place in an orderly fashion. The Sale Guidelines require that the Sale be conducted in accordance with the terms of the leases for the Liquidating Stores, and Sale Guidelines may be amended on a store by store basis with the consent of the parties, the applicable landlord, and the Monitor.
- [17] The Monitor was closely involved in the process by which the Consultant was chosen. The Monitor supports the proposed Realization Process Approval Order.

### **Should the DIP be approved?**

- [18] Since the granting of the Initial Order, CIBC (the "DIP Lender") has agreed to provide additional funding (the "DIP Loan") to Comark, as borrower, on the terms set out in a term sheet agreed to between the Retail Entities and ParentCo as Guarantors, and the DIP Lender dated January 15, 2025 to a maximum principal amount of \$18 million.
- [19] Based on the Updated Cash Flow Forecast, the DIP Facility is expected to provide the DIP Parties with sufficient liquidity to continue their business operations during the CCAA proceedings while completing the Sale or a Transaction for the benefit of the Applicants and their stakeholders.

- [20] Section 11.2(1) of the *CCAA* provides the court with authority to grant an interim financing charge “in an amount the court considers appropriate”, subject to the limitation that the security or charge may not secure an obligation that exists before the order is made. I am satisfied that the proposed DIP Lender’s Charge satisfies these conditions and is sized appropriately to the Applicants’ needs, does not secure in the of the DIP Lender’s pre-filing obligations, and is consistent with pre-filing priorities.
- [21] Section 11.2(4) of the *CCAA* provides a list of factors to be considered by the court in deciding whether to approve interim financing and grant a DIP Lender’s Charge. I am satisfied that the application of these factors supports approval of the DIP Term Sheet and the granting of the DIP Lender’s Charge. The Monitor supports this relief.
- [22] I am satisfied that the authorization under the ARIO to limit sales taxes payable by the Applicants to taxes accrued or collected post-filing is appropriate. The DIP Lender’s obligation to advance the DIP Loan is subject to approval of the sales tax conditions. If the DIP Term Sheet is not approved and the DIP Loan is not advanced, the Applicants will not have the funding necessary to conduct the Sale and pursue a Transaction to maximize value for the benefit of creditors and stakeholders generally.

### **Should authorization be granted to pursue a Transaction?**

- [23] Since the commencement of these *CCAA* proceedings, the Applicants have received outreaches and expressions of interest from several interested parties for the acquisition of certain of the Applicants’ business and assets. The Applicants seek authority in the ARIO to pursue offers for or avenues of refinancing, restructuring, sale or reorganization of the business or assets of the Applicants (a “Transaction”). To the extent a Transaction result, it will be subject to prior approval of this Court. Any Transaction will be subject to the DIP Lender’s consent.
- [24] I am satisfied that the requested authorization should be granted. The authorization in the ARIO to pursue a Transaction would give the Applicants and the Monitor the flexibility to pursue all value-maximizing avenues for the assets of the Applicants, while concurrently conducting the Sale (with the ability to remove some or all of the Liquidating Stores from the Sale). I accept that this process would benefit the Applicants and their creditors and stakeholders generally by allowing the Applicants to determine whether there may be a going concern transaction or transactions that would generate more value for creditors and stakeholders than the Sale.
- [25] The DIP Lender and the Monitor support the Applicant and the Monitor engaging in discussions with potential interested parties.

### **Should the Administration Charge and the Directors’ Charge be increased?**

[26] The Initial Order approved the Administration Charge in the amount of \$750,000. The Applicants seek to increase the Administration Charge to \$1 million, with the concurrence of the Monitor. Similarly, the Initial Order approved the Directors' Charge in the amount of \$6.2 million, which the Applicants seek to increase to \$7.4 million, with the concurrence of the Monitor.

[27] I accept that these increases should be granted and approved.

**Should the Stay Period be extended?**

[28] Pursuant to section 11.02 of the *CCAA*, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.

[29] The Applicants, as supported by the Monitor, ask that the Stay Period be extended up to and including May 15, 2025. This will permit the Applicants, with the assistance of the Consultant and under the oversight of the Monitor, to conduct the Sale in accordance with the Consulting Agreement and Sale Guidelines, while concurrently pursuing a Transaction for some or all of the Applicants' business or assets, all with a view to maximizing recovery for the Applicants' creditors.

[30] I am satisfied that the Applicants have acted and are acting in good faith and with due diligence these *CCAA* proceeding. The Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. The Monitor supports the extension of the Stay Period to May 15, 2025.

[31] These are my additional reasons for granting the relief sought at the hearing on January 17, 2025.

Dated: January 21, 2025