

**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 COMARK INC.

APPLICANT

**AMENDED NOTICE OF MOTION
(Stay Extension and Approval of Amended and
Restated Initial Order Returnable April 21, 2015)**

The Applicant will make a motion before the Honourable Senior Regional Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on April 21, 2015 at 8:30AM, or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A":
 - (a) abridging the time for and validating service of this Notice of Motion and supporting materials such that the motion is properly returnable on April 21, 2015 and dispensing with further service thereof; ~~and~~
 - (b) extending the Stay Period, as defined in paragraph 14 of the Initial Order of Senior Regional Justice Morawetz dated March 26, 2015 (the "**Initial Order**"), until and including June 12, 2015; and

(c) approving the First Report of the Monitor and Second Report of the Monitor and the Monitor's activities described therein.

2. An Order substantially in the form attached hereto as Schedule "B" (the "**Draft Amended and Restated Initial Order**") amending and restating the Initial Order to include certain amendments at the request of the Applicant's landlords, and to allow the Applicant to continue to pay rent in arrears for the Percentage-Rent Leases (as defined below) in accordance with the terms of those leases. A backline of the Draft Amended and Restated Initial Order to the Initial Order is attached hereto as Schedule "C"; and

3. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

4. On March 26, 2015, this Honourable Court granted protection to the Applicant under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**") in the form of the Initial Order;

5. Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the monitor in the CCAA proceedings (the "**Monitor**");

6. The Court approved the engagement of Houlihan Lokey Capital, Inc. as financial advisor (the "**Financial Advisor**") to Comark;

7. The Applicant was authorized to obtain and borrow up to \$28 million under a revolving credit facility (the "**DIP Facility**") from its secured lender, Salus Capital Partners, LLC. ("**Salus**");

8. Since the granting of the Initial Order, Comark has been operating its business as a going concern in close consultation with the Monitor;

Communications with Stakeholders

9. As part of the continued operations of its business, the Applicant has developed and implemented a comprehensive communications plan with the assistance of its communications consultant in order to inform its stakeholders about the CCAA proceedings and respond to inquiries;

10. The Applicant, in close consultation with the Monitor, has been working with and engaged in communications and discussions with members of its various stakeholder groups;

11. The Applicant has been in contact with a large number of suppliers to ensure the continued supply of goods and services to Comark;

12. On March 31, 2015, the Applicant, with the consent of the Monitor, delivered disclaimer notices to the landlords of certain leases in respect of Comark stores that were identified as having poor performance or negative cash flow. Subsequently, a number of landlords contacted the Applicant regarding possible amendments to these leases and thus the Applicant has engaged in negotiations with certain landlords regarding lease terms;

The Sale and Investor Solicitation Process

13. In the Initial Order, the Court directed Comark to immediately commence a sale and investor solicitation process (the “SISP”);

14. The Applicant, together with the Financial Advisor and the Monitor, has been working diligently to conduct the SISP pursuant to its terms;

Amended and Restated Initial Order

15. Following the granting of the Initial Order, counsel to the Applicant was approached by counsel to a group of landlords to discuss certain concerns with respect to the Initial Order and the CCAA proceedings. As a result of these discussions, the Applicant, in consultation with the Monitor, has agreed to certain amendments to the Initial Order for the benefit of landlords, subject to the approval of this Court;

16. In addition, the Applicant has become aware that certain leases provide for the payment of rent based on a percentage of the previous month's sales (the "**Percentage-Rent Leases**") and thus must be paid in arrears. The amendment to the Initial Order sought by the Applicant will allow for rent for these leases to be paid in arrears in the ordinary course;

17. The Monitor and Salus consent to the above amendments;

Stay Extension

18. The Initial Order granted a stay of proceedings until and including April 24, 2015, or such later date as this Court may order;

19. Since the granting of the Initial Order, the Applicant, in close consultation and with the assistance of the Monitor, has acted and continues to act in good faith and with due diligence;

20. The Applicant has made progress in restructuring its business and continuing going concern operations; however, ongoing issues continue to arise on a daily basis which require the attention of Comark's management team;

21. An extension of the Stay Period until June 12, 2015 is appropriate in the circumstances as it will allow the Applicant, in close consultation with the Monitor, to continue to conduct the SISP in accordance with its terms and to engage in discussions and consultations with its stakeholders;

22. It is necessary and in the best interests of the Applicant and its stakeholders that the Stay Period be extended and that the Applicant be afforded the "breathing space" it needs to engage in an orderly restructuring of its business and continue going concern operations;

23. The Applicant has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period;

24. The extension of the Stay Period is supported by the Monitor;

25. The provisions of the CCAA and, in particular, Section 11 thereof;

26. The inherent and inequitable jurisdiction of this Honourable Court;

27. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and

28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

29. The Affidavit of Neville Lewis sworn April 15, 2015 and the exhibits attached hereto;
30. The Affidavit of Gerald Bachynski sworn March 25, 2015;
31. The Supplementary Affidavit of Gerald Bachynski sworn March 26, 2015;
32. The First Report of the Monitor dated March 26, 2015;
33. The Second Report of the Monitor, to be filed dated April 16, 2015;
34. ~~33.~~The Initial Order dated March 26, 2015; and
35. ~~34.~~Such further and other material as counsel may advise and this Honourable Court may permit.

April 15, 2015

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Michael De Lellis (LSUC #: 48038U)
Tel: 416.862.5997

Caitlin Fell (LSUC #: 60091H)
Tel: 416.862.6690
Fax: 416.862.6666

Lawyers for the Applicant

TO: THE SERVICE LIST

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Court File No. CV15-10920-00CL

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PROCEEDING COMMENCED AT
TORONTO

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Box 50, 1 First Canadian Place
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Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Michael De Lellis (LSUC #: 48038U)
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Tel: 416.862.6690
Fax: 416.862.6666

Lawyers for the Applicant

Matter No: 1163824