

Court File No.

**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 PAYLESS HOLDINGS LLC, PAYLESS SHOESOURCE
CANADA INC., PAYLESS SHOESOURCE CANADA GP INC. AND THOSE OTHER
ENTITIES LISTED ON SCHEDULE "A" HERETO**

**APPLICATION OF PAYLESS HOLDINGS LLC UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on April 7, 2017 at 3:15 p.m. at 330 University Avenue, Toronto ON, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date April , 2017

Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON M5G 1R7

TO: SERVICE LIST

APPLICATION

1. Payless Holdings LLC (“**Applicant**”), in its capacity as foreign representative of itself, as well as those entities listed in Schedule “A” that filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (collectively, the “**Chapter 11 Debtors**”), makes this Application seeking Orders for, *inter alia*, the following relief, substantially in the form of the draft Orders included in the Application Record:

Initial Recognition Order (Foreign Main Proceeding)(State here the precise relief claimed.)

- (a) Appointing the Applicant as the foreign representative (the “**Foreign Representative**”) of the Chapter 11 Debtors as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”);
- (b) Declaring that the centre of main interest for each of the Chapter 11 Debtors is the United States of America and recognizing the Chapter 11 cases (the “**Chapter 11 Cases**”) commenced in respect of the Chapter 11 Debtors in the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”) as a “foreign main proceeding” as defined in section 45 of the CCAA
- (c) Granting a stay of proceedings in respect of the Chapter 11 Debtors until otherwise ordered by this Court;
- (d) Restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to the Chapter 11 Debtors;
- (e) Requiring the Foreign Representative to publish notice of this proceeding as required by section 53(b) of the CCAA;

Supplemental Order (Foreign Main Proceeding)(State here the precise relief claimed.)

- (f) Recognizing and enforcing the terms of the orders made by the U.S. Court dated April 5, 2017 in the following motions (the “**First Day Orders**”);
- (i) Foreign Representative Motion;
 - (ii) Joint Administration Motion;
 - (iii) Employee Wages Motion
 - (iv) Insurance Motion;
 - (v) Customer Programs Motion;
 - (vi) Cash Management Motion;
 - (vii) DIP Motion;
 - (viii) Critical Vendors and Shippers Motion;
 - (ix) Tax Motion; and
 - (x) Surety Bond Motion.
- (g) Granting a stay of proceedings (the “**Requested Stay**”), as further described below, in respect of the Chapter 11 Debtors and the directors and officers of the Chapter 11 Debtors;
- (h) Appointing Alvarez and Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in respect of these proceedings;
- (i) Granting the DIP Lenders’ Charge (defined below) and affording it the priority set out in the proposed Supplemental Order;
- (j) Granting the Administration Charge (defined below) in the maximum amount of USD\$500,000 and affording it the priority set out in the proposed Supplemental Order;
- (k) Granting the Canadian Unsecured Creditors’ Charge (defined below) in the maximum amount of USD\$1.4 million and affording it the priority set out in the

proposed Supplemental Order, which, as further set out in such Supplemental Order is proposed to rank pari passu with any claim in respect of the Carve Out (as defined in the Interim DIP Order) as further provided therein;

- (l) Requesting the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere; and
- (m) Such further and other relief as this Honourable Court deems just;

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) The Chapter 11 Debtors together with their non-debtor affiliates (collectively, “**Payless**”), form an iconic American footwear retailer with a strategy of selling low-cost, high quality family footwear.
- (b) Payless is headquartered in Topeka, Kansas. There are nearly 4,400 Payless stores in more than 30 countries. Payless employs approximately 22,000 people.
- (c) Payless Holdings LLC is the ultimate parent of all of the Chapter 11 Debtors. It is incorporated under the laws of the State of Delaware, with its head offices in Topeka, Kansas. With the exception of the Payless Canada Group (defined below), all of the Chapter 11 Debtors are located in the U.S.
- (d) Three of the Chapter 11 Debtors are entities established in Canada and collectively make up the “**Payless Canada Group**”:
 - (i) Payless ShoeSource Canada Inc., incorporated under the laws of Canada;

- (ii) Payless ShoeSource Canada GP Inc., incorporated under the laws of Canada; and
 - (iii) Payless ShoeSource Canada LP is a partnership established under the laws of Ontario. The Applicant seeks to have a stay of proceedings and other benefits of the relief sought in this Application extended to Payless Shoe Source Canada LP, which is related to and carries on operations that are integral to the business of the Payless Canada Group.
- (e) The Payless Canada Group currently operates 258 stores in Canada, with about half in Ontario.
- (f) Approximately 56 of the Canadian store leases are subject to an indemnity with cross-default provisions such that an Event of Default will occur under such leases if the “Indemnifier” (Payless ShoeSource, Inc.) becomes bankrupt or insolvent, or takes the benefit of any statute for bankrupt or insolvent debtors.
- (g) Substantially all of the management of the Chapter 11 Debtors, including the Payless Canada Group, is located in the U.S. The Payless Canada Group relies on its U.S. counterparts for all overhead services including the accounting and finance, buying, logistics, marketing, strategic direction, IT and other functions.
- (h) The Payless Canada Group requires its U.S. counterparts to survive as a going concern. Among other reasons, Payless’ strategy depends on obtaining high quality, low cost products from manufacturing partners. The U.S. business sources and is the primary purchaser of substantially all of the Payless Canada Group’s inventory, without which the Payless Canada Group would be unable to survive. However, this supply chain is currently strained to its breaking point and suppliers have threatened to stop shipping or to restrict credit terms.

- (i) For the U.S. counterparts to survive, Payless must, *inter alia*, (a) obtain immediate incremental liquidity to pay trade obligations in the supply chain, and (b) right-size their balance sheet by significantly reducing annual debt service costs and reducing outstanding debt from approximately \$838 million to \$489 million (inclusive of assumed revolving loans).

- (j) Payless commenced the Chapter 11 Cases to implement a reorganization that is supported by most of its largest lenders. Through the Chapter 11 Cases, Payless will, *inter alia*, (i) obtain access to up to \$305 million in new money DIP ABL financing, (ii) obtain access to up to \$80 million in new money DIP term loan financing; (iii) implement a pre-arranged restructuring that will eliminate a significant amount of the funded debt; and (iv) execute on a store fleet rationalization process for U.S. stores that will improve profitability. At this time it is not anticipated that any Canadian stores will be closed;

The Chapter 11 Cases each constitute a “Foreign Main Proceeding” in which the Applicant is the “Foreign Representative”

- (k) The Chapter 11 Debtors are all currently parties to the Chapter 11 Cases pursuant to petitions filed in the U.S. Court under Chapter 11 of the U.S. Bankruptcy Code;

- (l) The Chapter 11 Cases constitute “foreign proceedings” pursuant to section 45(1) of the CCAA;

- (m) The Applicant has been appointed as “foreign representative” of all of the Chapter 11 Debtors in the Chapter 11 Cases and, as such, falls within the definition of “foreign representative” under subsection 45(1) of the CCAA;

- (n) Pursuant to section 46(1) of the CCAA, the Foreign Representative may apply to the court for recognition of the Chapter 11 Cases;
- (o) Pursuant to subsection 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Cases if it is satisfied that the application relates to a “foreign proceeding” and that the Applicant is a “foreign representative”;
- (p) Each of the Chapter 11 Debtors’ centre of main interest is located in the U.S. and, as such, the within proceedings are a “foreign main proceeding” for the purposes of section 45(1) of the CCAA;

The Requested Stay is appropriate in the circumstances

- (q) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit or proceeding against the Chapter 11 Debtors, subject to any terms and conditions it considers appropriate;
- (r) The Requested Stay in Canada is essential to the consolidated efforts of the Chapter 11 Debtors;

Recognition of the First Day Orders granted in the Chapter 11 Cases is appropriate

- (s) For the purposes of ensuring that all interested parties cooperate in the efforts of the Chapter 11 Debtors, the Applicant requests that the terms of the First Day Orders provided in the Chapter 11 Cases be recognized by this Court pursuant to section 49 of the CCAA;

Recognition of the DIP Motion is Appropriate

- (t) The Chapter 11 Debtors have negotiated for (i) up to \$305 million in new money debtor-in-possession ABL financing (the “**DIP ABL Facilities**”), and (ii) up to \$80 million in new money DIP term loan financing (the “**DIP Term Loan Facility**”) and together with the DIP ABL Facilities, the “**DIP Financing**”) to be entered into with certain lenders who from time to time are a party thereto (collectively, the “**DIP Lenders**”).
- (u) The Chapter 11 Debtors will use the DIP Financing to, *inter alia*, (a) repay specified pre-Petition obligations, (b) fund the Chapter 11 Cases, (c) make certain other specified payments, and (d) provide working capital during the Chapter 11 Cases in accordance with the approved budget.
- (v) The Chapter 11 Debtors sought, and were unable to obtain, sufficient and otherwise viable financing.
- (w) Without immediate access to the DIP Financing, the Chapter 11 Debtors would be unable to meet payroll and otherwise operate their business, and the Chapter 11 Debtors’ ability to preserve and maximize the value of their assets and operations would be irreparably harmed. The DIP Financing represents the best available option for the Chapter 11 Debtors and will benefit all parties in interest.
- (x) The entities in the Payless Canada Group are not borrowers under Payless’s current credit facilities and the assets of the Payless Canada Group are currently unencumbered (except in certain limited cases).

- (y) The DIP ABL Lenders have, among other things, required that, as a condition of granting the DIP ABL Facilities, the entities in the Payless Canada Group:
 - (i) be guarantors under the DIP ABL Facilities;
 - (ii) provide security for the borrowers' obligations; and
 - (iii) seek super-priority liens and charges (the "**DIP Lenders' Charge**") in the Chapter 11 Cases and these proceedings;

The Administration Charge, Canadian Unsecured Creditors' Charge and DIP Lenders' Charge are Necessary

- (z) The proposed DIP Lenders' Charge will constitute a charge on the property of the Chapter 11 Debtors located in Canada and will rank in priority to all unsecured claims, but is subordinate to the proposed Administration Charge, a proposed charge in the amount of \$1.4 million which will be set aside for the pre-filing unsecured trade creditors of the Payless Canada Group (the "**Canadian Unsecured Creditors' Charge**") and validly perfected secured claims of the Payless Canada Group;
- (aa) The DIP Lenders' Charge is necessary to provide cash flow to the Chapter 11 Debtors during the restructuring period;
- (bb) The effect of the Canadian Unsecured Creditors' Charge would be to ensure that Canadian unsecured creditors will be provided with recovery in these proceedings;
- (cc) The Administration Charge is for the benefit of the Information Officer and its counsel;

The Appointment of an Information Officer is Appropriate

- (dd) A&M has consented to act as the Information Officer in the within proceeding, and will assist the Court and Canadian stakeholders of the Chapter 11 Debtors;

General

- (ee) The CCAA, including Part IV; and
- (ff) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) Affidavit of Michael Schwindle sworn April 6, 2017;
- (b) Affidavit of Francesca Del Rizzo sworn April 6, 2017; and
- (c) The Consent of A&M to act as the Information Officer;
- (d) The report of A&M in its capacity as proposed Information Officer; and
- (e) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 6, 2017

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SCHEDULE “A”

ADDITIONAL CHAPTER 11 DEBTORS

Payless Intermediate Holdings LLC
WBG PSS Holdings LLC
Payless Inc.
Payless Finance, Inc.
Collective Brands Services, Inc.
PSS Delaware Company 4, Inc.
Shoe Sourcing, Inc
Payless ShoeSource, Inc
Eastborough, Inc.
Payless Purchasing Services, Inc.
Payless ShoeSource Merchandising, Inc.
Payless Gold Value CO, Inc.
Payless ShoeSource Distribution, Inc.
Payless ShoeSource Worldwide, Inc.
Payless NYC, Inc.
Payless ShoeSource of Puerto Rico, Inc.
Payless Collective GP, LLC
Collective Licensing, LP
Collective Licensing International LLC
Clinch, LLC
Collective Brands Franchising Services, LLC
Payless International Franchising, LLC
Collective Brands Logistics, Limited
Dynamic Assets Limited
PSS Canada, Inc.

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APPLICATION OF PAYLESS HOLDINGS LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

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