



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: BK-23-03008133-0031 DATE: NOVEMBER 17, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: BAD BOY FURNITURE WAREHOUSE LIMITED v. KSV RESTRUCTURING INC.

BEFORE: MR. JUSTICE WILTON-SIEGEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF MR. JUSTICE WILTON-SIEGEL:

[1] On the attendance, the Company seeks orders approving a financing accommodation agreement, approving a consulting agreement respecting a liquidation sale and proposed guidelines for the sale, declaring that the circumstances contemplated by s. 3.2 of the Regulations under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“WEPPA”) are satisfied and extending the period for filing a proposal. The orders are granted for the following reasons.

[2] The Accommodation Agreement with Laurentian Bank of Canada (“LBC”) provides additional operating financing under the existing security arrangements necessary to permit an orderly liquidation of the Company’s assets. Although there is no requirement for a super-priority charge, the considerations for such a financing set out under s. 50.6(4) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “BIA”) are relevant. In this regard, the financing is critical for the proposed liquidation sale which, in turn, is necessary to maximize the value of the Company’s assets and thereby to permit the Company to pay post-filing expenses and develop a proposal. No creditor would be materially prejudiced as the financing will continue the existing arrangements to which unsecured creditors were already subject in the pre-filing period. The Company’s cash flow forecast indicates that the funding should be sufficient to fund operations to the end of the requested extended Proposal Period. The Accommodation Agreement terms are reasonable and are supported by the Proposal Trustee.

[3] With respect to the proposed liquidation sale contemplated by the Consulting Agreement with Infinity Asset Solutions Inc. (the “Consultant”) and the Sale Guidelines, the provisions of s. 65.13(1) of the BIA are relevant. In this regard, the Proposal Trustee supports the engagement of the Consultant and the commencement of the liquidation sale on an urgent basis which the Consultant is in a position to do. The Consultant has extensive experience in retail liquidations. The Proposal Trustee is of the view that the Consultant’s fee structure is consistent with or lower than market and other recent liquidation sales.

[4] The proposed liquidation sale will permit an orderly and controlled process which is likely to achieve market value. The Sale Guidelines are also consistent with recent transactions. The one exception, pertaining to the on-line auction, is not opposed by the landlords whose comments were solicited in respect of the Sale Guidelines. The Consulting Agreement and the Sales Guidelines are also supported by the LBC.

[5] The Debtor also seeks an order under s. 5(5) of WEPPA. Given the Debtor’s financial circumstances, the terminated employees will have pre-filing unsecured claims against the Debtor for termination and severance pay claims with a very uncertain recovery. The employees who are not terminated in the future are being retained to conduct the liquidation sale and, as such, are being retained to wind down the business operations of the Debtor. Accordingly, the conditions required for a declaration under s. 5(5) are satisfied.

[6] Lastly, the Debtor seeks an order extending the period within which it is required to file a proposal pursuant to s. 50.4(8) of the BIA. The Debtor has satisfied the conditions under s. 50.4(9) of that statute for an extension. Based on the Proposal Trustee’s Report and the submissions of the Debtor, the Proposal Trustee, the LBC and the landlords at the hearing, I am satisfied that:

- (a) the Debtor has acted, and is acting, in good faith and with due diligence;
- (b) the Debtor would likely be able to make a viable proposal if the extension as granted; and

(c) for the reasons described above, no creditor would be materially prejudiced if the extension is granted.

[7] Accordingly, an order shall issue in the form attached.



Wilton-Siegel J.

Date: NOVEMBER 17TH, 2023