



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00713245-00CL DATE: 15 February 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC., AND JOINT CAPTAIN REAL ESTATE INC.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Brent Marshall	Secured lender	marshall@uijlaw.com ;

ENDORSEMENT OF JUSTICE KIMMEL:

Procedural History

1. The court granted an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") on January 23, 2024 (the "Initial Order") in respect of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "Applicants"). The reasons for the granting of the relief in the Initial Order are set out in the court's endorsement of January 23, 2024 (the "First Endorsement").
2. The Applicants sought an extension and expansion of the relief provided under the Initial Order, in the form of a proposed Amended and Restated Initial Order ("ARIO") to facilitate and advance these CCAA proceedings by their motion returnable January 31, 2024 (the "Come-Back Motion"), including:
 - a. extending the Initial Stay Period to and including March 28, 2024;
 - b. authorizing but not requiring the Applicants to pay, with the consent of the Monitor (as defined below), certain amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order;
 - c. approving the retention of Howards Capital Corp. ("HCC") as financial advisor to the Applicants (the "Financial Advisor") pursuant to a Financial Advisor Engagement Agreement dated January 24, 2024 (the "Financial Advisor Engagement Agreement"), between the Applicants and HCC, and granting the Financial Advisor Charge to secure the Completion Fee (each as defined below) and the Applicants' indemnification obligations under the Financial Advisor Engagement Agreement;
 - d. approving the Applicants' ability to borrow up to \$12 million under a debtor-in-possession credit facility (the "DIP Facility") pursuant to a DIP Agreement dated January 26, 2024 (the "DIP Agreement"), between the Applicants and Harbour Mortgage Corp. (the "DIP Lender"), and granting the DIP Lender's Charge (as defined below) to secure all of the Applicants' obligations under the DIP Agreement and the DIP Facility; and
 - e. expanding the scope of the Administration Charge (as defined below) to include certain fees of the Financial Advisor which are not secured by the Financial Advisor Charge, and increasing the maximum amount of the Administration Charge from \$750,000 to \$1,500,000.
3. The court heard fulsome submissions from counsel for all interested parties who appeared on the Come-Back Motion, after which it was determined that a brief adjournment of the Come-Back Motion would be granted to February 15, 2024. The court granted certain limited relief and imposed certain terms of the brief adjournment that were determined to be necessary and appropriate to preserve the *status quo* and ensure that the intended benefits of these CCAA proceedings were not lost during the period of the adjournment, including:
 - a. The Stay Period under the Initial Order was extended to February 16, 2024.
 - b. The court approved a reduced interim DIP Facility and corresponding DIP Charge of up to a maximum of \$4 million.
 - c. The court authorized the payment of restricted pre-filing indebtedness to essential suppliers.

- d. The court approved an increase in the Administrative Charge from \$750,000 to \$1 million.
4. This limited relief was granted in an Amended Initial Order dated January 31, 2024 (the "January 31, 2024 Order"). The court's reasons for granting the adjournment, for imposing the terms of the adjournment and for granting the limited relief contained in the January 31, 2024 Order are set out in the court's endorsement dated February 2, 2024 (the "February 2, 2024 Endorsement"), which directed that the remaining issues that had been raised for the court's consideration on the Come-Back Motion, together with any other issues raised by motion or opposition through the delivery of materials provided for under the terms of adjournment, would be determined at the return of the Come-Back Motion on February 15, 2024.
5. Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the First Endorsement and the February 2, 2024 Endorsement, as applicable.

Events since the January 31, 2024 Adjournment

6. The February 13, 2024 Supplement to the First Report of the Monitor ("Monitor's Supplementary Report") contains a detailed update to the court about, among other things:
 - a. Developments regarding the Lender Representative Counsel including the conduct of, and events following, the virtual meeting of Secured Lenders that the court directed be held, and that was held on February 5, 2024 (the "Secured Lender Meeting").
 - b. The determination of Lender Representative counsel, following consideration of the feedback received from Secured Lenders and having regard to the fact that Lion's Share Group Inc. ("Lion's Share") that the scope of its representation should be limited to the Applicants' Secured Lenders only.
 - c. The notice provided to affected unsecured Lenders of this reduced scope in the mandate of Lender Representative Counsel, through both:
 - i. Direct communication on February 9, 2024 with Claire Drage, the principal of The Windrose Group Inc. ("Windrose") and Chief Executive Officer of Lion's Share Group Inc. ("Lion's Share") that appears to be the holder of approximately 602 of the Applicants' 802 unsecured promissory notes, that the proposed ARIO will carve out unsecured Lenders from the mandate of Lender Representative Counsel in these proceedings; and
 - ii. An email sent on February 12, 2024 and notice posted on its case website to the distribution list of all Lenders (the "Lender Notice") to advise them of the decision by Lender Representative Counsel on the scope of its mandate and that this change would be reflected in the proposed ARIO.
 - d. An accounting of the uses of the initial authorized \$4 million advance under the DIP Facility approved by the January 31, 2024 Order (the "First Advance").
 - e. The Applicants' decision to adjourn the relief sought with respect to the appointment of a Financial Advisor, after consulting with the Monitor and the Committee to assess the need for, and role of, the Financial Advisor in these proceedings. The Financial Advisor's engagement, if any, remains subject to Court approval.

The Requested ARIO

7. Based on the significant efforts of the Applicants, the Monitor and Lender Representative Counsel and the now appointed members of the committee of Secured Lenders (the "Committee") that has been established under the previously approved mandate of Lender Representative Counsel contained in the Initial Order, all parties represented in court today support the granting of the updated ARIO now proposed by the Applicants, which reflects inputs from these stakeholders and the DIP Lender.
8. No one raised in advance, or appeared today to voice, any objection to the relief sought. Counsel for Lender Representative Counsel advised that so far no opt-out notices have been received from any

Secured Lenders to date. No one appeared today on behalf of Windrose, Lions Share or any other unsecured Lender, all of whom received the Lender Notice and some of whom have initiated other communications with the Monitor but did not raise any objection to the relief sought today.

9. Much of the relief sought in the ARIO is standard for a CCAA come back hearing, to incorporate matters that were not essential to the initial Stay Period but are required to further the applicants' refinancing and restructuring efforts.
10. The proposed ARIO also includes enhancements of the Monitor's oversight and supervision of the Applicants' use of the DIP Facility during these proceedings and the addition of investigatory powers regarding the use of lender advances prior to these proceedings and other pre-filing transactions (the "Monitor's Enhanced Powers"), requested by the Secured Lenders and supported by all other parties.
11. The court's jurisdiction for granting the Monitor's Enhanced Powers can be found in ss. 23(1)(c) and (k) and s. 11 of the CCAA. The Ontario Court of Appeal observed in *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, at para. 106:

The 2007 amendments to the CCAA expanded the description of the monitor's role and responsibilities. In essence, its minimum powers are set out in the Act and they may be augmented through the exercise of discretion by the court, typically the CCAA supervising judge. This framework is reflected in s. 23 of the CCAA, which enumerates certain duties and functions of a monitor. Paragraph 23(1)(k) directs that a monitor shall carry out "any other functions in relation to the company that the court may direct." Its express duties under s. 23(1)(c) include making, or causing to be made, any appraisal or investigation that the monitor "considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency".

See also *Essar* at paras. 107-108; and *8640025 Canada Inc. (Re)*, 2018 CarswellBC 557, 2018 BCCA 93, at para. 49.

12. The Monitor's Supplementary Report provides the rationale for its support of the extension of the Stay to March 28, 2024, based on its assessments and beliefs that:
 - a. the Applicants are acting in good faith and with due diligence;
 - b. no creditor will be prejudiced if the extension is granted;
 - c. subject to approval of the Applicants' additional borrowings under the DIP Facility, an extension of the Stay Period will provide the Applicants time to collaborate with the Monitor, Lender Representative Counsel and the Committee to develop a plan to pursue a refinancing or restructuring transaction with the ultimate objective of formulating a consensual plan of compromise or arrangement;
 - d. the Applicants' intention to formulate and seek court approval of a claims process prior to the expiry of the Stay Period; and
 - e. no party is opposed to the requested extension.
13. Counsel for the Monitor confirmed that the cash flows provided at the time of the initial return of the Come-Back Motion (discussed by the Monitor in its First Report) continue to apply and to support the extension of the Stay Period to March 28, 2024.
14. The Monitor's Supplementary Report details the reasons for the Monitor's support for, and recommendation to the court that it approve, all of the provisions of the now proposed form of ARIO. Counsel for the Applicants reviewed with the court all of the changes to the proposed form of ARIO against what had been proposed at the time of the January 31, 2024 order and also against the Initial Order. Much of the analysis and authority for the relief granted by the court in the Initial Order and the January 31, 2024 Order (and corresponding endorsements) applies to the relief sought in the ARIO. The

need for the increases in the authorized amount of the DIP Facility, the corresponding DIP Charge and the Administrative Charge was substantiated in the material filed for the initial return of the Come-Back Motion that was adjourned to today.

15. The court is satisfied, based on the reasons detailed in the Monitor's First Report and Supplementary Report and the submissions of counsel for the participating parties that the now proposed form of ARIO is fair, reasonable and appropriate in the circumstances. It provides additional breathing room and support for the Applicants' continuing pursuit of a comprehensive refinancing or restructuring and their efforts to implement a consensual plan of arrangement, if one can be achieved.

Order

16. Order to issue in the form signed by me today.
17. Counsel for the Applicants shall arrange for the next hearing date or dates once they know what issues will be brought before the court for consideration and they are able to estimate the amount of time that will be needed for the participating parties to make their submissions.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.