



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-25-03212487-0031
BK-25-03214507-0031
NEW CCAA

DATE: MAY 15, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: RE HAKIM OPTICAL LABORATORY LIMITED et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL:

Summary of Relief Sought

- [1] Hakim Optical Laboratory Limited ("HOLL"), Lawrence Ophthalmic Lab Inc. ("Lawrence Lab" together with HOLL, the "NOI Applicants") and Hakim Optical Worldwide Lenses Inc. (also known as Hakim Optical Lenses Worldwide Inc. and Hakim Optical Worldwide Lenese Inc. [sic]) ("HOWL", and together with the NOI Applicants, the "Applicants" or the "Company") seek an initial order (the "Initial Order"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and various ancillary relief.
- [2] The two NOI Applicants previously Notices of Intention to Make a Proposal ("NOI") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). KSV Restructuring Inc. ("KSV") consented to act as the proposal trustee (in such capacity, the "Proposal Trustee") in the two NOI Proceedings and has overseen the operations of the Company since April 16, 2025, when HOLL filed its NOI. The initial BIA stay of proceedings in respect of HOLL expires tomorrow, on May 16, 2025.
- [3] In conjunction with their application for the Initial Order under the CCAA, the Applicants seek to continue the NOI proceedings in the CCAA proceeding, the appointment of KSV as Monitor, a stay of proceedings to June 30, 2025 under the CCAA (the "CCAA Stay"), approval of proposed DIP financing and of a DIP Charge and an Administration Charge. At the same time, they seek orders terminating the NOI Proceedings and related relief.
- [4] Given the NOI Proceedings, notice of this application was served last week on the full service list of all known creditors and stakeholders of the Applicants. Importantly, they have had an opportunity to have input into the forms of order sought today (which include some changes requested by, in particular, Canada Revenue Agency and some of the Applicants' landlords) and no one raised any opposition to the relief sought today, which is

supported by the Applicants' senior secured lender and supported and recommended by the Proposal Trustee/proposed Monitor, KSV.

The Applicants' Business and Liquidity Concerns

- [5] Together, the Applicants constitute the largest privately owned optical chain in Canada. With approximately 70 active retail store locations, the Company offers a comprehensive selection of eyeglasses, contact lenses, prescription lenses and other optical services. Even with its recent pre-filing restructuring efforts and downsizing, there are 265 employees and 49 independent optometrists who have their own employees who continue to work in the Company's ongoing business and operations.
- [6] HOLL is the primary operating entity for the Applicants' retail business. Lawrence Lab operates the Company's captive lens processing and manufacturing facilities. HOWL is the counterparty on some of the Company's historical leases and utility contracts. The three Applicants operate on an integrated basis.
- [7] The Company has been facing liquidity issues since the COVID-19 pandemic and a cyberattack that it had to contend with in 2022. A number of restructuring and cash conservation initiatives have been undertaken over the past several years, including completing a sale transaction involving all of the Company's Atlantic Canada stores. During the past 18 months, in order to conserve needed liquidity, the Company closed approximately 40 unprofitable stores and laboratory locations (collectively, the "Closed Stores") prior to lease expiry and, in doing so, stopped making monthly rent payments associated with these locations.
- [8] In the fall of 2024, the Company defaulted in its obligations to RBC (its then senior secured lender) and faced a receivership application that was avoided by the assignment of RBC's debt to 1001112855 Ontario Inc. ("855 Ontario"). 855 provided some additional bridge financing earlier this year and is the proposed DIP Lender. The Company has been in negotiations with 855 Ontario with a view to securing a definitive stalking horse offer intended to be implemented through a court-supervised SISP.
- [9] Landlords were, at the same time, taking aggressive procedural steps in connection with the Landlord Enforcement Actions (including attempted execution of garnishment orders and seizure of personal property). This is what precipitated the NOI Proceedings.
- [10] The primary purpose of the NOI Proceedings was to, among other things, give HOLL and Lawrence Lab breathing room to focus their restructuring efforts. However, certain landlords have taken the position that because HOWL is not subject to the NOI Proceedings, it is not subject to the BIA stay of proceedings. They have continued Landlord Enforcement Actions against HOWL notwithstanding the NOI Proceedings,

resulting in distraction and disruption for the Company and its advisors. HOWL is an Applicant and will benefit from the CCAA Stay, if granted.

CCAA Initial Order

- [11] Section 11.6(a) of the CCAA provides the Court with jurisdiction to permit the Company to continue the NOI Proceedings under the CCAA provided that no proposal has been filed. The recognized requirements for such an order have been satisfied, in that: No proposal has been filed in the NOI Proceedings to date, the proposed continuation is consistent with the purposes of the CCAA, and the Company has provided the court with the information that would otherwise form part of an initial CCAA application pursuant to section 10(2) of the CCAA (all as detailed in the supporting affidavit, and summarized in paragraph 39 of the Applicants' factum): see *Clothing for Modern Times Ltd. Re*, 2011 ONSC 7522 at para 9, and subsequent cases that have accepted and adopted these requirements cited in footnote 34 of the Applicants' factum.
- [12] The proposed Initial Order is consistent with the CCAA purposes of avoiding the social and economic losses resulting from liquidation of an insolvent company, preserving the *status quo* while attempts are made to find a reorganization solution that is fair to all stakeholders and, in appropriate circumstances, facilitating the sale of the Company as a going concern even if that means that the CCAA debtor(s) will no longer continue to carry on business: see *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras 15, 69, 70 and 72; *Clothing For Modern Times*, at para 12; *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882, at para. 10.
- [13] Each of the Applicants is a "debtor company" or an "affiliated debtor company" with liabilities exceeding \$5 million within the meaning of the CCAA, for the reasons particularized in the supporting affidavit and summarized in paragraph 43 of the Applicants' factum.
- [14] Despite their restructuring efforts, the Applicants are insolvent and require protection and access to DIP financing in order to continue as a going concern while they continue to explore restructuring options. The Initial Order and CCAA Stay to June 30, 2025 are appropriate to provide the Applicants with the breathing room they need to do. The Applicants have acted with diligence and in good faith.
- [15] A comprehensive stay in favour of all Applicants under the CCAA is necessary to provide the Company with much needed breathing room to stabilize the business and preserve enterprise value, while also (a) providing the Applicants with greater flexibility to pursue a SISP and (b) achieving process efficiencies and procedural cost savings by avoiding mandatory court attendances that would be required if the NOI Proceedings continue under the BIA. The Applicants' do not seek to have the initial CCAA Stay extended retroactively to HOWL to the extent it was not protected by the BIA stay, but they do seek to extend the protection of the CCAA Stay to HOWL going forward.

- [16] Although section 11.02(1) of the CCAA contemplates an initial 10-day stay period on an initial CCAA application, this Court has, in a number of previous cases involving a conversion from a BIA proceeding to a CCAA proceeding, authorized an initial stay extension beyond the statutory 10-day period: see, for example, *Body Shop*, at para 19 referencing: *In the Matter of a Plan of Compromise or Arrangement of Tribalscale Inc.*, (July 31, 2020) Toronto, Court File No. CV-20-00645116-00CL (Initial Order) (ONSC), at para 17 and the various other cases cited at footnote 46 of the Applicants' factum.
- [17] I agree with the Applicants that a longer than 10-day initial CCAA Stay is warranted in this case, given the extensive efforts that were made to give notice to the creditors and other stakeholders, which has led to further engagement. I recently granted a similar order in *Re JBT Transport Inc.*, Court File No. CV-25-00736572-00CL, Endorsement dated February 10, 2025, at paragraph 21.
- [18] This situation is more analogous to the circumstances that the court considers in deciding whether to grant an extension of the stay of proceedings under section 11.02(2) of the CCAA for any period it considers necessary, if it is satisfied that: (a) circumstances exist that make the order appropriate (including for the reasons set out in paragraph 49 of the Applicant's factum), and (b) the applicants have acted, and are acting, in good faith and with due diligence. I am so satisfied in this case, and, more generally, am satisfied that the requirements for the granting of this Initial Order have been met, for the reasons outlined in detail in the Applicants' factum.
- [19] Further, the proposed Initial Order provides that any interested party may seek relief from the Initial Order on application to this Court made on seven days' notice. The proposed form of Initial Order is generally consistent with the Commercial List Model Order, with changes made to reflect more current practices that have developed in this court and to address the particular circumstances of this case.
- [20] As set out in the cash flow projection (the "Cash Flow Forecast") prepared by the Company and reviewed by the proposed Monitor, the Company requires access to immediate financing to continue operating in the ordinary course and fund the proposed CCAA Proceedings. The primary purpose of the DIP Facility is to fund the working capital requirements of the Company, including the payment of professional fees incurred during these CCAA Proceedings (or alternatively, the NOI Proceedings, as applicable). The proposed DIP financing is appropriate for the reasons summarized in paragraph 59 of the Applicant's factum, having regard to the factors delineated in s. 11.2(4) of the CCAA. The terms of the DIP Facility are within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings and the proposed Monitor is of the view that the DIP Facility and the DIP Lender's Charge are reasonable, appropriate and necessary in the circumstances.
- [21] The DIP Facility does not provide sufficient (or any) liquidity for the Applicants to pay post-filing rent for Closed Stores, and any such payment obligation would represent a

material unfunded post-filing liability of the Applicants that would jeopardize the viability of a successful restructuring. The Applicants have not been paying rent for the Closed Stores for a number of months and it would be inconsistent with their objectives under the CCAA for them to be required under the Initial Order to start doing so now. Accordingly, the Initial Order does not provide for the payment of post filing rent to those Closed Stores but does include some additional language that was requested by the landlords.

- [22] The DIP Facility is conditional upon, among other things, the granting of a priority charge over the Property in favour of the DIP Lender to secure the amounts borrowed under the DIP Facility (the "DIP Lender's Charge"), which would be subordinate only to the Administration Charge.
- [23] The proposed Administration Charge is warranted, necessary and appropriate to grant pursuant to s. 11.52 of the CCAA, in the circumstances (including those summarized in paragraph 55 of the Applicant's factum). See also *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para 54.
- [24] The proposed Monitor has consented to act and satisfies the requirements under s. 11.7 of the CCAA. The Monitor has reviewed the cash flow projections and supports the initial order. The initial order is also supported by the senior secured lender, 885 Ontario, which is also providing the DIP financing.

NOI Termination Orders

- [25] It follows that, if the court is granting the CCAA Initial Order, the NOI Proceedings must be terminated. The relief sought in the NOI Termination Orders is justified for the reasons detailed in paragraphs 63 to 65 of the Applicants' factum. Since the Proposal Trustee will become the Monitor, it is appropriate to review and approve the activities, conduct and fees of the Proposal Trustee as the Applicants move into the next phase of their restructuring efforts. I am satisfied that the requested orders are reasonable and appropriate in the circumstances.

Orders Signed

- [26] I have signed the three orders requested by the Applicants, CCAA Initial Order, and two NOI Termination Orders, dated today and effective in accordance with their terms.

A handwritten signature in dark ink, appearing to read "Kimmel J.", written in a cursive, flowing style.

KIMMEL J.