



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00696017-00CL DATE: July 5, 2023
REGISTRAR: T. Patel

NO. ON LIST: 1

TITLE OF PROCEEDING: *Loyaltyone Co. v. Bread Financial Holdings, Inc.*

BEFORE JUSTICE STEELE

PARTICIPANT INFORMATION

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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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ENDORSEMENT OF JUSTICE STEELE:

1. The applicant in these CCAA proceedings, LoyaltyOne Inc., seeks court approval for, among other things, a distribution to the secured creditors and approval of a sale of the furniture, fixtures and equipment. In addition, given that there is outstanding litigation with Canada Revenue Agency, LoyaltyOne seeks a lengthy stay extension.
2. The relief sought is unopposed.
3. The Monitor supports all relief being sought.

Should the stay be extended to July 14, 2023?

4. The current stay expires on July 14, 2023. The applicant seeks a lengthy stay extension.
5. The stay extension is granted.
6. Section 11.02 of the CCAA provides that the Court may grant an extension of the stay for any period the Court deems necessary, provided that the extension is appropriate, and the applicant has acted, and is acting, in good faith and with due diligence.
7. The length of the stay extension depends on the Court's view of what is most appropriate in the circumstances. It is highly fact specific: *U.S. Steel Canada Inc., Re*, 2016 ONSC 3106, at para. 15; *Chrystallex International Corporation (Re)*, (November 18, 2021), ONSC (Commercial List), CV-11-9532-00CL. I note that in *Chrystallex*, a 12 month stay extension was granted with periodic reporting by the Monitor, as is proposed in this case.
8. The applicant states that the stay extension is required to complete the remaining activities. In particular, the applicant notes that there is ongoing litigation with CRA that is not scheduled to proceed to trial until the fall of 2024. The applicant proposes that the Monitor report to the Court at least every six months (and more frequently if necessary).
9. In the circumstances, the stay extension sought is appropriate.

Distribution Order

10. The applicant seeks a distribution order with regard to the distribution of Cash and Proceeds by applicant. The applicant will retain sufficient amounts to satisfy certain obligations, including the Priority Amounts, and the amounts required to continue the administration of this CCAA proceeding.
11. Section 11 of the CCAA provides that the Court may make any order it considers appropriate and grants the Court authority to approve distributions to creditors during the CCAA proceedings, even where the distributions are outside of a plan of compromise or arrangement: *Nortel Networks Corp., Re*, 2014 ONSC 4777, at paras. 54 and 55.
12. The applicant advised the Court that the only remaining secured creditor is the Credit Facility Agent, as agent for the Credit Agreement Lenders. The Monitor's counsel provided an opinion that the security related to the Credit Agreement creates a valid perfected security interest in favour of the Credit Facility Agent. Further, the expected distribution (approx. \$85 million) is much less than the obligations that are outstanding under the Credit Agreement (approx. \$650 million). It is expected that the Credit Facility Agent will suffer a significant shortfall on its loan.
13. At para. 30 of its factum, the applicant directs the Court to other recent cases where the Court has exercised its discretion to grant distribution orders similar to the orders requested by the applicant, including *Harte Gold Corp., Re*, (February 15, 2022) ONSC (Commercial List), Court File No. CV-21-00673304-00CL.
14. As noted above, no party opposes the orders sought. Notice of this motion was given to the service list in the CCAA proceeding, including the relevant taxing authorities. CRA has provided a comfort letter and indicated that it does not intend to oppose the order.
15. I am satisfied that the distribution order sought is appropriate.

Reduction of Directors' Charge and Employee Retention Plans Charge

16. The applicant requests that the directors' charge be reduced to \$2 million from \$15 million, and that the employee retention plans charge be released.
17. The applicant has discontinued its operations.
18. The applicant no longer has any employees. All former employees have been paid all amounts owing by the applicant, and all source deductions have been remitted.
19. The applicant states that all known obligations under the directors' charge have been paid. However, to be prudent, the applicant requests that the directors' charge be reduced instead of eliminated.
20. The applicant notes that the Court has similarly released or reduced charges upon satisfaction of the obligations secured under the charges in recent cases, including *Old CLHC Company (f/k/a/ Clover Leaf Seafoods Company)*, (January 29, 2021) ONSC (Commercial List), Court File No. CV-19-31523-00CL.
21. The directors' charge shall be reduced to \$2 million, and the employee retention charge released.

Approval of FF&E Sale

22. The applicant seeks the Court's approval of the proposed FF&E sale, which contemplates consideration of \$360,000 plus HST.

23. The FF&E sale is approved.

24. Under section 36 of the CCAA, the Court may authorize the sale or disposition of the applicant's assets outside of the ordinary course of business free and clear of any security, charge, or other restriction. In determining whether to grant approval, the Court must determine whether the proposed sale is appropriate, fair, and reasonable.

25. Section 36(3) of the CCAA sets out certain factors for the Court to consider, each of which is addressed below:

- **Was the process leading up to the proposed sale or disposition reasonable in the circumstances:** The applicant engaged a liquidator to value the FF&E with a view to entering into an auction process. The applicant also entered into discussions with its landlord. The applicant and the landlord entered into the Bill of Sale for the FF&E. The purchase price is similar to what was anticipated through an auction process.
- **Did the Monitor approve the process leading to the proposed sale:** The Monitor approved the process.
- **Did the Monitor file a report in support of the sale:** The Monitor's fourth report supports the FF&E sale.
- **Were creditors consulted:** The applicant has consulted with the Consenting Stakeholders, among others.
- **The effects of the proposed sale on creditors and other interested parties:** The Monitor's fourth report indicates that the FF&E sale will save certain costs, including paying for their removal from the premises and other disposition costs.
- **Is the consideration to be received reasonable and fair:** The purchase price is comparable that the proceeds expected at auction.

26. I am also satisfied that the principles set out in *Royal Bank v. Soundair Corp.* (1991), 83 DLR (4th) 76, at para. 16, have been met.

27. The FF&E sale is approved.

Approval of the Monitor's activities and fees

28. I am satisfied that the Monitor's activities should be approved.

29. With regard to the Monitor's and its counsel's fees, the Court must be satisfied that they are "fair and reasonable" in all of the circumstances and are appropriate: *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400, at para. 26. The factors for the Court to consider include:

- The nature, extent, and value of the assets;
- Any complications and difficulties;

- The time spent;
- The court officer's knowledge, experience, and skill;
- The diligence and thoroughness displayed;
- The responsibilities assumed; and
- The results of the court officer's efforts.

30. The applicant states that the Monitor and its counsel have been "integral" in the CCAA process to date. The assistance of the Monitor and its counsel have led to the successful closing of the primary transaction for the benefit of stakeholders, including the Credit Agreement Lenders, suppliers, employees and loyalty rewards collectors. The applicant further notes that the Monitor had expanded powers, which resulted in a greater scope of work.

31. The Monitor and its counsel have filed fee affidavits, as required.

32. I am satisfied that the fees and disbursements are fair, reasonable and appropriate in all of the circumstances.

33. Orders attached.

A handwritten signature in blue ink, appearing to be "J. P. [unclear]", located in the lower right quadrant of the page.