

CITATION: Paladin Labs Canadian Holding Inc., 2022 ONSC 4748
COURT FILE NO.: CV-22-00685631-00CL
DATE: 2022-08-17

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C. 36, AS AMENDED

AND IN THE MATTER OF PALADIN LABS CANADIAN INC. AND PALADIN LABS INC.

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Robert J. Chadwick, Bradley Wiffen and Nargis Fazli*, for Paladin Labs Canadian Inc. and Paladin Labs Inc.

Sean Zweig, Josh Foster and Noah Goldstein, for KSV Restructuring Inc., proposed Information Officer

HEARD: August 17, 2022

ENDORSEMENT

[1] This application is brought under Part IV of the CCAA by Paladin Labs Inc. ("Paladin") as the proposed foreign representative of itself and Paladin Labs Canadian Holding Inc. ("Holdings" and, together with Paladin, the "Canadian Debtors") for recognition of chapter 11 proceedings commenced by Endo International plc ("Endo Parent") and certain of its affiliates (collectively, the "Debtors"), including the Canadian Debtors, in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

[2] The Canadian Debtors are part of a global specialty pharmaceutical group ("Endo" or the "Company") that produces and sells both generic and branded products. Endo Parent, the ultimate parent of Endo's global enterprise, is an Irish publicly-traded company headquartered in Dublin, Ireland.

[3] While Endo's global headquarters is in Ireland, the majority of its business is conducted in the United States. In 2021, Endo earned approximately 97% of its total consolidated revenue from customers in the United States. Endo's senior leadership located in the United States exercises overarching strategic management and control of the entire corporate group, including the Canadian Debtors.

[4] The Canadian Debtors are integrated members of the broader Endo corporate group. Paladin is Endo's Canadian operating company. Paladin sells specialty pharmaceutical products that it owns, licenses or distributes to a variety of customers across Canada. Holdings is a holding

company that owns all of the shares of Paladin. Both Paladin and Holdings are incorporated pursuant to the *Canada Business Corporations Act*.

[5] On August 16, 2022 (the “Petition Date”), the Debtors, including the Canadian Debtors, filed voluntary petitions for relief (the “Petitions”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court.

[6] On this application, Paladin, as the proposed foreign representative of the Chapter 11 Cases (the “Foreign Representative”), seeks the following relief pursuant to Part IV of the CCAA:

- (a) an order (the “Interim Order”), among other things, granting a stay of proceedings (the “Interim Stay”) in respect of the Canadian Debtors and certain affiliates that are named as defendants in litigation proceedings in Canada (the “Canadian Litigation Defendants”), pending the First Day Hearing of the Bankruptcy Court and a subsequent hearing of this Court for the granting of the Initial Recognition Order and the Supplemental Order;
- (b) an order (the “Initial Recognition Order”), among other things:
 - (i) recognizing Paladin as the Foreign Representative in respect of the Chapter 11 Cases; and
 - (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors; and
- (c) an order (the “Supplemental Order”), among other things:
 - (i) recognizing certain First Day Orders issued by the Bankruptcy Court in the Chapter 11 Cases;
 - (ii) granting a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants;
 - (iii) appointing KSV Restructuring Inc. (“KSV”) as the information officer in respect of these proceedings (the “Information Officer”); and
 - (iv) granting an Administration Charge in the amount of CDN\$200,000 over the assets and property of the Canadian Debtors in favour of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer.

[7] Today, the requested relief is solely for the Interim Order.

[8] Paladin operates a specialty pharmaceutical business in Canada (the “Canadian Business”) that is focused on the sale of branded pharmaceuticals to Canadian customers. The remainder of

the products sold are either distributed by Paladin on behalf of other Endo entities or licenced by Paladin from third party pharmaceutical companies.

[9] Paladin does not manufacture the pharmaceutical products sold by the Canadian Business.

[10] The registered head office of the Canadian Debtors is located at leased premises in Montreal, Quebec. Paladin has 98 employees in Canada, 77 of whom are office workers and 21 of whom are sales representatives and field employees. None of Paladin's employees are unionized.

[11] For the year ended December 31, 2021, Paladin generated aggregate net revenue of approximately CDN\$106 million. As of June 30, 2022, Paladin had total assets of approximately CDN\$491 million and total liabilities of approximately CDN\$667 million, excluding its obligations as a guarantor of Endo's approximately US\$8.15 billion of funded indebtedness.

[12] Counsel to the Applicant submits that Endo's existing capital structure and in funded debt obligations have become unsustainable.

[13] Endo is also under significant financial pressure due to the litigation overhang on the Company from having been named as a defendant in over 3,500 lawsuits, primarily in the United States, relating to the marketing and sale of FDA-approved prescription opioids (the "Opioid Lawsuits").

[14] Paladin, along with the Canadian Litigation Defendants who are affiliated entities in the Endo corporate group, are subject to various litigation claims in Canada (the "Canadian Litigation"). The Canadian Litigation consists principally of eight proposed class action lawsuits initiated in various provinces across Canada relating to the manufacturing, distribution and marketing of opioid products (the "Canadian Opioid Lawsuits") and one proposed class action lawsuit initiated in Federal Court alleging a price-fixing scheme relating to generic drugs.

[15] The issues to be considered are:

- (a) whether Ontario is a proper jurisdiction for these recognition proceedings; and
- (b) whether this Court should grant the Interim Order providing for the Interim Stay and other ancillary relief, including a stay of proceedings in respect of the Canadian Litigation Defendants, pending the determination of Paladin's application for the Initial Recognition Order and the Supplemental Order;

[16] Paladin submits that Ontario is a proper jurisdiction for these recognition proceedings in Canada. Part IV of the CCAA does not contain any provisions with respect to the jurisdiction of a particular court to hear a recognition application. Paladin submits that it is appropriate for this Court to take jurisdiction with respect to this recognition application given the Canadian Debtors' substantial connection to Ontario, including the following:

- (a) despite having its registered head office in Quebec, Paladin has a significant and predominant business presence in Ontario. Ontario is Paladin's largest market

based on both revenue and number of customers and approximately 50% of Paladin's Canadian purchases (by total dollar value) are from Ontario vendors;

- (b) substantially all of the products sold in the Canadian Business are received in and shipped from Ontario; and
- (c) pursuant to Ontario law governed documents, the Canadian Debtors granted liens on all of their present and after acquired property to secure the obligations under the Credit Agreement, the First Lien Notes and the Second Lien Notes. Pursuant to the Canadian Pledge and Security Agreement dated April 27, 2017, and the Second Lien Canadian Pledge and Security Agreement dated June 16, 2020, the Canadian Debtors unconditionally submitted to the exclusive jurisdiction of the Ontario courts in any action or proceeding pertaining to the applicable security agreement or any related action, proceeding or claim.

[17] I accept these submissions and find that Ontario is the proper jurisdiction for these recognition proceedings.

[18] The Debtors commenced the Chapter 11 Cases in the Bankruptcy Court by filing the Petitions. However, the order recognizing Paladin as the foreign representative of the Chapter 11 Cases (the 'Foreign Representative Order'), if granted, will not be issued by the Bankruptcy Court until the First Day Hearing has occurred. As such, there will be a period of time between the commencement of the Chapter 11 Cases and the time when Paladin is able to file the certified materials contemplated by subsection 46(2) of the CCAA and return to this Court as the formally appointed Foreign Representative seeking the relief in the Initial Recognition Order and the Supplemental Order.

[19] The proposed Interim Order provides for a stay of proceedings in favour of the Canadian Debtors, the Canadian Litigation Defendants and their respective directors and officers.

[20] In my view, the granting of the Interim Stay and the other relief in the proposed Interim Order is in accordance with the principles of cooperation and comity and is within the Court's jurisdiction and I am satisfied that this relief is both necessary and appropriate to protect the operations of the Canadian Business pending the return of the balance of Paladin's application.

[21] The proposed Interim Order also provides for a stay of proceedings in Canada in favour of affiliates of the Canadian Debtors that are subject to litigation in Canada. The seven current Canadian Litigation Defendants that would be protected by the stay are (a) affiliates of Endo Parent and/or the Canadian Debtors, (b) Debtors in the Chapter 11 Cases, and (c) named defendants in various litigation commenced in Canada.

[22] Counsel submits that the proposed stay in favour of the Canadian Litigation Defendants is intended to give effect in Canada to the Bankruptcy Code stay of proceedings and to enable the Company to focus on its restructuring efforts rather than incurring time and resources to defend

itself in the Canadian Litigation. The Canadian Litigation consists principally of eight proposed class action proceedings commenced against a broad range of participants, including Paladin and the Canadian Litigation Defendants.

[23] Paladin is only seeking to have the Chapter 11 Cases recognized in Canada with respect to the Canadian Debtors.

[24] I am satisfied this Court has the jurisdiction to grant a stay with respect to non-applicant debtor companies. The Court's jurisdiction arises from its authority under subsection 49(1) of the CCAA and pursuant to section 106 of the CJA.

[25] This Court has previously exercised its jurisdiction to impose a stay of proceedings in insolvency proceedings to non-applicant third-parties "where it is important to the reorganization and restructuring process, and where it is just and reasonable to do so" (see: *Tamerlane Ventures Inc. Re*, 2013 ONSC 5461 at para 21; *Pacific Exploration & Production Corp. Re*, 2016 ONSC 5429 at para 26), including in class action litigation.

[26] I also note that this Court has stayed opioid litigation similar to the Canadian Opioid Lawsuits in connection with recent Part IV recognition proceedings. (See: *Purdue Pharma LP, Re*, 2019 ONSC 7042).

[27] In my view, it would be prejudicial to permit the Canadian Litigation to continue against the Canadian Litigation Defendants when the underlying claims against such entities are closely related to the claims against Paladin. The granting of a stay in favour of the Canadian Litigation Defendants is, in my view, appropriate in the circumstances.

[28] In summary, I am satisfied that it is appropriate to grant the Interim Order and I have signed the order in the form presented.

[29] The balance of the relief sought in the Application will be addressed at a hearing to be scheduled through the Commercial List Office.


Chief Justice G.B. Morawetz

Date: August 17, 2022