

**CITATION:** Paystone Holdings Inc. (Re), 2026 ONSC 3693  
**COURT FILE NO.:** CL-26-00000261-0000  
**DATE:** 20260624

**ONTARIO SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF PAYSTONE HOLDINGS INC., PAYSTONE  
INC., ATOM GROWTH INC., and ATOM GROWTH (USA), INC.

**BEFORE:** FL Myers J

**COUNSEL:** *Sean Zweig, Thomas Gray, and Jamie Ernst*, for the  
Applicants

*Marc Wasserman, Mary Paterson, and Martino Calvaruso*,  
for AlixPartners Restructuring, Inc., the Monitor

*Kourtney Rylands and Jasmine Landau*, for BDC Capital  
Inc.

*Brendan O'Neill and Bradley Wiffen*, for Sandton  
Investments X (Luxembourg) S.à r.l

*Natasha MacParland and Mark Evans*, for Steve Lively  
and Shopley Inc.

*Gregory Azeff*, for 1001632600 Ontario Inc.

*Maleeha Anwar*, for Walter Andri

*Jamie Gibson*, for Canadian Business Growth Fund

*David Salter*, for CBGF 2021, LP and Canadian Business  
Growth Fund, LP

*Denna Jalili*, for National Bank of Canada

*Wojtek Jaskiewicz*, for CIC Capital Canada Inc.

*Robert Kennedy*, for Royal Bank of Canada

**HEARD:** June 22, 2026

## **ENDORSEMENT**

### **The Motion and Outcome**

- [1] This decision is rushed because the stay of proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 expires on June 25, 2026. A decision is required to determine the way forward. (I refer to the Paystone Applicants below as the debtor for convenience.)
- [2] The debtor brought this proceeding as a pre-packaged sale. In the case law, this type of process can be referred to as a "prepack" or, in receivership, as a "quick flip."
- [3] The essence of the process is that an insolvent debtor has come to court with a restructuring outcome already in hand. The debtor has consulted with affected stakeholders and has agreed on a way forward to resolve the insolvency. It proposes to sell its assets to a new company on specific terms and conditions that will allow the going concern business to survive intact. It just needs formal approval. This can be granted very quickly with few process steps needed because the affected parties have already conducted all necessary processes and have otherwise agreed on a mutually acceptable outcome.
- [4] As I will set out below, the law applicable to quick flips is not different than the regular applicable law. The timing is hurried. But the substance of the event - an asset sale in insolvency proceedings - is the same as usual.
- [5] In some cases, including this one, the debtor proposes that its assets be sold to its existing owners or management. In that case, those in charge of the debtor, i.e., management and the board of directors, can find themselves in a conflict of interest.
- [6] Non-arm's length sale transactions are subject to special provisions under the *CCAA*.

- [7] Case law also recognizes that when a non-arm's length asset sale is proposed, special scrutiny is required to try to guard against the risk of abuse. In a balance sheet insolvency, by definition, the equity of the insolvent debtor has no value. With liabilities exceeding the realizable value of the debtor's assets, there is no room left to share value with shareholders.
- [8] It is noteworthy then, in a non-arm's length quick flip, that those in charge of the debtor are proposing a transaction which sees them receiving some value when their equity has no value. There is a need to consider whether management and the board of directors have given due heed to the positions of creditors and other stakeholders. The fact that they propose the transaction as a prepack means there is little process or time available in which to ensure the propriety of the proposed transaction.
- [9] For the reasons that follow, I find that the debtor has not yet met the burden upon it for approval of the asset sale proposed.
- [10] I extend the stay to 11:59 p.m. EDT on June 30, 2026.
- [11] The debtor might need interim financing to move forward. In the evidence there are expressions of interest offering to provide debtor-in-possession financing under normal terms. I leave to the debtor, ably assisted by the Monitor, to propose next steps whether financing is required or not. I will hear them on a stay extension briefly on or before June 30, 2026 if necessary.

### **The Law**

- [12] Section 36 of the *CCAA* prohibits an insolvent debtor in a *CCAA* proceeding from selling assets outside of the ordinary course of business without court approval. With approval, the assets can be, and typically must be, vested in a purchaser free and clear of existing security by a court order. In that way, the purchaser can run the business without suffering the weight of the pre-existing debt that the debtor could not bear.
- [13] Under an approval and vesting structure, when the debtor's business assets are sold, the creditors' claims remain with the corporate shell of the debtor in the *CCAA* proceeding. Creditors are left to divvy up the sales proceeds in accordance with their lawful priorities.

- [14] A going concern sale is an appropriate restructuring alternative when it maximizes the value of the debtor's business. Doing so provides the best available recovery for creditors while, at the same time, preserving the going concern in the interests of other stakeholders like employees, customers, and suppliers. It is in the public interest to preserve the going concern to avoid the devastation wrought by business failure and bankruptcy. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (CanLII) at paras. 15 to 17.
- [15] The relevant portions of section 36 of the CCAA provide:

**Restriction on disposition of business assets**

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

**Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

**Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

### **Additional factors - related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

### **Related persons**

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

- [16] It is worth noting that although the goal of the process is to maximize recovery for creditors, while saving the going concern business, subsection 36 (3) deals as much with the process of sale as with the price obtained.
- [17] A robust, transparent process, overseen by the Monitor (or other officer of the court like a receiver), with input from affected creditors, is a proxy or a confirmation that a fair and proper effort was made to obtain fair market value or at least maximum realization on the assets for sale. This is a tried and true concept adopted by the CCAA from cases such as the Court of Appeal's seminal receivership decision in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA).

- [18] For a non-arm's length sale, subsection 36 (4) of the *CCAA* adds two additional factors for the court to consider. The court needs to consider whether the debtor made good faith efforts to sell the assets to an arm's length buyer. Then the court also must consider whether the price being realized for the assets was better than any other offer made in whatever sale process led to the proposed non-arm's length.
- [19] In *McEwan Enterprises Inc.*, 2021 ONSC 6878, Morawetz CJSCJ found the s. 36 (4) factors were not met in a proposed related party sale under the *CCAA*. He made specific reference to the fact that the subsection provides that court approval of a related party sale may "only" be given on proof of both the delineated factors in that subsection. In that case, the failure of the debtor to make any effort to sell its assets to an unrelated party was fatal to the approval sought under s. 36 (4)(a).
- [20] In *Sanjel Corporation (Re)*, 2016 ABQB 257 (CanLII) Romaine J. made the point that even in a prepack, a sale need only be reasonable. It does not need to be perfect. That case involved a sale to a secured creditor rather than to management. But I accept that perfection cannot be the standard. It is not required in subsection 36 (4) for related party transactions any more than it is required in subsection 36 (3) for non-arm's length sales generally.
- [21] Counsel for the debtor accepts that quick flips may attract heightened scrutiny. (See para 40 of their factum).
- [22] In *Tool-Plas Systems Inc. (Re)*, 2008 CanLII 54791 (ON SC), Morawetz J. (as he then was) wrote:
- [15] A 'quick flip' transaction is not the usual transaction. In certain circumstances, however, it may be the best, or the only, alternative. In considering whether to approve a 'quick flip' transaction, the Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the 'quick flip' transaction would realistically be any different if an extended sales process were followed.
- [23] Morawetz J approved the proposed quick flip in that receivership case. He noted at para. 11 of the decision that the subordinate secured creditor who would not receive any return on its secured claim nevertheless "agreed to forego payment."

- [24] BDC Capital Inc. does not agree to forgo payment in this case as discussed below. It is the subordinate secured creditor of the debtor. Its secured claim is for approximately \$12 million for outstanding principal and interest. If the transaction proposed is implemented, there will be no recovery for BDC and unsecured creditors behind it (approx.. \$7.7 million).
- [25] In another receivership proceeding, *Montrose Mortgage Corporation v. Kingsway Arms Ottawa*, 2013 ONSC 6905, DM Brown J (as he then was) wrote:

[10] “Quick flip” or “pre-pack” transactions are becoming more common in the Ontario distress marketplace. In certain circumstances, a “quick flip” involving the appointment of a receiver and then immediately seeking court approval of a “pre-packaged” sale transaction may well represent the best, or only, commercial alternative to a liquidation. In such situations the court still will assess the need for a receiver and the reasonableness of the proposed sale against the standard criteria set out in decisions such as *Bank of Nova Scotia v. Freure Village on Clair Creek* and *Royal Bank v. Soundair Corp.*, respectively. However, courts will scrutinize with especial care the adequacy and the fairness of the sales and marketing process in “quick flip” transactions:

Part of the duty of a receiver is to place before the court sufficient evidence to enable the court to understand the implications for all parties of any proposed sale and, in the case of a sale to a related party, the overall fairness of the proposed related-party transaction. As stated by Morawetz J. in the *Tool-Plas* case:

[T]he Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the quick flip transaction would realistically be any different if an extended sales process were followed.

The need for such a robust and transparent record is heightened even more where the proposed purchase involves

a credit bid by one of the debtor's secured creditors, the practical effect of which usually is to foreclose on all subordinate creditors.[Notes omitted.]

- [26] Brown J agreed that the regular rules apply to quick flips but with heightened review of the fairness of the sales process. He was concerned to ensure that the sales process was robust and transparent because, like here, the proposed sale would leave some creditors unpaid.
- [27] In *Proposition de SRTX inc.*, 2026 QCCS 570 (CanLII), Morin J made a very thorough review of the conditions surrounding approval of quick flips in a proposal proceeding under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3. At para. 38 of the decision, he expressly likened the principals at play to an analogous CCAA proceeding.
- [28] Like Morawetz J and Brown J, Morin J started with a very positive assessment of the potential for quick flips sales:
- [6] In the Court's view, prepacks should be encouraged and celebrated, not ostracized. When done correctly, they serve an important purpose. They can shield a business from the stigma of formal insolvency proceedings, reduce operational disruption, preserve going-concern value, and minimize professional costs associated with prolonged court oversight. In theory, they represent the most efficient form of corporate restructuring, its best version.
- [29] But he then went on to clarify that he was speaking about a narrow and constrained class of transactions. In the next paragraphs he wrote:
- [7] But prepacks are akin to unicorns. The occurrences of this mythical creature are scarce and only few live to tell the tale. Put differently, true examples are rare.
- [8] A successful prepack requires alignment among stakeholders whose competing interests typically diverge in insolvency: secured and unsecured creditors, employees, customers, clients, tax authorities, and shareholders, all seeking to rightfully preserve their respective positions. That tension is both inevitable and legitimate.
- [9] For that reason, prepacks are difficult to achieve. Their streamlined and expedited nature demands near unanimity, or at least a broad stakeholder alignment. If a key

stakeholder raises a serious opposition, the Court must exercise caution, even in the face of liquidity constraints or asserted urgency.

[30] He continued later:

[24] Prepacks require a carefully orchestrated symphony that allows for the SISP to be conducted outside formal insolvency proceedings.

[25] Unlike a traditional insolvency process, a prepack does not unfold in the open, with the benefit of public announcements and the procedural timelines that ordinarily allow stakeholders to absorb developments and organize a response. Instead, stakeholders are effectively presented with a transaction that is substantially complete, leaving them with significantly curtailed reaction time.

[26] Unlike in a traditional insolvency process, the Court has limited opportunity to develop a confidence-based relationship with its Court-appointed officer, the trustee. This reality underscores the heightened need for comprehensive and candid advance disclosure, an obligation that extends beyond routine procedural requirements. A full and frank disclosure type of obligation. Above and beyond.

[31] Morin J refers to a “SISP” having been conducted out of court – before the formal proceeding. A SISP is a “Sales and Investment Solicitation Process.” It is the current terminology used to refer to the process by which a debtor or a court officer markets assets while often looking for other investment or refinancing alternatives for the debtor at the same time.

[32] In all these cases, the request for a quick flip sale is preceded by a form of sales process by which the debtor or creditors have canvassed the marketplace. The debtor conducts the process outside of the formal court process. Therefore, it lacks the direct supervision of the court and its officer – whether a Monitor or Receiver. It is not a process conducted pursuant to terms that have been debated and tested in court among all interested parties. The process does not bear the *imprimatur* of the court.

- [33] Sales processes conducted out of court or before formal court proceedings have commenced can replicate court-ordered sales processes. If they are sufficiently robust and transparent, they can be perfectly valid proxies for fair market value fitting within the requirements of *Soundair*.
- [34] But, by proceeding out of court, the debtor leaves itself open to *ex post facto* review. In a quick flip, the time provided for creditors and the court to conduct the review is necessarily very brief. Hence the case law discusses the need for full disclosure and near unanimous support among creditors and interested parties – especially those who will receive no recovery under the proposed transaction.
- [35] Morin J also noted that the court is concerned not only with those who attend court, but also with the majority of affected creditors who do not participate. These typically include unsecured creditors, terminated employees, and unpaid suppliers, for example, whose claims will be left behind very suddenly. They will be told that a transaction was implemented by a court in a quick hearing. As a result, they will receive no payment on their claims due to a process in which they had no opportunity to participate. They will not even have the benefit of the explanations debated in the courtroom.
- [36] I have a concern about the appearance of justice being done in such cases.
- [37] At para. 27.3 of *SRTX*, Morin J addresses this concern saying that he expects more of the court's officer in prepacks:
- This informational asymmetry must be addressed proactively and requires a more detailed report from the trustee in a prepack context.
- The Court's supervisory role does not end with those physically present in the courtroom; it extends to all stakeholders whose rights and interests may be affected.
- Correspondingly, the Trustee's mandate is not limited to reporting procedural developments. As an officer of the Court, the Trustee must provide meaningful oversight by explaining how the interests of affected stakeholders have been considered or, where appropriate, why they have not been engaged or accommodated in the circumstances.
- [38] I do not read *SRTX* as changing the law related to prepacks or quick flips. The concepts reiterated by Morin J were already in place from cases such as *Montrose Mortgage Corporation* and *Tool-Plas*.

- [39] In this case there is heightened scrutiny already required because it is presented as a prepack. But, on top of that, the proposed sale is to the existing owners of the debtor. Therefore s. 36 (4) places additional burdens on the debtor.
- [40] In my view, the debtor has yet to meet its burdens.

### **Analysis**

- [41] I have not set out the detailed facts.
- [42] First, I have too little time to summarize the voluminous material before the court. If there was a tool to assist the court to summarize large amounts of data in a brief amount of time this might have been a good place for such assistance. I am grateful to counsel for all parties who put together large amounts of material and then provided full and helpful analyses in their factums and orally.
- [43] Second, there are few disputed facts of any relevance.
- [44] Third, the process and timing of this proceeding was entirely within the debtor's control with its senior creditors. It had every opportunity to provide for the transparency of its processes and to ensure that the court proceeding was brought in a way to facilitate necessary review and approvals. It chose to proceed with transactions outside formal proceedings and then to propose an urgent quick flip under the CCAA.
- [45] I provide a rough outline of the circumstances to make the analysis understandable beyond the parties.
- [46] The debtor operates in the fintech and software industry and provides payment processing and customer engagement platforms to approximately 38,000 small and medium-sized businesses across Canada and the United States. It has approximately 118 employees as well as various offshore contractors.
- [47] The debtor admits it is insolvent on a balance-sheet basis and that it is unable to pay its liabilities as they become due.

### **The Senior Debt is Purchased in May**

- [48] In 2025, for a variety of reasons, the debtor found itself in default of its \$92 million senior secured credit facility. The senior secured creditors were a consortium of three banks represented by National Bank of Canada as agent.

- [49] On May 8, 2026, Sandton Investments X (Luxembourg) S.à r.l. purchased the senior debt from the syndicate of banks for approximately \$41 million.
- [50] BDC's secured debt is subordinate to the first secured debt. This means that, on the face of the debt documents, the debtor needs to realize at least \$92 million-plus before there can be any recovery for BDC on its \$12 million claim.

### **The Sales Process**

- [51] In late 2025, the debtor retained Reflect Advisors, LLC and, in particular its founder Adam Zalev, as Chief Restructuring Officer.
- [52] Mr. Zalev provided the only affidavit evidence for the debtor in this proceeding. There is no evidence from management, the senior secured creditors, or Canaccord Genuity Corp. about the pre-court processes and transactions.
- [53] In his affidavit, Mr. Zalev uses his acknowledged restructuring expertise as a basis to provide opinions to the court about the adequacy of the processes through which he took the debtor. The debtor's counsel made no suggestion that this evidence was admissible. The evidence of steps taken, where not hearsay and double hearsay, is the stuff on which an opinion of an expert witness may be based. But Mr. Zalev is not presented as an expert witness. I cannot admit Mr. Zalev's opinions into evidence. I will refer to the Monitor's recommendations and assessments where appropriate.
- [54] In January, 2026, Sandton approached Mr. Zalev about a possible purchase of the senior debt.
- [55] Sandton executed a confidentiality agreement on January 26, 2026.
- [56] On February 11, 2026, the senior bank syndicate and the debtor entered into a forbearance agreement that contained the outlines of a sales process acceptable to the banks. Mr. Zalev says that the purpose of the process was "to fully repay and cancel obligations owing to the Syndicate."
- [57] At the request of the senior bank syndicate, the debtor retained Canaccord to design and implement a sales and investment solicitation process. The process was to be conducted without court proceedings.
- [58] Canaccord has acknowledged expertise in marketing refinancing transactions and assets sales for businesses including distressed businesses.

- [59] Canaccord contacted over 100 potentially interested industry players – strategic and financial. It obtained some 35 confidentiality agreements from potential bidders who wished to see the confidential dataroom assembled for the proposed transaction. The information in the dataroom included a confidential information memorandum that provided a comprehensive overview of the debtor’s business and highlighted relevant details.
- [60] Four potential bidders delivered expressions of interest to the debtor through Canaccord at the deadline for doing so as provided in the sales process.
- [61] In parallel with the Canaccord sales process, Mr. Zalev engaged in separate discussions with Sandton. Although Sandton signed its confidentiality agreement two weeks before the senior bank syndicate and the debtor agreed to the terms of Canaccord’s sale process, Sandton was not included in the process.
- [62] Mr. Zalev says that he did not even advise the senior bank syndicate of Sandton’s interest until March, 2026. He does not say why he kept this information back from the banks while the terms of the forbearance agreement and the Canaccord sales process were being worked out or once the process was implemented.
- [63] Mr. Zalev says that Sandton did not want to participate in the Canaccord process. Even if such unattributed hearsay were admissible in evidence, if that is all that it took for Sandton to become entitled to hold a separate, private, undisclosed negotiation with the debtor, then the comprehensiveness and rigour of the Canaccord sales process would seem to be undermined.
- [64] Mr. O’Neill, counsel to Sandton, says that Sandton was interested only in buying the secured debt of the senior banking syndicate. It is a lender interested in debt rather than investment in the business of the debtor. Ignoring that this is not in evidence, it is not an explanation of why it could not make a bid in the Canaccord process in which four others advanced refinancing expressions of interest too. In fact, no bids were received for a purchase of the debtor’s assets. As Mr. Zalev noted, the purpose of the Canaccord process was principally to get the banks out at the best price possible.
- [65] There is nothing in the documents before the court by which Sandton requires or agrees to any further court process, asset sale, or quick flip to management or otherwise. I am told that Sandton supports management’s proposal and only management’s proposal to buy the

business. But despite Sandton investing more than \$40 million a short while ago, this proposed sale and this prepack, that it wholeheartedly supports, are said to be the independent venture of the debtor.

- [66] In their forbearance terms, the senior bank syndicate required that the Canaccord process, like typical court-based processes, call for potential bidders to deliver non-binding “expressions of interest” by a deadline – March 6, 2026. On that same date, Canaccord would provide to bidders a template form of agreement of purchase and sale acceptable to the senior bank syndicate. Bidders with whom the debtor or the senior bank syndicate wished to move forward would then be required to deliver binding offers in the template form by March 31, 2026.
- [67] Canaccord reviewed the four expressions of interest submitted by bidders with the debtor, Mr. Zalev, and the senior bank syndicate. In addition, they reviewed an offer they received separately from Sandton. The banks and the debtor decided to proceed with the Sandton offer rather than moving forward with one of the expressions of interest obtained by Canaccord through the sales process. Mr. Zalev says:
- After reviewing and considering the terms of Sandton's proposal compared to the proposals received under the Pre-Filing Process, the Applicants and the Syndicate, in consultation with the CRO, determined that the Sandton proposal was superior (including, among other reasons, because it provided the greatest recovery for the Syndicate), and ultimately agreed to proceed with that proposal.
- [68] Mr. Zweig, counsel for the debtor, submitted that there was so much room (or “daylight”) between the expressions of interest obtained by Canaccord in the sales process when compared to the Sandton offer that there was no point moving forward with any of Canaccord’s bidders.
- [69] I do not understand that submission, however. Mr. Zweig agreed with me that looking at the expressions of interest provided by Canaccord, two of the four appear to be very close to the Sandton offer in dollar value. Mr. Zweig was unable to point to any evidence to explain the statement that the be Sandton bid was much more valuable than the expressions of interest received from at least the two bidders whose bids were so close to Sandton’s bid.

- [70] There is simply no evidence explaining why the Canaccord sales process did not move forward with Sandton as a bidder competing with other bidders with similar value proposals. Of course, I am not requiring the bank syndicate to do anything. It can sell its debt as it wishes. And it did so.
- [71] But if the debtor and Sandton wish to rely on the Canaccord process as a reliable guide to the market value of the assets of the debtor, it was incumbent on the debtor to ensure that the process was rigorous, comprehensive, fair, and that it was explained transparently. Sandton was treated differently by the debtor and the Syndicate in the Canaccord sale process.
- [72] The debtor ended the Canaccord sale process before seeking binding offers from any of the bidders without any verifiable explanation of why.
- [73] On May 8, 2026, Sandton bought the senior debt. It was not just a bilateral purchase between Sandton and the banking syndicate. On the same day, Sandton and the debtor (and its affiliates and shareholders as guarantors) agreed to the terms of a forbearance agreement of which more will be written below.

### **BDC's Involvement**

- [74] BDC says it was largely excluded from the Canaccord sale process and it was completely excluded from negotiations among the debtor and Sandton. There seems to have been some information shared with BDC at least about the Canaccord sales process. But as a Crown corporation and a subsequent creditor, it told the debtor that it was interested in assisting the debtor fund the best deal. It indicated a willingness to help finance bidders, and perhaps to participate with them in bids. Yet it was kept away from the ongoing process by Canaccord and the debtor.
- [75] In late May, the debtor set up a meeting with BDC to discuss the status of its position. The debtor provided BDC with a May 22, 2026 cash flow forecast showing it had sufficient funds to continue until the end of August.
- [76] A meeting was set between the debtor and BDC for after June 5, 2026. I understand the need to keep CCAA planning confidential. But BDC submits it was misled and kept in the dark inappropriately.

### **June 5, 2026 – CCAA – Quick Flip**

- [77] On June 5, 2026, the debtor sought protection under the CCAA. It sought a return date in ten days to carry out a quick flip of the business to a new company to be owned by the principals of the debtor.

- [78] The purchase price for the proposed sale would be \$60 million to be funded by Sandton by new debt against the purchaser. The debtor's debt to Sandton, as assignee of the bank syndicate, will be correspondingly reduced by \$60 million.
- [79] In other words, this is a sale with no cash proceeds. The debtor's business assets will remain intact with a debt load of \$60 million instead of the current \$92 million (plus BDC's \$12 million plus another \$7.7 million in unsecured debt).
- [80] The proposed sale will leave stranded with the debtor, with no cash or sale proceeds, the remaining \$32+ million of bank debt, the claims of BDC, and the claims of all other unsecured creditors.
- [81] I noted in my June 5 endorsement, that the debtor provided only a couple of hours informal notice to BDC of the proposed proceeding that day. I indicated some concern that by short-serving BDC, the debtor actually put itself in a worse position on the sale approval motion than if BDC had been brought into the fold and given notice at some time earlier.
- [82] BDC knew nothing of a proposal by management to buy the assets of the debtor after a purchase of the bank syndicate's debt by Sandton. It was given no opportunity to participate. As far as it knew, it was about to have a meeting with the debtor about how to move forward. Instead, it suddenly faced a *fait accompli* that sees it cut out on minimal notice and no court-based sale process.
- [83] BDC also expresses concern that in just two weeks from May 22, 2026, the cash flow statements relied upon by the debtor changed from showing it having cash for three months to being very suddenly out of cash and about to fail.
- [84] Mr. Zweig says that BDC cannot be heard to rely on an out-of-date forecast. But that was the last thing it received from the debtor. Neither BDC nor I have been provided with an explanation of what changed in such a brief time.
- [85] The debtor now also says that to carry on its business it needs cash support from its Visa sponsor bank The Bank of Nova Scotia. This has to do with the part of the debtor's business that provides access to Visa credit card services to customers. Apparently having gotten wind of the debtor's financial circumstances, the bank is requiring the debtor to post as much as \$5 million in security if it wishes to continue operating after June 30, 2026.

- [86] BDC then submits that there is no evidence at all about how the new purchaser is going to operate with no money in the till. How will it pay The Bank of Nova Scotia? Without evidence, Mr. Zweig submits that The Bank of Nova Scotia will see that the debtor's business is operating through a new company with support of a new lender and it will reduce its demands for cash collateral to something more manageable. Perhaps that is true. There is no evidence to support it, however. It sounds convenient.
- [87] BDC has put into evidence its efforts to put together a competing deal in the past two weeks. I will say more about it below. Mr. O'Neill said that his client has voluntarily agreed to give management a \$30 million discount because it is comfortable working with management. He said, quite correctly, that his client cannot be required to forgo any amount of its \$92 million in debt unless it chooses to do so.
- [88] Mr. O'Neill submits that Sandton is a lender and only a lender. It wants its debt paid. He said that Sandton would not support the proposal being put together by BDC because it involves a management team with whom his client is unfamiliar. There is a suggestion that there may be some bad blood between existing management and the people involved with BDC's bid.
- [89] However, BDC is proposing to pay out Sandton. It will not be dragged along with new management with whom it is not comfortable. As a lender who wants its money back, one would expect Sandton ought to be happy with \$60 million plus one dollar should BDC be able to raise it.
- [90] But Mr. O'Neil was clear that Sandton is only supportive of management's proposal and not any other. Nor can the court make it do what it does not want to do. It is offering to reduce its debt to \$60 million for management and management only.
- [91] But the Monitor seems to think that the discount is a done deal. It reports:

Pursuant to the Sandton Forbearance Agreement, Sandton agreed to extend the maturity date of the Senior Credit Facilities from December 31, 2027 to May 8, 2028, and grant Paystone a discount of \$35,262,500 to the outstanding principal amount owing at the maturity date provided that a prescribed termination event has not occurred and the obligations in respect of the Senior Credit Facilities have not been accelerated.

- [92] In that Forbearance Agreement, the debtor also agreed to provide a new blocked account agreement with The Bank of Nova Scotia on terms acceptable to Sandton. That agreement is not in evidence.
- [93] In the Forbearance Agreement, the debtor also agreed that it could not sell any assets or commence CCAA proceedings except with the consent of Sandton.
- [94] The odd thing to me is that Sandton invested \$40 million to buy the senior bank debt on May 8. About a month later a CCAA proceeding is brought proposing a quick flip to existing shareholders with Sandton taking a very large discount on the principal amount of its debt and there is nothing in any document provided to the court indicating how this deal happened. The debtor acts like management proposed this deal out of the blue and presto – quick flip emerges on June 5.
- [95] The Monitor just reports that a deal for the asset sale happened. It gives no indication of how it arose, when, or whether there are other undisclosed terms to the initial loan purchase that set this all in motion.
- [96] Yet it is clear from the Sandton Forbearance Agreement that Sandton has the governing hand on restructuring proceedings. It has consent rights over any proceeding or asset sale proposed by the debtor.
- [97] The Monitor reports that Sandton negotiated with Mr. Zalev separately. The Monitor reports:
- The Monitor also understands that Sandton's proposal, which provided for a material shortfall of the amount owing under the Senior Credit Facilities, was economically superior to the transactions contemplated by the Term Sheets and significantly less conditional.
- [98] The Monitor can only say what it has been told. It gives no analysis of how the Sandton proposal was superior in money to the two that are very close to it in terms of dollars to be offered.
- [99] The Monitor also says that the Sandton deal was less conditional than the proposals in the Canaccord proposal. But that is not a fair comparison of apples to apples. The bidders were in the non-binding expressions of intent stage of a multi-step process. Formal offers capable of closing were to come later after Canaccord provided bidders with a template form of agreement. That never happened. Sandton was proceeding on its own, privately with the CRO Mr. Zalev. If that negotiation went faster, did anyone tell the Canaccord bidders to deliver binding offers with their minimum closing conditions?

[100] At the hearing before me, the Monitor's counsel repeated the submission that Sandton was more deal-ready. Of course it was. It was not in the Canaccord bidding process that was truncated before it reached that stage.

### **Analysis**

[101] The debtor submits that the Canaccord sales process establishes that there is no one interested in buying the assets of this business. Even if the prospective bidders were interested, their indicative offers were far short of \$92 or even \$60 million. The fact that the banks took \$41 on \$92 million of debt is powerful testimony they the banks did not see any greater value available.

[102] The debtor submits that BDC is just trying to find some leverage when it is realistically deeply out of the money. They point to the fact that the proposed sale may save 100 jobs. There are 38,000 customers whose access to Visa services cannot be interrupted without serious prejudice to them and to the business.

[103] But the jobs will be saved and the customers protected in any going concern sale.

[104] There has been no process to try to sell the assets of the business with Sandton in place as the senior debt holder having paid just \$41 million for the position. No one, apart from management, has been able to discuss with the debtor, the CRO, or Sandton how they might propose to deal with the business and Sandton's debt going forward in light of the discount agreed in the Sandton Forbearance Agreement or any other discount to which it might be inclined to agree.

[105] BDC says it is trying to put together \$115 million to capitalize a transaction. It is a very sophisticated and public-minded party. There is no hint that it is engaged in a bad faith leverage play.

[106] To the contrary, if the debtor and Sandton were so satisfied that BDC was hopelessly out-of-the-money, why give it mushroom treatment? Why wouldn't they open the curtain to seek its consent like in *Tool-Plas*? Why a quick flip with the least possible notice to BDC? They could propose a plan of arrangement or compromise under the CCAA providing BDC and the unsecured creditors just one cent on the dollar to have them do better than in bankruptcy in that case.

[107] The Monitor has reviewed the sales process conducted by Canaccord. It finds the process robust and a commercially reasonable market canvass. It concludes:

[T]he Monitor acknowledges that Sandton's proposal emerged through discussions conducted outside the formal Pre-Filing Process and that not every potential strategic acquiror may have been contacted during the process. However, the Monitor does not consider these facts to undermine the overall reasonableness of the process. The relevant question is whether the Pre-Filing Process provided a meaningful market test and whether there is evidence that a superior executable transaction was reasonably available. Based on the information reviewed by the Monitor, including the results of the Pre-Filing Process and the absence of any binding alternative proposal since the commencement of the CCAA Proceedings, the Monitor is not aware of any such superior transaction.

[108] In the main, I do not disagree with the Monitor. I do not ignore that the banks sold very cheaply as a percentage of the face value of the debt. That sale changed the economics of the senior position materially. Unlike the senior bank syndicate, Sandton is not risking suffering a loss if it is paid less than face value on the senior debt. At the \$60 million it has agreed to accept from management, it is making a 50% profit. The situation facing potential bidders is very different with Sandton occupying the first secured position.

[109] The issue I have with Montor's conclusions, once again, is that it gives decisive weight to whether BDC's proposal is deal-ready. If this were a motion after a court-approved sale process and a late bidder came into court with a proposal that was not properly formed or ready to go, it would be dismissed out of hand. Hearing the proposal would likely violate the integrity of the process that had been agreed upon, ordered, faithfully executed, and scrupulously reviewed.

[110] But that is not the case here at all. The Monitor and the debtor are throwing up the lack of preparedness of BDC with a fully formed bid when it has known of this process only from the launch of the June 5, 2026 surprise. Sandton had from January 26, 2026 to May 8, 2026 to engaged in its negotiations with the banks, the CRO, and management. BDC, by contrast, has acted very quickly and appropriately given the prejudicial position into which it was put by the debtor and Sandton.

- [111] There was no fair process into which all proposed bidders were equally treated with transparent terms and outcomes. But even if the Canaccord sales process was a broad and comprehensive evaluation of the marketplace at the time, that is not where the parties are today. Now Sandton is here having bought the debt for less than 50 cents on the dollar. It has already agreed to give the debtor a \$35 million discount and to give management a \$30 million discount on its proposed quick flip.
- [112] There has been no process seeking arm's length buyers for the debtor's assets to compete with management with the current economics.
- [113] No one else has had a chance to be in the room where it happens. The deal between Sandton and management is a black box. It is the opposite of the fair and fully transparent process required under decades of case law on sales processes and quick flips.
- [114] Looking at s. 36 (1) of the *CCAA*, the debtor has not proved that the process leading to the sale proposed to management was fair or that its process was reasonable. As far as I can tell, there is no evidence of the process that led to the proposed quick flip to management except that Mr. Zalev met Sandton and kept it out of the Canaccord process on which the Monitor opines. The Monitor provides a view on the truncated Canaccord process. But it provides no assessment or view on the process that led to the debtor's proposed quick flip asset sale to management.
- [115] Neither has the debtor met its burden under s. 36 (4) of the *CCAA* that I repeat for convenience:
- ... the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

- [116] There was no effort made to sell the assets to unrelated parties after the senior debt was sold and Sandton agreed to the Sandton Forbearance Agreement. No one was invited to discuss options with management or Sandton. No one sought to engage arm's length bidders including even those whose process with Canaccord had been truncated.
- [117] Neither is there proof that the consideration being offered by the proposed related party buyer is superior to any other offer made in the process leading to the proposed sale. Since there was no such process, that standard cannot be met. Moreover, efforts to prevent BDC from even formulating an offer, which seeks to offer as much as \$115 million, are the opposite of the requisite approach under s. 36 (4). BDC says it needs just a few more days to finalize a proposal despite having been given no notice of the proposed sale until it was sprung on BDC in this proceeding.
- [118] Moreover, there is no open frankness, near unanimity, or transparency required in prepack case law discussed above.
- [119] Accordingly, the motion for approval of the related party prepack sale as proposed is dismissed.
- [120] The debtor asked for a stay extension to June 30, 2026 extending automatically to August 15, 2026 if the asset sale closes. I grant an extension to June 30, 2026.
- [121] With the sale not yet approved, the debtor may need financing to stay operational. It might also have issues with The Bank of Nova Scotia. Sandton says it will oppose a DIP loan priming its position. It says if a junior creditor wishes to buy time, it should be on its own nickel. In other words, any DIP to be proposed by BDC, it submits, should be junior in priority to Sandton. The debtor agrees although I do not know why it has an interest in the relative priority of DIP lenders.
- [122] BDC asks me to allow it to fund a priming DIP loan and that I should impose a standard SISP process. I am not prepared to do either at this time.
- [123] First the CCAA proceeding has to continue. Funding discussions and any required discussions with Scotiabank need to be held. A sales process will likely need to be run by the Monitor or someone neutral if management is going to want to keep their offer open. Perhaps there is a place for BDC in management's offer? Perhaps unsecured creditors too should be considered before equity holders?
- [124] There are many options available for the parties to discuss immediately.

- [125] I will make a few other quick points for completeness.
- [126] First the releases sought were far too broad in scope and in the people to whom they applied. There was no evidence supporting the necessity for releases to make the proposed sale work or the necessity for the proposed releases.
- [127] The debtor's response - to carve out from proposed releases all creditors who complained about their overbreadth - exacerbated the problem rather than fixing it. There was no fair basis, nor any basis in the jurisprudence, to grant third party releases to bind all except those who know enough to complain and threaten to throw a spanner in the works. The differential application of the releases made them more problematic in my view.
- [128] I would have been very slow to grant a vesting order purporting to vest off title or eliminate claims of contractual counterparties who were not served with the motion seeking the order. It is not good enough to say that only those who consent or whose contracts provide a right of assignment will be bound. The latter group is subject to debate and contestation. *Prima facie*, they should be identified and served. If it is too early to identify them with precision, perhaps the vesting should be deferred for contracts until the counterparties to be affected by the court's order are known.
- [129] This also goes to BDC's point that management's asset purchase agreement as proposed is not completed. The schedules do not identify the assets included or excluded. This happens in some cases. But I do not have a reason to know if it is immaterial and can simply be left for later in this case. In addition, the failure to constitute the purchaser is also an issue. Despite Sandton protesting that it is a lender only, its forbearance agreement dated May 8, 2026 entitles it to a warrant to purchase 10% of the debtor's shares on a fully diluted basis. Is that being carried into the purchaser? Mr. Zweig says there may be employee incentives offered. What about creditors?
- [130] Material side deals require disclosure under the CCAA. This applies equally or more so in a prepack.

  
FL Myers

**Date:** June 24, 2026

Justice FL Myers  
Digitally signed by Justice FL Myers  
Date: 2026.06.24 09:13:22 -04'00'