

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF H WORK, LLC, RGN-GROUP HOLDINGS, LLC, RGN-
NATIONAL BUSINESS CENTERS, LLC, RGN-FORT LAUDERDALE III, LLC, RGN-
COLUMBUS IV, LLC, RGN-CHICAGO XVI, LLC AND RGN-CHAPEL HILL II, LLC**

**APPLICATION OF RGN-NATIONAL BUSINESS CENTERS, LLC
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED**

(Applicant)

**FACTUM OF THE FOREIGN REPRESENTATIVE
(Re: Interim Stay)
(Returnable August 28, 2020)**

August 27, 2020

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PART I - BACKGROUND

1. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Affidavit of Joshua Nicosia sworn August 27, 2020 (the "**Nicosia Affidavit**").
2. On August 17, 2020, H Work, LLC, RGN-Group Holdings, LLC, and RGN-National Business Centers, LLC (collectively, the "**Guarantor Debtors**") filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"). These petitions followed on earlier voluntary petitions filed by the other affiliates (together with the Guarantor Debtors, the "**Chapter 11 Debtors**") which are single purpose leasing holding entities in the United States.

Nicosia Affidavit at para. 4, Applicant's Motion Record – Tab 2.

3. On August 24, 2020, RGN-National Business Centers, LLC, in its capacity as foreign representative of the Chapter 11 Debtors, commenced recognition proceedings (the "**CCAA Recognition Proceedings**") pursuant to Part IV of the *Companies' Creditors Arrangement Act* (the "**CCAA**").

Nicosia Affidavit at para. 5, Applicant's Motion Record – Tab 2.

4. Each of the Chapter 11 Debtors are direct or indirect subsidiaries of Regus Corporation, a non-debtor Delaware corporation that, together with its affiliates (collectively, “IWG” or the “**Company**”), offer a network of on-demand office and co-working spaces, and ancillary services and support, to a variety of clients across a host of industries in over 1,000 locations in the United States and Canada.

Nicosia Affidavit at paras. 1 and 6, Applicant's Motion Record – Tab 2.

5. As explained in the Affidavit of James Feltman sworn August 22, 2020 in support of the initial application under Part IV of the CCAA, an important component of the CCAA Recognition Proceedings was intended to be the recognition of relief sought in the Lease Notice Procedures Motion filed with the U.S. Court. The relief would have established specific notice procedures related to Leases held by Canadian Tenant SPEs and guaranteed or partially guaranteed by the Guarantor Debtors. On August 25, 2020, the U.S. Court denied the Lease Notice Procedures Motion. As a result, and given the default in numerous Leases related to Canadian Centres arising from the commencement of the Chapter 11 Cases by the Guarantor Debtors, there are various Leases that that the Landlords may terminate or attempt to terminate with no or limited notice to the Canadian Tenant SPEs. Termination of these Leases could cause material prejudice to the Canadian Tenant SPEs, the Occupants who use the Centres and the Chapter 11 Debtors' restructuring efforts as every Centre that is involuntarily closed will make a successful restructuring of the Chapter 11 Debtors less likely.

Affidavit of James Feltman sworn August 22, 2020 at paras. 37-38 and 50-52, Applicant's Motion Record – Tab 2, Exhibit A.

Nicosia Affidavit at paras. 12-16, Applicant's Motion Record – Tab 2.

6. Following denial of the Lease Notice Procedures Motion, the Chapter 11 Debtors and the applicable Canadian Affiliates, in consultation with the Information Officer, concluded that

an application under the CCAA is the most effective and efficient process to preserve the value of the Canadian enterprise while allowing the various Canadian Tenant SPEs to conduct a coordinated proceeding.

Nicosia Affidavit at para. 19, Applicant's Motion Record – Tab 2.

7. This factum is filed in support of the Foreign Representative's motion seeking a temporary stay of proceedings in favour of the Affected Canadian Tenant SPEs for a period of fourteen days (the "**Interim Stay**") to permit those Canadian Tenant SPEs (or the general partners thereof) to bring their own application under the CCAA. The Interim Stay is intended to preserve the *status quo* for the Affected Canadian Tenant SPEs until they (or their general partners) are ready to make an application under the CCAA given the necessary preparation while limiting the impact of the Interim Stay on the Landlords as much as possible.

PART II - ISSUES

8. The only issue on this motion is whether this Court should grant the Interim Stay.

PART III - THE LAW

(i) The Court has jurisdiction to grant the Interim Stay

9. The CCAA Court has the jurisdiction to grant the Interim Stay. Pursuant to subsection 49(1) of the CCAA, if an order recognizing a foreign proceeding is made, the Court may "on application by the foreign representative ... if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate ..." [emphasis added]. The only restriction on the CCAA Court's ability to make an order in Part IV proceedings is set out in subsection 49(2), which provides that any order under subsection 49(1) "must be consistent with any order that may be made in any proceedings under this Act." Similar to section 11 of the CCAA,

subsection 49(1) provides the CCAA Court with broad jurisdiction to make orders supporting a debtor's restructuring efforts which are in the interests of creditors.

CCAA, ss. 11, 49(1), 49(2).

Tucker v. Aero Inventory (UK) Ltd., 2010 ONSC 1196 at para. 22 ([CanLII](#)).

See also *Hollander Sleep Products, LLC et al. (Re)* 2019 ONSC 3238 at para. 38 ([CanLII](#))

10. In *Purdue Pharma (Re)*, this Court stated that subsection 49(1) "clearly provides [the Court] with jurisdiction" to extend the stay to related third parties if "satisfied that it is necessary for the "protection of the debtor company's property or the interests of a creditor or creditors".

Purdue Pharma L.P., (Re), 2019 ONSC 7042 at para. 22 ([CanLII](#)).

11. Further, extending the stay of proceedings to third parties is relief frequently granted pursuant to the CCAA where it is "fair and reasonable" to do so under the circumstances. The following set of factors is frequently examined by the Court when considering granting such relief:

- (a) Whether extending the stay to the third party would help maintain stability and value during the CCAA process;
- (b) Whether not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;
- (c) If the stay is not granted, will the debtor company be prevented from concluding a successful restructuring with its creditors resulting in economic harm that would be far-reaching and significant; and
- (d) Whether the balance of convenience favours extending the stay to the third party.

Pacific Exploration & Production Corp. (Re), 2016 ONSC 5429 at para. 26 ([CanLII](#)).

See also *JTI-MacDonald Corp. (Re)*, 2019 ONSC 1625 at para. 15 ([CanLII](#)).

12. These principles set out by courts in extending the stay to third parties have also been applied in Part IV proceedings. In *Payless Holdings Inc. LLC (Re)*, this Court determined that the stay of proceedings granted upon recognition of a Chapter 11 proceeding could be extended to a related partnership that was integral to the operations of the debtors in order to ensure that the purpose of the CCAA could be achieved. The decision indicates that this Court has the jurisdiction to extend the stay of proceedings to non-debtor companies under section 49 of the CCAA and may consider the same principles under that provision as courts in typical CCAA cases consider when extending the stay to third parties pursuant to section 11 of the CCAA.

Payless Holdings LLC (Re), 2017 ONSC 2242 at para. 37 ([CanLII](#)).

(ii) The Interim Stay should be granted by the Court

13. As set out in the Nicosia Affidavit, the Interim Stay is intended to prevent immediate and material potential prejudice to the Chapter 11 Debtors, the Canadian Tenant SPEs and the Occupants. In the case of approximately 39 Leases, there is a risk that the Landlords could lock out the Canadian SPE Tenants with no or limited notice. As a result, the Canadian SPE Tenants wish to commence their own proceedings under the CCAA as soon as possible to preserve the value of the enterprise.

Nicosia Affidavit at paras. 16-17, Applicant's Motion Record – Tab 2.

14. If Landlords are permitted to potentially terminate Leases pending an opportunity for the further CCAA application to be heard, the Chapter 11 Debtors could face situations similar to the Edmonton Centre where the Landlord locked the doors to the premises and the Canadian Tenant SPE and Occupants were denied access to the premises without any

advance warning. Temporarily preserving the *status quo* will protect the interests of the Guarantor Debtors as they are potentially liable for the Lease and their successful restructuring rests on the ability to preserve as many viable Centres as possible.

Nicosia Affidavit at paras. 17 and 19, Applicant's Motion Record – Tab 2.

15. Section 44 of the CCAA also sets out the purpose of Part IV is to promote “the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies” and the “rescue of financially troubled businesses to protect investment and preserve employment.” This relief is intended exactly for that purpose. The interests of the Chapter 11 Debtors, Canadian Tenant SPE, and the Occupants will be protected while the Foreign Representative and its affiliates pursues an avenue that it believes is in the best interest of it and its stakeholders, after consider available alternatives, as it will preserve the value of the enterprise.

CCAA, s. 44.

16. Further, the Foreign Representative submits that the prejudice of the Interim Stay to other stakeholders, primarily Landlords, will be minimal as they are only temporarily stayed from exercising rights and remedies for a limited fourteen day period. During the period of the Interim Stay, the Affected Canadian Tenant SPEs intend to make rent payments which become due and will be subject to the supervision of the Information Officer and this Court.

Nicosia Affidavit at para. 21, Applicant's Motion Record – Tab 2.

17. For the above reasons, the requested stay in favour of the Affected Canadian Tenant SPEs and temporary stay of the rights and remedies against those entities causes minimal prejudice, if any, to the Landlords. The balance of prejudice weighs in favour of the Chapter 11 Debtors.

PART IV - ORDER SOUGHT

18. The Foreign Representative respectfully requests that this Court grant the requested Order substantially in the form of the draft order attached at Tab 3 of the Motion Record establishing the Interim Stay.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of August, 2020.

A handwritten signature in black ink, appearing to read "L. Ni", is written above a horizontal line.

Stikeman Elliott LLP
Lawyers for the Foreign Representative

SCHEDULE "A"
LIST OF AUTHORITIES

Cases

1. *Hollander Sleep Products, LLC et al. (Re)*, 2019 ONSC 3238 ([CanLII](#))
2. *JTI-MacDonald Corp. (Re)*, 2019 ONSC 1625 ([CanLII](#))
3. *Pacific Exploration & Production Corp. (Re)*, 2016 ONSC 5429 ([CanLII](#))
4. *Payless Holdings LLC (Re)*, 2017 ONSC 2242 ([CanLII](#))
5. *Purdue Pharma L.P., (Re)*, 2019 ONSC 7042 ([CanLII](#))
6. *Tucker v. Aero Inventory (UK) Ltd.*, 2010 ONSC 1196 ([CanLII](#))

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**PART IV
CROSS-BORDER INSOLVENCIES**

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company’s property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

...

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company’s property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

49 (2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

49 (3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

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Court File No.: CV-20-00646084-00CL

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Proceeding commenced at Toronto

FACTUM OF THE FOREIGN
REPRESENTATIVE
(RETURNABLE AUGUST 24, 2020)

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