



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00723586-00CL

DATE: October 4, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: THE BODY SHOP CANADA LTD. INC.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Alec Hoy	Counsel to Alvarez & Marsal Canada Inc. (as Monitor)	ahoy@cassels.com
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Josh Nevsky	CCAA Monitor (A&M)	jnevsky@alvarezandmarsal.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
James Harnum	Counsel for certain terminated employees	jharnum@kmlaw.ca
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ENDORSEMENT OF JUSTICE OSBORNE:

- [1] The Applicant, TBS, moves for an order:
- a. extending the stay to December 13, 2024;
 - b. declaring the UK Purchaser to be a critical supplier to TBS in accordance with section 11.4 of the CCAA;
 - c. granting a critical supplier charge over certain inventory as security for amounts payable to the UK Purchaser up to a maximum of \$1,500,000; and
 - d. approving the priority of existing charges and the proposed new critical supplier charge as: Administration Charge; D&O Charge; KERP Charge; and Critical Supplier Charge.
- [2] Defined terms in this Endorsement have the meaning given to them in the motion materials, the First Report of the Monitor dated September 30, 2024, and/or earlier Endorsements made in this proceeding, all, unless otherwise stated.
- [3] The relief sought by the Applicant is supported and recommended by the Court-appointed Monitor.
- [4] 40 terminated Canadian employees who have together retained counsel do not oppose the relief sought but submit that any stay extension should not exceed one month. They also seek a direction to the Monitor to provide them with information relevant to any liquidation analysis in order that they can consider whether a bankruptcy would be preferable, mainly with a view to further exploring the availability of WEPPA benefits.
- [5] The UK Sale Process commenced in May, 2024 for the sale of the business and assets of the UK Parent. A consortium led by Aurea Group (now That Body Shop International Limited) was selected as the UK Purchaser by the UK Administrator. That acquisition closed on September 6, 2024. As part of that transaction, the UK Purchaser acquired the name “The Body Shop International Limited” and inventory owned by the UK Parent. The UK Transaction has not impacted TBS Canada’s operations.
- [6] As the UK Transaction did not contemplate the purchase of equity in TBS Canada, and the UK Purchaser intended that the Canadian business would continue under franchise relationship, the Monitor launched the next phase of the Canadian Sale Process following confirmation that the UK Transaction had closed.
- [7] The particulars of the Sale Process are fully set out in the motion materials and the First Report. Among other things, it contemplates a bid deadline of October 8, the selection of a successful bid by October 11, unless extended, and an outside date of November 15.
- [8] In the meantime, additional inventory is required from the UK Purchaser. As set out in earlier Endorsements, historically TBS US managed the storage freight and logistics for TBS Canada inventory through the US distribution centre.
- [9] Following the closing of the UK Transaction, the UK Purchaser has stepped into the shoes of the UK Parent and is now the exclusive supplier of “The Body Shop” branded items sold in Canada.

- [10] When TBS US commenced Chapter 7 Proceeding in the US Bankruptcy Court for the Southern District of New York in March, 2024, TBS US ceased providing freight, logistics and warehousing support services to TBS Canada. TBS Canada has however continued to source inventory from the US Distribution Centre during the Chapter 7 Proceeding through a license agreement with the Chapter 7 Trustee and an agreement with the logistics provider.
- [11] However, the Chapter 7 Trustee recently took steps to attempt to liquidate the Remaining Inventory at the US Distribution Centre, which was acquired by the UK Purchaser, with the result that, in order to secure a continued flow of inventory, TBS Canada and the Monitor entered into negotiations with the UK Purchaser to purchase that Remaining Inventory. The UK Purchaser agreed.
- [12] The challenge is that TBS Canada does not have sufficient liquidity to complete the purchase, such that it has agreed with the UK Purchaser that:
- a. TBS Canada will pay 50% of the purchase price of approximately \$1,300,000 upon shipment of the Remaining Inventory;
 - b. TBS Canada will pay an additional 10% for the Remaining Inventory within 15 days of the final shipment;
 - c. the remaining 40% will be paid by November 29, 2024; and
 - d. TBS Canada will secure the Outstanding Purchase Price, with the Court-ordered charge in favour of the UK Purchaser over the Remaining Inventory up to a maximum of \$1,500,000.
- [13] The Remaining Inventory is necessary for TBS Canada to sustain operations in the ordinary course through the end of the Sale Process. It will also provide adequate merchandise levels to sustain operations through the holiday season and into the first quarter of 2025. This stability will enable the Company to further advance the Sale Process and give Interested Parties some confidence that they could smoothly transition the business of the Company if the sale transition is finalized.
- [14] The current stay expires on October 8, and the Sale Process will not be concluded before that time, such that the Company requests an extension to December 13, 2024, to provide the Company, any Interested Party in the Sale Process and the UK Purchaser sufficient time to negotiate and settle the terms of a franchise arrangement and finalize and implement a transaction if the Sale Process is successful.
- [15] I am satisfied that the requested relief should be granted.
- [16] This Court has the power to declare that UK Purchaser, as the Company's only supplier of inventory, to be a critical supplier pursuant to section 11.4 of the CCAA and its inherent jurisdiction. The UK Purchaser is clearly a critical supplier here. The declaration as such is supported by the Monitor. The Company does not manufacture any inventory it sells, all of which is manufactured by or on behalf of the UK Purchaser outside Canada. The Company has no ability to source inventory from another supplier as the UK Purchaser owns the trademarks and intellectual property associated with "The Body Shop" brand. In short, absent supply from the UK Purchaser, TBS Canada cannot continue operations in the ordinary course.
- [17] For these reasons, in addition to the fact that although the Remaining Inventory is being or has been delivered to TBS Canada, at least 40% of the purchase price is not expected to be paid until the end of

November. Consequently, there is a risk that the UK Purchaser could demand that the corresponding portion of the Remaining Inventory be returned to it or take other steps, any of which would threaten the ability of TBS Canada to maintain ordinary course sales until the Sale Process is complete.

- [18] It follows that I am satisfied that the UK Purchaser should be ordered to supply the Remaining Inventory to TBS Canada pursuant to section 11.4(2) of the CCAA. In so doing, I recognize that the Remaining Inventory has been largely delivered already. I also recognize that the UK Purchaser is on notice of this motion, has received the motion materials, and does not oppose the relief sought.
- [19] It follows from all of this that the proposed Critical Supplier Charge is appropriate. It is supported by the Monitor, and such charges are regularly granted by this Court pursuant to its inherent jurisdiction and section 11.4 of the CCAA, and in particular, sections 11.4(3) and 11.4(4).
- [20] Here, the Outstanding Purchase Price for the Remaining Inventory is approximately \$1.4 million. I am satisfied that the proposed Critical Supplier Charge in the maximum amount of \$1,500,000, secured against the unpaid portion of the Remaining Inventory pursuant to section 11.4(3) of the CCAA, is appropriate.
- [21] As set out above, the Company cannot continue operations absent the UK Purchaser being declared a Critical Supplier which is in turn dependent on the Critical Supplier Charge being granted. All of that would negatively affect the Sale Process and the expected recovery for stakeholders. I note that it is a condition of the agreement among TBS Canada, the Monitor and the UK Purchaser that the Critical Supplier Charge would be secured in exchange for the release by the UK Purchaser of the Remaining Inventory.
- [22] The proposed priority of charges is appropriate. The Critical Supplier Charge will rank behind Existing Charges but ahead of the RBC Registrations. RBC does not oppose the relief sought, and in any event, there is no amount owing to RBC in connection with the RBC Registrations, which are in the process of being deleted or have been deleted. I am satisfied that the proposed Critical Supplier Charge does not cause any material prejudice to any secured interests. I am satisfied it should be granted pursuant to section 11.4(4) of the CCAA.
- [23] Finally, the proposed stay extension is reasonable and appropriate in the circumstances of this case. Such extensions are permitted pursuant to section 11.02(2) of the CCAA. The Applicant has acted and is acting in good faith and with due diligence. The continuing Sale Process is described above, and the extension is required to preserve the status quo through the Sale Process until that is completed and a transaction is hopefully finalized.
- [24] The Company is forecasted to have sufficient liquidity to support ordinary cost operations and this proceeding throughout the proposed extension period as reflected in the 13-week cash flow forecast appended to the First Report. The Monitor supports the proposed extension.
- [25] While I appreciate the concern of the employees represented today that the Company be capped on a relatively “short leash” I am satisfied that it is incentivized and indeed is working towards completion of a transaction and ultimately this proceeding, as soon as possible. It is not practical to have a shorter stay extension, and multiple court appearances are neither efficient for the Court, nor accretive to the ultimate recovery for stakeholders.
- [26] The Applicants and the Monitor will keep counsel for the terminated employees up to date with respect to the progress of this matter. In my view the exploration of possible bankruptcy in the context of the Sale Process is not appropriate or warranted at this time. I observe that as submitted by Ms. Renner, the CCAA

provides in section 36(3)(c) that one of the factors to be considered in deciding whether to authorize the disposition of assets outside the ordinary course of business is whether the monitor has 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. Accordingly, those issues can be considered at that time.

[27] The motion is granted. Order to go in the form signed by me today which is effective immediately and without the necessity of issue and entering.

Olson, J.