



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00734339-00CL

DATE: February 4, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING:

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
COMARK HOLDINGS INC., BOOTLEGGERS CLOTHING INC., CLEO FASHIONS
INC. AND RICKI'S FASHIONS INC**

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Shawn Irving	Applicants	sirving@osler.com
Tracy Sandler	Applicants	tsandler@osler.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Elizabeth Pillon Phil Yang	Tiger Asset Solutions Canada ULC	epillon@stikeman.com pyang@stikeman.com
Brendan O'Neill	Monitor (A&M)	boneill@goodmans.ca
Josh Nevsky	CCAA Monitor (A&M)	jnevsky@alvarezandmarsal.com
K. Plunkett	Putman Purchaser	kplunkett@airdberlis.com
David Bish	Cadillac Fairview	dbish@torys.com
Samantha Hans	1001110197 Ontario Inc. (purchaser)	shans@airdberlis.com
Josh Sloan	Monitor	jsloan@goodmans.ca
Bradley Wiffen	Monitor	bwiffen@goodmans.ca
Linda Galessiere		lgalessiere@clegal.ca
Milly Chow Caitlin McIntyre Supriya Sarin Akriti Bhatnagar	CIBC	milly.chow@blakes.com Caitlin.mcintyre@blakes.com supriya.sarin@cibc.com Akriti.Bhatnagar@cibc.com
D.J. Miller	Oxford Properties	dmjiller@tgf.ca
Fozia Chaudary	CRA	Fozia.chaudary@justice.gc.ca
Jeff Wilson	White Oaks Shopping Centre Inc.	Jwilson@westdellcorp.com

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] The Applicants seek two orders on this motion in the within *CCAA* proceeding.
- [2] In this endorsement, defined terms have the meanings given to them in the motion materials.
- [3] The Applicants seek:
- a. An order (the “Approval and Vesting and DIP Assignment Order”), among other things,
 - i. approving an asset purchase agreement (the “Putman APA”) between cleo and Ricki’s (together, the “Targets”) and 10011110197 Ontario Inc. (the “Putnam Purchaser”) whereby the Putman Purchaser will acquire certain assets and assume certain leases of Ricki’s and cleo (the “Putman Transaction”);

- ii. assigning certain leases of Ricki's and Cleo to the Putman Purchaser pursuant to section 11.3 of the *CCAA*; and
 - iii. approving the DIP Assignment and Assumption; and
- b. An order (the "Stalking Horse Sale Process Order"), among other things:
 - i. approving the form of process letter prepared by the Monitor setting out key milestones and bid requirements in respect of the sale of the Remaining Business (the "Process Letter");
 - ii. authorizing the Sale Process as set out in the Process Letter; and
 - iii. authorizing the execution of the Stalking Horse Term Sheet, approving its use as a stalking horse bid, and authorizing the Applicants to enter into an agreement substantially on the terms of the Stalking Horse Term Sheet.

[4] The facts in support of this motion are set out in the Affidavit of Shamsh Kassam sworn January 30, 2025. In addition, the motion materials include the Second Report of the Monitor dated January 31, 2025.

[5] The facts are summarized in the Applicants' factum at paras. 8-29.

Should the relief related to the Putman Transaction should be granted, including the approval of the Putman Transaction and the assignment of the Assumed Leases?

[6] Section 36 of the *CCAA* sets out the legal test for obtaining court approval of a sale of all or substantially all of a *CCAA* debtor's business and assets. The court is required to consider, among other things, (i) whether the sale process was reasonable in the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable. The court is required to look at the transaction as a whole and decide whether the sale is appropriate, fair and reasonable in the circumstances.

[7] I am satisfied that in the circumstances, although the Putman Transaction is not the result of a formal-approved sale process, the process was fair and reasonable. The process was undertaken by the Applicants and the Monitor in accordance with the authorization granted pursuant to paragraph 12 (f) of the ARIO which was designed to allow the Applicants and the Monitor to immediately commence testing the market for potential Going Concern Transactions. Acting in accordance with this authority, the Monitor conducted a reasonable solicitation process, during which interested parties executed NDAs and accessed the virtual data room order to review financial and operational information. Following this process, the Putman Purchaser is the only party to submit an offer to acquire the Ricki's and cleo assets,

and the Applicants (under the oversight of the Monitor and in consultation with the DIP Lender) commenced the negotiation which ultimately led to the Putman Term Sheet.

- [8] I am satisfied that by entering into the Putman Transaction, the Applicants and the Monitor realized the benefit which paragraph 12 (f) of the ARIO was designed to achieve. The expedited nature of the process adopted was reasonable and necessary in the circumstances, given the Applicants' liquidity constraints, the increasing amount of the Targets' merchandise that was being liquidated daily as part of the Sale, and the expiration of certain of the Applicants' leases.
- [9] In order to establish that a purchase price is fair and reasonable, the debtor must show that sufficient efforts have been made to obtain the best price, and the debtor has not acted improvidently, based on the information available at the time the offer was accepted.
- [10] In this case, the Putman Term Sheet is the only executable going concern transaction or restructuring alternative that has been identified for the Ricki's and cleo assets under the process set out in the ARIO. The Monitor supports the proposed transaction, and believes that this transaction will generate a greater overall recovery, net of costs, than the liquidation of all of the Ricki's and cleo stores under the Sale. The Monitor's view is that an alternative or additional marketing process would be unlikely to lead to a transaction provides a result superior to the Putman Transaction.
- [11] The Putman Transaction will ensure that Ricki's and cleo will continue to operate as a going concern business (with a reduced footprint), which will both preserve employment for the Transferring Employees, and ensure that contracts with vendors, trade creditors and other counterparties will continue in the normal course for the benefit of all parties.
- [12] The Putman Transaction is supported by both CIBC and ParentCo, the most significant stakeholders in the CCAA proceedings, as an integral component of the Restructuring Transactions. The aggregate value of the Applicants' assets is insufficient to repay in full the obligations of CIBC and ParentCo, which accordingly have the remaining economic interest in the Applicants.
- [13] The Monitor has provided meaningful assistance to the Applicants throughout the process. The Monitor is supportive of Ricki's and cleo entering into the Putman Transaction.
- [14] The statutory requirements for obtaining relief under section 36 of the CCAA are satisfied.

Should an order be made assigning Assumed Leases pursuant to s. 11.3 of the CCAA?

- [15] A necessary part of the proposed Putman Transaction is the assumption by the Putman Purchaser of the rights and obligations of the Assumed Leases for the Go-Forward Stores. Section 11.3 of the CCAA gives the Court the jurisdiction and discretion to make an order assigning the rights and obligations of a debtor company under an agreement to third party.

- [16] Pursuant to section 11.3 (3), the Court must consider, among other things: (i) whether the Monitor approves of the proposed assignment; (ii) whether the persons to whom rights and obligations will be assigned will be able to perform such obligations; and (iii) whether it would be appropriate to assign the rights and obligations to that person.
- [17] I am satisfied that the requirements set out in section 11.3 are satisfied. The Monitor and its counsel were involved in the development of the lease assignment process and the Monitor believes that the proposed assignment procedure is fair and reasonable in the circumstances. The Putman Purchaser is an affiliate of a company which owns and operates other well-known brands. The Putman Purchaser has confirmed that it has the ability to perform its obligations under the Assumed Leases.
- [18] The requested assignments are a necessary part of the Putman Transaction and the Restructuring Transactions. The proposed process will provide for a fair and expeditious process for the assignment of the Assumed Leases. I am satisfied that all monetary defaults in relation to the agreement - other than those arising by reason only of the company's insolvency, the commencement of proceedings under the CCAA for the company's failure to perform the non-obligation - will be remedied on or before a date fixed by this Court.
- [19] The relevant landlords were given notice of this motion and the assignments will not be completed without the landlord's consent to an Assumed Lease. No landlord opposed the requested order.

Should the Sale Process and the Process Letter be approved?

- [20] The Court in *Nortel* identified a number of factors that should be considered in determining whether to authorize a sale process, including: (i) whether a sale transaction is warranted at the time; (ii) whether the sale will benefit the entire economic community; (iii) whether any of the debtors' creditors have a *bona fide* reason to object to the sale; and (iv) whether there is a better alternative.
- [21] I am satisfied that the *Nortel* criteria support approval of the Sale Process as set out in the Process Letter for the following reasons:
- [22] Conducting the Sale Process is warranted and necessary at this time because it will either help identify a superior transaction for the Remaining Business for the benefit of all stakeholders, or it will demonstrate that good faith efforts have been made by the Applicants to sell or otherwise dispose of the assets of the Remaining Business to persons who are not related parties (in the event that a superior transaction does not emerge through the Sale Process). The Sale Process, as supported by the Stalking Horse Transaction, was developed by the Applicants and the Monitor, and is supported by the Monitor as appropriate in the circumstances.

[23] The Sale Process, as supported by the Stalking Horse Transaction, is, in these circumstances, an effective means of realizing the value of the Applicants' assets for the benefit of the entire economic community.

[24] The timeline set out in the Process Letter appropriately balances the need to adequately canvass the market with the Applicants' liquidity constraints, and the need to limit the degradation of the value of the Remaining Business. Interested parties will be able to effectively participate in the Sale thereby providing an opportunity to complete a transaction with greater value for the benefit of all stakeholders.

[25] No better alternative to the Sale Process exists at this time.

Should the Applicants be authorized to finalize the Stalking Horse Transaction substantially in accordance with economic terms set out in the Stalking Horse Term Sheet?

[26] I accept that in these circumstances, it is appropriate to approve the Sale Process supported by the Stalking Horse Transaction where the definitive transaction agreements are still being finalized.

[27] The Applicants should be authorized and empowered to finalize the Stalking Horse Transaction substantially in accordance with the economic terms set out in the Stalking Horse Term Sheet.

[28] In this respect, I accept the submissions at paras. 50-53 of the Applicants' factum.

Should the DIP Assignment and Assumption be approved?

[29] The DIP Assignments, including the DIP Assignment and Assumption, are integral component of the Restructuring Transactions and are a condition precedent to CIBC's support of the Putman Transaction. Similarly, it is a condition of the Stalking Horse Term Sheet that, concurrent with the closing of the Putman Transaction, ParentCo will have acquired the Outstanding Senior Secured Indebtedness and paid to CIBC an amount equal to the Outstanding Senior Secured Indebtedness. Therefore, failure to approve the DIP Assignment and Assumption would put the Restructuring Transactions at risk, to the detriment of creditors and stakeholders generally.

[30] The role of ParentCo going forward reflects a continuation of the existing DIP Facility and DIP Charge, which were approved by the Court as part of the ARIO, and are required for the Applicants to continue operating while they pursue the Sale Process and complete the ongoing Sale. I am satisfied that approval of the assignment of the existing DIP facility, including the benefits of the DIP charge, should be given.

[31] Orders to issue in forms of Orders signed by me today.