



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00722168-00CL

DATE: July 29, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF COACH USA INC. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|----------------------------------|--|
| Michael Shakra | Counsel to Coach USA, Inc. et al | shakram@bennettjones.com |
| Milan Singh Cheema | | singhcheemam@bennettjones.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---|--|
| Marc Wasserman | Counsel to Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed Information Officer | mwasserman@osler.com |
| Martino Calvaruso | | mcavaruso@osler.com |
| Ben Muller | | Bmuller@osler.com |
| Al Hutchens | Counsel to Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed Information Officer | ahutchens@alvarezandmarsal.com |
| Sven Dedic | | sdedic@alvarezandmarsal.com |
| Nathalie Nouvet | Counsel to Renco Group Inc. | nnouvet@stikeman.com |
| Evan Cobb | Canadian Counsel to the DIP Lenders | Evan.cobb@nortonrosefulbright.com |
| Carmen Khuu | Counsel to Metrolinx | Carmen.khuu@metrolinx.com |

Other:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|-------------------|--|
| Keith Williams | Creditor/Observer | mr.keith_williams@hotmail.com |

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] Coach USA, Inc., the Applicant, in its capacity as Foreign Representative, seeks a Third Supplemental Order recognizing and enforcing pursuant to section 49 of the *CCAA* three orders as entered by the United States Bankruptcy Court for the District of Delaware (The "US Court"), namely,
- a. The Final DIP Order filed July 19, 2024;
 - b. The NewCo Bidding Procedures Order filed July 19, 2024; and
 - c. The Bidding Procedures Order (amended and filed July 9, 2024).
- [2] This court has already recognized the Chapter 11 Cases as a foreign main proceeding pursuant to s. 47 of the *CCAA*. Section 49 of the *CCAA* gives this Court jurisdiction to make any order that it considers appropriate. This Court has jurisdiction to grant the requested relief.
- [3] This order was carved out of the Second Supplementary Order of Osborne J. dated July 18, 2024, recognizing and enforcing certain orders previously entered by the United States Bankruptcy Court for the District of Delaware pursuant to section 49 of the *CCAA*. The carve out (of the Final DIP Order and Bidding Procedures Order(s)) was to allow time for the resolution of certain objections that had been raised before the US Court. Those objections have been resolved resulting in three orders for which recognition and enforcement is now sought.
- [4] The Service List has received the Notice of Motion, the affidavit of Spencer Ware affirmed July 25, 2024 and the Second Report of the Alvarez & Marsal Canada Inc., in its capacity as information officer (the "Information Officer"), as well as a factum. The motion is unopposed, is supported by Renco and the DIP Lenders, and is recommended by the Information Officer. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Ware Affidavit or the Supplemental Order (Foreign Main Proceeding) of this Court dated June 14, 2024.
- [5] The Final DIP Order is a final version of the interim DIP order recognized pursuant to the First Supplemental Order. It was amended to address certain concerns raised by stakeholders before the US Court, but its fundamental structure remains substantially the same as the first day hearing order that included, among other things, a creeping roll-up feature. The DIP Facility is necessary to, among other things, enable the Chapter 11 Debtors to meet payroll obligations, make payments to vendors and continue operations. The same principles that were cited and considered when the Interim DIP Order was recognized continue to apply to the recognition and enforcement of the Final DIP Order.
- [6] All three orders are generally consistent with similar forms of orders for the approval of DIP financing, sales procedures and stalking horse agreements that have been recognized in other Canadian proceedings. The associated fees and other protections are not objected to. Counsel for the applicant/foreign representative advises that there are no unique or extraordinary features of the Third Supplemental Order now sought.
- [7] The basis for the granting of these orders by the US Court is fully described in the motion materials, as is the justification for their recognition here pursuant to the principles of comity and the provisions of the *CCAA*.
- [8] Section 52(1) of the *CCAA* provides that a Court must "cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding." See also *Hollander Sleep Products, LLC et al. Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238, at para 41; *In the*

matter of CURO Canada Corp. and LendDirect Corp., 2024 ONSC 1989, at para 15; and *In The Matter of Voyager Digital Ltd.*, 2022 ONSC 4553, at para 41. There is no Canadian public policy that counter-indicates the recognition and enforcement of the orders in question.

- [9] Order dated July 29, 2024 to go in the form signed by me with immediate effect without the necessity of issuing and entering.

A handwritten signature in black ink, appearing to read "Kimmel J.", with a stylized flourish at the end.

KIMMEL J.