

COUNSEL SLIP

COURT FILE

NO.: CV-22-00679628-00CL

DATE: April 14th 2022

NO. ON LIST 6

TITLE OF
PROCEEDING

SUNGARD AVAILABILITY SERVICES
-v-
DIGITAL TORONTO NOMINEE, INC.

COUNSEL FOR:

☐ PLAINTIFF(S)

☒ APPLICANT(S) **Jane Dietrich**

☐ PETITIONER(S)

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JUDICIAL NOTES:

Conway J. Endorsement

All defined terms used in this endorsement shall, unless otherwise defined herein, have the meanings set out in the factum of Sungard Availability Services (Canada) Ltd./Sungard, Services De Continuite Des Affaires (Canada) Ltee. for today's hearing.

On April 11, 2022, I granted an Interim Order in favour of Sungard AS Canada and the Guarantor Debtors pending the grant of the Foreign Representative Order and other first day orders by the U.S. Bankruptcy Court. Those orders were granted on April 12, 2022. Sungard AS Canada has now been appointed as the Foreign Representative of itself and the other Debtors. Various other Foreign Orders have also been granted.

Sungard AS Canada now seeks two orders, both of which are unopposed.

The first is an Initial Recognition Order recognizing Sungard AS Canada's Chapter 11 Case as a foreign main proceeding. I am satisfied that the requirements of s. 45-47 of the CCAA have been met and that an order should be granted. In particular, I am satisfied that Sungard AS Canada's centre of main interest (COMI) is in the U.S. given that all of the decision making and administrative support is provided there. The order contains the relief required by s. 48(1) of the CCAA. The stay of proceedings supersedes the interim order that I granted on April 11, 2022.

The second is a Supplemental Order. Ms. Dietrich walked the Court through all of the provisions of the Supplemental Order. In particular, she highlighted the Interim DIP Order for emergency funding that approves a rollup of certain pre-filing debt (there is a hearing for a Final DIP Order on May 11, 2022 to seek additional

funding including rollup provisions – that is not before me today), the Administration and DIP Agents' charges over the assets of Sungard AS Canada, the appointment of the Information Officer, and the payment of rent from May onwards. I am satisfied that those orders should be granted. I note that this Court has previously approved interim DIP financing that includes rollup provisions (and related charges) in foreign recognition proceedings: see, for example, *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964, at para. 10-14.

Counsel for Sungard AS Canada and the Canadian landlords have worked out language on consent to preserve rights with respect to April rent. I accept that language and endorse it as follows: The Supplemental Order is made without prejudice to the rights of parties on the issue of whether Canadian landlords are entitled to be paid rent, as provided for in the applicable leases, for the stub period following the commencement of the Chapter 11 proceeding to the end of April 2022, and whether that issue if adjudicated, is to be adjudicated before this Court or the U.S. Bankruptcy Court.

Counsel shall schedule a return attendance before me through the CL office at the appropriate time.

Orders to go as signed by me and attached to this endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is written on the page.