



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.:

DATE: **NOVEMBER 7.23**

NO. ON LIST: **1@12:30PM**

TITLE OF PROCEEDING:

**APPLICATION OF WEWORK INC. UNDER SECTION 46
OF THE COMPANIES' CREDITORS ARRANGEMENT ACT**

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, **Applicant**, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
APPL COUN BRANDON O'NEILL		<u>boneill@goodmans.ca</u>
APPL COUN JOE PASQUARIELLO		<u>jpasquariello@goodmans.ca</u>
APPL COUN TRISH BARRETT		<u>TBarrett@goodmans.ca</u>

For Defendant, **Respondent**, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
RESP COUN T SANDLER		<u>TSandler@osler.com</u>

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] WeWork Inc. (“WeWork Parent”), as the proposed foreign representative of the chapter 11 proceedings, requests an urgent order granting an interim stay of proceedings under the *Companies’ Creditors Arrangement Act* (the “CCAA”) in respect of
- a. 9670416 Canada Inc., WeWork Canada GP ULC, and WeWork Canada LP ULC (the “Canadian Debtors”),
 - b. 700 2 Street Southwest Tenant LP, 4635 Lougheed Highway Tenant LP, and 1090 West Pender Street Tenant LP (the “Canadian Limited Partnerships”), and
 - c. WeWork Companies U.S. LLC (the “Real Property Obligor”),
- in connection with the chapter 11 proceedings commenced in the United States Bankruptcy Court for the District of New Jersey (the “US Bankruptcy Court”).
- [2] WeWork Parent has filed an application under Part IV of the CCAA and section 106 of the *Courts of Justice Act* (the “CJA”) to be the foreign representative of the Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor. The Part IV application will be heard after WeWork’s appearance in the US Bankruptcy Court.
- [3] Commencing on November 6, 2023, WeWork Parent and certain of its affiliates, including the Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the US Bankruptcy Court. It is anticipated that these debtors will appear before the US Bankruptcy Court in the next few days to seek certain orders, including an order appointing WeWork Parent as the foreign representative in the chapter 11 proceedings. WeWork Parent will then return to Court in Ontario to, among other things, seek an order from the Court declaring WeWork Parent as the foreign representative and recognizing the chapter 11 proceedings as a “foreign main proceeding” in respect of the Canadian Debtors.
- [4] In the meantime, the Canadian Debtors, the Canadian Limited Partnerships and the Real Property Obligor seek interim protection from their creditors and stability.

Background

- [5] WeWork Parent is headquartered in New York City and trades on the New York Stock Exchange. Founded in 2010, it is one of the largest flexible workspace providers in the world.
- [6] The company operates in over 30 countries around the world and has approximately 770 locations.
- [7] In Canada, WeWork operates 20 locations in Toronto, Vancouver, Burnaby, Calgary, and Montreal.
- [8] WeWork has a broad customer base. WeWork provides short-term access for members to premises. It offers members access to flexible workspaces and other business amenities and services (such as dedicated staff, internet access, business printers and copiers, front desk services, etc.). WeWork further

offers members business and technical service solutions, including connections to human resources services, dedicated bandwidth and IT equipment co-location.

- [9] Rising interest rates and the slower than expected return to the office following the global pandemic, coupled with a heavy debt load, have negatively impacted WeWork's financial position. WeWork has consulted with experts to devise a path forward. The company will seek to complete a global restructuring of its funded indebtedness, rationalize its lease portfolio, and right-size its balance sheet.

Analysis

Is Ontario a proper jurisdiction for these recognition proceedings?

- [10] WeWork Parent submits that Ontario is a proper jurisdiction for these proceedings in Canada.
- [11] Part IV of the CCAA does not contain any provisions with respect to jurisdiction that require a particular court to hear the recognition application.
- [12] WeWork Parent submits that this Court ought to take jurisdiction given the substantial connections of the Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor to Ontario, which include:
- a. The Canadian Limited Partnerships are registered in Ontario;
 - b. WeWork Canada GP ULC and WeWork Canada LP ULC are extra-provincially registered in Ontario and are the general partner and limited partner, respectively, of the Ontario registered Canadian Limited Partnerships.
 - c. There are as many or more WeWork group leases in Ontario than in any other province;
 - d. 35% of total WeWork Canadian employees are located in Ontario; and
 - e. The Foreign Representative Order that is being sought in the US Bankruptcy Court will authorize the WeWork Parent to make an application for recognition before the Ontario Superior Court of Justice (Commercial List).
- [13] I am satisfied that Ontario is a proper jurisdiction for these recognition proceedings.

Should this Court grant the proposed Interim Stay Order?

- [14] As indicated above, the debtors anticipate appearing before the US Bankruptcy Court in the next few days to seek an order recognizing WeWork Parent as the foreign representative. Accordingly, there is a gap between the start of the chapter 11 proceedings and when WeWork Parent can file the materials pursuant to s. 46(2) of the CCAA and return to this Court to seek the relief sought in the Initial Recognition Order and the Supplemental Order.

[15] As noted above, the interim stay is sought in respect of the Canadian Debtors, the Canadian Limited Partnerships and the Real Property Obligor.

[16] The Court has jurisdiction to grant an interim stay pursuant to s. 106 of the CJA, section 11.02 of the CCAA and the Court's inherent jurisdiction. Section 106 of the CJA provides:

A Court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just."

[17] The Court in *Paladin Labs Inc. and YRC Freight Canada Company (Re)*, 2023 ONSC 4492 granted similar interim stays. In his endorsement in *Paladin*, at para. 18, Chief Justice Morawetz stated that the interim stay and other relief in the interim order was "in accordance with the principles of cooperation and comity" and within the Court's jurisdiction. The Court stated that the proposed relief was "necessary and appropriate."

[18] The evidence before the Court is that it is important for the Canadian Debtors to be immediately protected by a stay of proceedings. The Court was advised that following the US filing, there are already landlords in Canada considering action with regard to their premises. Accordingly, the stay request is urgent.

[19] The Court frequently grants interim orders to temporarily stay proceedings in Canada when a chapter 11 proceeding has been commenced in the United States. The temporary stay protects the assets of the debtors and enables them to coordinate the cross-border restructuring: *GNC Holdings Inc., Re* (June 24, 2020), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-20-00642970-00CL, at paras. 3-4 and 6; *Sungard Availability Services (Canada) Ltd., Re* (11 April 2022), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-22-00679628-00CL.

[20] I am satisfied that it appropriate to grant the requested stay.

[21] The proposed interim stay of proceedings would include the Canadian Limited Partnerships.

[22] The CCAA applies to companies but does not expressly apply to partnerships. However, the Court has broad inherent jurisdiction to supplement the stay provisions of section 11 of the CCAA to extend the protections and grant a stay where it is just and reasonable in the circumstances to do so: *Re Lehndorff General Partners Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div.) at paras. 16 and 21. The Court in *Lehndorff*, at para. 21, determined that it was appropriate in the circumstances of that case to extend the stay to the limited partnerships. In this regard, the Court stated, at para. 21:

The business operations of the applicants are so intertwined with the limited partnerships that it would be impossible for relief as to a stay to be granted to the applicants which would affect their business without at the same time extending that stay to the undivided interests of the limited partners in such. [...]

[23] This Court recently in *Target Canada Co., Re*, 2015 ONSC 303, at para. 42 and in *Nordstrom Canada Retail Inc.*, 2023 ONSC 1422, at para. 30, exercised its jurisdiction to extend the protection of the stay of proceedings to partnerships.

[24] WeWork Parent submits that it is just and appropriate in the instant case to extend the interim stay to the Canadian Limited Partnerships for the following reasons:

- a. Each Canadian Limited Partnership is a Chapter 11 Debtor;
- b. The general partner and limited partner of each Canadian Limited Partnership is a Canadian Debtor;
- c. The Canadian Limited Partnerships hold assets in Canada, including leases;
- d. If enforcement proceedings were started against the Canadian Limited Partnerships, it would cause disruption to the WeWork group and potentially defeat the purpose of obtaining protection under the CCAA to help preserve the stability of the group.

[25] I am satisfied that it is just and appropriate to extend the interim stay to cover the Canadian Limited Partnerships. The Canadian Limited Partnerships are intertwined with WeWork's business in Canada, and ensuring their stability will enable the company's management team to focus their efforts on the intended comprehensive global restructuring of the business.

[26] The proposed interim stay of proceedings would cover the Real Property Obligor in addition to the Canadian Debtors and the Canadian Limited Partnerships. The Real Property Obligor is a Delaware limited liability company, a guarantor of leases in Canada, and a co-defendant to certain litigation in Ontario.

[27] Chief Justice Morawetz in *Paladin*, at para. 24, noted that pursuant to s. 49(1) of the CCAA and s. 106 of the CJA, this Court has jurisdiction to grant a stay with respect to non-applicant debtor companies. As he noted in para. 25 of his endorsement in *Paladin*:

This Court has previously exercised its jurisdiction to impose a stay of proceedings in insolvency proceedings to non-applicant third-parties "where it is important to the reorganization and restructuring process, and where it is just and reasonable to do so" (see: *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 at para 21; *Pacific Exploration & Production Corp, Re*, 2016 ONSC 5429 at para 26), including in class action litigation.

[28] At para. 15 of *JTI-Macdonald Corp., Re*, 2019 ONSC 1625, the Court set out certain factors to be considered when determining whether to extend a stay to cover non-applicant third parties, including:

- a. whether the business and operations of the third party were significantly intertwined and integrated with those of the debtor company;
- b. whether the extension of the stay to the third party would help to maintain stability and value;
- c. whether not extending the stay to the third party would negatively impact the debtor company's ability to restructure;
- d. whether the balance of convenience favours extending the stay to the third party.

[29] I agree with WeWork Parent that the balance of convenience favours extending the interim stay to the Real Property Obligor to help preserve overall stability as the company focusses its efforts on pursuing a comprehensive restructuring. Among other things, the Real Property Obligor is a co-defendant with Canada LP ULC in litigation in Ontario, and a guarantor of all the WeWork group leases in Canada.

[30] I am satisfied that it is appropriate to grant the requested Interim Order.

[31] Order attached.

[32] The application is adjourned to November 16, 2023 at 2 pm (one hour).

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page. The signature is fluid and cursive, with a horizontal line extending from the end.