



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

**COURT FILE NO.:** CV-23-00709258-00CL

**DATE:** June 26, 2024

**NO. ON LIST:** 2

**TITLE OF PROCEEDING:** WEWORK INC v. OMERS REALTY CORPORATION et  
al.

**BEFORE JUSTICE:** MADAM STEELE

**PARTICIPANT INFORMATION**

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

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Name of Person Appearing	Name of Party	Contact Info
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## **ENDORSEMENT OF JUSTICE STEELE:**

1. On November 16, 2023, this Court granted an initial recognition order, which, among other things, recognized WeWork Inc. (“WeWork Parent”) as the “foreign representative” in respect of the Chapter 11 cases, and the Chapter 11 cases as a “foreign main proceeding” under section 47 of the *Companies’ Creditors Arrangement Act*.
2. WeWork Parent, as the Foreign Representative, brings a motion for an order, among other things: (a) recognizing and enforcing in Canada the Confirmation Order which, among other things, confirms the *Third Amended Joint Chapter 11 Plan of Reorganization of WeWork Inc. and Its Debtor Subsidiaries (Further Technical Modifications)* (the “Plan”); (b) granting certain Plan-related relief; and (c) recognizing and enforcing in Canada the Additional Foreign Orders.
3. No one opposes the orders sought.
4. The Information Officer supports the relief sought.
5. The debtors advised that they have made significant progress in the Chapter 11 cases. Among other things, they have continued negotiations with the debtors’ landlords to rationalize their lease portfolio or assume or reject certain contracts, negotiated the terms of \$450 million of new financing, and developed and implemented a plan that has resulted in the debtors emerging from the Chapter 11 cases on a restructured basis.
6. The Foreign Representative states that the Plan, in particular, represents the culmination of the debtors’ restructuring efforts. Among other things, the Plan facilitated the debtors’ emergence from the US Chapter 11 cases with a deleveraged balance sheet and a rationalized lease portfolio, while also facilitating recoveries to secured and unsecured creditors.
7. The Plan received overwhelming support from voting creditors, with all five classes of voting creditors having voted unanimously to accept the Plan. The Plan was deemed to be rejected by the Deemed Rejecting Classes. In seeking and obtaining the US Confirmation Order, the debtors relied on the “cramdown” provisions of the U.S. Bankruptcy Code, because the requirements had been met in the circumstances.
8. The Plan has been confirmed by the US Bankruptcy Court and became effective on June 11, 2024.
9. Although the Plan is effective, the Foreign Representative seeks recognition of the Confirmation Order in the Canadian proceedings because recognition will facilitate the debtors’ cross-border restructuring.

## Analysis

10. The Foreign Representative asks the Court to grant the Confirmation Recognition and Fifth Supplemental Order, among other things recognizing and giving effect in Canada to the Confirmation Order and the Additional Foreign Orders under Part IV of the CCAA.
11. I agree with the Foreign Representative that it is appropriate for this Court to grant the relief sought on the motion.
12. Because the Court has already recognized the Chapter 11 cases as a foreign main proceeding, the Court has broad discretion to make any order that it considers appropriate if it is satisfied that such is necessary for the protection of the debtor company's property or the interests of creditors: CCAA, para. 49(1). An order under Part IV of the CCAA "may be made on any terms and conditions that the court considers appropriate in the circumstances:" CCAA, s. 50.
13. When considering whether to recognize a foreign order, the Court in *Babcock & Wilcox Canada Ltd., Re*, 18 CBR (4<sup>th</sup>) 157 (Ont Sup Ct J) set out, at para. 21, a non-exhaustive list of factors for the Court to consider:
  - a. The recognition of comity and cooperation between the courts of various jurisdictions are to be encouraged.
  - b. Respect should be accorded to the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.
  - c. All stakeholders are to be treated equitably, and to the extent reasonably possible, common or like stakeholders are to be treated equally, regardless of the jurisdiction in which they reside.
  - d. The enterprise is to be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise and to the extent reasonably practicable, one jurisdiction should take charge of the principal administration of the enterprise's reorganization, where such principal type approach will facilitate a potential reorganization and which respects the claims of the stakeholders and does not inappropriately detract from the net benefits which may be available from alternative approaches.

- e. The role of the court and the extent of the jurisdiction it exercises will vary on a case by case basis and depend to a significant degree upon the court's nexus to that enterprise. [...]

[...]

### ***Recognition of the Confirmation Order***

14. The Foreign Representative asks the Court to recognize the Confirmation Order, which confirms the Plan.
15. Canadian courts frequently grant recognition to plans of reorganization confirmed by US courts in Chapter 11 cases: *Instant Brands Acquisition Holdings Inc. et al*, 2024 ONSC 1204 at para. 17.
16. I am satisfied that the Confirmation Order, which confirms the Plan, should be recognized here. There are no policy reasons to interfere with the US Bankruptcy Court's decision to confirm the Plan. I agree with the submissions of the Company at paras. 45-59 of their factum that recognition of the Confirmation Order is appropriate and consistent with Part IV and the principles of comity:
  - a. The Plan is fair and reasonable;
  - b. The Plan ensures the continuation of the Canadian business;
  - c. The Plan is overwhelmingly supported by stakeholders;
  - d. The releases in the Plan are reasonable and appropriate;
  - e. The Plan is not contrary to Canadian public policy. Courts have held that the exception set out in section 61(2) of the CCAA should be restrictively interpreted: *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964, at paras. 17-18. As noted by the Foreign Representative, the fact that the Plan contains a "cramdown," which is not a feature of Canadian insolvency law, is not a reason to interfere with the decision of the US Court to confirm the Plan: *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964 at paras. 16-18; *Mallinckrodt Canada ULC et al* (22 August 2022), Ont Sup Ct J [Commercial List] CV-20-00649441-00CL at para 13.

### ***Recognition of the Additional Foreign Orders***

17. In addition to the Plan, the Foreign Representative seeks recognition of the Additional Foreign Orders under Part IV of the CCAA. I am satisfied that it is appropriate and necessary in the circumstances for the Court to recognize and give effect to these orders:

- a. The Fifth Rejection Order: The debtors have rejected three service agreements with Canadian counterparts in B.C. and Quebec. The Court has previously recognized similar orders in these proceedings.
  - b. The Assumption Orders: These orders address the assumption of certain WeWork Canadian locations in Quebec, Ontario and B.C. and the assumption of the Cushman Contract. These assumptions are proceeding on terms that have been negotiated and agreed to among the applicable parties.
  - c. The Lease Assumption/Rejection Extension Orders: These orders provide the debtors with additional time to assume or reject unexpired leases of non-residential property, including certain unexpired leases of the WeWork Canadian locations. The Nineteenth Assumption Order and the Second Lease Assumption/Rejection Order were granted by the US Court on June 25, 2024.
  - d. Disclosure Statement Order: This order was an essential component to the unanimous approval of the Plan by voting creditors. Among other things, it described the key Plan terms and set out the Solicitation and Voting Procedures to approve the Plan.
  - e. DIP New Money Orders: The debtors amended the Plan and the RSA to embody the terms of the DIP which are structured to provide sufficient liquidity to implement the Plan and facilitate go-forward operations. The new DIP facilities provide for \$450 million.
  - f. Omnibus Claims Objection Procedures Order: This order is necessary to address certain claims held by creditors of the WeWork Canadian entities.
18. For each of the above requested recognition orders, the Foreign Representative has noted other Part IV CCAA appearances where the Court has made similar orders.

***Ancillary Relief***

19. The Foreign Representative also seeks recognition of the Ancillary Relief. As noted in the factum, certain ancillary relief is required to implement the Plan, including:
- a. The termination of the stay of proceedings in effect pursuant to the Initial Recognition Order and the First Supplemental Order (except with respect to the Information Officer);
  - b. The termination of the indemnification obligations of the WeWork Canadian entities under the First Supplemental Order;
  - c. The termination of the restriction on the WeWork Canadian entities regarding the sale or disposition of property in Canada pursuant to paragraph 5 of the Initial Recognition Order; and
  - d. The dismissal of a pending action against the debtors. There is one matter pending before the SCJ. The Plan has the effect of releasing and discharging all pending actions against the debtors. The dismissal of the Ontario proceeding is sought to give full force and effect in Ontario to the discharges under the Plan. The Foreign Representative confirmed that the plaintiff in the Ontario litigation

would have been provided with notice of the Plan and the releases and discharges contemplated thereunder.

20. I am satisfied that it is appropriate in the circumstances to grant the ancillary relief sought. As noted by the Foreign Representative, this Court has previously granted relief similar to the ancillary relief sought on the basis that such relief was necessary for the implementation of the plan: *Instant Brands Acquisition Holdings Inc, et al* (26 February 2024), Ont Sup Ct J [Commercial List] CV-23-00701159-00CL.

21. In granting the orders requested, I note that:

- a. The Plan enjoys the support of the overwhelming majority of stakeholders;
- b. No Canadian Party appears to oppose the relief sought;
- c. There are no public policy concerns that have been raised.

22. Order attached, which is immediately effective without the need for issuing and entering.

A handwritten signature in blue ink, appearing to read 'J. Steele', is written over a horizontal line.

JUSTICE STEELE