



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: February 22, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: WEWORK INC. v. OMERS REALTY CORPORATION et al
BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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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 Foreign Representative, brings a motion for an order recognizing and enforcing under section 49 of the CCAA certain orders granted in January and February 2024 by the United States Bankruptcy Court in the Chapter 11 cases.
- [3] WeWork Parent seeks recognition of a Second Interim Cash Management Order, a Final Cash Management Order, and a Bar Date Order.
- [4] No one opposes the orders sought.
- [5] The Information Officer supports the relief sought.

Should the Court grant the Orders recognizing and enforcing the US Orders?

- [6] Where a foreign main proceeding has been recognized under Part IV of the CCAA, as is the case here, section 49(1) of the CCAA provides that the Court may “make any order that

it considers appropriate” if the court is satisfied that is necessary to protect the debtor company’s property or the interests of a creditor.

- [7] The Court has stated that “[t]he purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada.” *Zochem Inc. (Re)*, 2016 ONSC 958, at para. 15. Section 52 of the CCAA provides that where a proceeding has been recognized by this Court under the CCAA as a foreign proceeding, “the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”
- [8] A Canadian court would generally only refuse to recognize an order of another court where section 61(2) of the CCAA applies. Section 61(2) states that “Nothing in this Part [IV] prevents the court from refusing to do something that would be contrary to 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.
- [9] None of the orders requested would be contrary to public policy.
- [10] The Information Officer notes in the Third Report that the three orders sought to be recognized are “for the most part, generally common in chapter 11 proceedings.”
- [11] The Second Interim Cash Management Order and Final Cash Management Order are final versions of the First Interim Cash Management Order, previously recognized by this Court. The Chapter 11 debtors, including the Canadian WeWork entities, are dependent upon the continued operation of the cash management system to continue to operate during the Chapter 11 proceedings so that they can complete their restructuring.
- [12] The Bar Date Order includes a number of bar dates in respect of various claim in the proceedings (the Bar Dates are summarized at para. 4.18 of the Third Report). The Bar Date Order was granted in the US Bankruptcy Court to establish a process and procedures to file claims against the Chapter 11 debtors, including the Canadian entities. WeWork Parent states that the recognition of the Bar Date Order will help further facilitate the notice process for Canadian claimants to receive notice of the bar dates so that they can file proofs of claim in the Chapter 11 cases, which is in the best interest of stakeholders. WeWork Parent further notes that the recognition of the Bar Date Order will assist the Chapter 11 debtors, including the Canadian entities, to identify claims, which forms part of their global restructuring.
- [13] The Court has recognized orders similar to the requested Bar Date Order in other Part IV CCAA proceedings: *YRC Freight Second Supplemental Order Endorsement*, at para. 6(a).

[14] I have considered the factors set out in *Babcock & Wilcox Canada Ltd., Re*, [2000] OJ No 786 (QL), 95 ACWS (3d) 608 (ONSC), at para. 21, including encouragement of comity and cooperation between courts of various jurisdictions, and the record before me and am satisfied that it is appropriate to recognize the US Orders.

[15] Order attached.

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