



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: 18-JAN-2024

NO. ON LIST: 1

TITLE OF PROCEEDING: WEWORK INC. v. OMERS REALTY CORPORATION

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Joseph Pasquariello	WeWork Inc.	jpasquariello@goodmans.ca
Brendan O'Neill	WeWork Inc.	boneill@goodmans.ca
Trish Barrett	WeWork Inc.	tbarrett@goodmans.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Tracy Sandler	The Information Officer, Alvarez & Marsal Canada Inc.	tsandler@osler.com
Martino Calvaruso	The Information Officer, Alvarez & Marsal Canada Inc.	mcalvaruso@osler.com
Sean Monahan	The Information Officer, Alvarez & Marsal Canada Inc.	smonahan@osler.com
Brett Harrison	The Manufacturers Life Insurance Company	brett.harrison@mcmillan.ca
Christopher Therrien- Pérodeau	Sun Life Insurance and Bentall GreenOak	Christopher.Therrien.Perodeau@cainlamarre.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
--------------------------	---------------	--------------

Al Hutchens	The Information Officer, Alvarez & Marsal Canada Inc.	ahutchens@alvarezandmarsal.com
Nate Fennema	The Information Officer, Alvarez & Marsal Canada Inc.	nfennema@alvarezandmarsal.com
Donna Krouzman	WeWork Inc.	donna.krouzman@wework.com
Brian Messing	WeWork Inc.	brian.messing@kirkland.com

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 by the United States Bankruptcy Court for the District of New Jersey in the Chapter 11 cases.
- [3] Two of the orders sought to be recognized are final versions of orders that were previously recognized by this Court on an interim basis: (i) the Final Cash Collateral Order; and (ii) the Final Creditor Matrix Order. There are three additional orders that the Foreign Representative seeks to have recognized in Canada: (i) the DIP Financing Order; (ii) the Second Lease Rejection Order; and (iii) the Cushman Stipulation and Consent Order (the five orders sought to be recognized, collectively, the “US Orders”).
- [4] No one opposes the orders sought.
- [5] The Information Officer supports the relief sought.

Should the Court grant the Order 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 Final Cash Collateral Order is the final version of the Interim Cash Collateral Order that was previously granted by the US Bankruptcy Court and recognized by this Court under the First Supplemental Order. The most significant change incorporated in the Final Cash Collateral Order is the Stub Rent Reserve and the protocol associated with the reserve, which is for the benefit of the landlord creditors including those in Canada. The Information Officer notes in its Second Report that the Final Cash Collateral Order includes substantially the same material terms as the interim order, other than the items set out at section 4.9 of the Second Report.
- [11] Similarly, the Final Creditor Matrix order is the final version of the Interim Creditor Matrix Order that was previously granted by the US Bankruptcy Court and recognized by this Court under the First Supplemental Order. As noted at section 4.13 of the Information Officer’s Second Report, the Final Creditor Matrix Order is materially the same as the interim order already recognized.
- [12] The DIP Financing Order sought authorizes post-petition financing of two DIP facilities. No collateral of the WeWork Canadian Entities was pledged in respect of the two DIP facilities, nor are any of the WeWork Canadian Entities party to or guarantors of these facilities. However, the WeWork Canadian Entities will benefit from the facilities. No DIP charge is required in Canada.
- [13] The Second Lease Rejection Order, among other things, authorizes the debtors to reject certain leases and abandon certain personal property. The Second Lease Rejection Order includes the rejection of two WeWork Canadian locations in Ontario, effective as of December 16, 2023 and December 31, 2023. The affected landlords and contract counterparties were issued appropriate notices of the rejections.
- [14] The Cushman Stipulation and Consent Order was granted in the US on a consent basis following the partial resolution of certain disputes related to the Cushman Contract. The Foreign Representative is seeking recognition of this order in Canada because the WeWork Canadian Entities benefit from the Cushman Services provided under the Canadian Participation Agreement. The Information Officer notes in the Second Report its understanding that “there will be no change in the relationship between Cushman and the WeWork Canadian Entities prior to the first omnibus hearing in February 2024.”
- [15] The Information Officer notes in its Second Report that “the Final Cash Collateral Order, the Final Creditor Matrix Order, the DIP Financing Order and the Second Lease Rejection Order are, for the most part, generally common in chapter 11 proceedings.”
- [16] 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.
- [17] Counsel for one of the landlords indicated that although they were not opposing the relief sought today, there is an issue regarding WeWork’s non-payment of rent, which is noted at section 5.2 of the Second

Report of the Information Officer. There was a discussion among counsel regarding whether the hearing sought to be scheduled by this landlord is appropriately heard in the US proceedings first or in the CCAA proceedings here. Counsel will advise me later today whether a case conference is required before me on January 19, 2024 to schedule a hearing.

[18] Order attached.

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