

**CITATION:** Bed Bath & Beyond Canada Ltd., 2023 ONSC 1230  
**COURT FILE NO.:** CV-23-00694493-00CL  
**DATE:** 2023-02-21

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*  
*ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF **BBB BED BATH & BEYOND CANADA LTD.**

Applicant

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *Marc Wasserman, Shawn Irving, Dave Rosenblat and Emily Paplawski*, for the  
Applicant

*Max Freedman*, U.S. Counsel to the Applicant

*Kevin Zych, Michael Shakra and Joshua Foster*, for the Monitor, Alvarez & Marsal  
Canada Inc.

*Linda Galessiere*, for Landlords of BBB, namely, RioCan; Ivanhoe, SmartCentre;  
Centrecorp and Royop

*Wael Rostom*, for Sixth Street Specialty Lending, Inc. (FILO Agent)

*Evan Cobb, Noah Schein and David Amato*, for JPMorgan Chase (ABL Lenders)

*Monique Sassi*, for the Hilco Merchant Retail Solutions, ULC, Gordon Brothers  
Canada ULC, Tiger Asset Solutions Canada, ULC, and B. Riley Retail Solutions  
ULC

*Ben Blewitt*, for FTI Consulting on behalf of JPMorgan Chase (ABL Agent)

*Craig Firth*, for Preston West Properties Ltd.

*Brendan Jones*, for BentallGreenOak, Effort Trust, Street Properties

*Gaspar Galati*, for 1651051 Alberta Ltd., 1826997 Ontario Inc., Yonge Bayview  
Holdings Inc., Airport Highway 7 Developments Limited, Woodhill Equities Inc.  
and Winston Argentinia Developments Limited

*John Shrives*, for Coulee Creek Common Ltd.

*John McGee*, for West Edmonton Mall Property Inc. (Landlord)

*Natasha Rambaran*, for Langley City Square Properties Ltd., Sunstone Opportunity (2007) Realty Trust and Fiera Real Estate Core Fund GP Inc. on behalf of Fiera Real Estate Core Fund LP

*Ryan Bosch*, for the Landlord of Southpoint Plaza Inc. (Qualico)

*Peter Connolly*, for Indo Count Global, Inc. (a wholly owned subsidiary of Indo Count Industries Limited) a supplier to Bed Bath & Beyond Inc. and Bed Bath & Beyond Canada Ltd.

**HEARD:** February 21, 2023

### **ENDORSEMENT**

[1] On February 10, 2023, BBB Canada Ltd. (the “Applicant”) was granted protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to an Initial Order (the “Initial order”). The Initial Order provided for a Stay of Proceedings up to February 21, 2023.

[2] On this motion, the Applicant seeks two orders. First, the Sale Approval Order, among other things, approving the Consulting Agreement and the Sale Guidelines and authorizing BBB LP, with the assistance of the Consultant (as defined below), to undertake a liquidation process in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines.

[3] The Applicant also seeks an Amended and Restated Initial Order (“ARIO”), among other things, extending the Stay Period to May 1, 2023, extending the Stay against BBBI in respect of the BBBI indemnities until May 1, 2023, increasing the Administration Charge and the D&O Charge, approving a Key Employee Retention Plan for the three non-store employees (the “KERP”) and granting a Court-ordered Charge (the “KERP Charge”) as security for payments under the KERP.

[4] In support of the requested relief, the Applicant relied on the Affidavit of Holly Etlin, sworn February 9, 2023, filed in support of the request for the Initial Order, the Second Affidavit of Holly Etlin sworn February 15, 2023, and a Supplemental Affidavit of Ms. Etlin, sworn February 20, 2023. In addition, the Monitor filed its First Report dated February 17, 2023.

[5] The motion was not opposed and counsel to the Applicant noted that the form of orders being requested on this motion were finalized after extensive negotiations as between the Applicant, the Monitor and various landlords.

[6] At the outset of the hearing, counsel to the Applicant provided a verbal update with respect to the possibility of a going concern transaction. He reported that there was no possibility of an executable transaction and it was necessary for the Applicant to proceed with its liquidation plan.

[7] The Applicant intends to wind-down the Canadian business and seeks court approval of a Consulting Agreement with a joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions Canada, ULC, and B. Riley Retail Solutions ULC (collectively, the “Consultant”) dated February 15, 2023 (the “Consulting Agreement”) regarding the liquidation of the merchandise and furnishings, trade fixtures, equipment and improvements to real property (“FF&E”) that are located in the Canadian retail stores, the warehouse and the corporate office in Mississauga.

[8] The proposed liquidation of BBB Canada’s merchandise and FF&E is currently contemplated to run for 10 weeks (until April 30, 2023).

[9] Having reviewed the record and hearing submissions, I am satisfied that the Consulting Agreement should be approved. The sale of the merchandise and FF&E is warranted at this time as it is an integral part of the orderly wind-down of BBB Canada’s business. In arriving at this conclusion, I have taken into account the factors identified in *Nortel Networks Corp. (Re)*, 2009 Carswell on 4467 (SCJ [Commercial List]) at para. 49 and *Brainhunter Inc. (Re)*, 2009 Carswell on 8207 (SCJ [Commercial List]) at paras 15 – 17.

[10] With respect to the Amended and Restated Initial Order, the Applicant requests that the Stay Period be extended up to and including May 1, 2023. The Monitor supports this request.

[11] I am satisfied that the record establishes that the parties have been working in good faith and with due diligence such that the request to extend the Stay Period to May 1, 2023, is appropriate in the circumstances. The required cash-flow forecast has been filed.

[12] I am also satisfied that it is appropriate to approve the Key Employee Retention Plan for three non-store employees and to grant a KERP Charge up to a maximum aggregate amount of \$161,000 as security for payments under the KERP. In arriving at this determination, I have taken into account the factors considered by the court in approving a KERP in *Walter Energy Canada Holdings Inc. (Re)*, 2016 BCSC 107 and in *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980. In the business judgment of the Applicant, the KERP is both objectively reasonable in scope and quantum and is necessary to facilitate the restructuring. The Monitor supports the approval of the KERP Charge.

[13] I am also satisfied that it is appropriate in the circumstances to increase the quantum of the Administration Charge to a maximum of \$1,250,000 and the D&O Charge to a maximum of \$8,250,000.

[14] The Applicant also seeks an extension of the Third Party Stay of Proceedings in respect of BBBI arising out of or in connection with the BBBI Indemnities (the “Third-Party Stay”) up to and including May 1, 2023. The parties affected by the Third Party Stay of Proceedings, namely landlords, expressed no objection to this request.

[15] The propriety and appropriateness of granting such a third-party stay is not without doubt, but in view of the consensual nature of the request, I am prepared to extend this Stay of Proceedings

as requested. All parties should recognize that the granting of such a Third Party Stay has no precedential value.

[16] Counsel to the Applicant also requested that the court issue a Declaration pertaining to the *Wage Earner Protection Program Act* (“WEPPA”). I am satisfied that the BBB Entities meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, and that the BBB Entities’ former employees are eligible to make a claim for payments under and in accordance with the WEPPA.

[17] In summary, the motion is granted. The Sale Approval Order and the Amended and Restated Initial Order have both been signed by me.



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Chief Justice G.B. Morawetz

**Date:** February 21, 2023