

CITATION: Bed Bath & Beyond Canada Ltd. v. Sixth Street Specialty Lending Inc., 2023,
ONSC 2906

COURT FILE NO.: CV-23-00694493-00CL

DATE: 2023-05-15

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 THE PLAN OF COMPROMISE OR
ARRANGEMENT OF BBB CANADA LTD.**

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Shawn Irving and Emily Paplawski*, for the Bed Bath & Beyond Ltd.

Evan Cobb, Agent to Secured Lenders

Mike Shakra and Joshua Foster, for Alvarez & Marsal, Monitor

HEARD: May 15, 2023

ENDORSEMENT

[1] The Applicant, BBB Canada Ltd. (the "Applicant") brings this motion for an order:

(a) assigning the Ottawa Trainyards Lease (as defined below) to Winners Merchants International L.P. ("Winners LP") pursuant to section 11.3 of the *Companies' Creditors Arrangement Act*, R.S.C. , 1985 C. c-36 (the "CCAA"); and

(b) approving the transactions contemplated by the Assignment and Assumption of Lease Agreement, dated May 1, 2023 (the "Giant Tiger Agreement"), among Bed Bath & Beyond Canada L.P. ("BBB LP", and together with the Applicant, "BBB Canada"), Bed Bath & Beyond Inc. ("BBBI") and Giant Tiger Stores Limited ("Giant Tiger") and vesting BBB LP's right, title and interest in and to the Colossus Lease (as defined below) and the other purchased assets described in the Giant Tiger Agreement free and clear of all Encumbrances other than permitted encumbrances identified in, or pursuant to, the Giant Tiger Agreement.

[2] The motion was not opposed and the Monitor supports the position of the Applicant.

[3] The evidentiary support for the motion is set out in four affidavits of Wade Haddad, sworn April 5, 21 and 26 and May 5, 2023, and in the Fourth Report of the Monitor.

Assignment of the Ottawa Trainyards Lease

[4] BBB LP and Winners LP are party to an Assignment and Assumption of Lease Agreement, dated May 5, 2023 (the “Winners Ottawa Agreement”) with respect to premises located in the Ottawa Trainyards Shopping Centre located at 500 Terminal Avenue, Ottawa, Ontario (the “Ottawa Trainyards Lease”).

[5] Under the Winners Ottawa Agreement, BBB LP agreed to assign and transfer, and Winners LP agreed to assume, all of BBB LP’s right, title and interest in and to the Ottawa Trainyards Lease, the premises described in the Ottawa Trainyards Lease, and all personal property, FF&E and Trade Fixtures left in the premises on the closing date (May 18, 2023), in each case on an “as is, where is” basis.

[6] Winners LP agreed to pay to the Monitor, in trust, cash consideration in the amount of \$300,000. All cure costs have been addressed as between Winners LP and BBB LP.

[7] Until recently, BBB Canada was not intending to seek any specific relief with respect to the Winners Ottawa Agreement. However, the Applicant contends that over the past number of weeks, the landlord under the Ottawa Trainyards Lease has not been responsive to attempts by its counsel to obtain instructions regarding the proposed final form of the landlord consent, nor has the landlord responded to communications from Winners LP regarding the assignment.

[8] I am satisfied, however, that, based on representation of counsel for the Applicant, the Notice of Motion has come to the attention of the landlord.

[9] Winners LP has advised that it is not prepared to complete an assignment of the Ottawa Trainyards Lease without a waiver from the landlord or an order from this Court under section 11.3 of the CCAA.

[10] BBB Canada is accordingly seeking an order under section 11.3 of the CCAA assigning the Ottawa Trainyards lease to Winners LP.

[11] Winners LP has covenanted to assume all of BBB LP’s obligations contained in the Ottawa Trainyards Lease from and after the closing date.

[12] The Applicant contends that an assignment of the Ottawa Trainyards Lease to Winners LP pursuant to section 11.3 of the CCAA will maximize realizable value of BBB Canada’s estate for the benefit of its stakeholders.

[13] The Monitor supports BBB Canada’s request for an assignment of the Ottawa Trainyards Lease pursuant to section 11.3 of the CCAA.

Giant Tiger Agreement

[14] BBB LP, BBBI and Giant Tiger are party to the Giant Tiger Agreement relating to the premises located at 67 Colossus Drive, Unit D10, Vaughan, Ontario (the “Colossus Lease”).

[15] Under the Giant Tiger Agreement, BBB LP agreed to assign and transfer, and Giant Tiger agreed to assume, all of the BBB LP’s right, title and interest in and to the Colossus Lease and the premises described in the Colossus Lease.

[16] Giant Tiger agreed to pay the Monitor, in trust, cash consideration in the amount of \$268,663.73, plus any applicable taxes, and be responsible for all cure costs under the Colossus Lease.

[17] While the transactions under the Giant Tiger Agreement closed on May 1, 2023, Giant Tiger has recently requested that BBB Canada seek an approval and vesting order in respect of the Giant Tiger Agreement.

[18] The Applicant contends that the Giant Tiger Agreement is in the best interests of BBB Canada and its stakeholders. The consideration paid by Giant Tiger for the Colossus Lease is fair and reasonable in the circumstances, representing the highest, non-overlapping, executable offer received within the marketing process for the Colossus Lease.

[19] The Monitor supports BBB Canada’s request for approval of the Giant Tiger Agreement.

[20] The legal analysis to support the motion is set out in the factum submitted by counsel to the Applicant. In particular, I refer to paragraphs 17 - 37.

[21] In addition, the legal issues raised on this motion have been the subject of comment in previous endorsements in these proceedings (2023 ONSC 2308 and 2023 ONSC 2781).

[22] Having reviewed the record and having heard submissions, I am satisfied that the requirements of s.11.3 of the CCAA have been satisfied and it is appropriate to grant an order assigning the Ottawa Trainyards Lease to Winners LP.

[23] I am also satisfied that the record establishes that it is appropriate in the circumstances to approve the Winners Ottawa Agreement and the Giant Tiger Agreement. In arriving at the conclusion I find that the factors listed in s. 36(3) of the CCAA have been taken into account. Specifically:

- (a) the process was reasonable;
- (b) the Monitor concurs;
- (c) the purchase price was fair and reasonable; and
- (d) the transaction is in the best interest of stakeholders.

[24] The motion is granted and the order has been signed.



Chief Justice Geoffrey B. Morawetz

Date: May 15, 2023