

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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 **TED BAKER CANADA INC., TED
BAKER LIMITED, OSL FASHION SERVICES CANADA
INC. and OSL FASHION SERVICES, INC.**

APPLICANTS

FACTUM OF THE APPLICANTS

January 23, 2025

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PART I - NATURE OF THE APPLICATION

1. On April 24, 2024, Ted Baker Canada Inc. (“**Ted Baker Canada**”), Ted Baker Limited (together with Ted Baker Canada, “**Ted Baker**”), OSL Fashion Services Canada Inc., and OSL Fashion Services, Inc. (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. On May 3, 2024, the Court granted an Amended and Restated Initial Order (the “**ARIO**”), which, among other things, extended the stay of proceedings granted pursuant to the Initial Order to August 2, 2024. On the same day, the Court also granted a Realization Process Approval Order (the “**Realization Process Approval Order**”), which, among other things, approved sale guidelines for the orderly realization of Ted Baker’s Merchandise and FF&E (both as defined therein) (the “**Sale**”).
3. On August 1, 2024, the Court granted an order (the “**First Stay Extension Order**”), which, among other things, extended the Stay Period (as defined below) until and including January 31, 2025. The Applicants, working with the Monitor (as defined below) and with the assistance of the Consultant (as defined below), have continued to advance these CCAA proceedings since that time, including by concluding the Sale and terminating the employment of the remainder of the Ted Baker employees.
4. On this motion, the Applicants seek an order (the “**Stay Extension Order**”), extending the Stay Period to and including January 31, 2026. The Stay Extension Order should be granted by the Court. The extension of the Stay Period is necessary in order for the Applicants to collect remaining accounts receivable, continue pursuing the collection of the ERC Tax Refund (as

defined below) and continue to pursue the orderly wind-down of the business of the Applicants in both Canada and the United States.

PART II - SUMMARY OF FACTS

5. The facts are more fully set out in the Affidavit of Antoine Adams sworn January 22, 2025.¹

A. Background and Update on the CCAA Proceedings

6. On April 24, 2024, the Court granted the Initial Order, which, among other things: (i) appointed Alvarez & Marsal Canada Inc. as the monitor in these proceedings (in such capacity, the “**Monitor**”); (ii) granted a stay of proceedings for the initial ten day period (the “**Stay Period**”); (iii) authorized Ted Baker to continue to borrow from the interim lender, being Canadian Imperial Bank of Commerce (“**CIBC**”), under the Applicants’ existing credit facility in an amount not to exceed USD \$7 million; (iv) authorized the Applicants to pay certain pre-filing amounts to key participants in the Applicants’ distribution network, and to other critical suppliers as needed; (v) granted various customary charges; and (vi) authorized Ted Baker Canada to act as foreign representative of the Applicants and to apply for foreign recognition and approval of these CCAA proceedings.²

7. On May 3, 2024, the Court granted the ARIO, which, among other things: (i) extended the Stay Period to August 2, 2024; (ii) approved a key employee retention plan (the “**KERP**”), and granted a Court-ordered charge as security for payments under the KERP and a sealing order in relation to the KERP; (iii) authorized the Applicants to enter into the DIP Term Sheet with CIBC,

¹ Affidavit of Antoine Adams, sworn January 22, 2025 [Fourth Adams Affidavit]. The Applicants further rely on the facts as set out in the Affidavits of Antoine Adams, sworn May 1, 2024 and July 26, 2024 [Second Adams Affidavit and Third Adams Affidavit, respectively]. Capitalized terms not otherwise defined have the same meaning as in the Second Adams Affidavit, Third Adams Affidavit or Fourth Adams Affidavit.

² Fourth Adams Affidavit at paras. 5-6.

as lender, and granted the DIP Lender's Charge; and (iv) increased the amounts of various charges.³

8. On the same day, this Court also granted the Realization Process Approval Order, which, among other things, (i) approved a consulting agreement between Ted Baker Canada and Ted Baker Limited (together, the “**Merchant**”) and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the “**Consultant**”) dated as of April 30, 2024 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the “**Consulting Agreement**”); (ii) approved the Sale Guidelines (as defined therein) for the orderly realization of the Merchandise and FF&E at concession locations in Canada or the United States, or at the Merchant's stores, as well as at the warehouses through sales in accordance with the terms of the Sale Guidelines; and (iii) authorized the Merchant, with the assistance of the Consultant, to undertake a realization process in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.⁴

9. Immediately following the granting of the Initial Order, the Applicants commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) seeking an order to recognize and enforce these CCAA proceedings (the “**Chapter 15 Case**”). On April 26, 2024, the Applicants were granted provisional relief in the Chapter 15 Case. On May 17, 2024, the US Court granted the following orders: (i) the *Final Order Recognizing and Enforcing the Realization Process Approval Order and Granting Additional Relief*; and (ii) the *Modified Order Recognizing Foreign Main Proceedings and Granting Additional Relief*.⁵

³ Fourth Adams Affidavit at para. 9.

⁴ Fourth Adams Affidavit at para. 10.

⁵ Fourth Adams Affidavit at paras. 8, 11.

10. Since the last extension of the Stay Period, the Applicants, working with the Monitor and with the assistance of the Consultant, have continued to advance these CCAA proceedings, including by:⁶

- (a) concluding the Sale, as contemplated in the Realization Process Approval Order, including completing the Final Reconciliation (as defined in the Consulting Agreement);
- (b) completing the United Legwear Transaction (as defined below) and supporting the transition of the business through the TSA (as defined below);
- (c) continuing to pursue the ERC Tax Refund that may be available to Ted Baker Limited in the United States;
- (d) addressing certain outstanding letters of credit as appropriate; and
- (e) communicating with the Applicants' employees, landlords and other stakeholders regarding the Sale and other matters related to these CCAA proceedings and the Chapter 15 Case.

B. The Sale

11. The Sale commenced on May 10, 2024. The Applicants, working with the Consultant and in consultation with the Monitor, worked to conduct the Sale in an efficient and responsible manner. The Sale concluded on August 2, 2024, as anticipated, except with respect to approximately 35 store locations in Canada and the United States, where, in consultation with the Monitor and the Consultant, the Sale was extended to August 4, 2024 to maximize recoveries from

⁶ Fourth Adams Affidavit at para. 14.

the Sale. The FF&E Removal Period (as defined in the Sale Guidelines) concluded on August 7, 2024.⁷

12. Pursuant to the Consulting Agreement, the Final Reconciliation was required to be completed no later than twenty (20) days following the earlier of: (a) the Sale Termination Date (as defined in the Consulting Agreement) for the last store; or (b) the date upon which the Consulting Agreement is terminated in accordance with its terms. With the assistance of the Monitor, the Final Reconciliation was completed on August 29, 2024, following which time the Merchant paid the Consultant its fees, as set out in the Consulting Agreement.⁸

C. Employees

13. As of the date of the Third Adams Affidavit, all but a small group of the Applicants' employees had been provided with notice of their respective termination dates and had been (or would be) provided with a termination letter. At that time, the Applicants continued to employ a small number of corporate employees, who assisted with the wind-up of the Applicants' business.⁹

14. Since the First Stay Extension Order was granted, the Applicants have terminated the employment of all remaining employees.¹⁰

D. United Legwear Transaction

15. On or about July 12, 2024, Ted Baker as seller, and United Legwear, as purchaser, entered into a term sheet pursuant to which Ted Baker agreed to sell certain inventory and FF&E to United

⁷ Fourth Adams Affidavit at paras. 16-17.

⁸ Fourth Adams Affidavit at para. 18.

⁹ Fourth Adams Affidavit at para. 23.

¹⁰ Fourth Adams Affidavit at para. 24.

Legwear (the “**United Legwear Transaction**”). The United Legwear Transaction closed effective July 22, 2024 (the “**Closing Date**”).¹¹

16. Ted Baker and United Legwear also entered into (i) an assignment agreement, effective July 22, 2024, whereby Ted Baker assigned to United Legwear the Department License Agreement dated August 26, 2011, between Ted Baker Limited and Bloomingdale’s, and (ii) a transition services agreement (the “**TSA**”), effective July 22, 2024, whereby Ted Baker agreed to provide certain temporary services to United Legwear from and following the Closing Date until August 30, 2024 (the “**Transition Period**”) to allow for the current Ted Baker employees at the Bloomingdale’s Concession Locations to be transferred to United Legwear location(s) and migrated to United Legwear’s payroll systems. On August 30, 2024, the Transition Period was completed.¹²

E. Letters of Credit Adjustments

17. Since the First Stay Extension Order was granted, the Applicants and the Monitor continued negotiations with the landlord for the warehouse located in Atlanta, Georgia (the “**Warehouse Landlord**”) regarding potential reductions to a letter of credit provided by CIBC on behalf of Ted Baker Limited in respect of the security deposit under the Industrial Lease Agreement between the Warehouse Landlord and the new tenant, Future Forwarding, dated October 19, 2017 (the “**Atlanta Letter of Credit**”). On September 30, 2024, the Warehouse Landlord advised that it would agree to a reduced letter of credit (the “**Replacement LC**”) to be provided by Future Forwarding, in replacement of the Atlanta Letter of Credit. On October 11, 2024, the Replacement LC was put in place and the cash collateral held by CIBC in the LC Cash

¹¹ Fourth Adams Affidavit at para. 25.

¹² Fourth Adams Affidavit at para. 26.

Collateral Account on account of the Atlanta Letter of Credit, together with interest thereon, was released by CIBC to the Applicants.¹³

18. In addition to the Atlanta Letter of Credit, three additional letters of credit were provided by CIBC (in its capacity as senior secured pre-filing lender), on behalf of the Applicants, for the benefit of US Specialty Insurance Company, Argonaut Insurance Co., and Intact Insurance Company, respectively.¹⁴ Since the First Stay Extension Order was granted, the Applicants took various actions, with the assistance of the Monitor and in consultation with CIBC, with respect to these remaining letters of credit.¹⁵ Of these three additional letters of credit, two remain outstanding.¹⁶

F. ERC Tax Refund

19. Prior to these CCAA proceedings, Ted Baker Limited had identified USD \$6,162,972.24 in tax refunds to which it may be entitled in the United States related to the Employee Retention Credit (“**ERC**”) program administered by the Internal Revenue Service (“**IRS**”) and had submitted an application asserting its entitlement to these refunds (the “**ERC Tax Refund**”).¹⁷

20. Prior to the granting of the First Stay Extension Order, the Applicants’ tax consultant advised that the IRS had temporarily paused the ERC program through which these tax refunds were processed and had stopped processing new applications. Since the First Stay Extension Order

¹³ Fourth Adams Affidavit at para. 27.

¹⁴ As described in the Fourth Adams Affidavit, on October 23, 2024, an affiliate of Fashion Canada and Fashion US (the “**Guarantor**”) entered into a settlement agreement with CIBC, in its capacity as Agent for the Lenders pursuant to the Existing Credit Agreement, pursuant to which the Guarantor paid the Guarantee Amount of USD \$5 million to CIBC in consideration for a full and final release of the Guarantee, as well as the Guarantor’s assumption of CIBC’s security interests as against the Applicants, with the exception of CIBC’s security interest against a cash collateral account securing any claims that CIBC may have against the Applicants in connection with the letters of credit that were issued by CIBC under the Existing Credit Agreement.

¹⁵ Fourth Adams Affidavit at para. 28.

¹⁶ Third Report of the Monitor dated January 23, 2025 [Third Report] at para. 3.10.

¹⁷ Fourth Adams Affidavit at para. 29.

was granted, the Applicants' tax consultant advised that the US government has resumed processing tax recoveries and therefore, the Applicants continue to pursue the ERC Tax Refund. The Applicants understand that the IRS's review process for ERC claims continues to be delayed due to a high volume of claims, including a number of improper claims. As such, the timeline for recovery, if any, remains unknown at this time.¹⁸

PART III - THE ISSUES AND THE LAW

21. This Factum addresses the issue of whether this Court should extend the Stay Period until January 31, 2026.

A. The Stay Period Should be Extended

22. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

23. The stay of proceedings currently expires on January 31, 2025. The Applicants request that the Stay Period be extended up to and including January 31, 2026, for the following reasons:

- (a) an extension of the Stay Period is necessary to allow the Applicants, with the assistance of the Monitor, to continue their efforts to collect outstanding accounts receivable, complete remaining activities with respect to the outstanding letters of credit, and complete other ancillary matters relating to the orderly wind-down of the business of the Applicants in both Canada and the US;¹⁹

¹⁸ Fourth Adams Affidavit at paras. 30-31; Third Report at para. 3.8.

¹⁹ Fourth Adams Affidavit at para. 33; Third Report at para. 4.2.

- (b) the Applicants have acted in good faith and due diligence throughout these CCAA proceedings, and the proposed extension is the best interest of the Applicants and their stakeholders;²⁰
- (c) the Monitor believes that the granting of the extension of the Stay Period will not materially prejudice any creditors of the Applicants;²¹ and
- (d) the Reserve established by the Applicants to satisfy their remaining post-filing obligations is anticipated to be sufficient to cover the minimal costs that will be incurred during the extended Stay Period.²²

24. In addition, given the potential for a meaningful recovery, extending the Stay Period until January 31, 2026 will provide the Applicants, under the supervision of the Monitor, with additional time to pursue, and potentially collect, the ERC Refund.²³

25. The Monitor supports the proposed extension of the Stay Period.²⁴

PART IV -NATURE OF THE ORDER SOUGHT

26. The Applicants therefore request a Stay Extension Order substantially in the form attached as Tab 3 to the Applicants' Motion Record.

²⁰ Fourth Adams Affidavit at para. 35; Third Report at para. 4.2.

²¹ Third Report at para. 4.2.

²² Fourth Adams Affidavit at para. 34; Third Report at paras. 3.11 and 4.2.

²³ Third Report at para. 3.9.

²⁴ Third Report at para. 4.2.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of January, 2025:



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TO: THE SERVICE LIST

SCHEDULE “A”: LIST OF AUTHORITIES

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
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INC., AND OSL FASHION SERVICES, INC.**

Court File No: CV-24-00718993-00CL

***ONTARIO*
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

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