Court File No. CV-20-00642013-00CL

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 COMARK HOLDINGS INC., BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

APPLICANTS

FACTUM OF THE APPLICANTS

January 16, 2025

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PART I - NATURE OF THE APPLICATION

1. On January 7, 2025 (the "**Filing Date**"), Comark Holdings Inc. ("**Comark**"). Ricki's Fashions Inc. ("**Ricki's**"), cleo fashions Inc. ("**cleo**") and Bootlegger Clothing Inc. ("**Bootlegger**") (together, the "**Applicants**" or the "**Comark Group**") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**")[1] pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Alvarez & Marsal Canada Inc. was appointed as monitor pursuant to the Initial Order (the "**Monitor**").

2. The Applicants commenced these CCAA proceedings to obtain the breathing space necessary to engage with their principal stakeholders and to consider the best manner in which to monetize their assets. Given the Applicants' limited liquidity and ongoing carrying costs, the Applicants intend to undertake a realization process, to commence by no later than January 18, 2025, to sell the Applicants' merchandise and inventory (collectively, the "**Inventory**") and goods, furniture, fixtures, equipment and/or improvements to real property (collectively, the "**FF&E**") which is located at or in transit to the Applicants' Liquidating Stores (as defined below). At present, the Applicants intend to conduct the Sale (as defined below) at all of their retail stores.

3. The Applicants therefore seek the following relief in this motion:

   (a) an order (the "**Realization Process Approval Order**"), among other things, approving a Consulting Agreement and Sale Guidelines (each as defined below), pursuant to which the Applicants, with the assistance of the Consultant (as defined

[1] R.S.C. 1985, c. C-36, as amended.

below), will undertake a sale (the "**Sale**") of the Inventory and FF&E located at or in transit to the Applicants' Liquidating Stores; and

(b) an Amended and Restated Initial Order ("**ARIO**"), among other things:

(i) extending the stay of proceedings until May 15, 2025;

(ii) authorizing the Applicants to enter into the DIP Term Sheet (defined below) and borrow under the DIP Facility (defined below) in the maximum principal amount of $18 million, and granting the DIP Lender's Charge (defined below);

(iii) authorizing the Applicants, with the support of the Monitor and the DIP Lender (defined below), to pursue offers for or avenues of restructuring, sale or reorganization of the business or assets of the Applicants, provided that completion of any such refinancing, restructuring, sale or reorganization transaction will be subject to (A) Court approval (except as otherwise permitted by paragraph 12(a) of the ARIO or by the Realization Process Approval Order) and (B) prior approval of the DIP Lender;

(iv) approving the form of Merchandise Transfer Agreement (as defined in the Second Kassam Affidavit), authorizing the Applicants and the Monitor to enter Merchandise Transfer Agreements with Overseas Vendors (as defined in the Second Kassam Affidavit), and directing the Applicants and the Monitor to perform their respective obligations under any Merchandise Transfer Agreement, and authorizing and approving any Merchandise

Transfer Agreement executed by the Monitor and the Applicants prior to January 17, 2025; and

(v) increasing the maximum amount secured by the Administration Charge to $1 million and the maximum amount secured by the Directors' Charge to $7.4 million.

4. An orderly, transparent process for the realization of the Inventory and FF&E is both necessary and appropriate in the circumstances. Liquidation processes have been approved in a number of retail insolvencies, and the terms of the Consulting Agreement and the Sale Guidelines are generally consistent with similar agreements and guidelines approved in other retail realization/realization processes carried out under the CCAA. The Consultant was selected through a fair and reasonable selection process and the Consulting Agreement and Sale Guidelines were developed with the oversight and support of the Monitor.[2]

5. The Sale was designed to maximize the value realized from the sale of the Inventory and FF&E for the benefit of the Applicants' creditors. It is a condition of the DIP Term Sheet that the Sale be commenced immediately. Importantly, the Applicants have the ability under the Consulting Agreement to remove certain or all of the Liquidating Stores from the Sale at any time on or prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025. This feature, together with the authorization to pursue a transaction being sought under the proposed ARIO, will benefit the Applicants and their stakeholders by allowing the Applicants to commence the Sale now, while concurrently allowing the Applicants and the Monitor to ascertain whether

[2] First Report of the Monitor dated January 16, 2025 at para 4.10 [First Report].

there may be a going concern transaction or transactions for some or all of the Applicants' business that would generate more value for creditors and stakeholders than the Sale.

PART II - SUMMARY OF FACTS

6. The facts are more fully set out in the Second Affidavit of Shamsh Kassam sworn on sworn January 16, 2025 (the "**Second Kassam Affidavit**").[3]

A. Overview of the Applicants' activities since the Initial Application

7. On the Filing Date, this Court granted the Initial Order, which, among other things: (i) appointed Alvarez & Marsal Canada Inc. as the Monitor; (ii) granted a stay of proceedings against the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the "**Initial Stay Period**"); (iii) authorized the Applicants to borrow from CIBC, as interim lender (the "**Interim Lender**"), under the Applicants' existing revolving facility (the "**CIBC Revolving Loan Facility**") during the Initial Stay Period, subject to certain conditions; (iv) authorized, but did not require, the Applicants to pay certain pre-filing amounts, with the consent of the Monitor and the Interim Lender, consistent with the Cash Flow Forecast (defined below) or otherwise agreed to with the Interim Lender; and (v) granted priority charges over the Property (defined below).[4]

8. Since the Filing Date, the Applicants, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to, among other things:[5]

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[3] Affidavit of Shamsh Kassam, sworn January 16, 2025 [Second Kassam Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Second Kassam Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

[4] Second Kassam Affidavit at para 7.

[5] Second Kassam Affidavit at para 8.

(a) stabilize the businesses and operations of the Applicants as part of these CCAA proceedings to enable the Applicants to continue operating their retail store businesses and e-commerce business;

(b) advise their stakeholders, including landlords, employees, logistics suppliers, merchandise vendors, and others, of the granting of the Initial Order;

(c) negotiate the DIP Term Sheet with the DIP Lender;

(d) develop the Sale Guidelines and finalize arrangements with the Consultant for the orderly realization of the Inventory and FF&E;

(e) engage with critical stakeholders; and

(f) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings.

9. The Applicants and the Monitor have also been in communication with several of the Applicants' key stakeholders, including as follows:

(a) The Applicants sent letters to all known landlords of the Applicant's retail locations (the "**Landlords**"), at their most recent email addresses contained in the Applicants' books and records, advising that the Applicants had been granted protection under the CCAA. The Applicants also circulated draft Sale Guidelines in respect of the proposed realization process to certain counsel who represent a

significant number of the Landlords and engaged in discussion with such counsel, along with counsel to the Monitor.[6]

(b) The Applicants promptly initiated employee outreach following the granting of the Initial Order, including by hosting live employee townhall meetings, and by conducting team meetings with store employees.[7]

(c) The Applicants and the Monitor have been in communication with other stakeholders, including various Overseas Vendors, the Canadian Retail Shippers' Association and other logistics providers.[8]

10. In addition, since the Filing Date, the Applicants have received outreaches and non-binding expressions of interest from a number of interested parties for the acquisition of certain of the Applicants' business and assets.[9]

B. The Realization Process

11. As noted above, the Applicants are seeking approval to commence an orderly realization of the Inventory and FF&E as soon as possible in order to maximize recoveries and limit operating costs, and to ensure that Ricki's, cleo and Bootlegger (collectively, the "**Retail Entities**") can exit from the Liquidating Stores as soon as practicable.[10]

12. Pursuant to the authority set out in the Initial Order, the Monitor, on behalf of the Applicants, reached out to two third-party liquidators that are well-known in the industry to seek bids in connection with the realization of some or all of the Applicants' Inventory and FF&E. Both

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6 Second Kassam Affidavit at para 11.
7 Second Kassam Affidavit at paras 13 (a)-(d).
8 Second Kassam Affidavit at paras 16-23.
9 Second Kassam Affidavit at para 43.
10 Second Kassam Affidavit at para 27.

potential liquidators expressed interest, and, following their execution of a nondisclosure agreement, were given access to a populated data room containing financial and operational details about the Applicants and the Inventory.[11]

13. The liquidators were then asked to provide their bids, which were reviewed and discussed. After negotiations with Tiger Asset Solutions Canada, ULC ("**Tiger**"), in consultation with the Monitor and with the consent of the Interim Lender, Tiger was selected as the consultant (the "**Consultant**").[12] The Applicants and the Consultant thereafter negotiated and entered into the consulting agreement dated January 14, 2025 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the "**Consulting Agreement**").[13]

14. Under the terms of the Consulting Agreement, the Consultant has exclusively been appointed to conduct the Sale, which is to commence on a date agreed to by the Applicants and the Consultant, following the granting of the Realization Process Approval Order (the "**Sale Commencement Date**").[14] The Sale is to conclude no more than 16 weeks after the Sale Commencement Date, but no later than April 30, 2025 (the "**Sale Termination Date**" and the period between the Sale Commencement Date and the Sale Termination Date, the "**Sale Term**").[15] The Sale will be conducted at the retail store locations listed in Exhibit "A-1" to the Consulting Agreement (the "**Liquidating Stores**"), which at present includes all of the Applicants' stores, but which list may be amended by removing stores at any time on or prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025.[16]

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11 Second Kassam Affidavit at para 25.
12 Second Kassam Affidavit at para 25.
13 Second Kassam Affidavit at para 2 (b)(i).
14 Second Kassam Affidavit at para 28 (b). It is a condition of the DIP Term Sheet that the Sale be commenced by no later than January 18, 2025.
15 Second Kassam Affidavit at paras 28 (b), 35 (b).
16 Second Kassam Affidavit at para 28 (c).

15. As consideration for its services, the Consultant will be entitled to a fee with respect to Inventory sold at the Liquidating Stores during the Sale Term of 2.0% of the gross receipts from sales of Inventory during the Sale Term (excluding sales taxes) (the "**Merchandise Fee**").[17]

16. In addition, the Consultant is entitled to a commission from the sale of FF&E equal to 15% of the gross proceeds of the Sale, net of applicable sales taxes (the "**FF&E Fee**").[18] The Applicants are responsible for all reasonable and documented out-of-pocket costs and expenses incurred by the Consultant in connection with the sale of FF&E.[19]

17. The Consulting Agreement is also subject to the proposed sale guidelines (the "**Sale Guidelines**"), for the orderly realization of the Inventory and FF&E.[20] The Sale Guidelines have been designed, with input from Canadian counsel who represent a significant number of the Landlords, in order to ensure an orderly and fair realization process. The Sale Guidelines are consistent with sale guidelines approved in other retail insolvencies.[21]

PART III - THE ISSUES AND THE LAW

18. This Factum addresses the following issues:

(a) This Court should approve the Consulting Agreement and the Sale Guidelines;

(b) This Court should authorize the DIP Term Sheet and the DIP Lender's Charge;

(c) This Court should authorize the Applicants to pursue a Transaction;

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17 Second Kassam Affidavit at para 28 (g).
18 Second Kassam Affidavit at para 28 (j).
19 Second Kassam Affidavit at para 28 (j).
20 Second Kassam Affidavit at para 2 (b)(ii).
21 Second Kassam Affidavit at para 33.

(d) This Court should approve the requested increases to the Administration Charge and the Directors' Charge; and

(e) This Court should extend the Stay Period until May 15, 2025

A. This Court should approve the Consulting Agreement and the Sale Guidelines

19. It is well-recognized that a CCAA court has jurisdiction to approve a sale process authorizing the realization of a debtor's assets,[22] and courts have frequently done so in the context of retail insolvencies.[23] In prior cases involving the approval of inventory and FF&E realization processes, courts have made use of the *Nortel* factors which generally apply in respect of sale process approvals.[24] In applying the *Nortel* test, the Court considers the following questions:[25]

(a) Is a sale transaction warranted at this time?

(b) Will the sale benefit the whole economic community?

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22 See, i.e., *Grant Forest Products Inc. v. GE Canada Leasing Services Co.*, 2013 ONSC 5933 at para 44; *Indalex Ltd. (Re)*, 2011 ONCA 265 at para 180.

23 See, i.e., *Ted Baker Canada Inc. et al v. Yorkdale Shopping Centre Holdings Inc.*, (May 3, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL (Endorsement of Justice Black) at paras 13-17 [*Ted Baker Endorsement*], endorsing *Ted Baker Canada Inc. et al v. Yorkdale Shopping Centre Holdings Inc. (Re)*, (May 3, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL (Realization Process Approval Order) [*Ted Baker Order*]; *Mastermind GP Inc. (Re)*, (November 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23- 00710259-00CL (Endorsement of Justice Steele), at paras 10-18 [*Mastermind Toys Endorsement*], endorsing *Mastermind GP Inc. (Re)*, (November 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00710259- 00CL (Realization Sale Approval Order) [*Mastermind Order*]; *Nordstrom Canada Retail Inc. (Re)*, 2023 ONSC 1814 at paras 6-13 [*Nordstrom Endorsement*], endorsing *Nordstrom Canada Retail Inc. (Re)*, (March 20, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00695619-00CL (Realization Sale Approval Order) [*Nordstrom Order*]; *Bed Bath & Beyond Canada Ltd. (Re)*, 2023 ONSC 1230 at paras 7-9 [*BBB Endorsement*], endorsing *Bed Bath & Beyond Canada Ltd. (Re)*, (February 21, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00694493-00CL (Sale Approval Order) [*BBB Order*]; *Sears Canda Inc. (Re)*, (July 18, 2017), Ont S.C.J. [Commercial List], Court File No. CV-17-11846-00CL (Realization Sale Approval Order); *Forever XX1 ULC (Re)*, (October 7, 2017), Ont S.C.J. [Commercial List], Court File No. CV-19-00628233-00CL (Sale Approval Order); *Target Canada Co. (Re)*, 2015 ONSC 846 at paras 2-5 [*Target Endorsement*], endorsing *Target Canada Co. (Re)* (February 4, 2015), Ont S.C.J. [Commercial List], Court File No. CV-15-10832-00CL (Approval Order – Agency Agreement).

24 See, i.e., *Nordstrom Endorsement*, at para. 7; *BBB Endorsement*, at para 9.

25 *Nortel Networks Corp (Re)*, 2009 CanLII 39492 (ONSC) at para 49. While the *Nortel* factors were formulated before the 2009 amendments to the CCAA, CCAA courts have since confirmed that these criteria still apply: *Brainhunter Inc (Re)*, 2009 CanLII 72333 (ONSC) at paras 15-17 [*Brainhunter*].

(c) Do any of the debtors' creditors have a *bona fide* reason to object to a sale?

(d) Is there a better viable alternative?

20. Courts have also evaluated proposed retail realization processes in light of the criteria set out in s. 36(3) of the CCAA,[26] namely:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the Monitor approved the process leading to the proposed sale or disposition;

(c) whether the Monitor filed a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a bankruptcy;

(d) the extent to which creditors were consulted;

(e) the effects of the proposed sale or disposition on creditors and stakeholders; and

(f) whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.

21. The Applicants submit that both the *Nortel* criteria and the s. 36(3) factors are satisfied in respect of the proposed realization process, for the reasons set out below.

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[26] See, i.e., *Ted Baker Endorsement* at para 14; *Mastermind Toys Endorsement*, at para 14; *Target Endorsement*, at para 5; *Sears Canada Inc. (Re)*, 2017 ONSC 6235 at para 8 [*Sears Canada*].

(a) The Sale is Warranted at this Time

22. The realization of the Inventory and FF&E is warranted at this time, as it is an integral and urgent part of the realization process. Given the Applicants' limited liquidity and ongoing carrying costs, the Applicants' are seeking approval of an orderly realization of the Inventory and FF&E to commence as soon as possible. In the circumstances, any delay would negatively impact the net recoveries generated from the Sale.[27] Moreover, it is a condition of the DIP Term Sheet that the Sale by commenced by no later than January 18, 2025.

23. As noted above, at present, the Applicants intend to conduct the Sale at all of the Liquidating Stores. However, the Consulting Agreement provides that the Applicants are entitled to remove any Liquidating Stores from the Sale at any time on or prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025. The Applicants may terminate the Consulting Agreement in the event that they remove all Liquidating Stores from the Sale.[28]

24. Further, retaining the services of the Consultant is a vital element of maximizing recoveries obtained pursuant to the realization process. Retaining the Consultant will produce better results than attempting to realize on the Inventory and FF&E without the assistance of the Consultant, as the Consultant's services are necessary in order the facilitate a seamless and efficient large-scale store closing process and maximize the value of the Inventory and FF&E.[29]

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27 Second Kassam Affidavit at para 27.
28 Second Kassam Affidavit at para 29.
29 Second Kassam Affidavit at paras 26, 31.

(b) The Process to Select the Consultant was Reasonable

25. The Consultant was selected following a competitive process. As discussed above, the Monitor solicited two potential third-party liquidators, each of whom executed a non-disclosure agreement and submitted bids in accordance with the bidding instructions received from the Monitor. The Consultant was selected following careful review and discussion of the proposals between the Applicants, the Monitor, and the DIP Lender.[30] This process accords with similar processes which have been approved by this Court in other retail insolvencies.[31]

26. Further, the selection of the Consultant to assist in the realization process was based on both the Consultant's in-depth expertise and knowledge of the Applicants' business, inventory, and store operations, and its extensive experience conducting retail realizations and other value-maximizing store realization processes.[32] The Consultant's experience includes a number of high-profile retail insolvencies, including *Nordstrom Canada*, *GNC*, *Bed, Bath and Beyond*, *Chico's*, *Gymboree*, *Canadian Shoe Outlet*, *Stokes*, *Scotch and Soda*, *Sears Canada*, *Scholars Choice*, *Maison Ethier*, and *Payless Canada*.[33]

27. Finally, the Monitor has been consulted and/or directly involved throughout the process and is supportive of the engagement of the Consultant at this time.[34] Owing to the Consultant's attractive bid and extensive qualifications, the Applicants, in consultation with the Monitor, have reasonably concluded that the Consultant is qualified and capable of performing the required tasks in a value maximizing manner and engaging the Consultant to assist with the Sale will produce

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30 Second Kassam Affidavit at para 25.
31 See, i.e., *Ted Baker Endorsement* at para 16; *Mastermind Toys Endorsement*, at para 16; *Target Endorsement*, at para 2.
32 Second Kassam Affidavit at para 26.
33 Second Kassam Affidavit at para 26. The experience of the proposed liquidator is an important consideration: see, i.e., *Mastermind Toys Endorsement,* at para 16.
34 First Report at para 4.7; Second Kassam Affidavit at paras 25-26.

better results than attempting to realize on the Merchandise and FF&E without the assistance of the Consultant.[35]

(a) The Consulting Agreement and Sales Guidelines are Fair and Reasonable

28. The manner in which the Sale will be conducted pursuant to the Consulting Agreement and the Sale Guidelines is fair and reasonable in the circumstances, and has been designed by the Applicants and the Consultant, in consultation with the Monitor and with the consent of the DIP Lender, in order to maximize recovery on the Inventory and the FF&E for the benefit of the Applicants' creditors.[36]

29. The terms of the Consulting Agreement, Sale Guidelines and Realization Process Approval Order are generally similar to and typical of agreements and orders for inventory realization sales that have been negotiated and/or approved in a number of other retail insolvencies, including *Nordstrom Canada*, *Mastermind Toys*, and *Ted Baker*.[37] Consistent with the differing circumstances of each case, each agreement and order inevitably varies to some degree to reflect the particular circumstances. This is consistent with the flexibility provided by the CCAA to make orders that are appropriate to the needs of the specific restructuring.

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35 Second Kassam Affidavit at paras 26, 31.

36 Second Kassam Affidavit at para 31.

37 See *Nordstrom Order* and *Ted Baker Order*, respectively. See *Ted Baker Endorsement*, at para. 16, for an example of the court taking comfort in a proposed sale process' similar to that approved in *Mastermind Toys* and *Nordstrom*.

30. Among other things, the realization process envisions a flexible structure, whereby the Sale will initially occur at the Liquidating Stores, with the Applicants having the ability to remove individual Liquidating Stores. Realization processes containing similar "toggling" provisions have been approved in the past, on the grounds that they provided the debtors with additional flexibility.[38] Further, the Consulting Agreement is supported by the Monitor as reasonable in the circumstances.[39]

31. The fee structure outlined in the Consulting Agreement is designed to align the Consultant's compensation with stakeholder outcomes and is supported by the Monitor as reasonable in the circumstances. In particular, the fee structure contained in the Consulting Agreement incentivizes the Consultant to maximize the value of the Applicants' Merchandise and FF&E for the benefit of stakeholders, and the quantum of the Merchandise Fee and FF&E Fee are reasonable and consistent with fees charged by liquidation consultants in similar situations.[40]

32. Further, the Sale Guidelines contain a number of other provisions designed to ensure that the Sale takes place in an orderly, respectful fashion.[41] These guidelines have been adapted to the circumstances of this case based on similar sale guidelines approved in other retail insolvencies; in particular, the Sale Guidelines are substantially similar to those which were approved in *Nordstrom Canada*, *Mastermind Toys,* and *Ted Baker*.[42]

33. In particular, the Sale Guidelines require that the Sale be conducted in accordance with the terms of the leases for the Liquidating Stores, and the Sale Guidelines may be amended on a store-

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38 *Ted Baker Endorsement* at para 15; *Mastermind Toys Endorsement* at para 16.
39 First Report at para 4.10; Second Kassam Affidavit at para 35.
40 First Report at para 4.10(d).
41 Second Kassam Affidavit at para 32.
42 Second Kassam Affidavit at para 33.

by-store basis with the consent of the parties, the applicable Landlord, and the Monitor.[43] Among other things, the Sale Guidelines preclude the Merchant from engaging in any auctions of Inventory or FF&E at the Liquidating Stores and require the Sale to be conducted during normal hours of operation provided for in its respective Lease, until the earlier of (i) the applicable Sale Termination Date and (ii) the date on which such Lease is disclaimed in accordance with the ARIO and CCAA or otherwise consensually terminated by the applicable Retail Entity or Retail Entities and Landlord.[44] All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Consultant shall have the right, notwithstanding anything to the contrary contained in the Leases, to advertise the Sale as an "everything on sale", "everything must go", "store closing" and/or similar theme sale.[45]

(b) The Monitor was Consulted and Supports the Realization Process

34. The involvement and support of the Monitor is an important consideration in determining whether to approve a proposed sale process.[46] The Monitor was closely involved in the process by which the Consultant was chosen, and the realization process, as set out in the Consulting Agreement and the Sale Guidelines, was designed in close consultation with the Monitor.[47] The Monitor supports the proposed Realization Process Approval Order.[48]

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43 Second Kassam Affidavit at para 32.
44 Second Kassam Affidavit at para 32 (a).
45 For a full description of the Sale Guidelines, see Second Kassam Affidavit at para 32. Capitalized words not otherwise defined in this section have the meaning ascribed to them in the DIP Term Sheet.
46 See, i.e., *Ted Baker Endorsement* at para 17; *Mastermind Toys Endorsement*, at para 16; *Nordstrom Endorsement*, at para. 9; *Target Endorsement*, at para 2.
47 Second Kassam Affidavit at paras 25-26, 31.
48 First Report at para 4.10; Second Kassam Affidavit at para 35.

35. For the foregoing reasons, this Court should approve the Consulting Agreement and the Sale Guidelines.

B. The DIP Should be Approved

36. Pursuant to the Initial Order, the Applicants were granted interim funding from the Interim Lender under the CIBC Revolving Loan Facility during the Initial Stay Period (the "**Interim Borrowings**"). The Interim Borrowings Obligations are secured by a Court-ordered charge (the "**Interim Lender's Charge**") on all of the present and future assets, property and undertakings of the Applicants (the "**Property**") and by certain cash collateral and shares of Comark pledged by ParentCo. The Interim Borrowings mature on January 17, 2025.[49]

37. Since the granting of the Initial Order, CIBC (the "**DIP Lender**") has agreed to provide additional funding (the "**DIP Loan**") to Comark, as Borrower, during these CCAA proceedings under a senior secured, super priority, debtor-in-possession, revolving credit facility (the "**DIP Facility**") on the terms set out in a term sheet agreed to between the Retail Entities and ParentCo as Guarantors, and the DIP Lender dated January 15, 2025 (the "**DIP Term Sheet**"), to a maximum principal amount of $18 million.[50]

38. Based on the Updated Cash Flow Forecast, the DIP Facility is expected to provide the DIP Parties with sufficient liquidity to continue their business operations during these CCAA proceedings while completing the Sale described above or a Transaction for the benefit of the Applicants and their stakeholders. Pursuant to the DIP Term Sheet, the DIP Lender's obligation to

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[49] Second Kassam Affidavit at para 36.

[50] Second Kassam Affidavit at para 37. The Borrower, cleo, Ricki's and Bootlegger are collectively defined in the DIP Term Sheet as the "**DIP Parties**".

advance the DIP Loan is subject to, among other things, this Court's approval and the DIP Lender's Charge being granted.[51]

39. Pursuant to s 11.2 of the CCAA, the Applicants are seeking approval of the DIP Facility and approval of a super-priority charge to secure the DIP Facility (the "**DIP Lender's Charge**"). The DIP Lender's Charge will not secure any obligation that exists before the ARIO is made. The DIP Lender's Charge will rank in priority to all other security interests, charges and liens on the Collateral, other than Permitted Priority Liens. As among the DIP Lender's Charge, the Interim Lender's Charge, the Administration Charge, the Director's Charge, and the security interests granted by the DIP Parties to CIBC with respect to the Obligations under the CIBC Credit Agreement, the relative priority shall be as follows:

(a) Administration Charge;

(b) DIP Lender's Charge;

(c) the Interim Lender's Charge (which will terminate upon repayment of the Interim Borrowings Obligations in accordance with the ARIO) and the security granted by the DIP Parties with respect to the Obligations under the CIBC Credit Agreement (other than the Interim Borrowing Obligations); and

(d) Directors' Charge.

40. Given the current financial circumstances of the Applicants, the DIP Lender has indicated that it is not prepared to advance funds without the security of the DIP Lender's Charge, including the proposed priority thereof.[52]

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[51] For a full description of the proposed DIP Facility, see Second Kassam Affidavit at para 39.

[52] Second Kassam Affidavit at para 41.

41. Section 11.2(1) of the CCAA provides the court with the authority to grant an interim financing charge "in an amount the court considers appropriate," subject to the limitation that the security or charge may not secure an obligation that exists before the order is made. The emphasis under s. 11.2(1) is on ensuring that the proposed financing is consistent with the pre-filing status quo, such that is upholds the relative priority of each secured creditor.[53] The proposed DIP Lender's Charge satisfies these conditions, as it is sized appropriately to the Applicants' needs, does not operate to secure any of the DIP Lender's pre-filing obligations, and is consistent with pre-filing priorities.

42. Under the DIP Term Sheet, proceeds received by a DIP Party in respect of Accounts, and any cheques, cash, credit card sales and receipts, notes or other instruments or Property received by a DIP Party with respect to any Collateral, less $100,000 to indefeasibly pay the DIP Financing Obligations and Obligations in the following order: (A) first, the Obligations in respect of the CIBC Revolving Loan Facility, including the Interim Borrowings, until Repaid in Full, (B) second, the DIP Financing Obligations, until Repaid in Full, (C) third, the Obligations in respect of the CIBC Term Loan Facility (as defined in the Initial Affidavit), until Repaid in Full, and (D) fourth, the Obligations in respect of the BCAP Loan Facility, to be applied in accordance with the waterfall set out in the CIBC Credit Agreement, until Repaid in Full. Numerous CCAA courts have approved DIP financing arrangements in which post-filing receipts are applied to pre-filing debts of the DIP lender (so called "creeping roll-ups") and have found that arrangements of this type are in accordance with the Court's jurisdiction under s. 11.2(1).[54]

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53 *BZAM Ltd. (Re)*, (February 28, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 24-00715773-00CL (Endorsement of Justice Osborne) at para. 56 [*BZAM*].

54 See, i.e., *Mountain Equipment Co-operative (Re)*, 2020 BCSC 1586 at paras 47-51; *Performance Sports Group Ltd. (Re)*, 2016 ONSC 6800 at para. 22; *Comark Inc. (Re)*, 2015 ONSC 2010 at paras. 17-29; *BZAM*, at paras. 56, 61-63.

43. Section 11.2(4) of the CCAA lists the factors to be considered by the court in deciding whether to approve interim financing and grant a DIP Lender's Charge. The Applicants submit that the application of these factors to the facts of this case support the approval of same. The Monitor supports the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge.[55]

44. It is an express condition of the DIP Term Sheet that only sales taxes accrued or collected after the Filing Date shall be paid to the tax authorities. Pre-filing taxes would be due to be paid when the Obligations in respect of the Pre-Filing Credit Agreement, Interim Borrowing Obligations, and the DIP Financing Obligations are repaid in full (the "**Sales Tax Conditions**").[56] In a recent retail insolvency, the Court exercised its discretion under s. 11 of the CCAA to amend an initial order to reflect that only sales taxes accrued or collected post-filing were required to be remitted by the debtor.[57] The Court observed that under ss. 37 and 38 of the CCAA, pre-filing sales taxes benefit from no priority under the CCAA, and that in the debtor's circumstances, limiting the taxes immediately due to taxes that accrued post-filing furthered the principal policy objective of the CCAA by allowing the debtor to craft a viable plan of arrangement using funds that would otherwise be used to pay pre-filing taxes.[58] The Court further reasoned that treating pre-filing taxes as unsecured claims would ensure a more equitable distribution of the debtor's assets.[59]

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55 First Report at para 5.6; Second Kassam Affidavit at para 42.

56 Second Kassam Affidavit at Exhibit G, DIP Term Sheet, section 8.

57 *Groupe Dynamite inc. v. Deloitte Restructuring Inc.*, (May 18, 2021), Q.C.C.S. [Commercial Division], Court File No. 500-17-058763-208 (Endorsement of Justice Kalichman) at paras 26, 28-29 [*Dynamite Endorsement*], attached as Exhibit 'A' to this factum; *Groupe Dynamite inc. v. Deloitte Restructuring Inc.*, (May 18, 2021), Q.C.C.S. [Commercial Division], Court File No. 500-17-058763-208 (Re-Amended and Restated Initial Order) at para 22.

58 *Dynamite Endorsement* a paras 28-29.

59 *Dynamite Endorsement* a para 30.

45. The authorization under the proposed ARIO to limit sales taxes payable by the Applicants to taxes accrued or collected post-filing is an appropriate use of this Court's discretion under the CCAA. The DIP Lender's obligation to advance the DIP Loan is subject to this Court's approval of the Sales Tax Conditions.[60] If the DIP Term Sheet is not approved and the DIP Loan is not advanced, the Applicants will not have the funding necessary to conduct the Sale and pursue a Transaction to maximize value for the benefit of creditors and stakeholders generally.

C. Authorization to pursue a Transaction

46. Since the commencement of these CCAA proceedings, the Applicants have received outreaches and expressions of interest from several interested parties for the acquisition of certain of the Applicants' business and assets. The Applicants are seeking the authority in the proposed ARIO to pursue offers for or avenues of refinancing, restructuring, sale or reorganization of the business or assets of the Applicants (a "**Transaction**").

47. Should this relief in the ARIO be granted, the Monitor intends to reach out forthwith to parties known to the Monitor and/or the Applicants who have expressed interest or may be interested in the business or assets of the Applicants. Depending on the level and nature of interest, the Monitor may, in its reasonable judgment, establish a solicitation process letter setting out bid procedures (including minimum proposal requirements, key milestones, and successful bid selection criteria) as may be determined by the Applicants and Monitor with the consent of the DIP Lender. If such bid procedures are established, the Monitor will clearly communicate such procedures to the potentially interested parties identified by the Applicants and the Monitor. Depending on the level of interest, the Monitor may, in its reasonable judgment, directly negotiate a Transaction with a potential acquirer, in lieu of a formal sales and investment solicitation process.

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[60] Second Kassam Affidavit at Exhibit G, DIP Term Sheet, section 8.

To the extent a Transaction results, it will be subject to prior approval of this Court.[61] Any such Transaction will also be subject to the DIP Lender's consent.[62]

48. Section 11 of the CCAA provides the court with broad discretion to "make any order that [the court] considers appropriate in the circumstances."[63] Courts have consistently recognized that s. 11 signals legislative endorsement of the "broad reading of CCAA authority developed by the jurisprudence."[64] The only constraints on the court's jurisdiction under s. 11 are set out in the CCAA itself, and the requirement than any order be "appropriate in the circumstances."[65] The "appropriateness" requirement is satisfied where an applicant has demonstrated that it has acted in good faith and with due diligence.[66]

49. The Applicants have met their burden. The authorization in the ARIO to pursue a Transaction would give the Applicants and the Monitor the flexibility to pursue all value-maximizing avenues for the assets of the Applicants, while concurrently conducting the Sale (with the ability to remove some or all of the Liquidating Stores from the Sale). This flexible and expedited process would benefit the Applicants and their creditors and stakeholders generally by allowing the Applicants to ascertain whether there may be a going concern transaction or transactions that would generate more value for creditors and stakeholders than the Sale.[67] The DIP Lender has advised that it supports the Applicant and the Monitor engaging in discussions with potential interested parties in the manner described above.[68]

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61 Second Kassam Affidavit at para 44.
62 Second Kassam Affidavit at para 43.
63 *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para 48 [*Callidus Capital*].
64 *Callidus Capital* at para 67; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 68 [*Century Services*].
65 *Callidus Capital* at para 67.
66 *Century Services* at para 69.
67 Second Kassam Affidavit para 46.
68 Second Kassam Affidavit para 47.

50. The Applicants do not have sufficient liquidity under the Updated Cash Flow Forecast or funding under the DIP Budget to run a formal sales process. The funding in the DIP Budget is conditional on the Applicants commencing the Sale by no later than January 18, 2025, as any delay will further erode the Applicants' financial position.[69]

51. The DIP Lender and the Monitor are supportive of the Applicants (in conjunction with the Monitor) entering into discussions with potentially interested parties.[70]

D. The Administration Charge and Directors' Charge Should be Increased

52. The Initial Order approved the Administration Charge in the amount of $750,000. The Applicants now seek to increase the Administration Charge to $1 million, with the concurrence of the Monitor. Similarly, the Initial Order approved the Directors' Charge in the amount of $6.2 million which the Applicants seek to increase to $7.4 million, with the concurrence of the Monitor.[71]

53. The Court has discretion to grant and increase these charges in an amount that the Court considers appropriate pursuant to sections 11.51 and 11.52 of the CCAA.[72] The DIP Lender does not object to either requested increase.[73]

E. The Stay Period Should be Extended

54. 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

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69 Second Kassam Affidavit at para 45.
70 First Report at para 7.26; Second Kassam Affidavit at para 46.
71 Second Kassam Affidavit at paras 47-48.
72 See Applicants' Initial Order Factum at paras 70-71.
73 Second Kassam Affidavit at paras 47-48.

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.

55. The Applicants, as supported by the Monitor, ask that the Stay Period be extended up to and including May 15, 2025. Extending the stay period will permit the Applicants, with the assistance of the Consultant and under the oversight of the Monitor, to conduct the Sale in accordance with the Consulting Agreement and Sale Guidelines, while concurrently pursuing a Transaction for some or all of the Applicant's business or assets, all with a view to maximizing recovery for the Applicants' creditors.[74]

56. The Applicants have acted in good faith and with due diligence in these CCAA proceedings.[75] The Updated Cash Flow Forecast demonstrates that, subject to this Court's approval of the DIP Facility in the form requested in the proposed ARIO, the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. The Monitor has expressed its support for the extension of the Stay Period to May 15, 2025.[76]

PART IV - NATURE OF THE ORDER SOUGHT

57. The Applicants therefore request an Amended and Restated Initial Order and Realization Process Approval Order substantially in the form of the draft Orders attached as Tabs 4 and 5, respectively, to the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of January, 2025

Sierra Farr

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74 Second Kassam Affidavit at para 49.
75 Second Kassam Affidavit at paras 50-51.
76 First Report at para 7.28; Second Kassam Affidavit at para 51.

SCHEDULE "A": LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 (CanLII), [2020] 1 SCR 521

2. *Bed Bath & Beyond Canada Ltd. (Re)*, (February 21, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00694493-00CL (Sale Approval Order)

3. *Bed Bath & Beyond Canada Ltd. (Re)*, 2023 ONSC 1230

4. *Body Shop Canada Ltd. (Re)*, (April 5, 2024), Ont. S.C.J. [Commercial List], Court File No. BK-24-03050417-0031 (Endorsement of Justice Osborne)

5. *Brainhunter Inc (Re)*, 2009 CanLII 72333 (ONSC)

6. *BZAM Ltd. (Re)*, (February 28, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00715773-00CL (Endorsement of Justice Osborne)

7. Century Services

8. *Comark Inc. (Re)*, 2015 ONSC 2010

9. *Forever XX1 ULC (Re)*, (October 7, 2017), Ont S.C.J. [Commercial List], Court File No. CV-19-00628233-00CL (Sale Approval Order)

10. *Grant Forest Products Inc. v. GE Canada Leasing Services Co.*, 2013 ONSC 5933

11. *Groupe Dynamite inc. v. Deloitte Restructuring Inc.*, (May 18, 2021), Q.C.C.S. [Commercial Division], Court File No. 500-17-058763-208 (Endorsement of Justice Kalichman)

12. *Groupe Dynamite inc. v. Deloitte Restructuring Inc.*, (May 18, 2021), Q.C.C.S. [Commercial Division], Court File No. 500-17-058763-208 (Re-Amended and Restated Initial Order)

13. *Mastermind GP Inc. (Re)*, (November 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00710259-00CL (Realization Sale Approval Order)

14. *Mastermind GP Inc. (Re)*, (November 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00710259-00CL (Endorsement of Justice Steele)

15. *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586

16. *Nordstrom Canada Retail Inc. (Re)*, (March 20, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00695619-00CL (Realization Sale Approval Order)

17. *Nordstrom Canada Retail Inc. (Re)*, 2023 ONSC 1814

18. *Nortel Networks Corp (Re)*, 2009 CanLII 39492 (ONSC)

19. *Performance Sports Group Ltd. (Re)*, 2016 ONSC 6800

20. *Royal Bank v. Soundair*, 1991 CarswellOnt 205 (CA)

21. *Sears Canda Inc. (Re)*, (July 18, 2017), Ont S.C.J. [Commercial List], Court File No. CV-17-11846-00CL (Realization Sale Approval Order)

22. *Sears Canada Inc. (Re)*, 2017 ONSC 6235

23. *Target Canada Co. (Re)* (February 4, 2015), Ont S.C.J. [Commercial List], Court File No. CV-15-10832-00CL (Approval Order – Agency Agreement)

24. *Target Canada Co. (Re)*, 2015 ONSC 846

25. *Ted Baker Canada Inc. et al v. Yorkdale Shopping Centre Holdings Inc.*, (May 3, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL (Endorsement of Justice Black)

26. *Ted Baker Canada Inc. et al v. Yorkdale Shopping Centre Holdings Inc. (Re)*, (May 3, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL (Realization Process Approval Order)

I certify that I am satisfied as to the authenticity of every authority.

Date January 16, 2025

Signature

Sierra Farr

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

COMPANIES' CREDITORS ARRANGEMENT ACT

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

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[…]

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

11.02 (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.

[…]

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

[…]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[…]

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[…]

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(a) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(a) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[…]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

> **(a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
>
> **(b)** the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

> **(a)** a director or officer of the company;
>
> **(b)** a person who has or has had, directly or indirectly, control in fact of the company; and
>
> **(c)** a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

[…]

Deemed trusts

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision"), nor does it apply in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province if

> **(a)** that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or
>
> **(b)** the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a *provincial pension plan* as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,
>
> and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

Status of Crown claims

38 (1) In relation to a proceeding under this Act, all claims, including secured claims, of Her Majesty in right of Canada or a province or any body under an enactment respecting workers' compensation, in this section and in section 39 called a "workers' compensation body", rank as unsecured claims.

Exceptions

(2) Subsection (1) does not apply

> **(a)** in respect of claims that are secured by a security or charge of a kind that can be obtained by persons other than Her Majesty or a workers' compensation body
>
> > **(i)** pursuant to any law, or

(ii) pursuant to provisions of federal or provincial legislation if those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of Her Majesty or a workers' compensation body; and

(b) to the extent provided in subsection 39(2), to claims that are secured by a security referred to in subsection 39(1), if the security is registered in accordance with subsection 39(1).

Operation of similar legislation

(3) Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts if the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection,

and, for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

TAB 1

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-058763-208

DATE: May 18, 2021

BEFORE: THE HONOURABLE PETER KALICHMAN, J.S.C.

GROUPE DYNAMITE INC.
GRG USA HOLDINGS INC.
GRG USA LLC
Petitioners
v.
DELOITTE RESTRUCTURING INC.
Monitor

and

MINISTRY OF ATTORNEY GENERAL OF BRITISH COLUMBIA
Respondent

JUDGMENT
(Application to amend an initial order with respect to the payment of sales tax)

JK0261

OVERVIEW

[1] The Court is asked to amend an initial order it issued under the *Companies' Creditors Arrangement Act* (the **CCAA** or the **Act**), to relieve the Debtors of their obligation to remit sales taxes accrued or collected prior to the CCAA filing (the **Application**).

[2] The Application is contested by the Ministry of Attorney General of British Columbia (the **BC Tax Authority**).

CONTEXT

[3] Groupe Dynamite Inc. operates over 300 retail stores in Canada and the U.S. under the names, Dynamite and Garage. The business was severely impacted by the Covid-19 pandemic and the government-imposed restrictions which followed. As a result, attempts were made to negotiate with landlords and, while this was going on, rent was withheld. Soon thereafter, Groupe Dynamite Inc., along with its US affiliates, GRG USA Holdings Inc. and GRG USA LLC (collectively **Dynamite**), filed an Application for an Initial Order and an Amended and Restated Initial Order for the purpose of pursuing a restructuring of its business under the CCAA.

[4] The Court rendered an Initial Order on September 8, 2020 (the **Initial Order**)[1] suspending all legal proceedings against Dynamite. An Amended and Restated Initial Order was rendered ten days later (the **ARIO**).[2]

[5] The Initial Order contains a provision regarding sales taxes (the **Sales Tax Provision**), which was restated in the ARIO. It reads as follows:

> [22] ORDERS that the Debtors shall remit, in accordance with legal requirements, or pay
>
> [...]
>
> (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Debtors and in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order.

[6] The Sales Tax Provision requires Dynamite to pay sales taxes that are accrued or collected after the date of the Initial Order (September 8, 2020) (**Post-Filing Sales Taxes**). It also requires Dynamite to pay sales taxes accrued or collected before the Initial Order which are not required to be remitted until afterwards (the **Straddle Period Sales Taxes**).

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1 Exhibit P-1.

2 Exhibit P-2.

[7] Sales taxes collected in the Province of British Columbia must be paid to the BC Tax Authority (**BC Sales Taxes**).[3]

[8] In August, 2020, the British Columbia Legislature enacted the *Economic Stabilization (Covid-19) Act* (the **Stabilization Act**). The Stabilization Act extended the date on which BC Sales Taxes were payable. More specifically, BC Sales Taxes that would otherwise have been payable between March 24, 2020 and September 29, 2020, were only payable on September 30, 2020.

[9] All BC Sales Taxes collected by Dynamite after the Initial Order have been remitted to the BC Tax Authority. However, from March 2020 to September 2020, Dynamite collected $ 1,183,315.74 in BC Sales Taxes, of which $ 993,944.12 has not been remitted. The BC Tax Authority has demanded payment of that sum as Straddle Period Sales Taxes.

[10] No other province has claimed Straddle Period Sales Taxes from Dynamite or taken a position with respect to the Application.

[11] Dynamite recognizes that the drafting of the Sales Tax Provision supports the position of the BC Tax Authority. However, it asks the Court to issue an amended ARIO to limit the application of the Sales Tax Provision to Post-Filing Sales Taxes. Under the proposed amendment, Straddle Period Sales Taxes would be treated as post-filing claims; that is to say that they would be unsecured claims that would be dealt with as part of the eventual compromise or arrangement between Dynamite and its creditors.

GENERAL PRINCIPLES

[12] The purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor and its creditors so that the company is able to continue its business. To ensure that companies have breathing space in which to craft a viable plan of arrangement, a court will typically suspend legal action against the debtor as part of an initial order. The courts will then supervise the restructuring process with a view to ensuring that the policy objectives of the CCAA are met.

[13] The initial order often contains what is known as a "come-back" provision, which specifies that parties can come back before the court to vary or amend the order. However, with or without a comeback provision, courts have broad statutory authority under the CCAA to amend or vary their orders where circumstances make it appropriate to do so.[4]

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3 The delay in which payment is to be made is established by regulation. *Provincial Sales Tax Act*, SBC 2021, c 35; *Provincial Sales Tax Regulation*, B.C. Reg. 96/2013.

4 Sarra, Janis P. *Rescue! The Companies' Creditors Arrangement Act*, 2nd ed., Toronto, Carswell, 2013, p. 60.

[14] Dynamite's application is based on s. 11 of the CCAA which gives the courts extremely broad discretion to make any order that they consider appropriate in the circumstances, subject to the restrictions set out in the Act. When exercising this discretion, courts should refer to "appropriateness, good faith, and due diligence" as baseline considerations.[5] An order is appropriate if it advances the policy objectives of the CCAA and employs means that are fair and reasonable.[6]

THE POSITIONS OF THE PARTIES

Dynamite

[15] Dynamite recognizes that it requested the wording of the Sales Tax Provision that was incorporated into the Initial Order and the ARIO. Its Vice-President, Finance, explains that the CCAA filing was prepared on an emergency basis after several of its landlords locked them out of their premises. As a result, neither he nor any other member of Dynamite's management team, realized the problem that the drafting of the Sales Tax Provision would create. More specifically, they assumed that Straddle Period Sales Taxes would be dealt with like other pre-filing claims and did not realize that Dynamite would be required to pay them immediately and in full.

[16] To further complicate matters, Dynamite points out that at the time of its initial filing under the CCAA, it owed far more in sales taxes than it normally would have. This was due to two distinct factors. First, because it had ceased to pay rent, it was unable to use its input tax credits to offset the amount of sales tax owed. Second, as a result of the Stabilization Act, Dynamite was able to defer several months' worth of sales taxes owed to the BC Tax Authority. Because they were focused on Dynamite's overall debt, which exceeded $ 350 million, management did not pick up on the fact that an amount exceeding $ 4.5 million in Straddle Period Sales Taxes would be owing as a result of the wording of the Sales Tax Provision.

[17] The Sales Tax Provision contained in the Initial Order and the ARIO was based on the Ontario Superior Court of Justice, Commercial List Form CCAA Initial Order (the **Ontario Model**) as opposed to the Bar of Montreal's model CCAA Initial Order (the **Quebec Model**). The Ontario Model requires debtors to pay Post-Filing Sales Taxes as well as Straddle Period Sales Taxes. The Quebec Model only requires debtors to remit Post-Filing Sales Taxes.

[18] While the Ontario Model order has been used in Quebec[7], Dynamite argues that that it is not appropriate here. Straddle Period Sales Taxes are simply pre-filing claims and if they are required to be paid, the BC Tax Authority would receive a significant advantage over other creditors with unsecured claims. Furthermore, although no other

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5 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 70.
6 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 70.
7 *In re: Le Groupe SMI Inc.* 500-11-055122-184, C.S. Mtl. (Corriveau, J.), August 24, 2018; *In re : Nemaska Lithium Inc.*, 500-11-057716-199, C.S. Mtl. (Gouin, J.), 23 décembre, 2019.

province has as yet claimed Straddle Period Sales Taxes, Dynamite submits that if it is required to satisfy the claim of the BC Tax Authority, it will likely face claims from the other provinces, which total over $3.5 million. This, it argues, could jeopardize its ability to craft a viable plan of arrangement. Consequently, Dynamite maintains that the current drafting of the Sales Tax Provision is inconsistent with the remedial objectives of the CCAA.

[19] Finally, Dynamite submits that the Court has the discretion to grant the Application and that doing so is appropriate and consistent with the objectives of the CCAA.

The BC Tax Authority

[20] The BC Tax Authority recognizes that the Court can amend its previous orders but argues that it would be inappropriate to do so here. It maintains that typically an order is amended or revised because a stakeholder did not have an opportunity to contest the initial order or because there has been a change in circumstance. Neither of those situations applies here.

[21] According to the BC Tax Authority, Dynamite has provided no compelling justification for the amendment it seeks. It argues that the explanations Dynamite has provided demonstrate a complete lack of diligence that the Court should not endorse. Firstly, the wording of the Sales Tax Provision, which Dynamite chose to include in its application for the issuance of an initial order, is clear and unambiguous. The fact that the same wording is part of the Ontario Model and has been previously incorporated into orders issued in Quebec, confirms that it is not inconsistent with the objectives of the CCAA. Second, Dynamite was not only aware of the Stabilization Act, it benefitted from it. As a result, Dynamite knew or ought to have known the full impact of the Sales Tax Provision.

[22] Since Dynamite does not invoke new circumstances to justify its request, the BC Tax Authority argues that the Application amounts to a disguised appeal and should be dismissed. In support of this argument, it refers to the decision in *Conporec.*[8], where Justice Parent ruled that an application similar to the one at issue here, amounted to an appeal as it raised no new grounds. Justice Parent dismissed the application and leave to appeal was not granted.[9]

[23] In addition, the BC Tax Authority adds that Dynamite failed to act diligently even when it became clear that its interpretation or understanding of the Sales Tax Provision was incorrect. More specifically, Dynamite waited six months after receiving a request from the BC Tax Authority to pay Straddle Period Sales Taxes, before bringing the Application.

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8 *Conporec inc. (Arrangement relative à)*, 2008 QCCS 4813, par. 32.

9 *Parc industriel Laprade inc. c. Conporec inc.*, 2008 QCCA 2222.

[24] Finally, the BC Tax Authority argues that the proposed amendment is neither fair nor equitable and should not be granted where it causes harm to a third party. The Straddle Period Sales Taxes were collected by Dynamite, they have been claimed on the basis of orders validly issued by this Court and the BC Tax Authority should be entitled to receive that payment. If having to pay Straddle Period Sales Taxes makes it more difficult for Dynamite to craft a viable plan of arrangement – and the BC Tax Authority takes no position on that issue – this is entirely due to Dynamite's own lack of diligence. The Court should not allow Dynamite to correct its mistake at the expense of the BC Tax Authority.

[25] In the alternative, the BC Tax Authority submits that if an amendment is authorized, the Court should shorten the Straddle Period and provide that the Debtors shall remit "Sales Taxes accrued or collected prior to August 1st, 2020, but not required to be remitted until on or after" the Initial Order. In this way, the BC Tax Authority would effectively be on an equal footing with other provinces and would not be prejudiced by the generous deferral period provided for in the Stabilization Act.

THE COURT'S DECISION

[26] For the following reasons, the Court concludes that granting the Application is an appropriate use of its discretion under s. 11 CCAA.

[27] To begin with, Dynamite is acting in good faith. The drafting of the Sales Tax Provision did not reflect Dynamite's intentions or its objectives in launching the restructuring process and it now seeks to correct that situation. There is no evidence to suggest that Dynamite has derived any benefit from seeking to amend the Sales Tax Provision now as opposed to having adopted the proposed wording from the outset. On the contrary, it is quite clear to the Court that, given the opportunity to redo the application for the issuance of an initial order, Dynamite would have based the Sales Tax Provision on the Quebec Model.

[28] There is no dispute that the proposed amendment furthers the principal policy objective of the CCAA. Dynamite's ability to craft a viable plan of arrangement will be enhanced if it can make use of the funds that would otherwise be used to pay Straddle Period Sales Taxes, particularly if other provinces were eventually to bring a similar claim to that of the BC Tax Authority. In this respect, the amendment is consistent with the remedial purpose of the CCAA, which is to avoid "the social and economic losses resulting from liquidation of an insolvent company."[10]

[29] Sales taxes accrued or collected prior to the Initial Order benefit from no priority under the CCAA.[11] They are pre-filing claims and are generally paid as part of the plan

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[10] *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379, par. 70.

[11] Arts. 37 and 38 CCAA and *Métaux Kitco inc (Arrangement relatif à)*, 2016 QCCS 444, pars. 59-64, confirmed in 2017 QCCA 268.

of arrangement.[12] Exceptions to this rule should be construed narrowly and should only be made when they enhance the debtor's ability to carry on its business while working on a plan of arrangement.[13] This may have been the case in the two Quebec orders to which the Court was referred and which were based on the Ontario Model in regards to sales taxes.[14] At any rate, nothing in the evidence suggests that that is the case here.

[30] By treating Straddle Period Sales Taxes as unsecured claims, the proposed amendment will also ensure a more equitable distribution of Dynamite's assets, which is a key objective of the CCAA.[15]

[31] The BC Tax Authority argues that retroactively modifying a court order when there has been no change in circumstances amounts to an appeal and is an inappropriate use of the Court's discretion as was decided in *Conporec*. The Court does not share this view. The decision in *Conporec*, which was decided on its own set of facts, does not bind this Court. Furthermore, it should be noted that in her reasons for refusing to grant leave to appeal from that decision, Justice Thibault indicated that she was not convinced that the motions judge was correct in determining that an application to vary the initial order was not an appropriate remedy.[16] From the Court's perspective, the fact that there has been no significant change in circumstances since the Initial Order was rendered does not preclude a party from seeking to vary the order; it is rather a factor to be considered in the application of s. 11 CCAA. More specifically, it raises the issue of Dynamite's diligence in bringing the Application, which the Court will deal with next.

[32] There is no doubt that Dynamite could have avoided this issue altogether or, at the very least, have acted sooner to bring the Application. It is true that the CCAA proceedings were instituted in haste and that Dynamite management did not realize the consequences of the Sales Tax Provision or fully take account of the impact of the Stabilization Act on the amount of accrued sales tax. However, neither of these factors was beyond Dynamite's control.

[33] Does this mean that the Application should be dismissed for lack of due diligence? The Court does not think so.

[34] In determining whether or not it is appropriate to exercise its discretion under s. 11 CCAA, the issue of due diligence should not be analysed in a vacuum. It is

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12 Art. 19 CCAA.

13 *Soccer Express Trading Corp. Re.* 2020 BCSC 749, par. 83.

14 In re: *Le Groupe SMI Inc.* 500-11-055122-184, C.S. Mtl. (Corriveau, J.), August 24, 2018; *In re : Nemaska Lithium Inc.*, 500-11-057716-199, C.S. Mtl. (Gouin, J.), December 23, 2019. It should be noted that no detailed reasons were provided in either of those cases.

15 *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379, par. 22; *Métaux Kitco inc (Arrangement relatif à)*, 2016 QCCS 444, pars. 48 and 50, confirmed in 2017 QCCA 268.

16 *Parc industriel Laprade inc. c. Conporec inc.*, 2008 QCCA 2222, par. 32.

necessary to consider the consequences of Dynamite's failure to act with greater diligence.

[35] The BC Tax Authority argues that it is harmed by the proposed amendment because it will not receive the sales taxes to which it is entitled but will instead have to claim them as an unsecured creditor. In its view, a court order rendered in the context of insolvency proceedings should not be modified to the detriment of a good faith creditor.

[36] The Court is sympathetic to the position of the BC Tax Authority. It too has acted in good faith and, based on the Initial Order and the ARIO, had every reason to expect that it would be paid Straddle Period Sales Taxes. However, retroactively modifying the Initial Order puts the BC Tax Authority in precisely the same position it would have been in had the proposed wording of the Sales Tax Provision been included from the outset. This is not a situation where a third party relied in good faith on the wording of a court order and will be unable to unwind the harm that it will suffer if the order is retroactively modified.[17] The BC Tax Authority has not taken any decisions or made any commitments on the basis of the current wording. Furthermore, the Sales Tax Provision was not the result of an agreement that is now being reneged on. In short, even though Dynamite could have acted more diligently, the Court does not agree that the proposed amendment prejudices the BC Tax Authority or any other creditor and concludes that the criteria of due diligence has been satisfied.

[37] The Court recognizes that the Straddle Period Sales Taxes owing to the BC Tax Authority are higher than they would have been if not for the Stabilization Act. In a sense, it is true to say that BC has been harmed by its own generosity. By suggesting an alternative cut-off date of August 1, 2020 for Straddle Period Taxes (i.e. roughly five weeks before the Initial Order was issued), the BC Tax Authority seeks to minimize the impact of the proposed amendment. This modification would level the field between BC and the other provinces which either did not extend the period in which sales taxes were to be paid or granted a shorter extension than that which was provided for in the Stabilization Act.

[38] The Court does not agree that the alternative conclusion proposed by the BC Tax Authority would be an appropriate use of its discretion. Firstly, it is important to remember that while the Stabilization Act puts BC at a relative disadvantage, it is not the only province that is owed Straddle Period Sales Taxes. As was indicated earlier, over and the above claim of the BC Tax Authority, there remains $3.5 million owing to other provinces. Furthermore, as the Monitor noted in his testimony, the Stabilization

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[17] This was the case in *White Birch Paper Holding Company (Arrangement relative à)*, 2012 QCCS 1679, pars. 223 and 236. See also *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)*, 2013 QCCS 5762 (CanLII), par. 91-93; Although the context is different, the analysis of Justice Morawetz in *Target Canada Co. (Re)*, 2016 ONSC 316, is also helpful in appreciating the distinction between an order that has been the subject of negotiation or which has been relied on by creditors and an order, such as the one at issue here, which has not.

Act has the same impact vis-à-vis the BC Tax Authority as favourable credit terms might have on a supplier. The claim of a supplier who gave a debtor 60 days in which to pay for goods sold may be higher than its competitor who gave only 30 day terms. The result may be unfortunate but it is inevitable that when an initial CCAA order is rendered, the impact on the creditors will vary depending on the status of their relationship with the debtor. The alternative solution proposed would place the BC Tax Authority on an equal footing with the other provinces but would provide it with an advantage over other unsecured creditors and would allow for partial payment of a pre-filing debt. Neither of these outcomes is warranted under the circumstances.

[39] That said, the Court agrees with the BC Tax Authority that the Application should not be granted with costs. The situation which led to the Application was not of its doing. It should not be condemned to costs for having relied on the terms of a court order even though those terms will now be modified.

FOR THESE REASONS, THE COURT:

[40] **GRANTS** the Application to Amend the Amended and Restated Initial Order with respect to the British Columbia Provincial Sales Tax as per the Re-Amended and Restated Initial Order signed this day;

[41] **AUTHORIZES** the following amendment to paragraph 22 (b) of the Initial Order dated September 8, 2020 (as amended and restated on September 18, 2020);

> [22] ORDERS that the Debtors shall remit, in accordance with legal requirements, or pay:
>
> (b) all goods and services, harmonized sales or other applicable sales taxes (collectively "Sales Taxes" required to be remitted by the Debtors and in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order.

[42] **WITHOUT JUDICIAL COSTS.**

PETER KALICHMAN, J.S.C.

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Date of hearing: April 19, 2021

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

Court File No: CV-25-00734339-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK HOLDINGS INC., BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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