

Estate/Court File No.: BK-31-3050418



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE) MONDAY, THE 4th DAY
JUSTICE OSBORNE) OF MARCH, 2024.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF THE BODY SHOP CANADA LIMITED, IN THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by The Body Shop Canada Limited (the "**Company**") for an order, *inter alia*: (a) expanding the stay of proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the "**BIA**") by ordering the continuation of services and certain other protections in respect of the Company; (b) approving the Administration Charge (as defined below); (c) approving the D&O Charge (as defined below); (d) directing all persons who have in their possession and property, books or documents of the Company to deliver such books or documents or property to the Company, and (e) granting certain other relief was heard this day by videoconference.

ON READING the affidavit of Jordan Searle sworn on March 1, 2024, the First Report (the "**First Report**") of Alvarez & Marsal Canada Inc., in its capacity as proposal trustee of the Company (the "**Proposal Trustee**") filed, on being advised that the Company filed a notice of intention to make a proposal pursuant to section 50.4(1) of the BIA on March 1, 2024 (the "**NOI Filing Date**"), and on hearing the submissions of respective counsel for the Company, the Proposal Trustee, certain Landlords (defined below), including, Crombie Property Holdings

Limited, Oxford Properties Group and its affiliates, and The Cadillac Fairview Corporation Limited and its affiliates, who have consented to the rent payment terms set out herein on an exceptional basis, and such other counsel as were present as shown on the Participant Information Form, no one else appearing although duly served:

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record and First Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Searle Affidavit.

EXTENSION OF TIME TO FILE A PROPOSAL

3. **THIS COURT ORDERS** that pursuant to 50.4(9) of the BIA, the time for the Company to file a proposal is hereby extended to April 16, 2024 (the “**Extension Date**”).

RESTRUCTURING

4. **THIS COURT ORDERS** the Company shall have the right to:
 - (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate; and
 - (b) refuse to honour any gift cards, existing return policies, refunds or discounts or other similar customer programs or obligations.

NO INTERFERENCE WITH RIGHTS

5. **THIS COURT ORDERS** that until the Extension Date (including as such date may be extended pursuant to section 50.4(9) of the BIA, the “**Proposal Outside Date**”), no individual, firm, corporation, governmental body or agency, or any other entities, including the UK Administrator or the UK Parent (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence, permit, lease, purchase order or other arrangement, whether written or oral (each, an “**Agreement**”), in favour of or held by the

Company, except with the written consent of the Company and the Proposal Trustee, or leave of this Court.

6. **THIS COURT ORDERS** that any Person who has, or is believed or suspected to have, in their possession or power any of the property of the Company, or any book, document or paper of any kind relating in whole or in part to the Company, shall promptly, upon the request of the Company and the Proposal Trustee, be required to produce the book, document or paper for the information of the Company, or to deliver to the Company any property of the Company in their possession.

7. **THIS COURT ORDERS** that no Person, including HSBC Bank Canada, shall disburse, remit, transfer or otherwise pay any funds from the bank accounts held at HSBC Bank Canada in the name of the Company, except with the prior written consent of the Company or the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

8. **THIS COURT ORDERS** that until the expiry of the Proposal Outside Date, all Persons having an Agreement or arrangement with the Company or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, banking services, payroll services, merchant and credit card processing services, insurance, transportation services, utility or other services to the Company, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Company, and that the Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Company in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Company and the Proposal Trustee, or as may be ordered by this Court.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a "**Landlord**") under the lease or as otherwise may be negotiated between the Company and the

Landlord from time to time ("**Rent**"), (a) for the period commencing from and including the NOI Filing Date until March 31, 2024, four times monthly in equal payments on the first business day of each week, in advance (but not in arrears), and (b) for the period commencing April 1, 2024 until the Extension Date, as such date may further extended pursuant to an Order of this Court, twice monthly in equal payments on the first and fifteenth day of each month, in each case, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Proposal Trustee, at such other intervals and dates as may be agreed to between the Company and the Landlord. On the date of the first of such payments following the date of this Order, any Rent relating to the period commencing from and including the NOI Filing Date shall also be paid.

10. **THIS COURT ORDERS** that no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the NOI Filing Date, nor shall any Person be under any obligation on or after the NOI Filing Date to advance or re-advance any monies or otherwise extend any credit to the Company.

ADMINISTRATION CHARGE

11. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Restructuring Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the NOI Filing Date, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Restructuring Professionals on a weekly basis, or as they may otherwise agree, and is hereby authorized to pay or to have paid retainers to the Restructuring Professionals as security for the payment of their respective fees and disbursements outstanding from time to time.

12. **THIS COURT ORDERS** that the Restructuring Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$700,000, as security for payment of their respective professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order, in respect of this proceeding. The Administration Charge shall have the priority set out in paragraphs 17 and 19 hereof.

INDEMNIFICATIONS AND CHARGE

13. **THIS COURT ORDERS** that the Company shall indemnify its directors and its officers against obligations and liabilities that they may incur as a director or officer of the Company after the NOI Filing Date, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

14. **THIS COURT ORDERS** that the director and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,100,000, as security for the indemnity provided in paragraph 13 of this Order. The D&O Charge shall have the priority set out in paragraphs 17 and 19 herein.

15. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and (b) the Company's director and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors and officers insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 13 of this Order.

LANDLORD CHARGE

16. **THIS COURT ORDERS** that in respect of each real property lease, until the earlier of (a) April 16, 2024, or (ii) the effective date of any disclaimer of the lease pursuant to section 65.2 of the BIA (i.e. 30 days after the notice is sent in accordance with the BIA) (the "**Applicable Period**"), the Landlord under such lease shall be entitled to the benefit of and is hereby granted a charge (the "**Landlord Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not, in the case of the Landlord, exceed an aggregate amount equal to 50% of the monthly rent set under such lease with the Company and the Landlord, as security for payment of the Landlord's rent during the Applicable Period. The Landlord Charge shall have the priority set out in paragraphs 17 and 19 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

17. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge (collectively, the “**Charges**”), as among them, with respect to the Property shall be as follows:

First – Administration Charge

Second – D&O Charge

Third – Landlord Charge

18. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

19. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including any statutory, deemed or constructive trust), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, notwithstanding the order of perfection or attachment, provided that the Charges shall rank subordinate to the Encumbrances evidenced by registrations listed on Schedule “A” to this Order.

20. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

21. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order subsequently made; (c) the provisions of any federal or provincial statutes; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances,

contained in any Agreement which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Company pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

22. **THIS COURT ORDERS** that any Charge created by this Order over a lease of real property in Canada shall only be an Encumbrance in the Company's interest in such real property lease.

SERVICE OF DOCUMENTS

23. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL www.alvarezandmarsal.com/thebodyshop

24. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Company's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed

to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Company and the Proposal Trustee and their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, email or facsimile transmission to the Company's creditors or other interested parties at their respective addresses (including email addresses) as last shown on the records of the Company and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of transmission thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Time; (b) the next business day following the date of forwarding or transmission thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

GENERAL

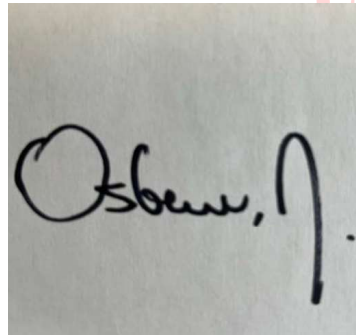
26. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, agency or regulatory or administrative bodies, having jurisdiction in Canada, the United States of America or any other jurisdiction, to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, agencies and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered

to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order without the need for entry or filing.

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be "Osben, J." with a stylized flourish at the end.

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**SCHEDULE A
PPSA REGISTRATIONS**

Secured Party	Jurisdiction	Registration Number
Enterprise Fleet Management Canada, Inc.	British Columbia	625741P
	Alberta	20051800301
	Nova Scotia	37880374
	Ontario	20231218 1404 1462 0081
		20200225 1401 1462 3626
		20230515 1405 1462 5479
		20230529 1406 1462 1279
		20230529 1406 1462 1280

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF THE BODY SHOP CANADA LIMITED, IN THE CITY
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Estate/Court File No.: 31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**
Proceeding commenced at Toronto

ORDER

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