

TAB 1

**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 PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c. C-36, AS AMENDED

APPLICANT

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on February 18, 2020 at the Court House, 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicant does

not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 18, 2020

Local Registrar

Address of court office: 330 University Avenue
Toronto, Ontario M5G 1R7

TO: SERVICE LIST

APPLICATION

1. Pier 1 Imports, Inc. (“**Applicant**”), in its capacity as a foreign representative of itself as well as Pier 1 Services Company (“**Pier 1 Services**”), Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Imports (U.S.) Inc. (“**Pier 1 Retail**”), PIR Trading, Inc. and Pier 1 Value Services, LLC (collectively, the “**Chapter 11 Debtors**” or “**Pier 1**”), makes this Application seeking, among other things, the following relief:

- (a) Appointing the Applicant as the foreign representative (in such capacity, the “**Foreign Representative**”) of the Chapter 11 Debtors as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”);
- (b) Declaring that the centre of main interest for each of the Chapter 11 Debtors is the United States of America and recognizing the Chapter 11 cases (the “**Chapter 11 Cases**”) commenced in respect of the Chapter 11 Debtors in the United States Bankruptcy Court for the Eastern District of Virginia (the “**U.S. Court**”) as a “foreign main proceeding” as defined in section 45 of the CCAA;
- (c) Granting a stay of proceedings in respect of the Chapter 11 Debtors until otherwise ordered by this Court;
- (d) Requiring the Information Officer to publish notice of this proceeding as required by section 53(b) of the CCAA;
- (e) Recognizing and enforcing certain of the First Day Orders (as defined below) of the U.S. Court;

- (f) Granting a stay of proceedings (the “**Requested Stay**”), as further described below, in respect of the Chapter 11 Debtors and the directors and officers of the Chapter 11 Debtors;
- (g) Appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in respect of these proceedings; and
- (h) Granting the Administration Charge, Directors’ Charge and DIP Charge (each as defined below) and affording them the priority set out below; and
- (i) Such further and other relief as this Honourable Court deems just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) Pier 1 is a leading retailer of unique home décor and accessories, including furniture, candles, housewares, gifts, and seasonal products.
- (b) Pier 1 is headquartered in Fort Worth, Texas. It operates approximately 923 retail stores across the United States and Canada, as well as an online store, and has approximately 17,000 non-seasonal employees. Approximately 65 of these stores and 1,024 of these employees are located in Canada.
- (c) The Applicant is the ultimate parent company of the Chapter 11 Debtors. It was incorporated as a Delaware corporation in 1986, and is publicly listed on the New York stock exchange. The other Chapter 11 Debtors are all U.S. corporations that operate on an integrated basis, and are either direct or indirect wholly-owned subsidiaries of the Applicant.

- (d) Pier 1 does not maintain any separate Canadian legal entity for its Canadian operations. Pier 1 Retail holds the leases for and operates all of Pier 1's retail stores and employs all Pier 1 employees in Canada. Its Canadian operations are a Canadian branch of Pier 1 Retail for tax purposes (the "**Canadian Branch**").
- (e) The Canadian Branch is fully integrated with and entirely dependant on Pier 1's U.S. operations. Among other things:
 - (i) the Canadian Branch is almost wholly reliant on U.S. managerial services that are provided by Pier 1 Services from the head office in Fort Worth, Texas for overhead services, including accounting, finance, logistics, marketing, human resources, IT, risk management and other functions;
 - (ii) all directors and officers of Pier 1 Retail are located in the United States;
 - (iii) all inventory is procured by Pier 1 Services;
 - (iv) all intellectual property is owned by Pier 1 Services or Pier 1 Licensing, Inc., and is licensed to Pier 1 Retail through shared services arrangements;
 - (v) the Chapter 11 Debtors operate an integrated, centralized cash management system (the "**Cash Management System**") to collect, transfer and disburse funds generated by their operations. The Cash Management System is managed in the United States by Pier 1's treasury and accounting groups.
- (f) Pier 1 is insolvent.
- (g) As a result of a challenging retail environment and certain strategic missteps under past management, Pier 1 has experienced a decline in its performance, including

substantial declines in revenue, operating losses and net losses, which have resulted in significant liquidity pressures.

- (h) Over the past year, Pier 1 has taken comprehensive steps to address the challenges it faces, including a renewed focus on its brand and core group of purchasers, realignment of its merchandising strategy, and reshaping its far too expensive store footprint. Pier 1 intends to continue implementing its turnaround plan during the pendency of the Chapter 11 Cases and these recognition proceedings.
- (i) As a result of an extensive analysis of the financial performance of each store, Pier 1 has concluded that it must close up to 450 stores in any go-forward scenario, and has decided to close all its Canadian locations by the end of March 2020 as part of its overall restructuring.
- (j) The Chapter 11 Debtors commenced the Chapter 11 Cases to implement a reorganization supported by a majority of their prepetition term loan lenders (the “**Consenting Term Lenders**”). As contemplated in the Plan Support Agreement with the Consenting Term Loan Lenders and the related Bidding Procedures, the Chapter 11 Debtors will continue an ongoing broad marketing effort seeking any manner of offers for their business and assets, and quickly move to confirm a Chapter 11 plan with the goal of completing their Chapter 11 Cases promptly.

The Chapter 11 Cases each constitute a “Foreign Main Proceeding” in which the Applicant is the “Foreign Representative”

- (k) The Chapter 11 Debtors are all currently parties to the Chapter 11 Cases commenced pursuant to voluntary petitions for relief (the “**Petitions**”) filed in the

U.S. Court under Chapter 11 of the U.S. Bankruptcy Code on February 17, 2020 (the “**Petition Date**”).

- (l) The Chapter 11 Cases constitute “foreign proceedings” under section 45(1) of the CCAA.
- (m) The Applicant has been appointed as “foreign representative” of all of the Chapter 11 Debtors in the Chapter 11 Cases and, as such, falls within the definition of “foreign representative” under section 45(1) of the CCAA.
- (n) Pursuant to section 46(1) of the CCAA, the Foreign Representative may apply to this Court for recognition of the Chapter 11 Cases.
- (o) Pursuant to subsection 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Cases if it is satisfied that the application relates to a “foreign proceeding” and that the Applicant is a “foreign representative”.
- (p) Each of the Chapter 11 Debtors’ centre of main interest is located in the United States and, as such, the Chapter 11 Cases are a “foreign main proceeding” under section 45(1) of the CCAA.

The Requested Stay is appropriate in the circumstances

- (q) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit or proceeding against the Chapter 11 Debtors, subject to any terms and conditions it considers appropriate.

- (r) The Requested Stay that, among other things, prohibits (i) the commencement or furtherance of any action, suit or proceeding against the Chapter 11 Debtors, (ii) the exercise of any rights or remedies against the Chapter 11 Debtors subject to certain exceptions, and (iii) any person from discounting, failing to honour, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, licence or permit of the Chapter 11 Debtors.

- (s) The Requested Stay is essential to protect the efforts of the Chapter 11 Debtors to proceed with the Chapter 11 Cases, to pursue a restructuring transaction and to wind down their Canadian operations.

Recognition of the First Day Orders is appropriate

- (t) The Chapter 11 Debtors have filed the following first day motions (the “**First Day Motions**”) with the U.S. Court:
 - (i) Foreign Representative Motion;

 - (ii) Joint Administration Motion;

 - (iii) Case Management Motion;

 - (iv) Creditor Matrix / SOFA Extension Motion;

 - (v) Motion to Expedite Hearing;

 - (vi) Cash Management Motion;

 - (vii) Wages Motion;

- (viii) Insurance Motion;
 - (ix) Lienholders Motion;
 - (x) Utilities Motion;
 - (xi) Customer Programs Motions;
 - (xii) Taxes Motion;
 - (xiii) Sell-Down Motion;
 - (xiv) Claims Agent Retention Motion;
 - (xv) NOL Motion;
 - (xvi) Store Closing Motion;
 - (xvii) Lease Rejection Motion;
 - (xviii) DIP Motion; and
 - (xix) Bid Procedures Motion.
- (u) The Chapter 11 Debtors expect that the U.S. Court will enter interim and / or final orders in respect of the First Day Motions (the “**First Day Orders**”) in the near future.
- (v) For the purposes of ensuring that all interested parties cooperate in the efforts of the Chapter 11 Debtors, the Applicant requests that the terms of certain First Day Orders to be specified be recognized by this Court pursuant to section 49 of the CCAA.

Recognition of the Interim DIP Order is Appropriate

- (w) The Chapter 11 Debtors have negotiated post petition financing pursuant to a senior secured asset-based credit facility on a super-priority basis (the “**DIP Senior Credit Facility**”), in the aggregate principal amount of up to \$256 million.
- (x) The Interim DIP Order is one of the First Day Orders and, among other things, authorizes the Chapter 11 Debtors to enter into the DIP Senior Credit Facility.
- (y) The DIP Senior Credit Facility is the result of collaborative and intense negotiations and it represents the best available option under the circumstances.
- (z) The Chapter 11 Debtors are required to obtain an order of this Court recognizing and giving effect to the Interim DIP Order within [*7] business days of the day that the Interim DIP Order is entered by the U.S. Court. Moreover, the Chapter 11 Debtors cannot access DIP funding until the Interim DIP Order is recognized in Canada.
- (aa) Without immediate access to the DIP Senior Credit Facility, the Chapter 11 Debtors would be unable to operate their business and maintain business relationships with their vendors, suppliers and customers, pay their employees or otherwise finance their operations, nor to pay Chapter 11 related costs and fees, and their ability to preserve and maximize the value of their assets would be irreparably harmed.

Recognition of the Interim Store Closing Sale Order is Appropriate

- (bb) The Interim Store Closing Sale Order is one of the First Day Orders and, among other things, authorizes the Chapter 11 Debtors to commence or continue store

closing sales (the “**Sale**”) at their Canadian retail stores pursuant to the Store Closing Program Agreement dated as of January 28, 2009 (as amended, the “**Consulting Agreement**”) by and between Pier 1 Retail and Gordon Brothers Retail Partners, LLC (the “**Consultant**”).

- (cc) As noted above, the Chapter 11 Debtors and their professional advisors have conducted a detailed analysis of the financial performance of every store and concluded that, in any go-forward scenario, the Chapter 11 Debtors must close up to 450 of their stores, including all of their Canadian stores.
- (dd) The Chapter 11 Debtors concluded in their business judgment that retaining the Consultant was necessary for a seamless and efficient large-scale store closing process, and to maximize the value of the saleable inventory located in the closing stores (the “**Merchandise**”), and the associated furniture, fixtures and equipment (the “**FF&E**” and, with the Merchandise, the “**Store Closure Assets**”), and that the Consultant is the person most qualified and capable of performing the required tasks in a value-maximizing manner.
- (ee) The Sale is expected to generate significant recoveries for the benefit of the Chapter 11 Debtors’ stakeholders.
- (ff) The Sale at the Canadian stores will be conducted in accordance with sale guidelines (the “**Canadian Sale Guidelines**”) that are consistent with sales guidelines approved by Canadian courts in recent Canadian retail store liquidations.

- (gg) The terms of the Consulting Agreement, the process for liquidating the Merchandise and FF&E, and the transactions contemplated under the Consulting Agreement and the Canadian Sale Guidelines are all fair and reasonable.

The Administration Charge, the Directors' Charge, and the DIP Charge are Necessary

- (hh) The Applicant seeks the following charges over the Chapter 11 Debtors' property located in Canada in the following priority:

(i) A charge for the benefit of Canadian counsel of the Chapter 11 debtors, the proposed Information Officer, and the Information Officer's counsel in the amount of CDN \$350,000 (the "**Administration Charge**");

(ii) A charge in favour of the Chapter 11 Debtors director and officers in the amount of CDN \$2 million (the "**Directors' Charge**");

(iii) A charge securing the amount actually borrowed by the Chapter 11 Debtors under the DIP Senior Secured Facility in the amount of \$256 million (the "**DIP Charge**").

- (ii) The size of the Administration Charge and of the Directors Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings.

The Appointment of an Information Officer is Appropriate

- (jj) A&M has consented to act as the Information Officer in the within proceeding, and will assist the Court and Canadian stakeholders of the Chapter 11 Debtors.

General

- (kk) The CCAA, including Part IV; and
- (ll) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) Affidavit of Robert J. Riesbeck sworn February 18, 2020;
- (b) Affidavit of Graeme Rotrand sworn February 18, 2020;
- (c) Consent of A&M to act as the Information Officer, to be filed;
- (d) Pre-filing report of A&M in its capacity as proposed Information Officer, to be filed; and
- (e) Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 18, 2020

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Michael De Lellis (LSO# 48038U)

Tel: 416.862.5672
Fax: 416.862.6666

Lawyers for the Applicant

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

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.0900
mwasserman@osler.com

John A. MacDonald (LSO# 25884R)
Tel: 416.862.5672
jmacdonald@osler.com

Michael De Lellis (LSO# 48038U)
Tel: 416.862.5997
mdelellis@osler.com

Fax: 416.862.6666

Matter No: 1201200