SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: **CV-24-00717178-00CL** **DATE:** **26-MAR-2024**

NO. ON LIST: **4**

TITLE OF PROCEEDING: **IN THE MATTER OF CURO CANADA CORP. AND LENDDIRECT CORP.**

BEFORE: **OSBORNE, J.**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Ryan Jacobs Jane Dietrich Natalie Levine Alec Hoy	Lawyer for the Proposed Foreign Representative	rjacobs@cassels.com jdietrich@cassels.com nlevine@cassels.com ahoy@cassels.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Aubrey Kauffman	WF MARLIE 2018-1, LTD. BY ITS ADMINISTRATIVE AGENT, WATERFALL MANAGEMENT, LLC	akauffman@fasken.com
Jamie Ernst Sean Zweig Joshua Foster	Proposed Information Officer, FTI CONSULTING CANADA INC.	ernstj@bennettjones.com zweigs@bennettjones.com fosterj@bennettjones.com
Tracy Sandler Martino Calvaruso	ATALAYA ASSET INCOME FUND PARALLEL 345 LP, LENDER UNDER CANADA SPV II FACILITY	tsandler@osler.com mcalvaruso@osler.com

ENDORSEMENT OF JUSTICE OSBORNE:

[1] This is the comeback hearing in respect of this foreign recognition proceeding under the CCAA that was first, returnable before me yesterday, March 25, 2024, at which time I granted relief in the form of an interim stay (the "Interim Stay Order").

[2] The background to and context for this Application are fully set out in the Endorsement I released yesterday. That Endorsement is incorporated by reference hereto. Defined terms have the same meaning. For convenience, however, I have repeated some of the content of my Endorsement dated yesterday in this Endorsement to explain the nature of the relief sought and granted, and because certain of that content is also relevant to the relief sought and granted today.

[3] As reflected in yesterday's Endorsement, the hearing before the U.S. Bankruptcy Court was continuing at the time the matter was before me. Since the conclusion of the hearing in this Court yesterday, the U.S. Bankruptcy Court has issued various First Day Orders, with the result that the Applicant seeks further relief in this Court today.

[4] The Applicant, CURO Group Holdings Corp. ("CURO Parent"), in its capacity as the Proposed Foreign Representative of itself, CURO Canada Corp. and LendDirect, seeks foreign recognition and related relief pursuant to Part IV of the *Companies' Creditors Arrangement Act* ("*CCAA*") and section 106 of the *Courts of Justice Act* ("*CJA*"). CURO Canada and LendDirect are referred to below as the "Canadian Debtors".

[5] Yesterday, on March 25, 2024, CURO Parent, the Canadian Debtors, and certain other affiliates (the "Debtors") filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "U.S. Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of Texas (the "U.S. Bankruptcy Court") to commence insolvency proceedings (the "Chapter 11 Cases").

[6] The Debtors are part of a group of companies (together with their non-Debtor affiliates, the "Company") that offer a broad range of direct-to-consumer finance products to customers in the United States (the "U.S.") and Canada. Those products include installment loans, revolving line-of-credit loans, single-pay loans and insurance products, and other financial products such as optional credit protection, cheque cashing, money transfer services, car club, and other related memberships (the "Consumer Lending Services").

[7] In Canada, the consumer loan services, ancillary insurance and other financial products are offered through "CashMoney" brand at retail stores and online, and through the "LendDirect" brand online.

[8] The Applicant relies on the Affidavit of Douglas D. Clark sworn on March 25, 2024 together with Exhibits thereto (the "Clark Affidavit"), the Affidavit and Second Affidavit of Alec Hoy sworn in this proceeding, and the Pre-Filing Report of the proposed Information Officer, FTI Consulting Canada Inc. ("FTI"). Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated.

[9] The Application by the Proposed Foreign Representative (which, by its nature is broader than the requests for relief sought today) seeks Orders in stages pursuant to sections 46 to 49 of the *CCAA* for, among other things:

a. the Interim Stay Order staying proceedings against the Canadian Debtors pending the determination of the relief set out below, which Interim Stay Order I granted yesterday;

b. an order (the "Initial Recognition Order"): (i) recognizing CURO Parent as the foreign representative in respect of the Chapter 11 Cases; (ii) finding that the centre of main interests for the Canadian Debtors is the U.S.; and (iii) recognizing the Canadian Debtors' Chapter 11 Cases as foreign main proceedings; and

c. an order (the "Supplemental Order"): (i) recognizing certain orders of the U.S. Bankruptcy Court (the "First Day Orders"); (ii) granting a stay of proceedings in respect of the Canadian Debtors and their directors and officers since the Interim Stay Order would be of no further force or effect; (iii) appointing FTI Consulting Canada Inc. ("FTI") as Information Officer (the "Information Officer"); and (iv) granting the Administration Charge, the D&O Charge and the Securitization Charges (each as defined below).

[10] Now, the First Day Orders have been formally issued by the U.S. Bankruptcy Court with the result that the Proposed Foreign Representative returns to Court today to seek the Initial Recognition Order and the Supplemental Order.

[11] In my Endorsement of yesterday, I set out the nature of the business and the structure of the relevant Securitization Facilities and related credit facilities that are relevant to this Application. I explained the relevance of the Restructuring Support Agreement and the integration of the Canadian operations with those in the United States.

[12] Further, and specifically at paragraphs 32 – 41, I set out my reasons why I was satisfied that Ontario is a proper jurisdiction for these recognition proceedings. While that is obviously relevant to the relief granted today, in my view, it was also relevant to the Interim Stay Order granted yesterday. I further set out my reasons why I was satisfied that the limited interim stay relief sought. Yesterday was also appropriate.

[13] Given that the First Day Orders have now been made by the US Bankruptcy Court, the Applicant returns for the "second stage" of relief sought in the Application, and in particular, recognition and supplementary relief.

[14] I am satisfied that the Chapter 11 Cases are Foreign Main Proceedings. Part IV of the *CCAA* establishes the process for addressing the administration of cross-border insolvencies to promote cooperation and coordination with foreign courts (s. 44).

[15] Hainey, J. of this Court summarized the principles underlying such proceedings in *Hollander Sleep Products, LLC et al. Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238 at para 41 ("*Hollander*"):

> [41] The central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.
>
> [42] Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general uncertainty. Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location.

[16] I am satisfied that it is appropriate to recognize the Canadian Debtors' Chapter 11 Cases as Foreign Main Proceedings.

[17] First in this regard, the relevant provisions of the *CCAA* have been satisfied. Pursuant to subsection 46(1) of the *CCAA*, a foreign representative may apply to the Court for recognition of a foreign proceeding, in respect of which that person is a foreign representative (s.46(1)).

[18] Subsection 47(1) of the *CCAA* provides that the Court shall make an order recognizing a foreign insolvency proceeding if it is satisfied the following two requirements are met:

a. the application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the *CCAA*; and

b. the applicant is a "foreign representative" within the meaning of the *CCAA* in respect of that foreign proceeding.

[19] Proceedings under the U.S. Bankruptcy Code are consistently recognized by Canadian courts to satisfy the definition of "foreign proceeding" under subsection 45(1) of the *CCAA: CCAA*, s. 45(1); *Hollander* at para 27; *Payless Holdings LLC, (Re)*, 2017 ONSC 2242 at para 22; *Zochem Inc. (Re)*, 2016 ONSC 958 at para 20 ("*Zochem*").

[20] A "foreign representative" is a person who is authorized to: (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding. The Proposed Foreign Representative has now obtained an order from the U.S. Bankruptcy Court declaring CURO Parent as the Foreign Representative for purposes of the Chapter 11 Cases. Accordingly, the requirements for recognition of the Canadian Debtors' Chapter 11 Cases as a "foreign proceeding" pursuant to section 47 of the *CCAA* have been satisfied, and the Chapter 11 Cases should be recognized as foreign proceedings.

[21] Second, the Canadian Debtors' Chapter 11 Cases are Foreign Main Proceedings, since the Canadian Debtors' centre of main interest ("COMI") is in the United States.

[22] Pursuant to subsection 47(2) of the *CCAA*, if the Court grants an order under subsection 47(1) it is required to specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding." If the Court recognizes a foreign proceeding as a "foreign main proceeding", subsection 48(1) of the *CCAA* provides for an automatic stay against the debtor in Canada.

[23] Subsection 45(1) of the *CCAA* provides that a "foreign main proceeding" is a foreign proceeding in a jurisdiction where the debtor company has its COMI. Subsection 45(2) provides that, absent evidence to the contrary, a debtor's COMI is deemed to be the location of its registered office. However, this is a rebuttable presumption and the determination of COMI is substantive, rather than technical: *CHC Group Ltd. (Re),* 2016 BCSC 2623 at para 9.

[24] Where it is necessary to go beyond the presumption under subsection 45(2), as it is here, Courts have found the COMI to be where: (i) the location is readily ascertainable by creditors; (ii) the location of the debtor's principal assets or operations; and (iii) the location where the management of the debtor takes place: *Zochem*, at para. 22.

[25] In addition to those primary considerations, Canadian courts have also considered the following factors:

a. the location where corporate decisions are made;

b. the location of employee administrations, including human resource functions;

c. the location of the company's marketing and communication functions;

d. whether the enterprise is managed on a consolidated basis;

e. the extent of integration of an enterprise's international operations;

f. the centre of an enterprise's corporate, banking, strategic and management functions;

g. the existence of shared management within entities and in an organization;

h. the location where cash management and accounting functions are overseen;

i. the location where pricing decisions and new business development initiatives are created; and

j. the location an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

See: *In The Matter of Voyager Digital Ltd*., 2022 ONSC 4553 at para 19; *Massachusetts Elephant & Castle Group, Inc. (Re)*, 2011 ONSC 4201 at paras 26-31.

[26] I am satisfied that notwithstanding that the registered offices of CURO Canada and LendDirect are a single store location in Ontario and a law firm in Alberta, respectively, the COMI for each entity is in the U.S. All executive and management level decision making for the company is made by management and leadership in the U.S. The Canadian Debtors have no Canadian head office and rely on back-office service support provided in the U.S. The Canadian Debtors are unable to operate independently of that support. Oversight of cash management and accounting functions, the seat of the treasury management, supervision of human resources, legal and corporate development all take place in the U.S.

[27] The granting of an order recognizing the Chapter 11 Cases as a foreign main proceeding under subsection 47(2) of the *CCAA* is appropriate in the circumstances as: (i) the Canadian SPV Lenders, being the principal creditors of the Canadian Debtors, are U.S.-based entities whose address for services is located in the U.S.; (ii) the Canadian Debtors' operations are deeply interconnected with the operations of the U.S.-based Debtors; (iii) the Canadian Debtors are governed from a strategic and management perspective out of the U.S.; and (iv) coordination of the insolvency proceedings in the U.S. and Canada supports the equal and fair treatment of stakeholders.

[28] Third, I am satisfied that the Initial Recognition Order and Supplemental Order should be granted.

[29] Subsection 48(1) of the *CCAA* provides that on making an order recognizing a foreign proceeding specified by the court as a "foreign main proceeding", the Court is required to grant certain mandatory relief, including a limited stay of proceedings.

[30] The Initial Recognition Order sought by the Proposed Foreign Representative provides for all the relief required under section 48 and is consistent with the Model *CCAA* Initial Recognition Order (Foreign Main Proceeding) of the Commercial List.

[31] Section 49 of the *CCAA* provides that, if an order recognizing a foreign proceeding is made, this Court has broad discretion to make any order it considers appropriate where it is satisfied that the order is necessary for the protection of the debtor company's property or the interests of creditors. The Court may make such orders on any terms and conditions it considers appropriate in the circumstances.

[32] If an order recognizing a foreign proceeding is made, subsection 52(1) of the *CCAA* requires that the Court "cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding."

[33] Considering that requirement and the circumstances facing the Canadian Debtors, the relief requested in the proposed Supplemental Order, including recognition of the First Day Orders and appointment of FTI as Information Officer, is appropriate.

[34] I am also satisfied that Recognition of the First Day Orders is appropriate. The Proposed Foreign Representative is seeking an order recognizing and giving effect in Canada to the First Day Orders set out in the Clark Affidavit at paragraph 87, with the exceptions, as noted in the motion materials, given that one order relating to the Disclosure Statement has not yet been addressed by the U.S. Bankruptcy Court, and other orders have been granted but not yet issued. The Applicant may seek recognition of those orders (i.e., relating to critical vendor claims, future utility services and Combined Disclosure Statement Approval) as necessary at a later date.

[35] The relief sought today includes: (a) authorizing CURO Parent in its capacity as Foreign Representative to seek recognition of the Canadian Debtors' Chapter 11 Cases in Canada; (b) authorizing the Debtors to pay pre-filing workforce obligations; (c) authorizing the Debtors to pay certain pre-filing amounts related to the Debtors' continuing business and operations; (d) authorizing the Debtors to continue certain insurance policies and satisfy pre-filing obligations in respect thereof, as well as authorization to effect new insurance coverage as needed; (e) authorizing the continued use of the Canadian Securitization Facilities; and (f) authorizing the Debtors to continue their cash management arrangements including intercompany transactions. The relief is substantially similar to relief that would be sought upon the commencement of proceedings under Part I of the CCAA.

[36] As described above, the principles of comity, cooperation and accommodation with foreign courts guide the *CCAA* court in the exercise of its discretion in cross-border insolvency cases (see s.52(1)). Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided those other jurisdictions operate consistent with principles of order, predictability and fairness: *Hollander* at para 41.

[37] Courts have held that "where a cross-border insolvency is most closely connected to one jurisdiction, it is appropriate for the court in that jurisdiction to exercise principal control over the insolvency process in light of the principles of comity and in order to avoid a multiplicity of proceedings." See: *Magna Entertainment Corp. (Re)*, 2009 CanLII 9757 (ONSC) at para 9; and the Endorsement of Hainey J dated October 16, 2020, *Mallinckrodt Canada ULC et al.,* Court File No. CV-20-00649441-00CL, at paras. 1 & 4-6.

[38] It is appropriate for this Court to grant an order recognizing and giving effect to the First Day Orders for the following reasons:

a. comity will be furthered by this Court's recognition and support of the orders made by the U.S. Bankruptcy Court;

b. coordination of proceedings in Canada and the U.S. will ensure equal and fair treatment of all stakeholders regardless of their location;

c. given the Canadian Debtors' reliance on the management and leadership located in the U.S., it is reasonable and sensible for the U.S. Bankruptcy Court to have principal control over the Canadian Debtors' insolvency process; and

d. the First Day Orders are intended to minimize the adverse effects of the Chapter 11 Cases on the Debtors' businesses.

[39] Recognition of the First Day Orders is important to ensure equitable treatment of Canadian stakeholders, coordination with the Chapter 11 Cases, and avoid prejudice to Canadian creditors.

[40] I am also satisfied that FTI Should be Appointed as the Information Officer in this proceeding.

[41] FTI has consented to act as Information Officer and has advised that it is not conflicted from acting in such capacity.

[42] Although not required by the *CCAA*, it has become common practice in proceedings under Part IV of the *CCAA* for the Court to appoint an information officer, pursuant to the Court's discretionary powers. The information officer's role is to help effect cooperation between the Canadian proceeding, the foreign representative and the foreign court, including to keep this Court apprised of the status of the foreign proceedings: *YRC Freight Canada Company (Re)*, 2023 ONSC 4834 at para 35.

[43] The Proposed Foreign Representative seeks to appoint FTI as the Information Officer in this proceeding. The appointment of FTI as Information Officer will keep affected creditors, stakeholders and the Court updated on developments in the Chapter 11 Cases and will be a point of contact to respond to inquiries from interested parties in Canada.

[44] FTI's proposed role as Information Officer is consistent with both the terms of the Model Order dealing with the appointment of an information officer and the terms of orders granted in other recent recognition proceedings under the CCAA in Ontario. See for example: Supplemental Order (Foreign Main Proceeding) dated March 12, 2021, *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL at paras 5 and on ("*Knotel Supplemental Order*").

[45] I am also satisfied that the Administration Charge should be granted in the proposed quantum of $1 million.

[46] The Proposed Foreign Representative is requesting that the Court grant to the proposed Information Officer, its legal counsel and the Proposed Foreign Representative and Canadian Debtors' legal counsel a first priority administration charge with respect to their fees and disbursements in the maximum amount of USD $1 million (the "Administration Charge") on the Canadian Debtors' property in Canada.

[47] While not directly applicable in the context of a Part IV recognition proceeding, it is instructive that section 11.52 of the *CCAA* expressly provides that the Court has the jurisdiction to grant an administration charge.

[48] In *CanWest Publishing Inc*., 2010 ONSC 222 at para 54 the Court provided a non-exhaustive list of factors to be considered in approving an administration charge, including:

a. the size and complexity of the businesses being restructured;

b. the proposed role of the beneficiaries of the charge;

c. whether there is an unwarranted duplication of roles;

d. whether the quantum of the proposed charge appears to be fair and reasonable;

e. the position of the secured creditors likely to be affected by the charge; and

f. the position of the Monitor.

[49] In the context of Part IV proceedings, this Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the Information Officer and its counsel. See for example: Supplemental Order (Foreign Main Proceeding) dated August 9, 2019, *Jack Cooper Ventures Inc. et al*., Court File No. CV-19-625200-00CL at paras 17-18; *Knotel* Supplemental Order at para 19; Supplemental Order (Foreign Main Proceeding) dated August 29, 2023, *YRC Freight Canada Company et al*., Court File No. CV-23-00704038-00CL at paras 12 & 19 ("*YRC Supplemental Order*").

[50] The Proposed Foreign Representative submits that the amount of the charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required

of the professionals. In addition, the only registered secured creditors of the Canadian Debtors (other than a creditor with respect to a computer equipment lease), have consented to the Administration Charge. The Administration Charge is also consistent with the material agreements the Debtors have entered into in connection with the Chapter 11 Cases.

[51] I am also satisfied that the proposed D&O Charge should be granted.

[52] The proposed Supplemental Order also provides for the D&O Charge in a maximum aggregate amount of C$11.1 million on the Canadian Debtors' property in Canada as security for the indemnity obligations of the Canadian Debtors to their directors and officers in respect of obligations and liabilities that such directors and officers may incur in such capacity during these proceedings (the "D&O Charge").

[53] The proposed amount of the D&O Charge was estimated, in consultation with the Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, and federal and provincial tax liability exposure. The D&O Charge would be subordinate to the Administration Charge and the Securitization Charges.

[54] Section 11.51 of the *CCAA* expressly provides that the Court has the jurisdiction to grant a charge in favour of directors and officers. In deciding whether to grant a director's charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the debtor company could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or willful misconduct. (Ss. 11.51(3) and 11.51(4).

[55] This Court has previously granted similar charges to protect directors and officers in recognition proceedings: *YRC* Supplemental Order at para 21; Supplemental Order (Foreign Main Proceeding) dated November 16, 2023, *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL at para 22.

[56] The Proposed Foreign Representative submits that the amount of the D&O Charge is reasonable in the circumstances, taking into consideration that, among other things: (a) the Canadian Debtors require the continued support of the directors and officers in connection with these proceedings; (b) the directors and officers liability insurance may not provide adequate coverage against the potential liability the directors and officers could incur during these proceedings; (c) the quantum of the D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, and other potential sources for which the directors and officers may incur personal liability; (d) the scope of the D&O Charge is reasonable; (e) the secured creditors impacted by the D&O Charge have been provided notice; and (f) the Information Officer supports the proposed D&O Charge.

[57] I accept the submissions. I recognize that the quantum of the proposed D&O Charge is significant at $11.1 million. However, I am satisfied that the quantum is appropriate and justified in the circumstances. Among other things, the sales tax liabilities are remitted annually, rather than quarterly as other government remittances are required, with the result that the accrual and corresponding amounts are significantly higher than they might otherwise be. The Information Officer has reviewed the quantum and is satisfied that it is appropriate.

[58] I am also satisfied that the Securitization Charges should be granted.

[59] To facilitate the operation of the business during the Restructuring Proceedings, the Debtors require continued access to liquidity under the Securitization Facilities. The Securitization Order (as defined in the Clark Affidavit), if granted, will provide the collateral agents under the Canadian Securitization Facilities, among other things, (a) liens against the equity interests in the Canadian SPVs owned by the Canadian Debtors and (b) liens on the receivables in the event that the sale of receivables is recharacterized as a security interest. In each case, such liens are solely to secure any post-petition advances. In Canada, certain of these claims are to be secured by

two *pari passu* (one in favour of each agent) charges ranking subordinate to the Administration Charge (the "Securitization Charges"). The Securitization Charges should be considered analogous to a request for interim financing under the *CCAA*.

[60] While not directly applicable in the context of a Part IV recognition proceeding, section 11.2 of the *CCAA* provides the Court with express jurisdiction to grant a DIP financing charge. When considering whether to grant a DIP financing charge under section 11.2 of the *CCAA*, the Court refers to the factors outlined in subsection 11.2(4) of the *CCAA*.

[61] The Securitization Charges are reasonable in the circumstances taking into account:

a. the time sensitive nature of these proceedings;

b. the Canadian Debtors' require access to liquidity to continue the operation of their businesses in the ordinary course;

c. the Securitization Charges mirror the liens and claims granted under the Securitization Order; and

d. the only significant secured creditors of the Canadian Debtors are the Canadian SPVs in respect of limited accounts in the Canadian Debtors' control and the agent under the Canada SPV II Facility in respect of equity interests of the applicable Canadian SPV and its general partner. Both the Canadian SPV Lenders and the Canadian SPVs have consented to the Securitization Charges and are supportive of the proposed structure.

[62] For all of these reasons, the proposed relief is granted.

[63] Orders to go in the form signed by me today and they are effective immediately and without the necessity of issuing and entering.

Date: March 25, 2024