

**CITATION:** Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc., 2019

ONSC 1305

**COURT FILE NO.:** CV-19-00614629-00CL

**DATE:** 20190225

**RE: SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE: 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 PAYLESS SHOESOURCE CANADA INC. AND  
PAYLESS SHOESOURCE CANADA GP INC.**

**BEFORE:** Regional Senior Justice G. B. Morawetz

**COUNSEL:** *J. Dietrich and M. Sassi*, for the Applicants

*D. Chochla*, for the Ad Hoc Group of Term Lenders

*S. Zweig and A. Nelms*, for FTI Consulting Canada Inc., Monitor

*T. Reyes*, for Wells Fargo, ABL Agent

*D. Bish*, for Cadillac Fairview

*S. Kour*, for Term Loan Agent, Cortland Products Corp.

*A. Taylor*, for Tiger Group LLC and Great American Group LLC

*C. Prophet*, for Ivanhoe Cambridge

*S. M. Citak*, for Oxford & Crombie

*L. Galessiere*, for various landlords

**HEARD AND ENDORSED:** February 21, 2019

**REASONS:** February 25, 2019

### **ENDORSEMENT**

[1] This motion was heard on February 21, 2019. At the conclusion of the hearing, the record was endorsed as follows:

The requested relief was not opposed. Motion granted. Order signed. Brief endorsement to follow.

[2] These are the Reasons.

[3] The Applicants brought this motion for an order approving transactions contemplated under the liquidation consulting agreement entered into between Payless Holdings, LLC (“Merchant”) and Payless ShoeSource Canada LP (“Canadian Merchant”), Great American Group, LLC and Tiger Capital Group, LLC (together with their respective Canadian assignees, the “Consultant”) dated as of February 12, 2019 (the “Liquidation Consulting Agreement”) and the sale guidelines attached as a schedule to the Liquidation Approval Order (the “Sale Guidelines”).

[4] The Initial Order in these CCAA proceedings was granted on February 19, 2019. Subsequent to the granting of the Initial Order, materials were served on various landlords, some of whom were represented at this hearing.

[5] Counsel to the Applicants advised that since the materials were served, constructive discussions were held with various landlords which resulted in this motion proceeding unopposed. In addition, a negotiated form of order has been proposed.

[6] Payless engaged Malfitano Advisors, LLC (“Malfitano Advisors”) to assist as asset disposition advisor and conducted a solicitation and bidding process for liquidators.

[7] Two proposals were received from two bidders. After extensive evaluation, the Liquidation Consultant was selected and the Merchant and Canadian Merchant entered into the Liquidation Consulting Agreement with the Liquidation Consultant on February 12, 2019.

[8] The Monitor is supportive of the Liquidation Consulting Agreement and the transactions contemplated therein.

[9] I am satisfied that it is appropriate to approve the Liquidation Consulting Agreement and the accompanying Sale Guidelines.

[10] During the course of the hearing, Ms. Galessiere raised an issue relating to a theoretical surplus and whether any such surplus could be the subject of a cash sweep involving the U.S. Debtors. Assurances were provided by the Monitor that there would be no cash sweep effected until at least March 22, 2019. Given that the stay extension date is March 21, 2019, it seems to me that if this issue becomes real, as opposed to theoretical, it can be addressed at the hearing to extend the Stay Extension Date, which is now scheduled for March 20, 2019.

  
Morawetz R.S.J.

**Date: February 25, 2019**