Court File No. CV-16-11582-00CL

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 PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(Applicants)

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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

THIS APPLICATION will come on for a hearing on October 31, 2016, at 10:00 am, at 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 applicants do not have a lawyer, serve it on the applicants, 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 applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days 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	October 31, 2016	Issued by	
			Local registrar C. Irwin Registrar 7th floor
		Address of court office	330 University Avenue, 7th floor, Toronto, Ontario M5G 1R7

TO: **THE SERVICE LIST**

APPLICATION

1. Performance Sports Group Ltd. ("**PSG**") and the other applicants (collectively, the "**Applicants**" and each an "**Applicant**") make this application for:

(a) An Initial Order substantially in the form attached at Tab 3 of the Application Record, seeking among other things:

(i) abridging the time for service of this Notice of Application and dispensing with service on any Person (defined below) other than those served;

(ii) declaring that the Applicants are parties to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;

(iii) appointing Ernst & Young Inc. as monitor of the Applicants in these proceedings (in such capacity, the "**Monitor**");

(iv) staying all proceedings taken or that might be taken in respect of the Applicants, the Applicants' directors and officers and the proposed Monitor, subject to the terms and conditions set out in the draft Initial Order;

(v) authorizing the Applicants to file with this Court a plan of compromise or arrangement;

(vi) staying all rights and remedies of any person, individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the proposed Monitor, or affecting the business of the Applicants (the "**Business**") or the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

(vii) restraining all Persons having oral or written agreements with the Applicants to supply goods and/or services or statutory or regulatory mandates for the supply of goods and/or services to the Applicants from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants;

(viii) authorizing and empowering the Applicants to enter into and borrow under the Term Loan DIP Agreement (as defined in the Affidavit of Mark Vendetti sworn October 31, 2016 (the "**Vendetti Affidavit**")) in accordance with its terms;

(ix) authorizing and empowering the Applicants to enter into and borrow under the ABL DIP Agreement (as defined in the Vendetti Affidavit and together with the Term Loan Credit DIP Agreement, the "**DIP Agreements**") in accordance with its terms;

(x) authorizing, but not requiring, the Applicants to pay certain pre-filing amounts owed to:

(A) suppliers located in various jurisdictions in Asia (the "**Foreign Suppliers**")

(B) certain North American suppliers that are critical to ensuring there is no disruption to the Applicant's business (the "**Critical Suppliers**");

(C) suppliers which delivered goods to the Applicants in the 20 days leading to the filing, in this case, October 11, 2016 (the "**20 Day Goods Suppliers**");

(D) shippers, brokers, warehousers, distributors and logistics providers, based in various locations around the world, who may assert possessory liens against the Applicants (the "**Shippers and Warehousemen**");

(E) third parties such as contractors, builders, and repairers, who may potentially assert liens under applicable law against the Applicants (the "**Lien Claimants**"); and

(F) taxes owing to governmental authorities ("**Taxes**")

(xi) authorizing the Applicants to maintain their customer programs (the "**Customer Programs**") and authorizing, but not requiring, the Applicants to honour pre-filing amounts owing in respect of the Customer Programs;

(xii) approving the engagement letter between Alvarez & Marsal North America, LLC ("**A&M**") and the Applicants dated October 24, 2016 and further approve the appointment of Brian J. Fox of A&M as Chief Restructuring Officer ("**CRO**") of the Applicants;

(xiii) authorizing the Applicants to continue using their transfer pricing model;

(xiv) granting the following priority charges (collectively, the "**Charges**") over the Property, such charges to rank in the priority set out in the Initial Order and described at Schedule "1" to the Vendetti Affidavit:

(A) a charge to secure payment of fees and disbursements incurred in connection with this proceeding (the "**Administration Charge**") in favour of the proposed Monitor, U.S. and Canadian counsel to the proposed Monitor, U.S. and Canadian counsel to the Applicants, counsel to the directors of the Applicants and the CRO;

(B) a charge to secure obligations under the ABL DIP Agreement (the "**ABL DIP Charge**");

(C) a charge to protect the directors and officers of the Applicants (the "**D&O Charge**"); and

(D) a charge to secure intercompany advances intended to fund expected deficits incurred by certain Applicants (the "**Intercompany Charge**").

(xv) approving the retainer by the Applicants of Prime Clerk LLC to act as claims and noticing agent;

(xvi) approving a procedure by which parties affected by the relief sought may seek to amend or vary the Initial Order at a motion on a date to be set by the Court; and

(b) Granting such further and other relief as this Court may deem just.

2. The grounds for the application are:

<u>The Applicants</u>

(a) PSG is a public company incorporated under the laws of British Columbia. PSG is the ultimate parent of the other Applicants, who are incorporated under the laws of Canada, Delaware, and Vermont;

(b) The Applicants are leading designers, developers and manufacturers of high performance sports equipment and related apparel in the hockey, baseball/softball, lacrosse and soccer markets;

<u>Causes of Financial Difficulties</u>

(c) In the past 18 months, the Applicants have been affected by a confluence of significant adverse events, which have precipitated a severe liquidity crisis;

(d) Due to a failure to file financial statements by a deadline established by a forbearance with their secured creditors, the Applicants are in default under their term loan credit agreement and their ABL credit agreement and do not have the ability to repay or refinance their secured debt in a timely manner;

The Applicants Are Insolvent

(a) As at September 30, 2016, PSG had liabilities totalling approximately $608 million;

(b) As at October 28, 2016, the Applicants, except PSG Innovation Corp. and PSG Innovation Inc., owed approximately $330 million under their term loan credit agreement and $159 million under their ABL credit agreement;

(c) The Applicants, except PSG Innovation Corp. and PSG Innovation Inc., have defaulted under their secured credit facilities and do not have the liquidity necessary to meet its obligations as they come due;

(d) PSG Innovation Corp. has intercompany debts of approximately $13 million and PSG Innovation Inc. has intercompany debts of approximately $50,000, neither of which has the means to repay these debts as they have no operations of their own;

(e) The Applicants require interim financing to continue their operations;

Relief Sought

(f) The Applicants are entities to which the CCAA applies;

(g) The Applicants are acting in good faith and with due diligence;

(h) The Applicants require a stay of proceedings and the other relief sought herein in order to maintain their operations while giving them the necessary time to complete a going-concern restructuring transaction;

(i) Authorizing the Applicants to pay pre-filing amounts owed to Foreign Suppliers, Critical Suppliers, 20 Day Goods Suppliers, Shippers and Warehousemen and Lien Claimants and on account of Taxes will ensure the Applicants' business operations are not interrupted during the CCAA proceedings;

(j) Authorizing the Applicants to honour their Customer Programs and pay pre-filing amounts owing in respect of their Customer Programs will allow the Applicants to maintain goodwill and positive relationships with their customers for the duration of the CCAA proceedings

(k) Approval of the A&M Engagement Letter and appointment of the CRO is appropriate in the circumstances as the CRO and A&M have worked extensively with the Applicants since its initial engagement and their involvement will be critical to the successful completion of a going-concern restructuring transaction as part of the CCAA proceedings;

(l) Authorization of continue use of the Applicants' transfer pricing model during the CCAA proceedings will allow the Applicants to continue operating in an integrated manner and facilitate intercompany transactions in the ordinary course;

(m) The Applicants require interim financing to continue operating and approval of the DIP Agreements will provide suppliers, customers and other stakeholders with confidence that the business of the Applicants will continue to operate smoothly throughout these CCAA proceedings;

(n) The corresponding ABL DIP Charge is a condition for borrowing under the ABL DIP Agreement which will provide the liquidity necessary to allow the Applicants to continue operating in the ordinary course;

(o) Notice of this application has been given to the Applicants' major secured creditors that are likely to be affected by the Charges;

(p) The Administration Charge is necessary in order to ensure various professionals continue providing their services to the Applicants during the CCAA proceedings;

(q) The Applicants require the continued participation of their directors and officers and such directors and officers have indicated that they cannot continue their service with the Applicants unless the D&O Charge is granted;

(r) The Intercompany Charge will minimize the chance of potential prejudice to a creditors of a specific Applicant if such Applicant makes an intercompany advance during the CCAA proceedings;

(s) The proposed Monitor supports the relief sought by the Applicants;

<u>Other Grounds</u>

(t) The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(u) Rules 2.03, 3.02, 14.05(2), 16 and 38 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and sections 106 and 137 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

(v) Such further and other grounds as counsel may advise and this court may permit.

3. The following documentary evidence will be used at the hearing of the application:

(a) The Affidavit of Mark Vendetti sworn October 31, 2016, and the Exhibits attached thereto;

(b) The pre-filing report of the Monitor; and

(c) Such further and other evidence as counsel may advise and this Court may permit.

October 31, 2016

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Proceeding commenced at Toronto

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