



ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00701159-00CL DATE: October 16, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: Instant Brands Acquisition Holdings Inc et al

BEFORE P. Osborne

JU.S.TICE:

**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Applicant, in its capacity as Foreign Representative, seeks a recognition order in respect of various orders entered by the United States Bankruptcy Court for the Southern District of Texas and other relief. The specific orders in respect of which recognition is sought today are fully set out in the Notice of Motion dated October 10, 2023, but include, in summary:
  - a. the Sale Order dated October 3, 2023 approving the sale of substantially all of the Chapter 11 Debtors' assets, and authorizing the Chapter 11 Debtors to enter into and perform the Asset Purchase Agreements and Related Documents, and assume and assign and grant Related Relief;
  - b. the Claims Procedure Order dated September 11, 2023;
  - c. the Assumption and Rejection Procedures Order dated AugU.S.t 30, 2023; and
  - d. the KEIP (Key Employee Incentive Plan) Order dated AugU.S.t 30, 2023.
2. In addition, the Applicant seeks:
  - a. approval for the entry into and consummation of the Appliances Asset Purchase Agreement and the Housewares Asset Purchase Agreement (the "APAs");
  - b. a vesting order vesting the Assets of the Canadian Debtors in and to the applicable Buyer free and clear of Encumbrances other than the Permitted Encumbrances; vesting all other Assets of the Sellers located in Canada, all purchased Intellectual Property of the Sellers registered in Canada and Purchased Intellectual Property of the Canadian Debtors registered in any jurisdiction outside Canada (collectively, the "Canadian Acquired Assets"), in and to the applicable U.S. Appliances Buyer and U.S. Housewares Buyer, free and clear of all Encumbrances other than Permitted Encumbrances;
  - c. assuming and assigning the Canadian Assigned Contracts to the applicable Buyers; and
  - d. declaring that, upon payment of the applicable Cure Costs, all past defaults under the Canadian Assigned Contracts are cured such that they should be in good standing and effective according to their terms.
3. Defined terms in this Endorsement have the meaning given to them in the motion materials, the Fourth Report of the Information Officer ("IO") dated October 13, 2023, or my previous. Endorsements made in this proceeding, unless otherwise stated herein.
4. The Applicant relies on the Affidavit of Adam Hollerbach affirmed October 10, 2023 together with Exhibits thereto, and the Fourth Report of the IO.
5. The relief sought today is unopposed and is supported and recommended by the IO. To be clear, counsel for both the Applicants and the IO confirm that there has not been any informal expression of opposition, let alone any materials filed. No party opposing the relief appears today.
6. I have not set out in this Endorsement the chronology of this complex matter which is fully set out in the materials and the earlier Endorsements made in this proceeding and is not in issue today. Since the last appearance in this Court, the Chapter 11 Debtors, in consultation with their advisors, determined that a sale of all, substantially all, or a portion of their assets would be a potential path to maximizing and preserving value for the benefit of stakeholders.
7. Accordingly, the Chapter 11 Debtors implemented the Sale Process in accordance with the Bidding Procedures approved by both the U.S. Court and recognized by this Court.

8. 172 potentially interested parties were contacted, of which 86 entered into non-disclosure agreements and were given access to the virtual data room. Ultimately, two Qualified Bidders were selected and participated in the Auction on September 18, 2023.
9. The Successful Bidder was identified by Notice of Auction Results and Scheduled Sale Hearing on September 28, 2023, and the Sale Hearing was held in the U.S. Court on October 3, 2023. No party in interest objected to the Transactions, and the U.S. Court granted the Sale Order.
10. The Appliances APA was entered into on September 27, 2023 and the Appliances Buyers have advised the Sellers that they intend to make offers of employment to most of the Company Employees, including those in Canada.
11. The Housewares APA was entered into on September 27, 2023 and the Housewares Buyers have provided the same advice with respect to Company Employees in Canada.
12. The Chapter 11 Debtors are required under the APAs to obtain an order of this Court recognizing the Sale Order.
13. The Chapter 11 Cases have already been recognized by this Court as a Foreign Main Proceeding. Section 49(1) of the CCAA provides this Court with the jurisdiction to make any order it considers appropriate in a Part IV proceeding if the order is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.
14. I am satisfied here that the Transactions benefit all of the Chapter 11 Debtors' stakeholders and that implementation of the APAs will maximize the value of the Chapter 11 Debtors', including the Canadian Debtors', estate for the benefit of the Chapter 11 Debtors' stakeholders, including their creditors.
15. The sale and acquisition of the Canadian businesses and the assets held by the Canadian Debtors represent a small yet integral portion of the overall transactions given the integration of the business of the Canadian Debtors with operations in the U.S. The transfer of the Canadian Debtors' assets to the Canadian Buyers is necessary for the Transactions to occur.
16. The IO supports the relief sought and is satisfied that the terms and conditions of the APAs are not unusual or atypical for a sale of assets in a Chapter 11 proceeding and that nothing has come to the attention of the IO to suggest that completion of the Transactions is not in the best interests of the Chapter 11 Debtors and their stakeholders generally.
17. I am further satisfied that the Transactions meet the requirements for sale approval under Part IV of the CCAA and that this Court should recognize the Sale Order made in the Foreign Main Proceeding.
18. In considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, the Canadian court must determine whether the order meets the requirements of section 49(1) described above, and in so doing may consider the sale approval factors set out in section 36(3).
19. Those section 36(3) factors dovetail and overlap with the *Soundair* Principles, such that this Court must be satisfied that:
  - a. the Sale Process leading to the Transactions was fair and reasonable in the circumstances;
  - b. the Bidding Procedures afforded interested bidders a fair and reasonable opportunity to conduct due diligence, submit higher or otherwise better offers to acquire the Bid Assets;
  - c. Qualified Bidders were given a fair and reasonable opportunity to participate in the Auction prior to the closing of bidding;

- d. at the closing of the Auction, the Transactions constituted the best sale transactions available to the Chapter 11 Debtors in respect of each of the Appliances Business and the Housewares Business;
  - e. the negotiations underlying the key economic terms of the Transactions for both were conducted in good faith and on an arm's-length basis; and
  - f. the Chapter 11 Debtors, with the assistance of their advisors, consulted and worked throughout the Sales Process with the Consultation Parties or Specified Consultation Parties, as applicable, regarding the Sale Process and the associated Bids.
20. I am satisfied that the market for the Bid Assets has been thoroughly canvassed and that the Chapter 11 Debtors have worked to maximize the value of the Bid Assets, all of which was recognized by the U.S. Court by entry of the Sale Order.
  21. It follows that the Transactions represent the key opportunity to maximize the value for the Assets of the Canadian Debtors.
  22. For all of these reasons, the factors applicable to the determination required by this Court for sale approval have been met.
  23. I am further satisfied that the Administration Charge Reserve and the D&O Charge Reserve should be approved. Since the Transactions will result in the sale of substantially all of the Property, the Chapter 11 Debtors have agreed to fund these Reserves, in the amount of CDN \$1 million and CDN \$1.5 million respectively. The IO is satisfied that each of the Reserves appropriately protects the respective beneficiaries in connection with the potential obligations covered by those charges. I agree.
  24. Finally, I am satisfied that the additional U.S. Orders should be recognized here. The Chapter 11 Cases have been recognized as the Foreign Main Proceeding and I previously appointed the Foreign Representative, and there is no reason now not to continue the coordination of proceedings in both jurisdictions to ensure equal and fair treatment of stakeholders and creditors, whether they are located in Canada or the United States. The additional U.S. Orders are necessary for the protection continuance of the business and property of the Chapter 11 Debtors.
  25. The Chapter 11 Debtors notified known creditors of the Claims Procedures Order and published notice in U.S. newspapers on September 18, 2023. The IO advises that in its opinion, the process contemplated by the Proof of Claim Procedures Order is typical for claims processes conducted in Chapter 11 proceedings. The IO specifically is of the view that it affords Canadian creditors the opportunity to assert their claims in the Chapter 11 Proceedings. To be clear, the Chapter 11 Debtors' creditors, including creditors to the Canadian Debtors, received the Bar Date Notice.
  26. As stated above, but worth repeating with specific reference to the proposed Claims Procedures Order, neither the Applicant nor the IO has received any indication of opposition to the relief sought today, even informally, and no party appears today to oppose.
  27. The Assumption and Rejection Procedures Order was granted by the U.S. Court on an uncontested basis, aside from certain limited objections with respect to Cure Costs, adequate assurance, and assumption and assignment of Contracts and Leases.
  28. The KEIP is, in the view of the Chapter 11 Debtors, critical to incentivize the Key Executives to maximize the value of their going concern businesses pending completion of a sale transaction and to maximize the value received in a sale transaction. In any event, all of the executives are located in the United States.
  29. In sum, the U.S. Orders do not breach any applicable Canadian law and are not inconsistent with orders that may be granted under Part IV of the CCAA.

30. For all of these reasons, I am satisfied that the relief sought today should be granted.

31. Orders to go in the form signed by me today, which are effective immediately and without the necessity of issuing and entering.

Oleary, J.