



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE
NO.:

CV-23-00701159-00CL

DATE: 26 February 2024

NO. ON LIST: 1

TITLE OF
PROCEEDING:
BEFORE
J.U.S.T.I.C.E.:

Instant Brands Acquisition Holdings Inc., *et al*
P. OSBORNE

PARTICIPANT INFORMATION

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ENDORSEMENT OF J.U.S.TICE OSBORNE:

1. The Applicant, Instant Brands Inc. (the “Applicant”), in its capacity as Foreign Representative, moves for an order:
 - a. recognizing in all Canadian jurisdictions the following orders entered by the United States Bankruptcy Court for the Southern District of Texas in the Chapter 11 Cases:
 - i. the Order Authorizing the Amendment of the Debtors’ Key Employee Incentive Plan (the “Amended KEIP Order”);
 - ii. the Solicitation Order; and
 - iii. the Confirmation Order;
 - b. authorizing the Foreign Representative and others, including the Information Officer in the CCAA proceedings (the “IC”), to take all steps to implement the Plan and the Plan Documents, including those in the Plan Supplement and to comply with the Plan, the Plan Documents and the Confirmation Order;
 - c. authorizing the Canadian Debtors to execute and file articles of amendment or such other documents or instruments in connection with, or as may be required to give effect to, the transactions contemplated by the Plan, the Confirmation Order and this Order;
 - d. authorizing the termination of:
 - i. all stays in effect pursuant to the Initial Recognition Order and the Supplemental Order;
 - ii. the Administration Charge and the DIP Charge; and
 - iii. the court-ordered restrictions imposed on the Chapter 11 Debtors during the CCAA proceedings;
 - e. permanently staying and dismissing all existing actions and proceedings commenced against the Chapter 11 Debtors on a with prejudice and without costs basis as of the Effective Date;
 - f. approving the activities of the IC as described in the Fifth Report dated February 23, 2024;
 - g. approving the fees and disbursements of the IC and its counsel; and
 - h. providing a mechanism for the termination of the CCAA proceedings.
2. The relief sought today is unopposed. It is strongly supported by the IC.
3. I pause to observe in particular that all Canadian stakeholders have been served with the materials. Those Canadian stakeholders include the parties to the Canadian actions. None has filed any materials, none

appears today to oppose the relief sought, and none has communicated with the Applicant or the IC even informally that it intends to oppose the relief sought.

4. Defined terms in this Endorsement have the meaning given to them in the motion materials, the Fifth Report and/or my earlier Endorsements in this foreign recognition proceeding.
5. The Applicant relies upon the affidavits of Adam Hollerbach affirmed February 21, 2024 and February 23, 2024 respectively, each together with the Exhibits thereto, and the Fifth Report.
6. The U.S. Court heard the Chapter 11 Debtors' first day motions and made various orders including authorizing the Applicant to act as Foreign Representative, on June 13, 2023. I granted an Initial Recognition Order on June 15, 2023.
7. On October 16, 2023, I granted an order recognizing the Sale Order of the U.S. Court dated October 3, 2023. As authorized, the Appliances Sale Transaction closed on November 8, 2023. However, the Housewares Sale Transaction was terminated due to the lack of requisite regulatory approvals within the defined "Outside Date" set out in the Housewares APA.
8. On December 22, 2023, the Chapter 11 Debtors filed the initial version of the Combined DS and Plan, and a Solicitation Motion.
9. The Plan provides a framework for a significant reduction of the pre-petition funded indebtedness and an operating restructuring of the Chapter 11 Debtors' housewares business. Allowed Administrative Claims, Other Secured Claims, will be paid in full. Over \$390 million of Prepetition Term Loan Claims will be equitized into 100% of the New Equity interests in the Reorganized Parent. A Litigation Trust will be created and a Litigation Trustee appointed. The Chapter 11 Debtors will continue to exist as Reorganized Debtors, and the plan will provide for the vesting of Assets in the Reorganized Debtors.
10. The U.S. Court entered the Solicitation Order on January 11, 2024. The first Plan Supplement was filed with the U.S. Court on February 1, 2024.
11. The Plan confirmed by the Confirmation Order of the U.S. Court entered the day after the Combined Hearing on February 23, 2024 represents the culmination of the Chapter 11 Cases and, broadly, a consensus among the major economic stakeholders.
12. Of the Holders who voted on the Plan, the overwhelming majority (355 of the 391 votes tabulated representing approximately 97.3% in amount, and 90.8% in numerosity), voted in favour of the Plan. Those include Holders of Claims in Class 3 (Pre-petition Term Loan Claims). I note that approximately 87.6% in number of Class 4 (Gen. Unsecured Claims) who voted on the Plan voted to accept, although Holders of more than one third in amount of that Class voted to reject.
13. There were only two formal substantive objections ahead of the Combined Hearing, neither of which prevented the confirmation of the Plan. Both of those objections have now been addressed. One was resolved consensually, and the other was determined by the U.S. Court against the objecting party (Midea).
14. I granted an order on October 16, 2023 recognizing the order of the U.S. Court approving the KEIP.
15. I am satisfied that the relief sought today should be granted. While not determinative of the issues by any means, I draw significant comfort from:
 - a. the fact that the Plan enjoys the support of the overwhelming majorities of economically affected stakeholders;
 - b. the fact that no Canadian party appears today to oppose the relief sought;
 - c. the fact that Canadian creditors are treated in exactly the same way as are U.S. creditors; and

- d. as confirmed by the IC, there are no public policy concerns such as would be a factor weighing in favour of the relief already granted by the U.S. Court not being recognized by this Court.
16. This Court has already recognized the Chapter 11 Cases as a foreign main proceeding within the meaning of sections 47 and 48 of the CCAA. Accordingly, this Court has broad discretion to make any order that it considers appropriate if satisfied that such is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.
 17. Canadian courts regularly recognize, pursuant to the jurisdiction found in sections 49 and 50 of the CCAA, U.S. court orders confirming a plan of reorganization pursuant to the U.S. Code: See, for example, *Re GNC Holdings, Inc et al*, Recognition Order of Conway J dated October 16, 2020 (Ont Sup Ct (Commercial List)), Court File No. CV-20-00642970-00CL; *Re BBGI U.S., Inc et al*, Recognition Order of Hainey J dated March 26, 2021 (Ont Sup Ct J (Commercial List)), Court File No. CV-20-00647463-00CL; *Re Xerium Technologies Inc.*, 2010 ONSC 3974; *Re Mallinckrodt Canada ULC*, Recognition Order of Dietrich J dated April 22, 2022, Court File No. CV-20-00649441-00CL.
 18. I am satisfied that the Confirmation Order should be recognized here. It confirms the Plan, which itself represents the outcome of extensive negotiations among the Chapter 11 Debtors and their key stakeholders. I am satisfied that the Confirmation Order and the Plan satisfy the factors set out in the CCAA and the relevant jurisprudence:
 - a. they reflect significant creditor involvement and a global compromise among the Chapter 11 Debtors and their key stakeholders. Creditors were given ample opportunity to participate in the Plan approval process;
 - b. the Plan provides for equitable treatment in that Holders of Claims are treated in an economic and fair manner in accordance with both the U.S. Bankruptcy Code and the CCAA;
 - c. the creditor support was overwhelming as described above;
 - d. I am satisfied that the Plan is in the best interests of the Chapter 11 Debtors and their estates;
 - e. the Plan satisfies the applicable provisions of both the U.S. Bankruptcy Code and the CCAA such that there is no breach of relevant law;
 - f. the Plan was developed in good faith by that Chapter 11 Debtors in consultation with their key stakeholders;
 - g. there is no material prejudice to Canadian stakeholders in that, as noted above, they are treated no differently than U.S. stakeholders under the Plan. This includes Canadian-based employees, who are treated in the same manner as U.S.-based employees;
 - h. the relief sought today avoids value destruction and I accept the submission of the Applicant that the Chapter 11 Debtors believe that any alternative to the Confirmation of the Plan could result in the loss of significant value. I pause to observe the creditors and stakeholders evidently reached the same conclusion as demonstrated by the overwhelming vote for approval of the Plan; and
 - i. the IC fully supports the recognition of the Confirmation Order by this Court for all of the above reasons and the additional factors set out in the Fifth Report.
 19. For all of these reasons, and consistent with the general objectives of promoting comity, cooperation and the fair and efficient administration of cross-border insolvencies, I am satisfied that the Confirmation Order should be recognized in Canada.
 20. In the same way, I am satisfied that the Objection Denial Order, bringing to a conclusion the objections raised by Midea, one of the Objecting Suppliers, should be recognized here.

21. The Confirmation Order subsumes, and in fact is dependent on, the Objection Denial Order. The vote in favour of the Plan by the Exit Financing Parties, was conditional upon the denial of the objection raised by the Objecting Suppliers. In short, the Objection Denial Order is in all material respects an integral part of the Confirmation Order.
22. The Objection Denial Order does not breach any applicable Canadian law and nor is it inconsistent with orders that may be granted under Part IV of the CCAA. Recognition is supported by the IC. Recognition is granted.
23. I am further satisfied that the Solicitation Order should be recognized. It is clearly required for the successful restructuring of the Chapter 11 Debtors for a number of reasons, including that it conditionally approved the Disclosure Statement and establish the Solicitation and Tabulation Procedures on a final basis. The vote referred to above with respect to the Plan proceeded pursuant to the Solicitation Order. It is recognized in Canada.
24. I am also satisfied that the Amended KEIP Order should be recognized. It is critical to ensure that the Chapter 11 Debtors can continue to retain the Key Executives who have been very involved in determining the strategic plan and facilitating the achievement of the goals of the Chapter 11 Debtors. I recognized the original KEIP on October 16, 2023. The Amended KEIP order sought today ensures that the same Key Executives remain incentivized to maximize value. It was supported by the Ad Hoc Group of Crossover Lenders - the anticipated primary owners of the Chapter 11 Debtors' reorganized business - as well as by the IC. It is approved.
25. The Corporate Steps are also authorized. They would direct, as requested by the Canadian Debtors, that on the Effective Date, all exchangeable shares and other equity interests in the Canadian Debtors that are held by any person other than EKCO Housewares, Inc. or any of the other Canadian debtors: a) be redeemed for no consideration; and b) upon such redemption, deemed to be terminated and cancelled.
26. The Corporate Steps would also provide approval for the Canadian Debtors to execute and file articles of amendment or such other documents as may be required to give effect to the transactions contemplated by the Plan, the Confirmation Order and proposed Recognition Order. This flexibility is necessary to implement the Plan and ensure the maximization of chances for success of the Chapter 11 Debtors following the Effective Date. Substantively, these changes are consistent with what this Court approved when it approved the Appliances APA on October 16, 2023. This relief is in the best interests of the Chapter 11 Debtors and their stakeholders and is supported by the IC.
27. The Applicant also seeks the dismissal of the Canadian Actions. The Plan, through the release and discharge of Claims, Interests, and Causes of Action, has a practical effect of permanently staying and dismissing pending actions against the Chapter 11 Debtors in Canada, including the dismissal of the Canadian Actions.
28. The proposed Recognition Order reduces any ambiguity about the effect of the Plan on the Canadian Actions. It does not create any new releases or discharges not already contained within the Plan, but rather confirms the ability for the practical implementation of that Plan in Canada.
29. It is also appropriate to approve the requested authorization to begin winding down the CCAA proceedings toward eventual termination. Canadian courts regularly terminate cross-border recognition proceedings when appropriate, pursuant to section 49 of the CCAA, particularly when all matters requiring relief from the Canadian court have been completed.
30. The Recognition Order provides for various events to occur on the Effective Date, including the termination of all stays in effect; and the termination of the Administration Charge, the D&O Charge and the DIP Charge, as well as the restrictions on the Chapter 11 Debtors pursuant to paragraph 5 of the Initial

Order and paragraph 26 of the Supplemental Order and the indemnification obligations of the Canadian Debtors pursuant to the Supplemental Order.

31. All of those actions are necessary for the implementation of the Plan and in particular for the facilitation of the Exit Financing Facilities.
32. The IC supports the proposed mechanism for the termination of the CCAA proceedings, as do the Prepetition Term Loan Lenders.
33. Finally, the Chapter 11 Debtors seek approval of the activities, fees and disbursements of the IC and its counsel, all as set out in the Fifth Report. I am satisfied that this relief is fair and reasonable in the circumstances. The activities were appropriate, accretive to the maximization of value in the estates of the Chapter 11 Debtors, and particularly for the benefit of Canadian stakeholders, and the fees and disbursements of the IC and its counsel are fair and reasonable in the circumstances. The activities and fees are approved.
34. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

Olson, J.