

**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 ROBERTS COMPANY CANADA LIMITED**

Applicant

**FACTUM OF THE APPLICANT
(Motion returnable August 26, 2020)**

August 21, 2020

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I. INTRODUCTION

1. Roberts Company Canada Limited (the “**Applicant**” or “**RCCL**”) was granted creditor protection and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice Court (Commercial List) (the “**Court**”) dated June 29, 2020 (the “**Filing Date**”). The Initial Order granted a stay of proceedings up to and including July 9, 2020 (the “**Stay Period**”), appointed Richter Advisory Group Inc. (“**Richter**” or the “**Monitor**”) as Monitor of RCCL, and granted an Administration Charge and a Directors' Charge (each as defined in the Initial Order) over RCCL's assets, property and undertakings (the “**Property**”).

2. This Factum is filed in support of a motion by the Applicant seeking an order (the “**Stay Extension Order**”), among other things, extending the Stay Period in respect of the Applicant until and including October 30, 2020, or such further and other date as determined by the Court.

II. FACTS

3. The facts with respect to this motion are more fully set out in the Affidavit of Ravi Williams-Singh sworn August 21, 2020 (the “**Williams-Singh Affidavit**”).¹ The causes of the Applicant’s liquidity crisis and reasons for commencing these CCAA proceedings (the “**CCAA Proceedings**”) are set out in greater detail in the affidavit of Ravi Williams-Singh sworn on June 26, 2020 in support of the Initial Order (the “**Initial Affidavit**”) and are not repeated herein.

4. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Williams-Singh Affidavit, the Claims Procedure Order (as defined below), the Initial Affidavit, and in the Amended and Restated Initial Order (as defined below).

5. On July 8, 2020, the Court granted an order (the “**Amended and Restated Initial Order**”), which, among other things:

- (a) expanded RCCL’s restructuring authority and the Monitor’s ability to assist with RCCL’s restructuring efforts;
- (b) extended the Stay Period to and including August 31, 2020;
- (c) approved the KERP, and the KERP Charge (each as defined in the Amended and Restated Initial Order);
- (d) authorized RCCL, with the consent of the Monitor and in consultation with the ABL Lender (as defined in the Amended and Restated Initial Order) to pay amounts owing for goods and services actually supplied to RCCL prior to the date of the

¹ Affidavit of Ravi Williams-Singh sworn August 21, 2020 [Williams-Singh Affidavit], Applicant’s Motion Record [Motion Record], Tab 2.

Initial Order by third party suppliers, up to an aggregate amount of \$700,000, if, in the opinion of RCCL, the supplier is critical to its business, its ongoing operations, or the preservation of RCCL's property, and the payment is required to ensure ongoing supply; and

- (e) granted the ABL Lender's DIP Charge (as defined in the Amended and Restated Initial Order) in favour of the ABL Lender over RCCL's Property as security for all of the obligations of RCCL to the ABL Lender relating to advances made to RCCL under the ABL Credit Agreement (as defined in the Amended and Restated Initial Order) from and after the date of the Amended and Restated Initial Order.²

6. On July 28, 2020, the Court granted an Order (the "**Claims Procedure Order**"), which established a procedure (the "**Claims Process**") for the identification and quantification of certain claims against the Applicant and its current and former directors and officers, and authorized, directed and empowered the Applicant and the Monitor to take such actions as contemplated by the Claims Procedure Order.³

7. Since the granting of the Claims Procedure Order, the Applicant and the Monitor have acted diligently to carry out the steps contemplated therein and implement the Claims Process.⁴

A. The Stay Extension

8. The Stay Period granted in the Initial Order, and later extended by the Amended and Restated Initial Order, had the effect of imposing a stay of proceedings until and including August

² *Ibid* at para 5, Motion Record, Tab 2.

³ *Ibid* at para 6, Motion Record, Tab 2.

⁴ *Ibid* at para 14, Motion Record, Tab 2.

31, 2020. At this time, the Applicant is requesting an extension of the Stay Period until and including October 30, 2020.⁵

9. The Applicant requires the extension to the Stay Period to, among other things, continue the Claims Process in accordance with the Claims Procedure Order and formulate a plan of compromise and arrangement for the benefit of its creditors.

III. ISSUE

10. The sole issue to be determined on this motion is whether the Stay Period should be extended to and including October 30, 2020.

IV. LAW AND ARGUMENT

A. The Stay Period Should Be Extended

11. Section 11.02(2) of the CCAA provides the Court with the discretion to make an order extending a stay of proceedings in respect of a debtor company. Pursuant to section 11.02(3) of the CCAA, in order to exercise its discretion to extend the stay of proceedings, the Court must be satisfied that: (i) circumstances exist that make the order appropriate, and (ii) the debtor company has acted, and is acting, in good faith and with due diligence.⁶

12. Applying the above principles in *Re Canwest Global Communications Corp.*, Pepall J. (as she then was) granted a stay extension where necessary to provide stability while the debtor worked towards a plan of arrangement. In doing so, Pepall J. considered factors such as the

⁵ *Ibid* at para 9, Motion Record, Tab 2.

⁶ [Companies' Creditors Arrangement Act, RSC 1985, c. C-36](#), s 11.02(2), s 11.02(3); [U.S. Steel Canada Inc. \(Re\)](#), [2017 ONSC 1967](#) at para 23.

debtors' available cash resources during the extension of the stay period and the Monitor's support for the stay extension.⁷

13. Here, an extension of the Stay Period is necessary to provide time and stability to the Applicant while it:

- (a) assesses the claims that have been submitted as part of the Claims Process, and that may still be submitted, in consultation with the Monitor;
- (b) continues its review of strategic alternatives with the assistance of the Monitor; and
- (c) completes a plan of compromise and arrangement for the benefit of its creditors.⁸

14. The Applicant has acted, and continues to act, with good faith and with due diligence in the CCAA Proceedings, and has acted at all times in accordance with the CCAA and the various orders of the Court.⁹ Among other things, the Applicant has:

- (a) taken steps to maintain the operational stability of RCCL's business;
- (b) advanced the Claims Process in accordance with the procedures and timelines set out in the Claims Procedure Order;
- (c) communicated with RCCL's creditors, the ABL Lender, suppliers, and other stakeholders regarding the conduct of the CCAA Proceedings;

⁷ [Canwest Global Communications Corp \(Re\)](#), 2009 CanLII 63368 at para 43.

⁸ Williams-Singh Affidavit, *supra* note 1 at paras 16-17, Motion Record, Tab 2.

⁹ *Ibid* at paras 10, 19, Motion Record, Tab 2.

- (d) managed cash flows and made payments in accordance with the Amended and Restated Initial Order;
- (e) worked towards formulating a plan of compromise and arrangement in respect of RCCL; and
- (f) prepared, with the assistance of the Monitor, a cash flow forecast for the extended period covered by the requested extension of the Stay Period.¹⁰

15. The Applicant and the Monitor also promptly took steps to implement the Claims Process following the issuance of the Claims Procedure Order, and have continued to work diligently to carry out the steps contemplated therein.¹¹

16. The Monitor will be appending a revised cash flow forecast to its Third Report to the Court to be filed, and that cash flow forecast will demonstrate that the Applicant is projected to have sufficient cash over the proposed extension of the Stay Period to enable the Applicant to meet its day-to-day obligations.¹²

17. The Applicant is not aware of any creditors who are or would be prejudiced in any meaningful way by the requested extension.¹³

¹⁰ *Ibid*, Motion Record, Tab 2.

¹¹ *Ibid* at para 14, Motion Record, Tab 2.

¹² *Ibid* at para 18, Motion Record, Tab 2; Third Report of Richter Advisory Group Inc. dated August 21, 2020 at para 26 [Monitor's Report].

¹³ Williams-Singh Affidavit, *ibid* at para 20, Motion Record, Tab 2.

18. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances and supports the Applicant's request for an extension of the Stay Period to October 30, 2020.¹⁴

V. CONCLUSION

19. For the foregoing reasons, the Applicant respectfully requests that this Honourable Court grant the Stay Extension Order, substantially in the form included at Tab 3 of its Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of August, 2020.



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¹⁴ Monitor's Report, *supra* note 12 at para 27.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [*Canwest Global Communications Corp \(Re\)*, 2009 CanLII 63368](#)
2. [*U.S. Steel Canada Inc. \(Re\)*, 2017 ONSC 1967](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36.

Section 11

General Power of Court

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. – other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate;
and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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