Court File No. CV-20-00642013-00CL

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 COMARK HOLDINGS INC., BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

APPLICANTS

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

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 before a Judge presiding over the Commercial List on June 3, 2020 in 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 June ~~2~~ 3, 2020

Issued by Ray Williams **Ray Williams, Registrar**
Local Registrar

Address of court office: 330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO:

GOODMANS LLP
Bay Adelaide Centre – West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Rob Chadwick
Tel: 416.597.4285 / Email: rchadwick@goodmans.ca

Brendan O'Neill
Tel: 416.849.6017 / Email: boneill@goodmans.ca

Bradley Wiffen
Tel: 416.597.4208 / Email: bwiffen@goodmans.ca
Fax: 416.979.1234

Counsel for the Proposed Monitor, Alvarez & Marsal Canada Inc.

AND TO:

ALVAREZ & MARSAL CANADA INC.
Royal Bank Plaza, South Tower, Suite 200
P.O. Box 22
Toronto, Ontario M5J 2J1

Doug McIntosh
Tel: 416.847.5150 / Email: dmcintosh@alvarezandmarshal.com

Alan J. Hutchens
Tel: 416.847.5159 / Email: ahutchens@alvarezandmarsal.com

Joshua Nevsky
Tel: 416.847.5161 / Email: jnevsky@alvarezandmarsal.com

John-Luke Ip
Tel: 416.847.5154 / Email: jip@alvarezandmarsal.com
Fax: 416.847.5201

CHAITONS LLP
5000 Yonge Street
10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton
Tel: 416-218-1129 / Email: harvey@chaitons.com
Fax: 416-218-1849

Counsel for Stern Partners Inc.

BORDEN LADNER GERVAIS LLP
Waterfront Centre
200 Burrard Street, Suite 1200
Vancouver, BC V7X 1T2

Lisa Hiebert
Tel: 604.632.3425 / Email: lhiebert@blg.com

Edward Wang
Tel: 604.640.4191 / Email: ewang@blg.com
Fax: 604.687.1415

Counsel for Canadian Imperial Bank of Commerce

APPLICATION

1. The Applicants, Comark Holdings Inc. ("**Comark**"), Ricki's Fashions Inc. ("**Ricki's**"), cleo fashions Inc. ("**cleo**"), and Bootlegger Clothing Inc. ("**Bootlegger**", and collectively with Comark, Ricki's and cleo, the "**Applicants**" or the "**Comark Group**") make this application for an Order substantially in the form attached as Schedule "A" to this Notice of Application (the "**Proposed Initial Order**"), *inter alia*:

(a) Abridging the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;

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

(c) Appointing Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Proposed Monitor**" and, if appointed, the "**Monitor**") as an officer of this Court to monitor the business and financial affairs of the Applicants;

(d) Staying all proceedings and enforcement processes taken or that might be taken in respect of the Applicants, the Monitor, or their respective employees and representatives;

(e) Granting the following charges over the property of the Applicants, listed in order of priorities:

   (i) An Administration Charge in favour of counsel to the Applicants, the Monitor, and counsel to the Monitor; and

   (ii) A Directors' Charge in favour of the director and officers of the Applicants;

(f) Granting the authority to make payments to certain "critical" suppliers for pre-filing amounts with the consent of the Monitor;

(g) Providing that the Applicants are only obliged to pay rent with respect to their retail stores that are permitted by law to be open; and

(h) Such further and other relief as to this Honourable Court may seem just.

2. The grounds for the application are:

(a) The Applicants are insolvent;

(b) The Applicants are companies to which the CCAA applies;

(c) The claims against each of the Applicants exceed $5 million;

(d) The Applicants are leading Canadian specialty apparel retailers with a nationally recognized portfolio of banners and exclusive private label brands. The Applicants have 310 stores operating under three affiliates: Ricki's with 129 stores, cleo with 99 stores, and Bootlegger with 82 stores. Each of the three banners operates an e-commerce website specific to its brand;

(e) Comark's corporate headquarters (the "**Corporate Headquarters**") are in Mississauga, Ontario, from where Comark supports Ricki's, cleo and Bootlegger by providing centralized systems and corporate support functions relating to finance, real estate, human resources, I.T. and logistics;

(f) The Applicants' business was acquired by 9383921 Canada Inc. ("**ParentCo**") in August of 2015 following a proceeding under the CCAA;

(g) A combination of factors including the COVID-19 pandemic, a difficult economic environment in Alberta arising from declining oil prices, and a worsening retail environment have resulted in a severe liquidity crisis for the Applicants. For the fiscal year ended February 29, 2020, the Applicants have experienced a decline in store level cash flow of $15.6 million (-28%) compared to fiscal year 2019 and experienced a net operating loss of approximately $7.6 million. The financial challenges facing the Applicants dramatically increased in mid-March 2020, when the Applicants closed all of their brick and mortar stores across Canada and laid off the vast majority of their employees due to the COVID-19 pandemic;

(h) While planning was already underway by the Applicants to streamline their business operations, the closure of their stores for over two months due to the COVID-19 crisis and the resulting severe impairment of the Applicants' cash flows has rendered a gradual approach unfeasible. For the three-month period of March through May 2020, the Applicants have lost over $50 million dollars in sales, down from approximately $64 million in 2019 to $11 million in 2020 as a result of the store closures;

(i) During the course of the COVID 19 pandemic, the Applicants have not paid rent for their retail stores for the months of April and May, which amounts to approximately $9 million. Consequently, they have received notices of default from their landlords with respect to 56 of their stores. While the Applicants have recently started reopening certain of their stores (as permitted by different provinces), approximately half of their stores are currently closed and those stores that are open are operating in a highly constrained retail environment. The Applicants do not have sufficient funds to pay the defaulted amounts owing for April and May rent.

(j) The Applicants are also in breach of certain financial covenants under their lending facility, provided by Canadian Imperial Bank of Commerce ("**CIBC**"). Moreover, the Applicants cannot make any additional borrowings under that credit facility. In addition, while Parentco is supportive of the Applicants' business and this restructuring, it is unwilling to advance any further funding to the Applicants.

(k) The Applicants have investigated government support programs that could provide certain COVID-19 related business loans or funding. However, the Applicants are ineligible for certain COVID-19 government support programs because of their insolvent status. Moreover, the amount of funding that would be provided pursuant to those programs would not be sufficient to address the liquidity needs of the Applicants in any event;

(l) Accordingly, the Applicants are insolvent. Without the urgent relief sought in this application, the Applicants will not be able to continue as a going concern;

(m) Given that the Applicants have not paid April or May rent, the Applicants have approximately $5.3 million in available liquidity as at the end of May. The Applicants have not paid June rent to date. The Applicants anticipate that they will experience a negative cash flow of approximately $6.5 million in June 2020, including $3.2 million in June rent payments for stores that are or will be legally permitted to be re-opened. Without additional funding, the Applicants will have no available liquidity after June 2020;

(n) In order to successfully restructure their business, the Applicants will need a significant show of support and immediate financial concessions from their landlords. Given the Applicants' liquidity constraints and the need to recommence inventory purchases as soon as possible if the business is to go forward, a workable solution with landlords must be reached by June 19, 2020 in order to determine the future viability of the business by the end of June;

(o) Concurrent with the commencement of landlord discussions, the Applicants will be closing a number of stores, reducing operating costs, and implementing headcount reductions in order to right-size the Applicants' business. Should the Applicants secure the necessary landlord support to proceed with a potential going-concern transaction, management expects that the business that emerges from this CCAA proceeding will be well-positioned to capitalize on the opportunities that exist in the Canadian retail marketplace;

(p) The Applicants require a stay of proceedings and related relief under the CCAA in order to provide the Applicants a window of opportunity in which to secure a revised go-forward business model that will form the basis of a potential going concern transaction for the benefit of the Applicants and all of their stakeholders;

(q) Should the Proposed Initial Order be granted, the Applicants intend to promptly serve a motion or motions seeking this Court's approval of:

(i) A DIP Facility;

(ii) An expedited sale and/or investment solicitation process (the "**SISP**"). It is anticipated that ParentCo will participate in the SISP and will submit a going-concern transaction proposal that will be conditional upon, and in large part dictated by, negotiations with the Applicants' landlords with respect to all of their stores;

(iii) Sale guidelines with respect to the liquidation of certain closing stores; and

(iv) An extension of the stay of proceedings;

(r) A&M has consented to act as the monitor in the CCAA proceedings;

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

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

(u) Such further and other grounds as the lawyers may advise.

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

(a) The Affidavit of Gerald Bachynski sworn June 2, 2020 and the exhibits thereto;

(b) Consent of A&M to act as monitor in the CCAA proceedings;

(c) The Pre-Filing Report of the Proposed Monitor, to be filed; and

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

June ~~2~~ 3, 2020

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Tracy C. Sandler – LSO# 32443N
Tel: 416.862.5890 / Email: tsandler@osler.com

John MacDonald – LSO# 25884R
Tel: 416.862.5672 / Email: jmacdonald@osler.com

Karin Sachar – LSO# 59944E
Tel: 416.862.5949 / Email: ksachar@osler.com

Martino Calvaruso – LSO# 57359Q
Tel: 416.862.6665 / Email: mcalvaruso@osler.com
Fax: 416.862.6666

Counsel for the Applicants

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Proceeding commenced at: TORONTO

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OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Tracy C. Sandler – LSO# 32443N
Tel: 416.862.5890 / Email: tsandler@osler.com

John MacDonald – LSO# 25884R
Tel: 416.862.5672 / Email: jmacdonald@osler.com

Karin Sachar – LSO# 59944E
Tel: 416.862.5949 / Email: ksachar@osler.com

Martino Calvaruso – LSO# 57359Q
Tel: 416.862.6665 / Email: mcalvaruso@osler.com
Fax: 416.862.6666

Lawyers for the Applicants