

CITATION: *Pride Group Holdings Inc. et al.*, 2024 ONSC 5906
COURT FILE NO.: CV-24-00717340-00CL
DATE: 20241019

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 PRIDE GROUP HOLDINGS INC. and those Applicants listed on Schedule “A” hereto (each, an “Applicant”, and collectively, the “Applicants”)

RE: Pride Group Holdings Inc. et al., Applicants

BEFORE: Peter J. Osborne J.

COUNSEL: *Leanne Williams, Rachel Nicholson, Puya Fesharaki and Ines Ferreira*, for the Applicants
Raj Sahni, for the Directors and Officers
Matthew Cressatti, for CWB Maximum Financial Inc.
Monty Dhaliwal and John Russo, for Meridian OneCap Credit Corp.
Craig Colraine, for PACCAR Financial Ltd.
R. Brendan Bissell and Sharon Kour, for Versa Finance and Aviator Financial
Andrew J. Hatnay, Abir Shamim and Julie Hayworth, for the employees
Stuart Brotman and Daniel Richer, for The Lending Syndicate
Pam Huff, Kelly Bourassa, Chris Burr and Daniel Loberto, for the Monitor
John Salmas, for Bank of Montreal
Harvey Chaiton and Blair McRadu, for Mitsubishi HC Capital
Lee Nicholson, Ashley Taylor and Rania Hammad, for MOVETRUST and Boat Capital LP
Elaine Gray, for Daimler Truck Financial Services Canada Corporation and Daimler Truck Financial Services USA LLC
Tracy Sandler, Shawn Irving and Martino Calvaruso, for RBC as Financial Service Agent
Caroline Descours, Peter Kolla, Brittini Tee and Erick Axell, for Regions Bank, Regions Equipment Finance Corporation and Regions Commercial Equipment Finance LLC
Geoff Hall and Sanea Tanvir, for National Bank of Canada
Trevor Courtis, for Bennington Financial Corp.
Stewart Thom, for M&T Capital and Leasing Corporation and Webster Capital Finance, Inc.
Monique Sassi, for Flagstar
Nicholas Kluge, for Volvo Financial
Shahrzad Hamraz, for Republic Bank of Chicago

HEARD: October 19, 2024

ENDORSEMENT

[1] The Applicants move for certain relief as follows:

- a. a Wind-down, Liquidity Contribution Alternative and Turnover Order (the “Turnover Order”):
 - i. authorizing the sale of Inventory, to fund the cost of the Pride Entities’ Wind-Down Plan, save and except where a Recourse Lender: a) has satisfied its Liquidity Contribution in accordance with the terms of the Turnover Order if it elects to do so; and b) retrieved its Inventory by the applicable Turn-Over Outside Dates; and
 - ii. terminating the Governance Protocol in respect of Remaining Assets turned over to Recourse Lenders in accordance with the Turnover Order; and
- b. in the event the Turnover Order is granted, a Stay Extension and KERP Approval Order approving the KERP and extending the stay of proceedings through and including March 31, 2025.

[2] The Applicants rely upon the Affidavits of Randall Benson, the CRO, sworn September 18 and October 8 2024, respectively, each with exhibits thereto, and the 14th Report (together with the first and second supplements thereto), the 15th Report and the 16th Report of the Monitor dated October 9, 2024.

[3] No formal responding motion materials were filed, but each of Regions and PACCAR filed an aide memoire.

[4] Defined terms in this Endorsement have the meaning given to them in earlier Endorsements made in this proceeding, the Reports of the Monitor, and/or the motion materials unless otherwise stated.

[5] The relief sought was supported by several stakeholders and recommended by the Monitor and CRO. It was not opposed in any fundamental or conceptual manner, although numerous stakeholders made submissions with respect to the scope of relief.

[6] For the reasons that follow, I am satisfied that the relief should be granted, and I so advised the parties at the conclusion of the hearing. I signed both orders with reasons to follow. These are those reasons.

[7] The background to and context for this motion are fully set out in earlier Endorsements, and in the motion materials. Of particular relevance to this motion is my Endorsement dated September 30, 2024 declining to approve the Initial Funding and Wind-Down Plan pursuant to which the Pride Entities sought an order requiring Recourse Lenders and Securitization Parties to fund their respective portions of the Liquidity Requirement to the Monitor.

[8] I had previously observed in this proceeding that there was general consensus to the effect that the Pride Entities (excluding the PGL Entities), which are to be wound down, required approximately \$40 million to fund the Wind-Down Plan. At the hearing of this motion, numerous parties submitted that they did not accept that budget (though no alternative has been put before the Court). In my view, such is not particularly relevant to the disposition of this motion. That figure is the best estimate of the Applicants, in consultation with the CRO and Monitor. If the Wind-Down Plan can be implemented for less, that will be done. But for present purposes, it is a working budget. In any event, the fundamental point is that a significant amount of money (i.e., the Liquidity Requirement) is required for the Wind Down if it is to be effected in an orderly, fair, efficient and transparent manner, and those funds have to come from somewhere.

[9] In the wake of my declining to approve the Initial Funding and Wind-Down Plan, the Pride Entities have a liquidity deficit. They have implemented, in consultation with the CRO and Monitor, protocols to preserve cash and meet day-to-day and payroll obligations, and to provide them with a small window within which to prepare and negotiate with key stakeholders a revised Funding and Wind-Down Plan. That has now been done, and approval for that Plan is sought today.

[10] In summary, it contemplates that secured creditors that are not Securitization Parties (i.e., the Recourse Lenders) are authorized to elect to pay their pro rata portion of the Liquidity Requirement rather than have the Pride Entities sell further Inventory to fund the Plan, failing which the Pride Entities are authorized to monetize the Inventory applicable to such Recourse Lender.

[11] I am satisfied that proceeding in this manner is the only means to ensure that the Liquidity Requirement is satisfied, while preserving the rights of Recourse Lenders to take possession of and deal with the collateral subject to their security interests, and further, subject to their pro rata portion of the Liquidity Requirement being satisfied.

[12] I am further satisfied that the Wind-Down Cash Flow Forecast and the Wind-Down Plan should be approved, subject to such amendments as the Pride Entities, in consultation with the CRO and Monitor, may deem necessary. They are fully detailed in the Reports of the Monitor and describe in detail an orderly and organized wind-down to be implemented over the span of several months for the benefit of all stakeholders, and the maximization of recoveries.

[13] With respect to the election regarding the Liquidity Requirement, the proposed relief provides that each Recourse Lender be permitted a short window (that may be extended by the applicable Recourse Lender, the CRO and the Monitor) within which to elect to satisfy its proportionate share of the Liquidity Requirement in full to the Monitor, subject to applicable set-offs.

[14] Following receipt by the Monitor of that Liquidity Contribution from a Recourse Lender, the Recourse Lender or its agents shall be permitted to take possession and control of any Remaining Assets in respect of which the Monitor has determined that that Recourse Lender has provided sufficient evidence of a perfected security interest free and clear of any encumbrances.

[15] The right of the Recourse Lender to take possession of Remaining Assets is subject to the applicable Turn-Over Outside Dates set out in the Turnover Order, all of which will ensure that the Pride Entity lots where trucks and trailers are stored are cleared in an orderly and efficient manner and in accordance with the terms of the Wind-Down Plan.

[16] The proposed relief also permits the Pride Entities to sell Inventory through their agent, Nations Capital, LLC (“NCI”), including Multiple Collateral Vehicles in which a Recourse Lender but not any Securitization Party has asserted an interest other than: a) Inventory in respect of which the Monitor has received the Liquidity Contribution; and b) Inventory which has been retrieved by the Recourse Lender within the time period permitted.

[17] NCI will conduct sales through an orderly sales process using existing sale channels and relationships through private treaty sales. Net sale proceeds will be applied first to any unpaid portion of the Liquidity Contribution by the applicable Recourse Lender, with any excess to be distributed to the applicable Recourse Lender so entitled.

[18] Leasebooks will be transferred to the Recourse Lenders. For those that have not elected to pay their Liquidity Contribution, the Pride Entities shall be permitted to apply the Leasebooks against the Liquidity Contribution of the applicable Recourse Lenders, as well as the sale of Inventory.

[19] The proposed relief also provides that the Recourse Lenders will be permitted to reach a settlement with any other Recourse Lender in respect of any Multiple Collateral Vehicles (“MCVs”) by a fixed date, and that the Recourse Lender that has been determined or agreed by such settlement to have an interest in such vehicle may take possession of same by the date permitted, provided again that the Liquidity Contribution has been satisfied.

[20] Further, the Recourse Lender that has satisfied its Liquidity Contribution on time may take possession of all Priority Collateral Vehicles (“PCVs”) that such Recourse Lender has asserted an interest in, subject to the future determination of entitlement to that PCV.

[21] Moreover, any Recourse Lenders taking possession of specific Inventory and Leasebooks will be obligated to provide reporting on the sale and collections as against outstanding indebtedness, and any equity above the applicable indebtedness in such Inventory and Leasebooks resulting from such sales.

[22] In addition, the Pride Entities are obligated to provide regular reporting on the status of the Wide-Down Plan, and variances against the Wind-Down Cash Flow Forecast developed in consultation with the Monitor, including on a bi-weekly basis.

[23] Other than as captured by the above, the Pride Entities will be permitted to monetize, through NCI, any and all other MCVs and PCVs.

[24] For all of these above reasons, I am satisfied that the Turnover Order should be approved. Jurisdiction to grant same is found in section 11 of the CCAA. I am satisfied that my discretion under that statutory provision is properly exercised here in that the relief sought furthers the remedial objectives of the CCAA and is guided by the baseline considerations of appropriateness, good faith and due diligence.

[25] The objectives of maximizing creditor recovery, and providing a timely, efficient and impartial resolution of the debtor's insolvency are, in my view, clearly furthered by granting the relief sought here. See: 269354-9186 *Québec Inc. v Callidus Capital Corp*, 2020 SCC 10 at paras. 40, 46, 48, 49, 50, 67 and 70; and *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras. 7 and 59.

[26] I am further satisfied that the Wind-Down Plan now sought to be approved is fundamentally but critically different from the Initial Funding and Wind-Down Plan that I declined to approve earlier. That would have required, in essence, the Recourse Lenders and Securitization Parties to involuntarily advance funds to the Monitor to fund their respective portions of the Liquidity Requirement. While the Recourse Lenders generally supported that plan, a majority of the Securitization Parties did not. I concluded that the plan ought not to be approved for a number of reasons, as fully set out in my earlier Endorsement, including but not limited to the restrictions as described in section 11.01(b) of the CCAA.

[27] The Wind-Down Plan now proposed takes my earlier findings into account, and instead contemplates monetizing the Inventory to generate the Liquidity Requirement, expressly subject to the Option (but not any requirement) in favour of each Recourse Lender to prepay their proportionate share of that Liquidity Requirement on a per-VIN basis to secure the return of their collateral as requested, all subject to a future cost allocation.

[28] Accordingly, I am satisfied that no party is being compelled to advance funds without its consent, but rather, the Liquidity Requirement will be satisfied by selling the Inventory, as this Court has previously authorized in numerous cases. It is only if the Recourse Lenders wish, at their option, to prepay their proportionate share of the Liquidity Requirement will they be required to advance funds. Such advances, however, are entirely at the election of the Recourse Lenders.

[29] Further, orders approving inventory liquidation sales are routinely made pursuant to the CCAA. See, for example: *Target Canada Co. (Re)*, 2015 ONSC 846 ("*Target*") at paras. 2-5; *Sears Canada Inc., (Re)*, 2017 ONSC 6235 ("*Sears*") at paras. 6-8; and *Bed, Bath & Beyond Canada Ltd., Re*, 2023 ONSC 1230 ("*BBB*") at para. 9.

[30] The factors to be considered in determining whether to approve a sale process (which in turn should be evaluated in light of the considerations that may ultimately apply when seeking approval for concluded sale pursuant to section 36 of the CCAA) can apply when approving the process to liquidate a debtor's inventory: *BBB* at para. 9. Those factors were set out by the court in *Nortel Networks Corp., (Re)*, 2009 CarswellOnt 4467 at para. 49.

[31] Finally, it is appropriate to appoint a professional liquidator (here, NCI), and authorize a coordinated process for the sale of inventory in this CCAA proceeding, and to do so at this time: see *Target*, *Sears* and *BBB*.

[32] The NCI Term Sheet is attached to the Supplemental Benson Affidavit sworn September 23, 2024 and is (and has been for several weeks) publicly available for stakeholders to review.

[33] With respect to the proposed KERP, and in the absence of a viable restructuring plan, but also within the context of the required complex Wind-Down Plan, there is a significantly reduced

incentive for key employees of the Pride Entities to remain involved and motivated to implement the Wind-Down efficiently.

[34] The CRO and Monitor require the continued aid and contribution of the Key Personnel to complete the steps in these CCAA Proceedings, including the complex proposed turnover of assets located in so many different jurisdictions. The KERP was developed to address this issue.

[35] The proposed KERP amount, in the maximum aggregate amount of \$1.8 million, will be held by the Monitor in trust until such time as the respective Key Personnel become entitled to receipt of their respective proposed distribution thereunder, at which time the Monitor can release sufficient funds to the relevant Pride Entity to make such payment.

[36] I pause to observe that no Key Personnel is a member of the Johal family, and the KERP will not be amended to include a member of the family as Key Personnel.

[37] For all of these reasons, I am satisfied that the proposed KERP is appropriate, reasonable, and necessary if the proposed Wind-Down Plan is to have a maximum chance of success.

[38] I am further satisfied that, given that the Turnover Order is being granted, the proposed extension of the stay of proceedings from November 29, 2024 to and including March 31, 2025 is both necessary and appropriate to give effect to the Wind-Down Plan. That date is consistent with the Wind-Down Forecasts prepared by the Monitor, being the anticipated date of substantial completion of the New Funding and Wind-Down Plan.

[39] Further, the Wind-Down Cash Forecast reflects that the Pride Entities should have sufficient liquidity to operate through to March 31, 2025. The Monitor supports the extension of the stay. I am satisfied that the Pride Entities have been and continue to act in good faith and with due diligence such that the requirements of section 11.2 of the CCAA have been met here.

[40] For all of these reasons, I granted the two orders sought on this motion and directed that they be effective immediately and without the necessity of issuing and entering.

Osborne J.