

CITATION: In the matter of CURO Canada Corp. and LendDirect Corp., 2024 ONSC 1785
COURT FILE NO.: CV-24-00717178-00CL
DATE: 20240325

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

N THE MATTER OF THE COMPANIES’ CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CURO CANADA CORP. AND LENDDIRECT CORP.

APPLICATION OF CURO GROUP HOLDINGS CORP. UNDER SECTION 46 OF THE COMPANIES’ CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

RE: CURO Group Holdings Corp., Applicant

BEFORE: Peter J. Osborne J.

COUNSEL: Ryan Jacobs, Jane Dietrich, Natalie Levine and Alec Hoy, for the Applicant

Sarah A. Schultz and Anna Kordas, US Counsel to the Applicant

Aubrey Kauffman, for WF Marlie 2018-1, Ltd. by its Administrative Agent, Waterfall Management, LLC

Jamie Ernst, Sean Zweig and Joshua foster, for the Proposed Information Officer, FTI Consulting Canada Inc.

Tracy Sandler and Martino Calvaruso, for Atalaya Assett Income Fund Parallel 345 LP, Lender under Canada SPV II Facility

HEARD: March 25, 2024

ENDORSEMENT

[1] The Applicant, CURO Group Holdings Corp. (“CURO Parent”), in its capacity as the Proposed Foreign Representative of itself, CURO Canada Corp. and LendDirect, seeks in this Application foreign recognition and interim stay relief pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (“CCAA”) and s.106 of the *Courts of Justice Act* (“CJA”). CURO Canada and LendDirect are referred to below as the “Canadian Debtors”.

[2] Today, on March 25, 2024, CURO Parent, the Canadian Debtors, and certain other affiliates (the “Debtors”) filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “U.S. Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of Texas (the “U.S. Bankruptcy Court”) to commence insolvency proceedings (the “Chapter 11 Cases”). The First Day hearings in the U.S. Bankruptcy Court are presently continuing. The Applicant anticipates relief being granted imminently as further described below.

[3] The Debtors are part of a group of companies (together with their non-Debtor affiliates, the “Company”) that offer a broad range of direct-to-consumer finance products to customers in the United States (the “U.S.”) and Canada. Those products include installment loans, revolving line-of-credit loans, single-pay loans and insurance products, and other financial products such as optional credit protection, cheque cashing, money transfer services, car club, and other related memberships (the “Consumer Lending Services”).

[4] In Canada, the consumer loan services, ancillary insurance and other financial products are offered through “CashMoney” brand at retail stores and online, and through the “LendDirect” brand online.

[5] The Applicant relies on the Affidavit of Douglas D. Clark sworn on March 25, 2024 together with Exhibits thereto (the “Clark Affidavit”), the Affidavit and Second Affidavit of Alec Hoy sworn in this proceeding, and the Pre-Filing Report of the proposed Information Officer, FTI Consulting Canada Inc. (“FTI”). Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated.

[6] The Application by the Proposed Foreign Representative seeks Orders pursuant to sections 46 to 49 of the CCAA for, among other things:

- a. an interim order (the “Interim Stay Order”) staying proceedings against the Canadian Debtors, pending the determination of the relief set out below;
- b. an order (the “Initial Recognition Order”): (i) recognizing CURO Parent as the foreign representative in respect of the Chapter 11 Cases; (ii) finding that the centre of main interests for the Canadian Debtors is the U.S.; and (iii) recognizing the Canadian Debtors’ Chapter 11 Cases as foreign main proceedings; and
- c. an order (the “Supplemental Order”): (i) recognizing certain orders of the U.S. Bankruptcy Court, if granted (the “First Day Orders”); (ii) granting a stay of proceedings in respect of the Canadian Debtors and their directors and officers; (iii) appointing FTI Consulting Canada Inc. (“FTI”) as Information Officer (the “Information Officer”); and (iv) granting the Administration Charge, the D&O Charge and the Securitization Charges (each as defined below).

[7] CURO Parent seeks the above relief in stages. Although the Canadian Debtors have filed petitions with the U.S. Bankruptcy Court commencing their Chapter 11 Cases, and thereby obtained an automatic stay in the U.S., certain of the First Day Orders (including the order appointing the foreign representative (the “Foreign Representative Order”)) are presently being heard by the U.S. Bankruptcy Court as part of the “first day” hearing which is continuing as of the time of this Endorsement. To protect the assets and business of the Canadian Debtors in Canada during this intervening period, the Proposed Foreign Representative appears in this Court today to seek the Interim Stay Order. If the First Day Orders are formally issued by the U.S. Bankruptcy Court, the Proposed Foreign Representative intends to return to the Court to seek the Initial Recognition Order and the Supplemental Order. That is discussed further below.

[8] In the Chapter 11 Cases, the Debtors are seeking the approval and implementation of a pre-packaged plan (the “Plan”), filed contemporaneously with the petitions, to effect a balance sheet

restructuring at the Company's parent level. The Debtors commenced the solicitation of support for the Plan prior to filing the petitions and expect to obtain the votes necessary for confirmation of the Plan.

[9] These Canadian recognition proceedings (the "Canadian Recognition Proceedings" and together with the Chapter 11 Cases, the "Restructuring Proceedings") are necessary to implement a stay of proceedings in Canada during the Chapter 11 Cases, enable the Canadian Debtors to operate in the ordinary course, and protect against the enforcement of cross-default provisions in the Company's contracts during the restructuring. The Plan does not propose to impair any of the general unsecured creditors of the Canadian Debtors.

[10] There are no foreign insolvency proceedings involving the Canadian Debtors other than the Chapter 11 Cases.

[11] The Proposed Foreign Representative submits that the recognition in Canada of the Chapter 11 Cases of the Canadian Debtors and the additional relief sought from this Court is necessary to protect the Canadian Debtors' assets and businesses and will support the Chapter 11 Cases. This will be the subject of a further hearing.

[12] The provision of the Consumer Lending Services is subject to licencing requirements and regulations under certain federal and state legislation in the U.S. and federal, provincial and municipal regulations in Canada. The Canadian Debtors collectively hold over 300 licences to provide the Consumer Lending Services in the applicable Canadian jurisdictions.

[13] In the U.S., the Company operates under several principal brands, including "Heights Finance," "Southern Finance," "Covington Credit," "Quick Credit," and "First Heritage Credit." In Canada, it operates under the "CashMoney" and "LendDirect" brands.

[14] The Canadian Debtors' operations account for approximately 150 of the Company's 550 store locations and approximately 1,075 of the Company's 2,856 employees. In Canada, the Consumer Lending Services are provided by CURO Canada through the CashMoney branch locations and online, and under the LendDirect brand through a series of online platforms maintained by LendDirect.

[15] The Debtors are headquartered in the United States with offices in Chicago, IL, Greenville, SC and Wichita, KS. The Canadian Debtors do not have a Canadian corporate office; they rely on the Company's U.S. operations for substantially all of their administrative, back office and strategic functions. Executive and strategic-level decision making occurs in the U.S., and the Canadian Debtors' operations are integrated with the larger scale Company operations.

[16] As set out in the Clark Affidavit, the Company's capital structure includes approximately USD \$2.1 billion of funded debt obligations comprised of corporate debt and non-debtor SPV funding debt. The corporate debt consists of amounts that certain of the Debtors have borrowed in connection with funding and operational expenses (the "Corporate Debt").

[17] The Canadian Debtors are not obligors under the Corporate Debt, but there are cross-default provisions between the Securitization facilities (as defined below) and the Corporate Debt.

[18] The “SPV Funding Debt” is made up of five credit facilities pursuant to which loans receivable originated by the Debtors are sold to special purpose vehicles to collateralize debt incurred under such facilities (the “Securitization Facilities”). The borrowers under the Securitization Facilities are non-Debtor bankruptcy remote special purpose vehicles (the “SPVs”).

[19] The cash generated from the Securitization Facilities provides liquidity for the Company’s day-to-day operations. Two of the Securitization Facilities are used in the Canadian Debtors’ operations (the “Canada SPV Facility” and the “Canada SPV II Facility”, and together, the “Canadian Securitization Facilities”). CURO Parent has granted a limited guarantee of both Canadian Securitization Facilities; the Canadian Debtors have also delivered a limited guarantee in connection with the Canada SPV II Facility.

[20] Over the two years preceding the Petition Date, the Company took steps with the objective of shifting its business model in the US to focus on longer-term, higher balance and lower interest rate credit products, optimizing its business operations, and strengthening its liquidity, largely through to debt transactions and extending its operating liquidity by refinancing the Securitization Facilities.

[21] Notwithstanding these efforts, however, it became apparent in January, 2024 that as a result of the companies leverage, it needed to undergo a comprehensive restructuring to facilitate the refinancing of the Securitization Facilities. Following the company’s decision not to make certain interest payments on the Corporate Debt, it focused its efforts on engaging with stakeholders with a view to a comprehensive financial restructuring. Ultimately, the Company determined that an in-court balance sheet restructuring was necessary.

[22] Given that, as of February 1, 2024, the Company was operating within the grace period under the various debt facilities, the discussions with the lenders proceeded swiftly. Throughout February, the Debtors engaged in negotiations with various stakeholders, including certain holders of the Corporate Debt, and lenders under the Securitization Facilities to negotiate terms of waivers of certain cross-defaults and amendments to the Securitization Facilities necessary to maintain going concern value. The Debtors and their lenders entered into a series of waiver of default and forbearance agreements. The agreements were extended through March 25, 2024 to give the parties additional time to finalize the restructuring negotiations.

[23] Following extensive negotiations, on March 22, 2024, the Debtors entered into the Restructuring Support Agreement (the “RSA”) with holders of in excess of 82% of the Prepetition 1L Term Loans, and holders in excess of 74% the Prepetition 2L Notes (as defined in the Clark Affidavit).

[24] The RSA contemplates a balance sheet restructuring effected with the reinstatement of certain obligations and in equitization. It is subject to certain milestones being achieved in the Chapter 11 Cases as more particularly described in the Clark Affidavit.

[25] The lenders to the Canadian SPVs (the “Canadian SPV Lenders”) are supportive of the Plan and have agreed to work with the Company. They are represented in Court today and support the interim stay relief sought today. It is expected that they will also support the relief sought by the Applicant at the comeback hearing. At this time, the Canadian Recognition Proceedings are

intended to facilitate a stay and prevent harm to the ongoing business while the Debtors effectuate a balance sheet restructuring through the Chapter 11 Cases.

[26] CURO Canada is a corporation amalgamated under the *OBCA*. Its registered office is in Brampton, Ontario. CURO Canada is extra-provincially registered in British Columbia, Manitoba, Saskatchewan, Alberta, Nova Scotia, New Brunswick and Newfoundland and Labrador. CURO Canada is a wholly-owned indirect subsidiary of CURO Parent.

[27] LendDirect is an Alberta corporation formed by incorporation on September 5, 2015. Its registered office is a law firm in Edmonton, Alberta. LendDirect is also extra-provincially registered in Ontario, British Columbia, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island and the Northwest Territories. LendDirect is a wholly-owned indirect subsidiary of CURO Parent.

[28] Canadian operations are fully integrated with those in the U.S. The Canadian Debtors are administratively reliant on the U.S. Debtors. The Canadian Debtors have a limited number of back-office employees, all of whom are subject to the oversight of the management team and directing minds located in the U.S. The Canadian Debtors depend upon the Company's management team in the U.S. to fulfil all key management functions for the Canadian operations including administrative, tax, accounting, cash management, finance, treasury, legal, human resources and other executive-level functions. These services are provided by other Debtors pursuant to intercompany agreements and practices.

[29] The Canadian Debtors have a director of compliance who serves as the resident director and officer in Canada for each of the Canadian Debtors. Other factors demonstrating the integration of the Canadian Debtors in the Debtors' operations include:

- a. the Company's senior leadership in the U.S. exercises primary strategic management and control of the Company, including the Canadian Debtors;
- b. the Canadian Debtors rely on the proprietary software owned by Curo Management LLC, a U.S.-based Debtor, to conduct their business;
- c. the Canadian Debtors' overall financial position is managed on a consolidated basis by the Company's management team located in the U.S. and, for financial reporting purposes and in satisfying CURO Parent's reporting obligations with the Securities and Exchange Commission, the Company reports the financial results of the entire corporate group, including the Canadian Debtors, on a consolidated basis;
- d. payroll processing for the employees of the Canadian Debtors is processed in Canada but is directed exclusively by a management team located in the U.S.;
- e. utilities for substantially all of the Canadian Debtors' store locations are managed pursuant to a contract with Curo Management LLC and a third party located in the U.S.;

- f. the Canadian Debtors are each direct, wholly-owned subsidiaries of Curo Intermediate Holdings Corp., a Delaware corporation, and indirect, wholly-owned subsidiaries of CURO Parent, a publicly traded Delaware corporation;
- g. CURO Parent has repeatedly made statements in its public filings that the Company's operations, including those of the Canadian Debtors, are integrated across the Company's brands and geographies and headquartered in the U.S.;
- h. the Canadian Debtors' only secured creditors, other than with respect to the leased computer equipment, are two Canadian SPVs in respect of accounts holding proceeds of loans sold to the Canadian SPVs and the agent under the Canada SPV II Facility in respect of equity interests of the applicable Canadian SPV and its general partner. The parties with an economic interest in the Canadian SPVs, being the Canadian SPV Lenders, are located in New York; and
- i. CURO Parent delivered separate guarantees in connection with the Canadian Securitization Facilities which include: (i) a guaranty in connection with the Canada SPV Facility of (x) the covenants, agreements and certain obligations of the Canadian Debtors under the transaction documents, and (y) damages, losses, claims and costs in certain limited circumstances; and (ii) a limited guaranty in connection with the Canada SPV II Facility of (x) certain indemnified obligations, which include obligations of the Canadian Debtors, and (y) certain costs and expenses incurred by the agent under such Canada SPV II Facility in certain circumstances.

[30] As such, the Canadian Debtors are substantially intertwined with the Company and wholly dependent upon the other Debtors for all of their key functions (without which they cannot operate independently).

[31] I am satisfied that the proposed relief sought today in the form of the interim stay should be granted.

[32] As a preliminary matter, I am satisfied that Ontario is a proper jurisdiction for these recognition proceedings. Part IV of the *CCAA* does not include any provisions with respect to jurisdiction that require a particular court to hear the recognition application. I am satisfied for the reasons set out above that Ontario is a proper jurisdiction.

[33] Pursuant to the purpose of the cross-border regime set out in s. 44 of the *CCAA*, s. 46 provides that a person who is a foreign representative may apply to the Court for recognition of a foreign proceeding in respect of which that person is a foreign representative. Pursuant to s. 47, the Court shall make an order recognizing a foreign insolvency proceeding, if the Court is satisfied that the application relates to a foreign proceeding within the meaning of the *CCAA* and that the applicant is a foreign representative in respect of that foreign proceeding.

[34] While recognition relief is not before me today, it is relevant for the purposes of jurisdiction in respect of even the limited interim stay relief sought today.

[35] First, I am satisfied that an interim stay of proceedings is appropriate and should be granted here. Pursuant to subsection 46(2) of the *CCAA*, when a foreign representative seeks recognition

of a foreign proceeding, its application must include, among other things, certified copies of the instruments commencing the foreign proceeding and authorizing the foreign representative to act in that capacity. The relief required to be evidenced under subsection 46(2) of the CCAA will not be granted until an attendance before the U.S. Bankruptcy Court, which is expected to conclude later today.

[36] Interim relief will provide a short stay of proceedings pending the filing and certification of the evidence required by subsection 46(2) of the CCAA. Without interim relief, the Canadian Debtors will not have the protection of a stay in Canada in the time between the commencement of the Chapter 11 Cases and the hearing in Canada for the Initial Recognition Order and the Supplemental Order, which as discussed below will proceed later this week.

[37] This Court has granted interim stay orders providing for a temporary stay of proceedings in Canada following the initiation of Chapter 11 Cases where a delay in obtaining a formal order in the U.S. “could prejudice the Canadian applicants in respect of whom no stay would otherwise arise”: Endorsement of Koehnen J dated June 24, 2020, *GNC Holdings Inc., et al.*, Court File No. CV-20-00642970-00CL at paras 3 & 4, and Interim Order; see also: *Lightsquared LP (Re)*, 2012 ONSC 2994 at paras 1-3 and the Interim Initial Order dated October 19, 2010 granted by Morawetz, J. in *TerreStar Networks Inc.*, Court File No. CV-10-8944-00CL.

[38] This Court has the jurisdiction to grant an interim stay in the context of a pending recognition application pursuant to section 106 of the CJA, section 11.02 of the CCAA, and its inherent jurisdiction: Endorsement of Cavanagh, J. dated March 9, 2021, *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL.

[39] This Court has granted similar interim stays in similar prior cases: *Paladin Labs Canadian Holdings Inc.*, 2022 ONSC 4748 [*Paladin Interim Stay Endorsement*]; Interim Order (Foreign Proceeding) dated August 17, 2022, *Paladin Labs Canadian Holdings and Paladin Labs Inc.*, Court File No. CV-22-00685631-00CL at para 2; Interim Stay Order (Foreign Proceeding) dated August 8, 2023, *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at para 2; Endorsement of Morawetz CJ dated August 8, 2023, *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at paras 11 & 16; Interim Stay Order (Foreign Proceeding) dated November 7, 2023, *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL at para 3; Endorsement of Steele, J. dated November 7, 2023, *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL at paras 17-20.

[40] In *Paladin Labs Inc.*, Chief Justice Morawetz concluded that granting the interim stay and other relief as proposed in the interim order was “in accordance with the principles of cooperation and comity” and within the Court’s jurisdiction. The relief was both necessary and appropriate (paras. 18 – 20).

[41] For all of these reasons, the interim stay in the form of the draft order presented, is granted.

[42] Order to go in the form signed by me today and attached to this Endorsement, which order is effective immediately and without the necessity of issuing and entering.

[43] As noted above, further relief will be sought by the Applicant pending the completion of the First Day hearings currently ongoing in the U.S. Bankruptcy Court.

[44] **Accordingly, the balance of this Application is adjourned to be continued before me tomorrow, March 26, 2024 commencing at 2:00 PM via Zoom.**

Osborne J.

Date: March 25, 2024