



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693758-00CL DATE: April 22, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: In the Matter of the Compromise or Arrangement of Original
Traders Energy Ltd. and 2496750 Ontario Inc.

BEFORE: Justice Kimmel

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Richard Swan	Counsel for the Monitor (KPMG Inc.)	swanr@bennettjones.com
Raj Sahni		sahnir@bennettjones.com
Milan Singh-Cheema		singhcheemam@bennettjones.com
Duncan Lau	Representative of the Monitor (KPMG Inc.)	duncanlau@kpmg.ca
Paul van Eyk		pvaneyk@kpmg.ca

For Other:

Name of Person Appearing	Name of Party	Contact Info
Roger Jaipargas	Counsel for Royal Bank of Canada	rjaipargas@blg.com
Samantha Hans	Counsel for OTE Group	shans@airdberlis.com
Martin Henderson		mhenderson@airdberlis.com
Jonathan Chen	Counsel for Glenn Page and 2658658 Ontario Inc.	jchen@litigate.com
Lars Brusven	Counsel for Gen7 Fuels LP	lbrusven@lolg.ca
Natai Shelsen	Counsel for Mandy Cox, 2745384 Ontario Inc., Alderville Gas Ltd., Kellie Hodgins, Gen 7 Brands International Inc., Oneida Gen7 LP,	nshelsen@goldblattpartners.com

	French River Gen7 LP, Rankin Gen7 LP, Jocko Point Gen7 LP, Curve Lake Gen7 LP, Sarnia Gen 7 LP, Walpole Gen7 LP, Roseneath Gen7 LP	
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ENDORSEMENT OF JUSTICE KIMMEL:

1. The Monitor seeks the following two orders:
 - a. an Order (the "Stay Extension and Ancillary Relief Order"), among other things:
 - i. extending the stay of proceedings granted by this Court pursuant to the Initial Order as extended by this Court from time-to-time (the "Stay Period") to October 25, 2024;
 - ii. declaring that, pursuant to section 5(5) of the Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1 ("WEPPA"), the OTE Group and its collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 (the "WEPPA Regulations") and are individuals to whom WEPPA applies;
 - iii. authorizing the Monitor to invest \$10 million of OTE Group funds into a one (1) year redeemable Guaranteed Investment Certificate ("GIC"); and
 - iv. Approving various of its reports and the activities set out therein.
 - b. an Order, revising the relief in the AirSprint Funds Order (the "AirSprint Funds Order") originally sought before this Court on March 27, 2024.
2. The parties on the service list have been served with the motion returnable today and no party in attendance, or otherwise, has raised any objection to the orders sought.

The Stay Extension and Ancillary Matters Order

3. The Monitor's Ninth Report dated April 16, 2024 (the "Ninth Report") details the reasons for its request for the Stay Extension to October 25, 2024. Capitalized terms not defined in this endorsement shall have the meanings ascribed to them in the Ninth Report.
4. The Stay Extension is to, among other things, afford sufficient time to advance ongoing asset recovery efforts by the Monitor, including but not limited to completing the Italian Yacht sales process, continuing to engage in discussions regarding the monetization of the Blending Equipment, and pursuing certain tax refunds and other receipts.
5. The Fourth Extended Cash Flow Forecast prepared by the OTE Group with the assistance of the Monitor indicates that the OTE Group will have sufficient liquidity to fund the costs of the CCAA Proceedings during the extension of the Stay Period, if granted.
6. The Monitor is explicitly authorized to apply to this Court for an extension of the Stay Period pursuant to paragraph 3(e) of the Monitor's Enhanced Powers and Bid Process Approval Order and is of the view that the extension of the Stay Period is appropriate because: the OTE Group, under the supervision of the Court and the Court-appointed Monitor, has acted and continues to act in good faith and with due diligence; the extension will provide the time necessary for the Monitor, on behalf of the OTE Group, to continue ongoing asset recovery efforts; and the extension should not materially prejudice any

creditor, as the OTE Group is projected to have sufficient funds through its continuing operations to fund post-filing activities, as contemplated in the Fourth Extended Cash Flow Forecast.

7. These factors satisfy the requirements of section 11.02(2) of the CCAA for the requested extension of the Stay Period, which may be granted for "any period the court considers necessary". See *Nordstrom Canada Retail (Re)*, 2023 ONSC 1631 at para 7. This additional time is appropriate where it will enable the continuation of the applicants' business, avoid the social and economic costs of a liquidation and will give the OTE Group the breathing room required to restructure with a view to maximizing recoveries, whether as a going concern or as an orderly liquidation or wind-down. See *Century Services Inc v. Canada (Attorney General)*, 2010 SCC 60; *Target Canada Co. (Re)*, 2015 ONSC 303 at para. 7; and *Timminco Limited (Re)*, 2012 ONSC 2515 at paras. 15-17.
8. Since the cash receipts have been higher than expected, as part of the ancillary relief, the Monitor seeks the court's authorization to invest some of this excess cash in a GIC so it can earn interest during the extended Stay Period, on terms that protect RBC's security (and that RBC has approved). This is within the court's discretion under s. 11 of the CCAA to order, and is appropriate in the circumstances.
9. The OTE Group has terminated 39 employees and retained only 6 to assist with the CCAA Proceedings and to allow for the completion of the OTE Group's activities. The Monitor also seeks a declaration that WEPPA applies with respect to former employees who were terminated.
10. Section 5(5) of WEPPA states that the court "may" in proceedings under the CCAA determine that a former employer meets the criteria prescribed by the WEPPA Regulations. Section 3.2 of those Regulations states that "for purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations".
11. As required by s. 5(1) (iv) of WEPPA, the former employer (the OTE Group) is the subject of CCAA proceedings. Further, the OTE Group's former employees in Canada have been terminated (other than the few who have been retained to wind down its business operations), as s. 3.2 of the Regulations requires.
12. Service Canada has confirmed in the context of another proceeding recently before me (*BRR Logistics Limited et al. (April 15, 2024) ONSC (Commercial List), Court File No: BK-24-03038619-0031 (Endorsement) (Kimmel, J)*, at para 20.) that a court order or direction is required for the WEPPA benefits to flow to terminated employees. The Monitor is of the few that the requirements for eligibility and granting such an order have been satisfied. I agree that the requested WEPPA declaration appropriate to make.
13. Lastly, this Court has previously noted that there are good policy and practical reasons why a request for the approval of the Monitor's reports and corresponding activities should be granted. See *Target*, at para 2. See also: *Laurentian University of Sudbury*, 2022 ONSC 5850 at para 17. The appropriate qualifications to such relief have been included in the proposed order.

The AirSprint Funds Order

14. At a hearing on March 27, 2024, the Court adjourned the portion of the motion relating to the AirSprint Funds Order to give the parties an opportunity to discuss and consider whether certain concerns raised by the court about the proposed release and declaratory language could be addressed by amendments to the proposed form of order or through commercial documents.
15. In the March 27, 2024 endorsement the court stated as follows:
 - a. The court is satisfied that the financial terms of the AirSprint Settlement set out in (a) above are fair and reasonable and appropriate within the established criteria for approving settlements under s. 11 of the CCAA and the applicable authorities, such as *Nortel Networks Corporation*

(Re), 2018 ONSC. 6257 at para 24 and *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, 2013 ONSC 1078, at para 49. (At para. 8)

- b. The court has previously determined that the AirSprint Funds do not belong to the Mareva Respondents, but are in fact the property of the OTE Group. See *Original Traders Energy Ltd, (Re)*, 2024 ONSC 325 at para 95. Consistent with this, the sworn statement of worldwide assets provided to the Monitor by Page and 265 in connection with the Mareva Motion did not include the AirSprint Property. (At para. 9)
- c. AirSprint is seeking finality, which is not unreasonable. The issue from the court's perspective is what is necessary or appropriate to ask the court to order or declare to achieve this, beyond what has already been said in the Mareva Decision and what the parties may agree to as between and among themselves. (At para.11)

- 16. The Monitor continues to believe that the relief sought in the AirSprint Funds Order is necessary and appropriate. The revised AirSprint Funds Order will provide both the OTE Group and AirSprint with necessary finality and will allow both parties to move forward with certainty. The relief sought benefits the OTE Group and its stakeholders as it will see the return of the remaining funds held by AirSprint to the OTE Group estate and ensure that all funds recovered are rightfully the property of the OTE Group.
- 17. The court ordered release is a condition of the AirSprint Settlement, which the court previously found to have reasonable financial terms and to benefit the OTE Group and its stakeholders. It has been narrowed and now only releases specific liability related to the use of OTE Group funds. It is rationally connected to the AirSprint Settlement, it is fair, reasonable and not overly broad and is limited to and directly connected to the CCAA proceedings. It does not release claims not permitted to be released pursuant to section 5.1(2) of the CCAA and excludes claims arising from fraud or willful misconduct.
- 18. The Monitor believes that this release is necessary and appropriate and no one opposes it.
- 19. I am satisfied the justification exists for approving the now narrowed requested third party release, having regard to the relevant considerations set out in *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 4; See also: *Fresh City Farms Inc., and Mama Earth Organics Inc.* 2024 ONSC 2016 at para 42.
- 20. The further requested declaration regarding the OTE Group's ownership of certain AirSprint sale proceeds is appropriate given that the court had previously directed that these funds be held in trust. Since the court's July 17, 2023 order, the parties involved in the relevant transactions have confirmed in their evidence in these CCAA proceedings that OTE Group funds were used to purchase these interests.

Orders Granted

- 21. The Stay Extension and Ancillary Matters and AirSprint Funds Orders may issue in the forms signed by me today.



KIMMEL J.