



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00720035-00CL DATE: 10 May 2024

NO. ON LIST: 1

TITLE OF PROCEEDING:

BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
MARK SHEELEY/Martino Calvaruso/Emilie Dillon	KIDKRAFT INC	msheeley@osler.com edillon@osler.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Virginie Gauthier	KSV Restructuring Inc.	virginie.gauthier@gowlingwlg.com
Heather Meredith/Ella Hantho	Backyard Products LLC	hmeredith@mccarthy.ca ethantho@mccarthy.ca
Mitch Stephenson/Stuart Brotman	Gordon Brothers	sbrotman@fasken.com mstephenson@fasken.com

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] KidKraft, Inc. (“KidKraft”, and together with its debtor and non-debtor affiliates, the “Company”), in its capacity as the proposed foreign representative (in such capacity, the “Foreign Representative”) of the Chapter 11 Debtors (defined below) seeks an order (the “Interim Stay Order”) pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, as amended (the “CCAA”) and section 106 of the *Courts of Justice Act*, among other things, granting an interim stay of proceedings in respect of the Canadian Debtors (defined below) and KidKraft, and their respective officers and directors.
- [2] The Company - a leader in branded, sustainable, wood-based active and imaginative play products such a swing sets, dollhouses, playhouses, and more - is currently facing significant balance sheet and liquidity challenges. On May 10, 2024 (the “Petition Date”), Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “Canadian Corporate Debtors”), Solowave Design LP (together with the Canadian Corporate Debtors, the “Canadian Debtors”), KidKraft, and six other debtors and debtors-in-possession (collectively, the “Chapter 11 Debtors”) filed voluntary petitions for relief (together, the “Petitions”) pursuant to Chapter 11 of the U.S. *Bankruptcy Code* with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “U.S. Court”). The cases commenced by the Chapter 11 Debtors and the U.S. Court are referred to herein as the “Chapter 11 Cases”.
- [3] Also on May 10, 2024, the Chapter 11 Debtors filed several first day motions and applications, including for an order authorizing KidKraft to act as Foreign Representative (the “Foreign Representative Order”), with the U.S. Court (collectively, the “First Day Motions”). The U.S. court is expected to hear certain First Day Motions on May 13.
- [4] In its notice of application, KidKraft also seeks orders, among other things, which will be the subject of a future hearing following the entry of orders (the “First Day Orders”) by the U.S. Court in respect of certain First Day Motions. The orders which will be sought are the Initial Recognition Order and a Supplemental Order as described in the materials.
- [5] The Interim Stay Order is being sought in an expedited basis to ensure that the *status quo* is preserved in respect of KidKraft, the Canadian Debtors and the Canadian Property (as defined in the materials) pending the granting of the First Day Orders by the U.S. Court, including the Foreign Representative Order. If granted, the Interim Stay Order will protect the Company’s Canadian business and the Canadian Property (including valuable inventory) from immediate actions of creditors and contract counterparties in Canada.
- [6] Shortly after the U.S. Court has issued the Foreign Representative Order and the other First Day Orders, KidKraft, in its capacity as the Foreign Representative, intends to return to this Court to seek the Initial Recognition Order and the Supplemental Order.
- [7] The background facts to this motion are set out in the Affidavit of Geoffrey Walker sworn May 10, 2024. These facts are summarized in the applicant’s factum at paragraphs 7-34.

Is Ontario a proper jurisdiction for these recognition proceedings in Canada?

- [8] I am satisfied that Ontario is a proper jurisdiction for these recognition proceedings in Canada. Part IV of the CCAA does not contain any provisions with respect to the jurisdiction of a particular Canadian court to hear a recognition application. I am satisfied that it is appropriate for this Court

to take jurisdiction over this Recognition application given the Canadian Debtors' substantial connection to Ontario.

Should an interim stay order be granted?

- [9] Pursuant to section 46(2) of the *CCAA*, a foreign representative seeking recognition of a proceeding must include in its application, among other things, certified copies of the instruments that commenced the foreign proceeding and authorized the foreign representative to act in such capacity. However, the latter documents will not be available until the Chapter 11 Debtors appear before the U.S. Court in the coming days to seek the First Day Orders, including the Foreign Representative Order authorizing KidKraft to act as Foreign Representative.
- [10] As a result, there will be a period of time between the commencement of the Chapter 11 Cases and the time when the Foreign Representative can return to this court to seek the Initial Recognition Order and Supplemental Order. While the Chapter 11 Debtors obtained the benefit of a stay of proceedings upon filing the Petitions with the U.S. Court, the Canadian Debtors will not have the protection of a stay in Canada during this key period without the Interim Stay Order.
- [11] To close this gap, this Court has granted interim orders to temporarily stay proceedings in Canada when a Chapter 11 proceeding has been commenced in the United States. The Court's jurisdiction to grant an interim stay in the context of a pending recognition application is found in section 106 of the *Courts of Justice Act*, section 11.02 of the *CCAA*, and its inherent jurisdiction. See *In the matter of CURO Canada Corp. and LendDirect Corp.*, 2024 ONSC 1785, at para. 38.
- [12] I am satisfied that an interim order granting a short stay of proceedings will provide the Canadian Debtors with necessary protection pending the certification and filing of U.S. Court materials required to recognize these foreign proceedings. Maintaining the *status quo* will prevent unnecessary disruptions within the Chapter 11 Debtors' Canadian supply chain and Canadian business. An interim stay will protect the Company's inventory, which is currently stored in or in transit within Canada by third parties. I accept that preservation of such inventory is essential to the success of the Chapter 11 Cases, as it is proposed to secure the Company's proposed debtor-in-possession facility and form part of the proposed sale transaction (as described in the motion materials).
- [13] The requested Interim Stay Order provides for a stay of proceedings in favour of KidKraft and the Canadian Debtors and in respect of the Canadian Property, as well as a stay in favour of the directors and officers of KidKraft and the Canadian Debtors. The Interim Stay Order will give effect in Canada to the stay of proceedings in the Chapter 11 Cases and provide stability and preserve the value of the Canadian Business until KidKraft can be duly authorized to act as the Foreign Representative by the U.S. Court and return before this Court to seek the Initial Recognition Order and Supplemental Order.
- [14] I am satisfied that it is appropriate to grant the same stay protection to Solowave Design LP and KidKraft. In this respect, I accept the submissions made on behalf of the Applicant at paragraphs 45-51 of its factum.
- [15] Order to issue in form of Order signed by me today.
- [16] I have set aside time on **May 17, 2024 at 9:00 a.m.** for the applicant's motion for the Initial Recognition Order and Supplemental Order. I ask counsel for the applicant to confirm this date and time with the Commercial List Office.