



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00720035-00CL

DATE: June 28, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: KIDKRAFT, INC.

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mark Sheeley	Counsel to the KidKraft, Inc., Applicant	msheeley@osler.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Mitch Stephenson	Counsel for Gordon Brothers	mstephenson@fasken.com
Virginie Gauthier	Counsel for the Information Officer, KSV Restructuring Inc.	virginie.gauthier@gowlingwlg.com
Heather Meredith	Counsel for Backyard Products LLC	hmeredith@mccarthy.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] In this endorsement, defined terms have the meanings given to them in the factum filed on behalf of KidKraft.
- [2] The applicant, KidKraft, Inc. (“KidKraft”, and together with its debtor and non-debtor affiliates, the “Company”), in its capacity as foreign representative (the “Foreign Representative”) of itself and four other debtors in possession moves for an order:

- a. recognizing and enforcing the At-Issue Orders entered by the U.S. Court pursuant to section 49 of the *Companies' Creditors Arrangement Act*, as amended (the “*CCAA*”);
- b. amending the Supplemental Order to account for the Final DIP Order;
- c. approving the sale of the Canadian Transferred Assets (as defined in the Purchase Agreement of KidKraft and the Chapter 11 Debtors over which the Court has jurisdiction to the Purchaser vesting the Canadian Transferred Assets in and to the Purchaser free and clear of all claims and encumbrances, and authorizing the Chapter 11 Debtors to take such steps and execute such additional documents as may be necessary or desirable for the completion of the sale of the Canadian Transferred Assets to the Purchaser;
- d. providing a mechanism for the termination of the *CCAA* recognition proceedings, including the discharge of the Information Officer;
- e. approving the pre-filing report of KSV Restructuring Inc., dated May 16, 2024, the first report of the Information Officer dated June 18, 2024, the second report of the Information Officer dated June 27, 2024, and the activities of the Information Officer described therein; and
- f. approving the fees and disbursements of the Information Officer’s legal counsel.

[3] On May 10, 2024, KidKraft, the Canadian Debtors, and six other debtors and debtors in possession (collectively, the “Chapter 11 Debtors”) filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code and several first day motions and applications with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “U.S. Court”), commencing the “Chapter 11 Cases”.

[4] On May 17, 2024 this Court recognized the Chapter 11 Cases as “foreign main proceedings” within the meaning of Part IV of the *CCAA*, recognized the appointment of the Foreign Representative, and granted related stays of proceedings (the “Initial Recognition Order”). This Court also recognized 11 First Day Orders entered by the U.S. Court (the “Supplemental Order”).

[5] On June 19, 2024, this Court granted an order (the “Second Recognition Order”), among other things, recognizing the Second Interim DIP Order and amending paragraph 24 of the Supplemental Order to include references to the Second Interim DIP Order.

[6] The Chapter 11 Debtors have obtained the U.S. Court’s approval of their Sale Transaction to the Purchaser and the Plan which provides for the end of the Chapter 11 Cases. The Foreign Representative seeks relief on this motion that will implement the Plan and Sale Transaction, and ensure that the *CCAA* Part IV proceedings can be brought to an orderly close.

[7] On June 18, 2024, the U.S. Court entered the following orders:

- a. Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief (the “**Final Critical Vendors Order**”)

[8] On June 24 and 25, 2024, the U.S. Court entered five orders (together with the Final Critical Vendors Order, the “At-Issue Orders”) described below:

- a. Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and

Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief (the “**Final Cash Management Order**”);

- b. Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Final DIP Order**”);
- c. Order (I) Approving Certain Bidder Protections, (II) Approving Contract Assumption and Assignment Procedures, and (III) Granting Related Relief (the “**Bidder Protections Order**”);
- d. Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors’ Amended Joint Prepackaged Chapter 11 Plan (the “**Plan Confirmation Order**”); and
- e. Amended Order (I) Authorizing the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief (the “**Sale Order**”).

[9] The Company has proactively worked to address its balance sheet and liquidity challenges including running multiple out-of-court sale processes prior to the Petition Date. After sale process in fall of 2023 failed to result in a sale, an agreement was reached pursuant to which the prepetition and DIP Lender purchased the existing debt under the Prepetition Credit Agreement (the “Debt Sale”) and agreed to provide additional financing while working with the Company to explore strategic alternatives.

[10] Following a second sale process in the spring of 2024, Backyard Products, LLC (the “Purchaser”) emerged with a bid to purchase a substantial majority of the Company’s assets (including the Canadian Debtors’ assets) in Chapter 11 (the “Sale Transaction”). The parties documented their commitment to the Sale Transaction in a restructuring support agreement (the “RSA”) entered into by the Chapter 11 debtors, 1903 Partners, LLC (the lender under the Prepetition Credit Agreement), GB Funding, LLC (the administrative agent under the Prepetition Credit Agreement), MidOcean and the Purchaser.

[11] In connection with the RSA, certain of the Chapter 11 Debtors (including KidKraft, Solowave Design LP and Solowave Design Inc.) and the Purchaser entered into an asset purchase agreement (the “Purchase Agreement”) to effectuate the Sale Transaction in conjunction with the Plan (defined below). The Purchase Agreement provides for an estimated purchase price of at least \$39 million and the Purchaser will also pay certain other additional amounts.

[12] The Company and its advisors began preparations to commence the Chapter 11 Cases following the signing of the RSA in the Purchase Agreement. On the petition date, the Chapter 11 Debtors filed the Debtors’ Joint Prepacked Chapter 11 Plan (as subsequently amended and supplemented, the “Plan”). On June 17, 2024, the Chapter 11 Debtors, the Purchaser, MidOcean, and the official unsecured creditors’ committee reached a global settlement, notice of which was filed with the U.S. Court that day. The Plan was amended in accordance with the global settlement. In exchange for the Committee’s support of the Plan in the proposed DIP financing, the Chapter 11 Debtors and their key stakeholders agreed to fund a general unsecured claims trust for the benefit of certain holders of general unsecured claims.

- [13] Confirmation of the Plan was supported by all major stakeholders, including Gordon Brothers and the Committee. The U.S. Court confirmed the Plan and entered the Plan Confirmation Order on June 24, 2024.
- [14] Classification of claims and interests against each Chapter 11 Debtor ensured that similarly situated claims are treated the same or that there is a reasonable basis for any disparate treatment. Gordon Brothers, the sole holder of claims in the only class entitled to vote on the Plan, voted to accept the Plan.
- [15] The Plan effectuates the sale of substantially all of KidKraft's inventory, intellectual property, and accounts receivable, among other things, to the Purchaser pursuant to the terms of the Purchase Agreement. The Purchaser has also agreed to assume certain of the Chapter 11 Debtors' liabilities including any liabilities and identified cure costs (if any) arising under the assumption and assignment of any transferred contracts and certain transfer taxes and non-income taxes, subject to the terms and conditions of the Purchase Agreement. The Purchaser has also committed, under the terms of the Purchase Agreement, to offer employment to nearly all of the domestic employees of the Chapter 11 Debtors that are party to the Purchase Agreement who are employed by the same at the closing of the Sale Transaction. The Chapter 11 Debtors will utilize the proceeds of the Sale Transaction to fund distributions to satisfy claims and wind down their operations in an orderly manner.
- [16] The Plan include certain settlements, releases, exculpations, and injunctions. The Chapter 11 Debtors do not, however, hold any colourable claims or causes of action worth pursuing against any released parties.
- [17] The Third Day Orders are described in the motion materials including in the factum of KidKraft at paragraphs 20-29.
- [18] The Plan provides for the end of the Chapter 11 Cases. After the Plan Confirmation Order is recognized in Canada and the Plan is effective, these *CCAA* Part IV recognition proceedings will have achieve their purpose. To avoid the cost and time of returning to court to seek termination of these proceedings, the Third Recognition Order provides that:
- a. upon the Plan becoming effective and any remaining matters to be attended to in the *CCAA* proceedings having been completed, the Information Officer will file a certificate (the "Information Officer's Termination Certificate") with the Court confirming same;
 - b. upon filing of the Information Officer's Termination Certificate:
 - i. the *CCAA* proceeding shall be terminated;
 - ii. the Administration Charge, the Directors' Charge and the DIP Charge shall be terminated, released and discharged;
 - iii. the Information Officer and its counsel, Gowling WLG (Canada) LLP will be discharged and released.
- [19] I am satisfied that the At-Issue Orders should be recognized. In this respect, I accept the submissions made on behalf of KidKraft at paragraphs 32-49 of its factum.
- [20] I am satisfied that the ancillary belief in the Third Recognition Order in connection with the implementation of the Plan and the termination of these proceedings should be granted. Among other things, the Third Recognition Order (i) gives the releases in the Plan full force and effect;

(ii) provides a mechanism for the termination of the *CCAA* proceedings and the discharge and release of the Information Officer and its counsel; (ii) approves the activities of the Information Officer; and (iv) approves the fees and disbursements of the Information Officer and its legal counsel.

[21] Order to issue in form of Order signed by me today.

[22] This Order is effective upon issuance and entry of the Order is not required for it to be in full force and effect.