



Court File No.

**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 KIDKRAFT, INC., SOLOWAVE DESIGN
HOLDINGS LIMITED, SOLOWAVE DESIGN INC., SOLOWAVE
INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE
COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

Applicant

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

<https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNtYmkxUT09>

On May 10, 2024 at 4:00 p.m. or as soon after such time as the application may be heard, before a judge presiding over the Commercial List.

- 2 -

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date

Issued by

Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON
M5G 1R7

TO: THE SERVICE LIST

- 3 -

APPLICATION

1. The applicant, KidKraft, Inc. (“**KidKraft**”, and together with its debtor and non-debtor affiliates, the “**Company**”), in its capacity as the proposed foreign representative of itself and Solowave Design Holdings Limited, Solowave Design Inc. and Solowave International Inc. (collectively, the “**Canadian Corporate Debtors**”), and Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”), makes this application for the following relief pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and section 106 of the *Courts of Justice Act*, R.S.O. 1990, as amended (the “**CJA**”):

- (a) an order (the “**Interim Stay Order**”), substantially in the form set out at Tab 4 of the Application Record, among other things, granting an interim stay of proceedings in respect of KidKraft and the Canadian Debtors, and their respective directors and officers;
- (b) an order (the “**Initial Recognition Order**”), substantially in the form to be filed, among other things:
 - (i) recognizing the Chapter 11 Cases (as defined below) commenced in respect of KidKraft and the Canadian Debtors in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”) as a “foreign main proceeding” as defined in section 45 of the CCAA; and
 - (ii) recognizing KidKraft as the “foreign representative” (in such capacity, the “**Foreign Representative**”) of KidKraft and the Canadian Debtors, as defined in section 45 of the CCAA;

- 4 -

- (c) an order (the “**Supplemental Order**”), substantially in the form to be filed, among other things:
- (i) recognizing certain other orders issued by the U.S. Court in the Chapter 11 Cases (the “**First Day Orders**”), including an interim order authorizing the Chapter 11 Debtors (as defined below) to obtain postpetition debtor-in-possession financing;
 - (ii) granting a stay of proceedings in respect of KidKraft and the Canadian Debtors and their respective directors and officers;
 - (iii) extending the protections and authorizations in the Supplemental Order to Solowave Design LP;
 - (iv) appointing KSV Restructuring Inc. (“**KSV Restructuring**”) as the information officer in this proceeding (in such capacity, the “**Information Officer**”); and
 - (v) granting a Court-ordered charge on the present and future assets, property and undertakings of KidKraft located in Canada and of the Canadian Debtors (the “**Canadian Property**”) to secure:
 - (A) the professional fees and disbursements incurred in respect of this proceeding by the Information Officer, its counsel, and KidKraft and the Canadian Debtors’ Canadian counsel (up to a maximum amount of CAD\$750,000) (the “**Administration Charge**”);
 - (B) the indemnity granted by KidKraft and the Canadian Debtors in favour of their respective directors and officers in respect of obligations and liabilities in Canada that they may incur as directors

- 5 -

or officers after the commencement of this proceeding (up to a maximum amount of CAD\$100,000) (the “**D&O Charge**”);

(C) a debtor-in-possession credit facility (the “**DIP Charge**”, and collectively with the Administration Charge and the D&O Charge, the “**Charges**”); and

(d) such further and other relief as this Honourable Court deems just.

2. KidKraft’s application is proposed to proceed in stages. At the initial return date, May 10, 2024, KidKraft will seek: (a) the Interim Stay Order; and (b) the scheduling of the hearing for the Initial Recognition Order and the Supplemental Order following the entry of the First Day Orders by the U.S. Court.

3. **THE GROUNDS FOR THE APPLICATION ARE:**

(a) KidKraft is a privately held company that is a leader in branded, sustainable, wood-based active and imaginative play products such as swing sets, dollhouses, playhouses, and more. KidKraft distributes its products through several large stores, including Costco, Sam’s Club, Target, and Walmart, online retailers, including Amazon and Wayfair, as well as through direct-to-consumer sales from the Company’s website.

(b) On May 10, 2024 (the “**Petition Date**”), each of KidKraft, the Canadian Debtors and six other debtors and debtors in possession (collectively, the “**Chapter 11**

- 6 -

Debtors)¹ filed voluntary petitions for relief (together, the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court. The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases**”. Contemporaneously therewith, the Chapter 11 Debtors began filing certain first day motions and application with the U.S. Court (collectively, the “**First Day Motions**”) seeking, among other things, authority to continue to operate their business in the ordinary course and entry of an order authorizing KidKraft to act as the Foreign Representative in respect of the Chapter 11 Cases of KidKraft and the Canadian Debtors (the “**Foreign Representative Order**”).

- (c) A hearing before the U.S. Court in respect of the First Day Motions is scheduled for May 13, 2024. If the U.S. Court grants the requested First Day Orders, including the Foreign Representative Order, they are expected to be available shortly thereafter.
- (d) Other than the Chapter 11 Cases, no other foreign proceeding (as defined in subsection 45(1) of the CCAA) in respect of KidKraft and the Canadian Debtors has been commenced.

¹ The Chapter 11 Debtors are KidKraft, Inc., KidKraft Europe, LLC, KidKraft Intermediate Holdings, LLC, KidKraft International Holdings, Inc., KidKraft Partners, LLC, KidKraft International IP Holdings, LLC, Solowave Design Corp., Solowave Design Holdings Limited, Solowave Design Inc., Solowave Design LP, and Solowave International Inc.

- 7 -

- (e) The Company's organizational structure consists of eighteen entities, of which eleven are debtors in the Chapter 11 Cases (defined above as the Chapter 11 Debtors).
- (f) All of the Chapter 11 Debtors are incorporated or established under the laws of the U.S., with the exception of the Canadian Debtors.
- (g) Each of the Canadian Corporate Debtors is incorporated under the laws of Ontario, and Solowave Design LP is a limited partnership formed under the laws of Alberta.
- (h) The Company's business in Canada is principally as a distributor to national retailers. The Company has no headquarters, office locations, or retail locations in Canada. The Company supplies its products to its customers in Canada via a third-party logistics provider located in Mississauga, Ontario, which stores and distributes inventory owned by KidKraft or Solowave Design LP, pursuant to a logistics services agreement.
- (i) The Chapter 11 Debtors' primary long-term debt consists of that certain Amended and Restated First Lien Credit Agreement dated as of April 3, 2020, among KidKraft and KidKraft Netherlands B.V., a private company with limited liability incorporated under the laws of The Netherlands, as borrowers, KidKraft Intermediate Holdings, LLC and its subsidiaries that are guarantors thereto, the lender party thereto, and the administrative agent (as amended, restated, amended and restated, extended, supplemented or otherwise modified, the "**Prepetition Credit Agreement**"). The lender has provided commitments under the Prepetition

- 8 -

Credit Agreement consisting of revolving credit commitments and term loan commitments, (such commitments, collectively, the “**Prepetition First Lien Revolving Facility**”) and term loan commitments (such commitments, collectively, the “**Prepetition First Lien Term Facility**”), each of which are secured by a first priority lien on substantially all of the Chapter 11 Debtors’ assets, as well as liens on the Company’s Dutch subsidiaries’ assets.

- (j) On January 31, 2024, a Forbearance, Amendment No. 5 and Joinder to Amended and Restated First Lien Credit Agreement (the “**Fifth Amendment**”) was entered into in connection with the Debt Sale (defined below) and joined KidKraft’s Dutch and Canadian affiliates (i.e., the Canadian Debtors) as guarantors under the Prepetition Credit Agreement, joined KidKraft Netherlands B.V. as a co-borrower, increased the priority revolving commitments under the Prepetition Credit Agreement to USD\$26,780,000, and extended the maturity of the term loans under the Prepetition Credit Agreement from June 30, 2023 to June 30, 2024.
- (k) As security for the guarantees, the following agreements were entered into, among others:
 - (i) a security agreement supplement dated January 31, 2024, whereby the Canadian Debtors became parties to the original security agreement securing the obligations under the Prepetition Credit Agreement;
 - (ii) a general security agreement dated January 31, 2024, whereby the Canadian Debtors pledged a security interest in all of the Canadian Debtors’ personal

- 9 -

property and securities (except certain excluded personal property and interests);

- (iii) patent security agreements dated January 31, 2024 and February 8, 2024, whereby security interests were granted over certain U.S. and Canadian patents held by Solowave Design Inc., Solowave Design LP and/or KidKraft; and
- (iv) trademark security agreements dated January 31, 2024 and February 8, 2024, whereby security interests were granted over certain U.S. and Canadian trademark mark registrations and applications owned by Solowave Design Inc. and/or KidKraft.

- (l) As of the Petition Date, the Chapter 11 Debtors' aggregate principal outstanding funded debt obligations under the Prepetition Credit Agreement total approximately USD\$144,900,000, plus accrued and unpaid interest.
- (m) The Company is currently facing significant balance sheet and liquidity challenges, caused by a range of factors that ultimately resulted in the Company's operating margins being squeezed. The Company proactively worked to address their balance sheet and liquidity challenges, including through a balance sheet restructuring in 2023 and by running multiple robust out-of-court sale processes prior to the Petition Date.
- (n) In connection with these actions, the Company engaged advisors to explore strategic alternatives, including a potential sale of all or substantially all of the assets or equity of the Company. After a sale process undertaken in the fall of 2023

- 10 -

failed to result in a sale, the Company continued to face significant liquidity challenges and worked with its advisors to begin contingency planning for a potential in-court restructuring process in December 2023 and January 2024.

- (o) Subsequently, an agreement was reached pursuant to which 1903 Partners, LLC (“**Gordon Brothers**”) purchased the existing debt under the Prepetition Credit Agreement (the “**Debt Sale**”). In connection therewith, Gordon Brothers provided additional financing in the form of revolving priority loans to the Company through the Fifth Amendment, giving the Company crucial liquidity to maintain its operations and prevent further degradation of its business while the Company and Gordon Brothers worked collaboratively to explore value-maximizing strategic alternatives.
- (p) 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 with such sale to be effectuated in Chapter 11 (the “**Sale Transaction**”). On April 25, 2024, the Chapter 11 Debtors, Gordon Brothers, MidOcean Partners IV, L.P., and the Purchaser entered into a restructuring support agreement (the “**RSA**”), documenting the parties’ commitment to the restructuring transactions described in the RSA.
- (q) Among other things, the RSA contemplates Gordon Brothers voting in favour of a joint prepackaged Chapter 11 plan (the “**Plan**”) and providing debtor-in-possession financing (the “**DIP Facility**”), and the sale of certain of the Chapter 11 Debtors’ assets to the Purchaser through the Chapter 11 Cases.

- 11 -

- (r) Prior to the Petition Date, on May 9, 2024, Amendment No. 6 to the Amended and Restated First Lien Credit Agreement was entered into, which documented the amendments to the Prepetition First Lien Term Facility pursuant to the RSA and accounted for the additional commitments that had been advanced since entry into the Fifth Amendment.

The Interim Stay Order Is Necessary

- (s) Given the filing of the Petitions with the U.S. Court and the commencement of the Chapter 11 Cases, and the nature of the operations in Canada, KidKraft and the Canadian Debtors are in urgent need of an interim stay of proceedings in Canada pending the entry of the First Day Orders and a further hearing in Canada seeking their recognition and commencing proceedings under the CCAA.
- (t) Maintaining the status quo will prevent unnecessary disruptions within the Chapter 11 Debtors' Canadian supply chain and Canadian business. In particular, an interim stay is necessary to protect the Company's valuable inventory, which is currently stored in, or in transit within, Canada by third parties, which is proposed to secure the Company's proposed DIP Facility and be included as part of the Sale Transaction.
- (u) Subject to the automatic stay that arises upon the filing of the Petitions with the U.S. Court and the proposed Canadian stay of proceedings requested from this Court: (a) counterparties to agreements with KidKraft relating to its Canadian business and with the Canadian Debtors could seek to terminate such agreements due to the recent commencement of Chapter 11 Cases; and (b) creditors of KidKraft

- 12 -

and the Canadian Debtors could seek to pursue self-help remedies against the Canadian Property in Canada.

The Chapter 11 Cases Are Foreign Main Proceedings

- (v) KidKraft and the Canadian Debtors are all currently parties to the Chapter 11 Cases pursuant to the Petitions, which were filed in the U.S. Court under Chapter 11 of the U.S. Bankruptcy Code.
- (w) The Chapter 11 Cases constitute a “foreign proceeding” pursuant to subsection 45(1) of the CCAA.
- (x) Once appointed as Foreign Representative of itself and the Canadian Debtors, KidKraft, falling under the definition of “foreign representative” under section 45(1) of the CCAA, may apply to this Court for recognition of the Chapter 11 Cases pursuant to section 46(1) of the CCAA.
- (y) Each of the Chapter 11 Debtors’ centre of main interest is located in the U.S. and, as such, the within proceedings are a “foreign main proceeding” for the purposes of section 45(1) of the CCAA.

A Stay of Proceedings Is Required and Appropriate

- (z) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit or proceeding against KidKraft and the Canadian Debtors, subject to any terms and conditions it considers appropriate.

- 13 -

- (aa) The requested stay in Canada is essential to ensure the Sale Transaction can be completed.

Recognition of the First Day Orders Is Appropriate

- (bb) The Chapter 11 Debtors are seeking the First Day Orders to enable the operation of the Company's business without disruption. KidKraft, in its capacity as proposed Foreign Representative, will be seeking recognition of certain First Day Orders, if granted, pursuant to the proposed Supplemental Order.
- (cc) The recognition of the First Day Orders in Canada pursuant to this Court's authority under section 49 of the CCAA is necessary to achieve coordination with the Chapter 11 Cases and allow the Company to pursue an orderly restructuring within the Chapter 11 Cases and this proceeding.

Appointment of an Information Officer Is Appropriate

- (dd) KSV Restructuring is a licensed trustee in bankruptcy in Canada and its principals have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).
- (ee) KSV Restructuring has consented to acting as Information Officer in this proceeding.

The Charges Are Necessary and Appropriate

- (ff) The proposed Supplemental Order will provide for the Administration Charge, the D&O Charge and DIP Charge.

- 14 -

- (gg) The Administration Charge is necessary to secure the obligations of KidKraft and the Canadian Debtors with respect to the fees and disbursements of such professionals incurred in respect of this proceeding. The Administration Charge is proposed to rank in priority to all other secured and unsecured claims.
- (hh) The D&O Charge is necessary to secure the indemnity obligations of KidKraft and the Canadian Debtors to their directors and officers in respect of obligations and liabilities that such directors and officers may incur during this proceeding in their capacities as directors and officers. The D&O Charge is proposed to rank in priority to all other secured and unsecured claims, other than the Administration Charge.
- (ii) The Chapter 11 Debtors require the additional financing provided by the DIP Facility. Financing on a postpetition basis is not otherwise available and is not available on terms more favourable than the terms contained in the DIP Facility. The DIP Facility represents the best available option for the Chapter 11 Debtors and will benefit all parties in interest.
- (jj) The amounts actually borrowed by the Chapter 11 Debtors under the DIP Facility are proposed to be secured by the DIP Charge, ranking in priority to all other secured and unsecured claims, other than the Administration Charge and the D&O Charge.
- (kk) A going concern outcome is only available if the relief sought, including the DIP Charge, is granted.

General

- (ll) The CCAA, including Part IV.
 - (mm) The CJA, including section 106.
 - (nn) Such further and other grounds as counsel may advise.
4. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit(s) of Geoffrey Walker, to be sworn;
 - (b) the affidavit(s) of Emilie Dillon, to be sworn;
 - (c) the consent of KSV Restructuring to act as the Information Officer; and
 - (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

- 16 -

May 10, 2024

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Tracy C. Sandler (LSO# 32443N)
Tel: 416.862.5890
Email: tsandler@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.6665
Email: mcalvaruso@osler.com

Mark Sheeley (LSO# 66473O)
Tel: 416.862.6791
Email: msheeley@osler.com

Lawyers for the Applicant

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No:

AND IN THE MATTER OF KIDKRAFT, INC. SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC. AND SOLOWAVE DESIGN LP

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OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Tracy C. Sandler (LSO# 32443N)
Tel: 416.862.5890
Email: tsandler@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.6665
Email: mcalvaruso@osler.com

Mark Sheeley (LSO# 66473O)
Tel: 416.862.6791
Email: msheelley@osler.com

Lawyers for the Applicant