



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00715202-00CL

DATE: June 17, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: In the Matter of Hornblower Cruises and Events Canada Ltd., and Others
BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Applicant(s):

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ENDORSEMENT OF JUSTICE PENNY:

- [1] In February of this year, Hornblower Holdings LLC and certain of its affiliates filed voluntary petitions for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas. Later that month, the US Court issued first day orders, authorizing, among other things, Hornblower to as a foreign representative of the debtors. Following issuance of the orders of the US

Court, recognition proceedings were initiated in Ontario before this court. On February 27, 2024, Chief Justice Morawetz issue the initial recognition order and a supplementary order which, among other things, appointed Grant Thornton as Information Officer. Further supplementary orders were made by this court in March and May 2024, again recognizing various steps taken and orders made in the US proceedings. On June 7, 2024 the US Court entered certain findings of fact, conclusions of law and an order: (i) approving the debtors' disclosure statement on a final basis, and (ii) confirming the debtors' Plan.

- [2] Essentially, the approved Plan provides for an equity transaction converting \$700 million of debt, a rights offering for a further amount of up to \$345 million, exit financing and a wind down of certain aspects of the business, referred to as the American Queen business.
- [3] The Plan identifies 10 classes of claims and interests. The evidence of the applicants, and the understanding of the Information Officer, is that all creditors were subject to this classification system, including the Canadian creditors. There has been no different treatment of creditors based on whether they are Canadian or American.
- [4] Upon implementation, the Plan contemplates various releases and related orders comparable to the sorts of releases recognized in Canadian proceedings.
- [5] The Information Officer understands based upon its review of the Plan materials and other sources that implementation of the Plan is necessary for the debtors, including the Canadian debtors, to restructure the Hornblower business and emerge from the US proceedings and corresponding recognition proceedings. Moreover, the Information Officer understands that implementation of the Plan is critical for the Canadian debtors to continue operating as a going concern, which will maximize value for all Canadian creditors and other stakeholders.
- [6] Typically, a Canadian court will only refuse to recognize an order of the foreign court where such order is contrary to subsection 61(2) of the CCAA, which provides that "Nothing in [Part IV of the CCAA] prevents the court from refusing to do something that would be contrary to public policy." Canadian courts have held that this exception should be interpreted narrowly. The Information Officer is not aware of any element of the relief being sought that would be contrary to Canadian public policy nor is any such provision evident on the face of the record.
- [7] I am satisfied that the recognition order sought today is warranted and should be granted, based on the following factors: (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (b) the need to accord respect to foreign bankruptcy and insolvency legislation; (c) the equitable treatment of stakeholders, and, in particular whether recognition will ensure, to the extent reasonably possible, the equal treatment of stakeholders regardless of the jurisdiction in which they reside; (d) the importance of promoting plans that allow the enterprises to reorganize globally, especially where there is an established interdependence on a transnational basis; (e) the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise; (f) where one jurisdiction is to have an ancillary role, the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments regarding the reorganizational efforts in the foreign principal jurisdiction and stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction; and (g) all affected stakeholders receive effective notice as is reasonably practicable in the circumstances.
- [8] I am further satisfied that: (a) the Plan reflects significant creditor involvement and a global compromise; (b) creditors were given ample opportunity to participate in the Plan approval process; (c) creditors are largely supportive of the Plan; (d) there is no material prejudice to Canadian stakeholders resulting from

unequal treatment under the Plan; and (e) the information officer supports recognition of the Plan confirmation order.

[9] The Information Officer's request for a discharge is appropriate at this time.

[10] Finally, the Information Officer's request for approval of its reports and fees, and those of its counsel, is warranted at this time.

[11] There is no opposition to any of the relief sought today.

[12] Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a period.

Penny J.