

Court File No. BK-23-02929201-0032  
Estate File No. 32-2929201

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF PROSYSCO LTD. OF THE CITY OF TORONTO IN THE PROVINCE OF  
ONTARIO**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF 1110615 ONTARIO LTD.**

**FACTUM OF THE DEBTORS  
(RE: THIRD STAY EXTENSION)**

July 24, 2023

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**TO: THE SERVICE LIST**

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## **PART I – OVERVIEW**

1. On April 1, 2023, Prosysco Ltd. and 1110615 Ontario Ltd. (the “**Companies**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). Albert Gelman Inc. was appointed as proposal trustee under the BIA (the “**Proposal Trustee**”).
2. On April 24, 2023, the Honourable Madam Justice Conway granted an order (the “**First Extension Order**”) that, among other things:
  - (a) administratively consolidated the NOI proceedings commenced by the Companies; and
  - (b) extended the time to file a proposal for forty-five days up to and including June 14, 2023.
3. On June 12, 2023, the Honourable Madam Justice Kimmel granted an order (the “**Second Extension Order**”) that, among other things, granted a second extension of the time to file a proposal for forty-five days up to and including July 31, 2023.
4. This factum is filed by the Companies in support of their motion seeking an order that, among other things, extends the time for the filing of a proposal for a third period of 45 days up to and including September 14, 2023.
5. The Proposal Trustee is supportive of the requested relief and the Companies are unaware of any opposition, including from the Companies’ primary secured lender, Royal Bank of Canada (“**RBC**”).

## **PART II – FACTS**

### **A. Background on the Companies' Business**

6. The relevant facts are more fully set out in the affidavit of Terrence Stanley David Scott sworn July 19, 2023.<sup>1</sup>

7. Prosysco Ltd. ("**Prosysco**") is a manufacturer, designer and supplier of highly specialized engineering process solutions targeting the biotech, pharmaceutical, food, beverage, and dairy industries. Prosysco is the only supplier in Canada capable of providing a full spectrum of design / build / installation / commissioning services for high purity process equipment required for vaccine production.<sup>2</sup>

8. 1110615 Ontario Ltd. ("**111 Ontario**") is the parent company of Prosysco that controls 80% of the outstanding shares of Prosysco. 111 Ontario is a holding company that does not conduct business or have any employees.<sup>3</sup>

### **B. Difficulties Experienced from the Growth of the Business**

9. Prosysco's business is performed on a "project-by-project" basis. A buyer does not provide Prosysco the majority of its payment until a project is complete, which may be months or years after the project commences. Accordingly, Prosysco is often required to finance the majority of the project costs until it receives payment from a buyer on completion.<sup>4</sup>

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<sup>1</sup> Affidavit of Terrence Stanley David Scott sworn July 19, 2023, Motion Record of Prosysco Ltd., Tab 2 ("**Scott Affidavit**"). [Caselines Master A12](#)

<sup>2</sup> Scott Affidavit, *ibid* at para 6. [Caselines Master A13](#)

<sup>3</sup> Scott Affidavit, *ibid* at para 7. [Caselines Master A14](#)

<sup>4</sup> Exhibit C of the Scott Affidavit, the Affidavit of Terrence Stanley David Scott sworn April 18, 2023 ("**Scott's April Affidavit**") at para 7. [Caselines Master A26](#)

10. Prosysco has historically received financing in the form of a credit facility from RBC, its primary secured lender. The financing covers the expenses required to design and build these projects until final payments from customers are received sometime after project completion.<sup>5</sup>

11. Commencing in 2018, Prosysco experienced rapid growth in its business. As a result, Prosysco found it increasingly challenging to maintain sufficient cash flow to pay for its expenses needed to grow and deliver its products and services, as well as capitalize the initial stages of its growing number of ongoing projects.<sup>6</sup>

12. Prosysco also had difficulty preparing “review engagement” financial statements for the fiscal year ending February 2022 as requested by RBC.<sup>7</sup>

13. In response to Prosysco’s cash flow challenges, Prosysco increased its borrowing limit under its credit facility with RBC and temporarily deferred approximately \$1.6 million in source deduction payments to the Canada Revenue Agency (“CRA”).<sup>8</sup>

14. As a result of Prosysco’s failure to provide “review engagement” financial statements and the significant arrears of source deductions, RBC sent Prosysco and 111 Ontario (as guarantor of Prosysco’s credit facility) a Notice of Intention to Enforce Security under s. 244 of the BIA.<sup>9</sup>

15. Prosysco and RBC engaged in discussions in an attempt to arrive at informal restructuring arrangements, but those discussions were ultimately unsuccessful.<sup>10</sup>

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<sup>5</sup> Exhibit C of the Scott Affidavit, Scott’s April Affidavit at para 9. [Caselines Master A27](#)

<sup>6</sup> Scott Affidavit, *ibid* at para 8. [Caselines Master A14](#)

<sup>7</sup> Exhibit C of the Scott Affidavit, Scott’s April Affidavit at paras 14-16. [Caselines Master A28](#)

<sup>8</sup> Scott Affidavit, *ibid* at para 9. [Caselines Master A14](#)

<sup>9</sup> Scott Affidavit, *ibid* at para 10. [Caselines Master A14](#)

<sup>10</sup> Exhibit C of the Scott Affidavit, Scott’s April Affidavit at para 21. [Caselines Master A30](#)

### C. Background of the NOI Proceedings

16. As a result, on April 1, 2023, the Companies commenced these NOI Proceedings to, among other things,

- (a) obtain the breathing room necessary to deal with its obligations in an organized manner and to negotiate go-forward arrangements with its key stakeholders;
- (b) address the operational and financial inefficiencies resulting from the rapid expansion of the business;
- (c) explore possible refinancing to allow the Companies to continue as a going concern for the value for its numerous stakeholders;
- (d) avoid the loss of the significant value of Prosysco's assets that are currently tied up as a result of "work in progress", which would be lost in a bankruptcy or liquidation; and
- (e) develop a proposal for its unsecured creditors.<sup>11</sup>

17. On April 24, 2023, the Honourable Madam Justice Conway granted the First Extension Order that, among other things:

- (a) administratively consolidated the NOI proceedings commenced by the Companies; and
- (b) extended the time to file a proposal for forty-five days up to and including June 14, 2023.<sup>12</sup>

18. On June 12, 2023, the Honourable Madam Justice Kimmel granted the Second Extension Order that, among other things:

- (a) extended the time to file a proposal for forty-five days up to and including July 31, 2023;

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<sup>11</sup> Scott Affidavit, *ibid* at para 10. [Caselines Master A14](#)

<sup>12</sup> Scott Affidavit, *ibid* at para 12, Exhibit D. [Caselines Master A15](#), [Caselines Master A39](#)

- (b) approved the actions, conduct and activities of the Proposal Trustee (as defined below) as set out in its Third Report provided that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval; and
- (c) approved the professional fees and disbursements of the Proposal Trustee and its counsel as detailed and set forth in the fee affidavits of Bryan Gelman and Mario Forte.<sup>13</sup>

**D. The Companies' Activities Since the Second Extension Order**

19. Since the Companies were last before the Court on June 12, 2023, the Companies have:

- (a) collected approximately \$1.6 million in outstanding accounts receivable owed to Prosysco and a total of approximately \$5.88 million since April 1, 2023;
- (b) received new orders and requests for quotes from both new and existing customers;
- (c) stayed current with government obligations, including in respect of source deductions and HST;
- (d) considered and enacted operational changes;
- (e) worked with Prosysco's new accountants, MNP LLP, in their review of the Companies' February 2023 financial statements; and
- (f) continued operating the business under the supervision of the Proposal Trustee.<sup>14</sup>

20. In addition, the Companies have been working with its advisors to explore various options to refinance and/or restructure its business. As part of that exploration process, the Companies are discussing possible strategic transactions (invest / loan) with numerous parties. In particular, the Companies have created a data room to share information with interested investors and lenders.

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<sup>13</sup> Scott Affidavit, *ibid* at para 13, Exhibit E. [Caselines Master A15](#), [Caselines Master A47](#)

<sup>14</sup> Scott Affidavit, *ibid* at paras 14-16. [Caselines Master A16](#)

To date, the Companies have granted access to the data room for six entities, all of which remain engaged in ongoing discussions with the Companies.<sup>15</sup>

21. The Companies are optimistic that these discussions will lead to a viable strategic transaction that will assist with maintaining the going concern nature of the Companies for the benefit of their stakeholders through a proposal.<sup>16</sup>

### **PART III – ISSUE**

22. The issue before this Court is whether:

- (a) this Court should extend the period for the Companies to file a proposal and the stay of proceedings pursuant to section 50.4(9) of the BIA.

### **PART IV – LAW & ARGUMENT**

#### **A. The Time to File a Proposal Should be Extended**

23. Under section 50.4(9) of the BIA, the Court has the authority to extend the period for filing a proposal and the stay of proceedings for a period of 45 days where it is satisfied that:

- (a) the extensions do not exceed an aggregate of five months after the expiry of the 30-day initial stay period;
- (b) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (c) the insolvent person would likely be able to make a viable proposal if the extension is granted; and,

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<sup>15</sup> Scott Affidavit, *ibid* at paras 17-18. [Caselines Master A17](#)

<sup>16</sup> Scott Affidavit, *ibid* at para 19. [Caselines Master A17](#)

- (d) no creditor would be materially prejudiced if the extension were granted.<sup>17</sup>  
(generally, the “**Section 50.4(9) Factors**”)

24. The Companies submit that each of the Section 50.4(9) Factors have been met:
- (a) the Companies filed for protection on April 1, 2023 and this extension will not exceed the aggregate limit of five months after the initial thirty day period;
  - (b) the Companies are acting in good faith and with due diligence to explore refinancing options to preserve the business.<sup>18</sup> Cash flow projections demonstrate that the Companies have sufficient cash to continue operating over the proposed extension period;<sup>19</sup>
  - (c) the combination of new customer orders and profitability in the most recent management-prepared financial statements supports a going-concern approach to restructuring.<sup>20</sup> An extension of time will facilitate the Companies ability to continue its going-concern approach and make a proposal to their creditors, which will preserve value for the benefit of creditors;<sup>21</sup> and
  - (d) no creditor will be materially prejudiced by the extension.<sup>22</sup> The Companies’ primary secured creditor, RBC, does not oppose the extension of time to file a

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<sup>17</sup> [Bankruptcy and Insolvency Act, RSC 1985, c B-3, at s. 50.4\(9\).](#)

<sup>18</sup> Scott Affidavit, *ibid* at para 14. [Caselines Master A16](#)

<sup>19</sup> The Second Report of the Proposal Trustee, Appendix “F”. [Caselines Master E61](#)

<sup>20</sup> Scott Affidavit, *ibid* at para 16. [Caselines Master A17](#)

<sup>21</sup> Scott Affidavit, *ibid* at paras 21-23. [Caselines Master A18](#)

<sup>22</sup> Scott Affidavit, *ibid* at para 24. [Caselines Master A18](#)

proposal.<sup>23</sup> In fact, a bankruptcy and resulting liquidation would be prejudicial to the Companies' stakeholders.<sup>24</sup>

25. Overall, the Section 50.4(9) Factors support extending the stay of proceedings to facilitate a restructuring that will ensure that the Companies are able to continue contributing to key Canadian industries including the biotech, pharmaceutical, food, beverage and dairy industries.

**PART V – RELIEF REQUESTED**

26. Based on the foregoing, the Companies respectfully request that this Court grant the proposed form of order found at tab 3 of the Companies' Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24<sup>th</sup> DAY OF JULY, 2023**



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**JESSICA WUTHMANN  
RECONSTRUCT LLP**

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<sup>23</sup> Scott Affidavit, *ibid* at para 5. [Caselines Master A13](#)

<sup>24</sup> Scott Affidavit, *ibid* at para 23. [Caselines Master A18](#)

**SCHEDULE "A"**

**List of Authorities**

Nil.

**SCHEDULE "B"****Statutory Authorities****[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)****Notice of intention**

**50.4 (1)** Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

**Certain things to be filed**

**(2)** Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

**Creditors may obtain statement**

**(3)** Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

**Exception**

**(4)** The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

### **Trustee protected**

**(5)** If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

### **Trustee to notify creditors**

**(6)** Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

### **Trustee to monitor and report**

**(7)** Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

**(a)** shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

**(b)** shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

**(i)** with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

**(ii)** with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

**(c)** shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

### **Where assignment deemed to have been made**

**(8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

**(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

**(b)** the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

**(b.1)** the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

### **Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

### **Court may not extend time**

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

### **Court may terminate period for making proposal**

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND**

**Court File No. BK-23-02929201-0032  
Estate No. 32-2929201**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF PROSYSCO LTD. OF THE CITY OF  
MISSISSAUGA IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF 1110615 ONTARIO LTD.**

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***ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

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