

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

THE HONOURABLE

)

TUESDAY, THE 10TH

JUSTICE GILMORE

)

)

DAY OF MAY, 2022

***IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TOBMAR INVESTMENTS INC. OF THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO***

ORDER

THIS MOTION, made by Tobmar Investments Inc. (the “**Corporation**”) for, among other things, an order extending the time for the Corporation to file a proposal under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) to July 3, 2022, was heard this day at 330 University Avenue, Toronto, Ontario by video conference.

ON READING the Affidavit of Mary Kelly sworn May 2, 2022 (the “**Kelly Affidavit**”) and the exhibits thereto; and the First Report of Albert Gelman Inc. in its capacity as proposal trustee of the Corporation (the “**Proposal Trustee**”) and on hearing the submissions of the counsel for the Corporation and counsel for the Proposal Trustee, and no one else appearing although duly served,

A. SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record and Factum of the Corporation is hereby abridged and service of same is validated so that this motion is properly returnable today.

B. EXTENSION OF TIME

2. **THIS COURT ORDERS** that the time for the Corporation's filing of a proposal under the BIA and the stay of proceedings herein be and is hereby extended in accordance with subsection 50.4(9) of the BIA to and including July 3, 2022.

C. ADMINISTRATIVE CONSOLIDATION

3. **THIS COURT ORDERS** that the present matter and the related matters in Court File No. 31-2822741 and 31-2822735 (the "**Related Matters**") shall be treated jointly as a single court file so as to consolidate, for administrative purposes only, the within proceeding and the Related Matters (collectively, the "**Proposal Proceedings**") and authorizes and directs that the Proposal Proceedings continue under the following joint title of proceedings:

Court File Nos. 31-2822735/31-2822739/31-2822741
Estate File Nos. 31-2822735/31-2822739/31-2822741

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
TOBMAR INVESTMENTS INTERNATIONAL INC., TOBMAR INVESTMENTS INC.,
AND GATEWAY MARKET CANADA INC., EACH OF THE CITY OF TORONTO IN
THE PROVINCE OF ONTARIO**

4. **THIS COURT ORDERS** that a copy of this Order be filed in the court files for the Related Matters.

5. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed in the court and estate file under Court File No. 31-2822735 and Estate No. 31-2822735.

D. ADMINISTRATIVE CHARGE

6. **THIS COURT ORDERS** that the Proposal Trustee and counsel for the Proposal Trustee shall be entitled to the benefit of and are hereby granted a charge in first priority (the "**Administrative Charge**") on all of the Corporation's current and future assets, undertakings and properties of any nature or kind whatsoever and wherever situate, including all proceeds thereof (the "**Property**") not exceeding \$75,000.00 as security for the professional fees and disbursements incurred by the Proposal Trustee and counsel for the Proposal Trustee in respect of these proceedings, both before and after the filing by the Corporation of a Notice of Intention to Make a Proposal under the BIA and the professional fees and disbursements of Albert Gelman Inc. as trustee in bankruptcy, including the fees and disbursements of its counsel.

7. **THIS COURT ORDERS** that the filing, registration or perfection of the Administrative Charge shall not be required and that the Administrative Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Administrative Charge coming into existence, notwithstanding such failure to file, register or perfect.

8. **THIS COURT ORDERS** that the Administrative Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administrative Charge (collectively, the "**Chargees**") shall not otherwise be

limited or impaired in any way by: (i) the pendency of the Proposal Proceedings and the declarations of insolvency made in the Proposal Proceedings; (ii) any application for a bankruptcy order pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of the creditors pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing loan documents, lease, sublease, offer to lease to lease or other agreements (collectively, an “**Agreement**”) which binds the Corporation, and notwithstanding any provision to the contrary in any such Agreement:

- (a) the creation of the Administrative Charge shall not create or be deemed to constitute a breach by the Corporation of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administrative Charge; and
- (c) the payments made by the Corporation pursuant to this Order, and the granting of the Administrative Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

E. LANDLORDS

9. **THIS COURT ORDERS** that with respect to landlords of Gateway Stores, as that term is defined in the Kelly Affidavit (the “**Landlords**”), until such time as a real property lease is disclaimed or terminated in accordance with the termination of the lease, the Corporation shall pay to such Landlords of Gateway Stores on or after April 19, 2022 (the “**Filing Date**”) all amounts constituting rent or payable as rent under the respective leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the Landlord under the respective lease, as applicable but, for greater certainty, excluding accelerated rent or penalties, fees, or other charges and costs arising as a result of the insolvency of the Corporation and the abandonment, if any, of any furniture, fixtures, equipment or signage) or as otherwise may be negotiated between the Corporation and the applicable Landlord from time to time (“**Rent**”) twice-monthly in equal installments on the first and fifteenth day of each month, in advance (but not in arrears), provided that in the event that a franchisee that was paying rent directly to a Landlord at the time of the commencement of these proceedings fails to make a payment of Rent as and when due, the Corporation shall, upon being notified in writing of such payment default, have three (3) business days or such other period as is agreed to by the affected Landlord to cure such payment default.

10. **THIS COURT ORDERS** that with respect to Rent owing for the period from and after the Filing Date (including Rent owing for notice periods for leases that are disclaimed), the Landlords shall be entitled to and are hereby granted a charge (the “**Landlords’ Charge**”) on the Property as security for the payment of all Rent for the period commencing on the Filing Date and concluding on the earlier of (i) the date on

which the Corporation's proposal under the BIA is implemented; and (ii) the effective date of the disclaimer or termination of such lease (the "**Post-Filing Rent**"). For greater certainty, the amount of Post-Filing Rent secured by the Landlords' Charge shall not exceed the amount of Post-Filing Rent owing as at the earlier of (i) the date on which the Corporation's proposal under the BIA is implemented; and (ii) the effective date of the disclaimer or termination of such lease.

11. **THIS COURT ORDERS** that the Landlords' Charge shall form a charge on the Property in priority to all encumbrances in favour of any person, but subordinate in priority to (i) the Administrative Charge; (ii) any Encumbrance in favour of the Toronto Dominion Bank; (iii) any encumbrance in favour of a secured creditor of the Corporation who would be materially prejudiced by this Order and who has not been given notice of this motion; (iv) the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA; (v) any valid claims to the Property of the Corporation asserted pursuant to section 81.1 of the BIA; and (vi) any valid priority charges which exist in relation to provincial sales taxes pursuant to the *Excise Tax Act* (Canada).

12. **THIS COURT ORDERS** that the amount of Post-Filing Rent subject to the Landlords' Charge in favour of any particular Landlord shall be determined on a basis consistent with the applicable lease, or as otherwise may be negotiated between the Corporation and the applicable Landlord from time to time, and, the Landlords' Charge shall be shared by affected Landlords rateably in accordance with the amounts of their respective unpaid Post-Filing Rent. In the event of any dispute between a Landlord and the Corporation as to the Post-Filing Rent payable to a Landlord, this Court shall have the

authority to determine such dispute on a summary basis on a motion made by the Corporation or the applicable Landlord, as the case may be.

13. **THIS COURT ORDERS** that the Landlords' Charge shall not be enforced without the written consent of the Proposal Trustee, or leave of this Court.

14. **THIS COURT ORDERS** that the filing, registration or perfection of the Landlords' Charge shall not be required and that the Landlords' Charge shall be enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Landlords' Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

15. **THIS COURT ORDERS** that the Landlords' Charge shall not be rendered invalid or unenforceable as to the rights and remedies of the Landlords entitled to the benefit of the Landlords' Charge and the Landlords shall not otherwise be limited or impaired in any way by: (i) any application(s) for bankruptcy issued pursuant to the BIA as against the Corporation, or any bankruptcy order made pursuant to such applications; (ii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA by the Corporation; (iii) any deemed bankruptcy of the Corporation; and (iv) the provisions of any federal or provincial statutes. Further, any payments made to the Landlords pursuant to the Landlords' Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions pursuant to the BIA or any other applicable law.

F. APPROVAL OF FIRST REPORT

16. **THIS COURT ORDERS** that the First Report of the Proposal Trustee and the actions and activities of the Proposal Trustee as outlined therein be and same are hereby approved.

G. GENERAL

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.

A handwritten signature in blue ink, appearing to read "C. [unclear] J.", is written above a horizontal line.

(Signature of judge)

RCP-E 59A (September 1, 2020)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TOBMAR INVESTMENTS INC. OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

DALE & LESSMANN LLP

181 University Avenue, Suite 2100
Toronto, ON M5H 3M7

Jeffrey P. Hoffman (#28067P)

Tel: 416-369-7806

jhoffman@dalelessmann.com

Nedko M. Petkov (#66429U)

Tel: 416-369-7821

npetkov@dalelessmann.com

Lawyers for the Insolvent Person

RCP-E 4C (July 1, 2007)