

District: Ontario
Division No. 09-Toronto
Court No. 31-2675583
Estate No. 31-2675583

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)



THE HONOURABLE MADAM
JUSTICE CONWAY

)
)
)

MONDAY, THE 26TH

DAY OF OCTOBER, 2020

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED

ORDER
(Priority Charges and Stay Extension)

THIS MOTION, made by Conforti Holdings Limited ("Conforti"), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") for an order, among other things, (i) approving a debtor-in-possession ("DIP") term sheet, a DIP loan, and authorizing Conforti to borrow up to \$500,000; (ii) granting a charge in favour of the DIP lender, an administrative charge in favour of Crowe Soberman Inc., in its capacity as proposal trustee of Conforti (the "Proposal Trustee"), counsel to the Proposal Trustee, and counsel to Conforti, and a charge in favour of Conforti's officers and directors; (iii) approving the first report of the Proposal Trustee, dated October 23, 2020 (the "First Report"), and the conduct and activities of the Proposal Trustee as described therein; and (iv) extending the time for Conforti to file a proposal from October 28, 2020 to December 14, 2020, was heard this day by videoconference due to the COVID-19 pandemic.

ON READING Conforti's notice of motion, the affidavit of Antonio Conforti, sworn October 21, 2020, and the First Report, and on hearing the submissions of counsel for Conforti and counsel for the Proposal Trustee, and counsel for those other parties appearing as indicated by

the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record (including service of the First Report) be and is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DIP FINANCING

2. **THIS COURT ORDERS** that Conforti is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Antonio Conforti (in such capacity, the "**DIP Lender**") in order to finance Conforti's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$500,000.

3. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between Conforti and the DIP Lender, dated as of October 20, 2020 (the "**DIP Term Sheet**"), filed.

4. **THIS COURT ORDERS** that Conforti is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and Conforti is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

5. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on all of the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 14 and 16 hereof.

6. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- b. upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three Business Days' (as that term is defined in the DIP Term Sheet) notice to Conforti and the Proposal Trustee, may exercise any and all of its rights and remedies against Conforti or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to Conforti and set off and/or consolidate any amounts owing by the DIP Lender to Conforti against the obligations of Conforti to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against Conforti and for the appointment of a trustee in bankruptcy of Conforti; and

c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of Conforti or the Property.

7. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by Conforti under the BIA with respect to any advances made under the Definitive Documents.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, Goldman Sloan Nash & Haber LLP as counsel to the Proposal Trustee, and Miller Thomson LLP as counsel to Conforti (collectively, the **“Professional Group”**), shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Conforti as part of the costs of these proceedings both before and after the making of this Order in respect of these proceedings and related matters. Conforti is hereby authorized to pay the accounts of the Professional Group on a monthly basis.

9. **THIS COURT ORDERS** that the Professional Group shall pass their accounts from time to time, and for this purpose, the accounts of the Professional Group are hereby referred to a judge of the Ontario Superior Court of Justice (Commercial List) at Toronto, Ontario.

10. **THIS COURT ORDERS** that the Professional Group shall be entitled to the benefit of and are hereby granted a charge (the **“Administration Charge”**) on the Property which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Professional Group, both before and after the making of this Order with respect to and incidental to these proceedings, including the reasonable fees and disbursements of the Professional Group incurred in preparation of the filing of Conforti’s proposal pursuant to section 50 of the BIA. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

DIRECTORS CHARGE

11. **THIS COURT ORDERS** that Conforti shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of Conforti after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of Conforti shall be entitled to the benefit of and are hereby granted a charge (the "Director's Charge") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 11 of this Order. The Director's Charge shall have the priority set out in paragraphs 14 and 16 hereof.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) Conforti's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts identified in accordance with paragraph 11 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. **THIS COURT ORDERS** that the priorities of the DIP Lender's Charge, the Administration Charge and the Directors' Charge (collectively the "Charges") as among them, shall be as follows:

First – Administration Charge (to the maximum of \$250,000);

Second – DIP Lender's Charge (to the maximum amount of \$500,000); and

Third – Director's Charge (to the maximum of \$100,000)

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

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**").

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, Conforti shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless Conforti also obtains the prior written consent of the Proposal Trustee, the DIP Lender and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 or

other agreement (collectively, an "Agreement") which binds Conforti and notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by Conforti 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 Conforti entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- c. the payments made by Conforti pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

19. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

APPROVAL OF FIRST REPORT

20. **THIS COURT ORDERS** that the First Report, together with the conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.

EXTENSION OF TIME TO MAKE A PROPOSAL

21. **THIS COURT ORDERS** that the time to make a proposal is delayed and extended to December 14, 2020.

OTHER

22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.crowesobermaninc.com/insolvency/insolvency-cases/conforti-holdings-limited/>.

23. **THIS COURT ORDERS** that Conforti and the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to Conforti's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

24. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

25. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this

Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

Connolly.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED

Court File Nos.: Division No. 09-Toronto
Court No. 31-2675583 and Estate No. 31-2675583

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at Toronto

ORDER
(Priority Charges and Stay Extension)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1101
Toronto, ON M5H 3S1

Bobby Sachdeva LSO #: 34454C
Tel: 905.532.6670
Fax: 905.660.0139
bsachdeva@millerthomson.com

Erin Craddock LSO #: 62828J
Tel: 416.595.8631
Fax: 416.595.8695
ecraddock@millerthomson.com

Lawyers for Conforti Holdings Limited