

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 15
CDS U.S. HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 20-11719 (CSS)
)	
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF STÉPHANE LEFEBVRE IN
SUPPORT OF FOREIGN REPRESENTATIVE’S MOTION,
PURSUANT TO SECTIONS 105(A), 363, 365, 1501, 1507, 1520, AND
1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, 6006,
AND 9014, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING
THE APPROVAL AND VESTING ORDER, (II) APPROVING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, AND ENCUMBRANCES, (III) RECOGNIZING AND ENFORCING THE
ADMINISTRATIVE RESERVES ORDER, AND (IV) GRANTING RELATED RELIEF**

I, Stéphane Lefebvre, to the best of my information and belief, state as follows:

1. I am the Chief Financial Officer of Cirque du Soleil Canada Inc. (the “Foreign Representative”). I am intimately familiar with the above-captioned debtors (collectively, the “Debtors” or “Cirque du Soleil”), which are the subject of jointly-administered proceedings (the “Canadian Proceedings”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Superior Court of Quebec, Commercial Division (the “Canadian Court”), and, as such, have knowledge of the matters contained in this declaration (the “Declaration”).

¹ The last four digits of Debtor CDS U.S. Holdings, Inc.’s tax identification number are (0086). Due to the large number of debtor entities in these jointly administered chapter 15 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ noticing agent at www.omniagentsolutions.com/cirquedusoleil. The location of the Debtors’ service address for purposes of these chapter 15 cases is: 8400, 2e Avenue Montréal, Quebec H1Z 4M6 Canada.

2. I submit this declaration in support of the *Foreign Representative's Motion Pursuant to Sections 105(A), 363, 1501, 1507, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6005, and 9014, for Entry of an Order (I) Recognizing and Enforcing the Approval and Vesting Order, (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Lien, Claims, and Encumbrances, (III) Recognizing and Enforcing the Administrative Reserves Order, and (IV) Granting Related Relief* (the "Motion") filed contemporaneously herewith.²

3. Except as otherwise stated herein, the statements in this Declaration are based on my personal knowledge or opinion except as otherwise noted. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration on behalf of the Debtors.

Events Leading to a Sale of Substantially All of the Debtors' Assets

4. The Debtors have undertaken affirmative steps to restructure their operations, as detailed in the Lefebvre Declaration and Martel Declaration. Such efforts have been focused on a going-concern sale of all or substantially all of the Debtors' assets (the "Assets") pursuant to the CCAA and section 363 of the Bankruptcy Code, or a similarly-structured transaction (the "Sale").

The Sale and Investor Solicitation Process and Procedures

(a) Sale Process—Phase I

5. Beginning in May 2020 ("Phase I" of the Sale Process (as defined below)), the Debtors, in conjunction with their advisors, including Greenhill & Co., LLC ("Greenhill") and National Bank Financial Inc. ("National Bank") and together with Greenhill, collectively, the

² All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Motion.

“Financial Advisors”), engaged in a comprehensive and good-faith sale process to sell the Assets (the “Sale Process”). To that end, the Financial Advisors prepared a list of 97 strategic and financial parties who, in the Financial Advisors’ reasonable professional judgment, may have been interested in acquiring the Assets (the “Potential Bidders”). Of the 97 Potential Bidders, 34 signed non-disclosure agreements. Initial non-binding indications of interest were due on June 8, 2020, and the Debtors received five proposals by the deadline. One such proposal was from the ad hoc committee of secured lenders (the “Ad Hoc Group”) for a credit bid of the full amount outstanding under the First Lien Credit Agreement and the Second Lien Term Loan Agreement. The existing shareholders, comprised of TPG VII CDS Holdings, L.P., Caisse de Depot et Placement du Quebec, Fosun Industrial Holdings Limited (the “Existing Shareholders”), and Investissement Quebec (“IQ” and together with the Existing Shareholders, the “Shareholder Consortium”) submitted a proposal on May 20, 2020 that included a draft acquisition agreement to serve as a stalking horse bid, which was fully negotiated and finalized on June 19, 2020 (the “Shareholder Stalking Horse Bid”). On June 11, 2020, the Transaction Committee (through the Financial Advisors) requested binding commitment letters from the Ad Hoc Group and Shareholder Consortium, which were provided on June 18 and 19, respectively.

6. Due to liquidity constraints and various other considerations discussed in the Lefebvre Declaration and Martel Declaration, the Debtors determined they needed to commence voluntary insolvency proceedings. On June 28, 2020, upon the informed recommendation of the Transaction Committee, the Debtors entered into an agreement on the terms of the Shareholder Stalking Horse Bid, which preserved optionality to obtain higher or otherwise better bids at limited additional expense given the lack of any break-up fees or further expense reimbursement

requirements. The following day, on June 29, 2020, the Debtors initiated the Canadian Proceedings.

(b) Sale Process—Phase II

7. After initiating the Canadian Proceedings (“Phase II” of the Sale Process), all five parties that submitted letters of intent in Phase I of the Sale Process were provided management presentations and the opportunity to make additional diligence requests, which the Debtors fulfilled as received. Two additional parties entered the Sale Process in Phase II. These two additional parties received the same diligence items and authority to submit diligence requests as the parties who submitted letters of intent in Phase I.

8. The Ad Hoc Group submitted a mark-up of the Shareholder Stalking Horse Bid which was subsequently fully negotiated, including revised commitment letters (the “Ad Hoc Group Stalking Horse Bid”), and on July 15, 2020, the Debtors filed to replace the Shareholder Stalking Horse Bid with the Ad Hoc Group Stalking Horse Bid. At a hearing held before the Canadian Court on July 17, 2020, the *Order Approving a Sale and Investment Solicitation Process* (the “SISP Order”) was heard and approved, and the Ad Hoc Group Stalking Horse Bid was approved and authorized to serve as the stalking horse bid for the Sale Process—replacing the Shareholder Stalking Horse Bid.

9. The SISP Order describes, among other things, (a) the Assets available for sale and the opportunity for an investment in connection with the purchase of such Assets, (b) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Assets and the sale or investment thereof, and (c) the manner in which bidders and bids become Qualified Bidders, Qualified Bids, and Auction Bidders, as applicable, (d) the evaluation of bids received, (e) the guidelines for the ultimate selection of the Successful

Bid(s) and/or Back-Up Bid(s), and (f) the process for obtaining such approvals (including the approval of the Canadian Court) as may be necessary or appropriate in respect of a Successful Bid.

10. As set out in the SISP Order, the deadline for parties to submit binding bids and deposits was August 18, 2020. No other bids were received by such deadline. The remaining parties to the Sale Process withdrew and did not offer a Superior Bid on various grounds, including valuation, cash needs of the business, and uncertainty surrounding relaunch of operations. Despite attempts by the Financial Advisors to connect Phase II interested parties as potential co-investors, the bidders ultimately could not provide a topping bid following the replacement of the Shareholder Stalking Horse Bid with the Ad Hoc Group Stalking Horse Bid.

11. I believe that, after expending significant efforts towards the Debtors' restructuring over several months, the Ad Hoc Group Stalking Horse Bid maximizes the value of the Debtors' estates for the benefit of their creditors and other parties in interest. I reach this conclusion after a months-long marketing process whereby the Debtors, in conjunction with their advisors, engaged with both strategic and financial parties who potentially were interested in participating in a sale.

12. The Spectacle Sale Agreement is the result of an extensive marketing process and arm's-length, good-faith negotiations between the parties thereto, and the proposed purchase price is the highest and best offer received to date. Additionally, the consideration to be received by the Debtors from the Buyer has been validated by a "market test" and an auction process in which the Ad Hoc Group served as a stalking horse whose bid was subject to higher or otherwise better offers. The Canadian Court-approved SISP was crafted to ensure that the Purchased Assets are sold for the maximum potential price, and I believe the Purchase Price resulting from this process is fair and reasonable.

The Spectacle Sale Agreement

13. Over the course of the past several months, the Debtors and their advisors pursued, in parallel with the conduct of the SISP, as well as following its conclusion, discussions with the Ad Hoc Group in order to determine the optimal transaction structure to be implemented with the Ad Hoc Group, should no Superior Bid be submitted by the Bid Deadline.

14. As part of these discussions, the Ad Hoc Group expressed a desire to maintain a portion of the corporate structure of the Debtors so as to facilitate the transition upon implementation of the transaction contemplated in the Ad Hoc Group Stalking Horse Bid, as well as to preserve certain tax attributes of the Debtors.

15. Accordingly, and as permitted under the Ad Hoc Group Stalking Horse Bid, it was determined that the transaction set out thereunder should be implemented as follows:

(a) by way of transfer of assets, for the assets owned by most of the U.S. Debtors (the “Non-Acquired Debtors”); and

(b) by way of a transfer of the equity interest held by Cirque du Soleil Holdings L.P. directly in CDS Canadian Holdings, Inc., (and indirectly of the entities held by the latter, including the other Canadian Debtors), as well as the equity interests of Cirque du Soleil Vegas, L.L.C. (the Debtors whose equity interest will be transferred directly or indirectly are collectively referred to herein as the “Acquired Debtors”); *provided*, however, that the Acquired Debtors would first be “reverse vested” as described herein.

16. Accordingly, on October 9, 2020, the parties entered into an amendment agreement with respect to the Ad Hoc Group Stalking Horse Bid so as to reflect the agreed transaction structure (as amended, the “Spectacle Sale Agreement”), pursuant to which Spectacle BidCo Holdings Inc. (“Spectacle Holdings”), as assignee of Spectacle Bidco LP (“Spectacle”), the acquisition vehicle for the Ad Hoc Group, would, directly or indirectly through one or more designated buyers (collectively, with Spectacle Holdings, the “Buyer”), acquire substantially all of the operations of the Debtors through: (a) an acquisition of all or substantially all of the assets

of the Non-Acquired Debtors specified in the Spectacle Sale Agreement; and (b) an acquisition of all issued and outstanding shares of CDS Canadian Holdings, Inc. (and indirectly of most of the other Acquired Debtors and the other non-debtor transferred subsidiaries) as well as the equity interests in Cirque du Soleil Vegas L.L.C. (collectively, the “Purchased Assets”). Consistent with the Spectacle Sale Agreement, the Debtors are also adding 9424-9356 Quebec Inc. (“ExcludedCo1”) and 9424-9398 Quebec Inc. (“ExcludedCo2”) as applicants to the CCAA Proceedings for the purpose of implementing the transactions contemplated in the Spectacle Sale Agreement (collectively, the “Spectacle Transaction”).

17. The Spectacle Transaction provides for, amongst other things, the following:

- (a) the completion of a pre-closing reorganization of certain Debtors in accordance with the Reorganization Step Plan attached to the Spectacle Sale Agreement;
- (b) all of the right, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in the Buyer, free and clear of any and all claims and encumbrances (excluding the Permitted Encumbrances);
- (c) certain contracts set out in the schedules to the Spectacle Sale Agreement and the draft Approval and Vesting Order shall be either retained by the applicable Acquired Debtors or assigned to the Buyer, as the case may be, with the possibility for the Buyer to designate additional contracts to be retained or assigned in accordance with the modus operandi proposed in the draft Approval and Vesting Order or otherwise in accordance with the Spectacle Sale Agreement;
- (d) certain assets set out in the Spectacle Sale Agreement (collectively, the “Excluded Assets”) of the Acquired Debtors will be transferred to and vested in ExcludedCo1, while certain contracts prescribed in the Spectacle Sale Agreement and attachments thereto (collectively, the “Excluded Contracts”) of the Acquired Debtors will be assigned to and assumed by ExcludedCo1, each in accordance with the sequence set out in the Spectacle Sale Agreement and the step plan attached thereto (the “Reorganization Step Plan”);
- (e) all liabilities, other than the “Assumed Liabilities,” as defined in the Spectacle Sale Agreement (collectively, the “Assumed Liabilities”) of the Acquired Debtors (collectively, the “Transferred Liabilities”) will be transferred to and assumed by ExcludedCo2 in accordance with the

sequence set out in the Spectacle Sale Agreement and the Reorganization Step Plan such that on the Effective Date the Transferred Liabilities shall be novated and become the exclusive obligations of ExcludedCo2 (and not the obligations of the Acquired Debtors) and the Acquired Debtors and the Purchased Assets shall be forever released and discharged from such Transferred Liabilities; and

18. I believe a sale of the Purchased Assets other than one free and clear of all interests, except as otherwise provided in the Spectacle Sale Agreement and the Approval and Vesting Order would yield substantially less value for the Debtors and their creditors than the alternative. Therefore, I believe a sale free and clear of all interests is in the best interests of the Debtors, their creditors, and other parties in interest.

19. Additionally, pursuant to the proposed Approval and Vesting Order, the commencement or prosecution of any demands, claims, or actions with respect to Transferred Liabilities against, among others, the Acquired Debtors and the Buyer shall be permanently enjoined. Any person who, prior to the Effective Date, had a claim against an Acquired Debtor or the Purchased Assets in respect of any of the Transferred Liabilities shall no longer have such claim against the Acquired Debtor or the Purchased Assets but will instead solely have an equivalent claim against ExcludedCo2 from and after the Effective Date in its place and stead.

20. The purchase price payable by the Buyer for the Purchased Assets pursuant to the Spectacle Sale Agreement shall consist of the following considerations (collectively, the "Purchase Price"):

(a) Spectacle Holdings will cause the release of all amounts outstanding and obligations owing under the First Lien Credit Agreement and the Second Lien Credit Agreement as of the Closing Date, including the principal amount of indebtedness and interest accrued as of the Closing Date, which amount as of (but not including) July 14, 2020, is estimated to be \$1,089,497,253.02, plus any fees (defined as the "Credit Bid Consideration" under the Spectacle Sale Agreement), with such release of the First Lien Debt and Second Lien Debt occurring in the manner, order, and sequence prescribed in the Reorganization Step Plan;

(b) Spectacle Holdings will arrange for the payment of a cash amount sufficient to pay: (i) all amounts owing under that certain “replacement loan” provided prepetition by the Ad Hoc Group to the Debtors (the “Ad Hoc Group Replacement Loan”), (ii) the amount of the “Administrative Monitor Reserve” and the amount of the “Administrative Seller Reserve,” and (iii) all amounts necessary to cure any monetary defaults as a condition to assuming the Assigned Agreements;

(c) Spectacle Holdings will assume or cause the relevant designated buyer to assume the Assumed Liabilities (other than those of any Transferred Subsidiary) which are retained by such Transferred Subsidiary; and

21. Spectacle Holdings will also fund, or cause to be funded, the amounts for:

(a) a fund (the “Employee Fund”) in the amount of \$15 million to provide financial assistance to former employees whose employment was terminated either by the Debtors (excluding for just cause) or by mutual agreement effective on or after January 1, 2020 (irrespective of the date on which the notice was given) and ending on the Effective Date, who remained employees in good standing until their services were no longer required, is not an eligible Contractor on the Contractor Fund, and whose entitlement to receive a severance payment from the applicable Debtors entity has not been paid as a result of the CCAA Proceedings; and

(b) a fund (the “Contractor Fund”) to provide financial assistance to certain contractors who have not provided notice of termination of their contract to the applicable Debtor entity and who has not received notice of termination of the contract from the applicable Debtors entity as a result of a material breach of the contract, is not an eligible employee under the Employee Fund, and has had their payments for services provided to the applicable Debtor entity pursuant to the contract stayed as a result of the CCAA Proceedings.

22. The proposed Approval and Vesting Order also provides that, on the Effective Date,

(a) the present and former partners, shareholders, members of the Council of Representatives, directors, officers, employees, legal counsel and advisors of the Debtors (including, for the avoidance of doubt, ExcludedCo1 and ExcludedCo2), (b) the Monitor, (c) the Ad Hoc Group and its members, and (d) the respective affiliates, funds under management, affiliated funds, shareholders, members, equity holders, trustees, directors, officers, managers, employees, partners, legal counsel, advisors and other representatives of the persons specified in (a), (b) and

(c) (the persons specified in (a), (b), (c) and (d) being, collectively, the “Released Parties”) shall be forever irrevocably and unconditionally released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, losses, damages, judgments, executions, recoupments, debts, sums of money, expenses, costs, accounts, liens, taxes, penalties, interests, recoveries, and other obligations, liabilities and encumbrances of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, or due or not yet due, in law or equity and whether based in statute, contract or otherwise) based in whole or in part on any act, omission, transaction, dealing or other occurrence, matter, circumstance or fact existing or taking place on or prior to the Effective Date or completed pursuant to the terms of the Approval and Vesting Order and/or in connection with the Spectacle Transaction, in respect of or relating to, in whole or in part, directly or indirectly, any of the Debtors (including, for the avoidance of doubt, ExcludedCo1 and ExcludedCo2) or their assets, liabilities, business or affairs wherever or however conducted or governed, the administration and/or management of the Debtors, the Canadian Proceedings, these chapter 15 cases, or the Spectacle Transaction (collectively, the “Released Claims”), which Released Claims are fully, finally, irrevocably, unconditionally and forever waived, discharged, released, cancelled and barred as against the Released Parties, and the commencement, prosecution, continuation or assertion, whether directly, indirectly, derivatively or otherwise, by any Person of any Released Claims against the Released Parties, whether before a court, administrative tribunal, arbitrator, other dispute resolver or otherwise, shall be permanently restrained and enjoined; provided, however, that nothing shall waive, discharge,

release, cancel or bar any claim against the present and former directors of the Debtors that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

23. I believe that the release provisions included in the Approval and Vesting Order are the product of arm's-length, good faith negotiations and that the inclusion of such provisions in the Approval and Vesting Order has been critical in obtaining the support of the various constituencies to the Spectacle Transaction. I also believe that such release provisions included in the Approval and Vesting Order are well-considered and reasonable. Finally, each of the professionals of the Foreign Representative and the Debtors relied on these protections to engage in the work related to the Spectacle Transaction on the Foreign Representative and Debtors' behalf.

24. The closing of the Spectacle Sale Agreement is also subject to a number of customary conditions precedent, including the following:

- (a) the Approval and Vesting Order and the Order shall have been granted and become final orders;
- (b) the pre-closing reorganization steps shall have been effected in the manner, order and sequence prescribed in the Reorganization Step Plan.

25. In connection with the closing of the Spectacle Transaction, the members in the Ad Hoc Group and certain other First Lien Lenders will provide \$375 million of new financing to Spectacle Holdings (as guaranteed by its subsidiaries, including, inter alia, the Transferred Subsidiaries) to finance the restart of operations and otherwise fund the operation of the business, including with respect to the Assumed Liabilities under the Spectacle Transaction. Spectacle Holdings and its subsidiaries will also be liable for debt recovery in the form of a new \$300 million take-back second lien loan and assume the obligations thereunder. This take-back second lien loan will be allocated among the First Lien Lenders based on their respective interests in the pre-filing First Lien Term Loan (including the Revolving Credit Facility).

26. As things currently stand, and assuming the Approval and Vesting Order is entered by the Canadian Court on October 20, 2020, the parties intend to close the Spectacle Transaction no later than October 30, 2020. A speedy completion of the Spectacle Transaction, which is supported by the Debtors' senior economic stakeholders, is vital to the future viability of the Debtors' business, as the Applicants require further injections of cash to restart their operations as soon as circumstances permit. Moreover, the Debtors' liquid resources, including the Ad Hoc Group Replacement Loan obtained to finance these proceedings Sale Process, are nearly exhausted. I believe it is imperative that the Spectacle Transaction be completed and exit financing obtained in the near future in order for the business to transition as quickly and smoothly as possible.

27. Additionally, the parties have structured the Spectacle Transaction, in part, as a share transaction in order to preserve tax attributes for the go-forward business. Preserving these assets is in the best interest of the Debtors' stakeholders as a whole, as it will assist in the recovery of the going concern business that emerges from the CCAA Proceedings.

28. In short, I believe the proposed structure is necessary to complete the best transaction available to the Debtors under the circumstances, and to ensure the Debtors' business continues as a going concern for a broad array of stakeholders, including transferring employees and continuing suppliers, as well as the numerous former employees and independent contractors who are expected to be reengaged once normal business operations resume. Any other transaction structure that does not enable a timely and efficient closing while achieving these restructuring objectives would undermine the future viability of the business as a going concern.

29. I believe the Spectacle Sale Agreement was negotiated without fraud or collusion, in good faith, and from an arm's-length bargaining position. I believe the Debtors did not enter

into the Spectacle Sale Agreement for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: October 14, 2020

Stéphane Lefebvre
Stéphane Lefebvre
Chief Financial Officer
Cirque du Soleil Canada Inc.