Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

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FACTUM OF THE APPLICANTS

September 25, 2015

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

FACTUM OF THE APPLICANTS

(Meetings Order)

PART I – INTRODUCTION

1. 1511419 Ontario Inc., formerly known as The Cash Store Financial Services, Inc., and its affiliated companies 1545688 Alberta Inc., formerly known as The Cash Store Inc., 986301 Alberta Inc., formerly known as TCS Cash Store Inc., 1152919 Alberta Inc., formerly known as Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd., doing business as "The Title Store" (collectively, the "**Applicants**" or "**Cash Store**"), seek an order (the "**Meetings Order**") authorizing the Applicants to, *inter alia*, file a plan of compromise and arrangement in respect of the Applicants (the "**Plan**") and convene meetings of their Affected Creditors (as defined in the Plan) (the "**Meetings**") for the purpose of considering and voting on the Plan.

2. If the Plan has been accepted by the required majorities in each class of Affected Creditors, the Applicants are seeking authorization to seek Court approval of the Plan and entry of the Sanction Order at the Sanction Hearing. Service of the Meetings Order and

the delivery and publication of the meeting materials in accordance with the terms of the Meetings Order are intended to provide good and sufficient notice of the Sanction Hearing upon all persons who may be entitled to receive such notice.

3. The issues to be considered on this motion are whether:

   (a) it is appropriate to permit the Applicants to file the Plan and call the Meetings; and

   (b) it is appropriate to classify the Affected Creditors (defined below) as proposed in the Plan and Meetings Order.

4. For the purposes of this Factum, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Affidavit of William E. Aziz sworn September 23, 2015 (the "**Aziz Affidavit**") or the Plan, as applicable.

PART II – THE FACTS

A. ASSET SALES AND ASSET SALE PROCEEDS

5. The Applicants have sold substantially all of their assets pursuant to a series of asset sale transactions with National Money Mart Company ("**NMM**"), easyfinancial Services Inc. ("**easyfinancial**") and CSF Asset Management Ltd. ("**CSF Asset Management**") approved by the Court on October 15, 2014, January 26, 2015 and April 10, 2015 (collectively, the "**Assets Sales**"), respectively. Each of the NMM, easyfinancial and CSF Asset Management transactions have now closed and had purchase prices of $51,129,141; $2,504,338; and $650,000, respectively, subject to final adjustments. The proceeds of the Asset Sales (the "**Asset Sale Proceeds**") have since been used in part to repay certain amounts due in respect of the DIP Loan, fund the Applicants' remaining operations and fund its ongoing restructuring efforts, including the Applicants' efforts to negotiate and complete the Settlement Agreements (defined below). The Asset Sale Proceeds are currently held by the Monitor and the remaining Asset Sale Proceeds will be sufficient to repay the first lien lenders under the Applicants' senior secured credit facility (the "**Senior Secured Lenders**") and other priority secured claims (such as the

remaining amounts owing under the DIP Loan), but will not be sufficient to repay the holders of the Applicants' second lien secured notes (the "**Secured Noteholders**"). The Secured Noteholders will suffer a significant deficiency under the Plan.

Aziz Affidavit at paras. 6-7; Motion Record of the Applicants ("**Motion Record**"), Tab 2.

6. Since the completion of the Asset Sales and the completion of the transition services that were being performed for NMM, the Applicants have had minimal ongoing operational activities and have been focused on various post-closing matters with respect to the Asset Sales, the orderly wind-down of their remaining business and assets and the resolution of outstanding claims (i) asserted against the Applicants by various stakeholders and (ii) asserted by the Applicants against certain third party defendants.

Aziz Affidavit at para. 8; Motion Record, Tab 2.

B. ESTATE LITIGATION

7. During the course of the Applicants' CCAA proceedings, it became clear that the Applicants may have valuable claims against certain of their former directors, officers, advisors and other third parties (the "**Estate Claims**"). In order to pursue these claims, the Applicants retained Litigation Counsel to investigate and advance such claims on behalf of the Applicants.

Aziz Affidavit at paras. 9-10; Motion Record, Tab 2.

8. At this time, the Applicants have commenced Estate Claims against a number of third party defendants, some of which have been resolved under the Settlement Agreements, and certain of which have not been resolved and remain outstanding (such claims the "**Remaining Estate Claims**"). Pursuant to the Plan, a Litigation Trustee with authority to instruct Litigation Counsel on behalf of the Applicants will be appointed, with the consent of Litigation Counsel and the Ad Hoc Committee, to prosecute the Remaining Estate Claims in accordance with the Plan, and a cash reserve (the "**Litigation Funding and Indemnity Reserve**") will be established under the Plan to serve as security for Litigation Counsel in respect of disbursements, security for costs and any adverse cost

awards that may be incurred in connection with the prosecution of the Remaining Estate Claims from and after the implementation date of the Plan. The Litigation Funding and Indemnity Reserve shall be maintained and administered by the Monitor in accordance with a Litigation Funding and Indemnity Reserve Agreement to be entered into in connection with the Plan.

Aziz Affidavit at paras. 11-12; Motion Record, Tab 2.

C. SETTLEMENT AGREEMENTS

9. Together with the ad hoc committee of Secured Noteholders (the "**Ad Hoc Committee**") and the Monitor, the Applicants have been engaged in ongoing negotiations with various litigation claimants and other interested parties in an effort to resolve (i) numerous claims made against the Applicants and (ii) numerous claims made by the Applicants against several third party defendants. These extensive negotiations, which have included four mediations, have resulted in the following Settlement Agreements:

(a) *Priority Motion Settlement Agreement* – a settlement agreement among the Applicants, the Consumer Class Action Plaintiffs, Coliseum, 8028702 and its affiliates, and the Ad Hoc Committee dated June 19, 2015 (the "**Priority Motion Settlement Agreement**") pursuant to which, among other things, (i) the claims asserted by the Ontario Consumer Class Action Plaintiffs (which claims were subsequently supported by the Western Canada Consumer Class Action Plaintiffs) against the Applicants and their assets and (ii) the claims asserted by the Consumer Class Action Plaintiffs against Coliseum and 8028702 and its affiliates (collectively, the "**McCann Entities**"), in their capacity as Senior Secured Lenders and, in the case of the McCann Entities, also as third party lenders to the Applicants, were all agreed to be settled among those parties in exchange for the settlement payments and releases contemplated by the Priority Motion Settlement Agreement and the Plan;

(b) *DirectCash Global Settlement Agreement* – a settlement agreement among the Applicants, the Consumer Class Action Plaintiffs and DirectCash dated

September 20, 2015 (the "**DirectCash Global Settlement Agreement**") pursuant to which, among other things (i) the claims asserted by the Applicants against DirectCash, (ii) the claims asserted by the Consumer Class Action Plaintiffs against DirectCash, and (iii) the claims asserted by DirectCash against the Applicants and their directors and officers were all agreed to be settled among those parties in exchange for the settlement payments and releases contemplated by the DirectCash Global Settlement Agreement and the Plan; and

(c) *D&O/Insurer Global Settlement Agreement* – a settlement agreement among the Securities Class Action Plaintiffs, the Consumer Class Action Plaintiffs, the Applicants and the D&Os who are defendants in actions brought by those parties dated September 22, 2015, (the "**D&O/Insurer Global Settlement Agreement**" and, collectively with the Priority Motion Settlement Agreement and the DirectCash Global Settlement Agreement, the "**Settlement Agreements**" and the "**Settlements**") pursuant to which, among other things (i) the claims asserted by the Securities Class Action Plaintiffs against The Cash Store Financial Services Inc. and certain D&Os, (ii) the claims asserted by the Consumer Class Action Plaintiffs against certain D&Os, and (iii) the claims asserted by the Applicants against certain D&Os were all settled among those parties in exchange for the settlement payments and releases contemplated by the D&O/Insurer Global Settlement Agreement and the Plan.

Aziz Affidavit at paras. 13-23; Motion Record, Tab 2.

10. The Settlement Agreements are supported by the Monitor and the Ad Hoc Committee and are a positive development for the Applicants. The Settlement Agreements will increase the recoveries available to the Applicants' various stakeholders, including the Secured Noteholders, shareholders and the class members of the various Consumer Class Actions across Canada.

Aziz Affidavit at paras. 24; Motion Record, Tab 2.

11. Each of the Settlements is conditional upon approval of the CCAA Court and the applicable Class Action Court.

D. THE PLAN

12. With the support of the Ad Hoc Committee, the Securities Class Action Plaintiffs, the Consumer Class Action Plaintiffs, the Monitor and the other settling parties under the Settlement Agreements, the Applicants have formulated the Plan. The purpose of the Plan is to, among other things:

    (a) distribute the remaining proceeds of the Asset Sales and any other available proceeds of the Applicants' assets, after the establishment of the various reserves contemplated in the Plan, to the Applicants' secured creditors according to their priorities;

    (b) provide a central forum for the distribution of settlement proceeds from the Settlements to the Applicants' various stakeholders (including the Applicants' Secured Noteholders, shareholders and the class members of the Consumer Class Actions across Canada, in each case according to their various interests and entitlements to same);

    (c) give effect to the releases contemplated for the Released Parties under the Plan and the Settlement Agreements, in exchange for the settlement payments made by those parties under the Plan and the Settlement Agreements; and

    (d) position the Applicants to continue to pursue the Remaining Estate Claims with the assistance of Litigation Counsel and the Litigation Trustee.

    Aziz Affidavit at para. 25; Motion Record, Tab 2.

13. The Plan provides for an orderly and timely distribution of the Applicants' Cash on Hand, subject to the holdback of certain funds reserved for, among other things, the administration of the Plan, the ongoing administration of the CCAA proceedings and the prosecution of the Remaining Estate Actions. The terms of the Plan include the following:

(a) the Plan contemplates two classes of creditors (the "**Affected Creditors**"): a class of the Senior Secured Lenders (the "**Senior Lender Class**") and a class of the Secured Noteholders (the "**Secured Noteholder Class**" and, collectively with the Senior Lender Class, the "**Affected Creditor Classes**" and each individual creditor being an "**Affected Creditor**");

(b) only the Affected Creditors shall be entitled to attend and vote on the Plan at the Meetings in respect of their Affected Creditor Claims;

(c) no Person is entitled to vote under the Plan in respect of an Unaffected Claim;

(d) each Senior Secured Lender and each Secured Noteholder shall receive their recoveries under the Plan, as described below;

(e) the Settlement Proceeds allocated to the claims of the Consumer Class Action Plaintiffs and the Securities Class Action Plaintiffs under the terms of the Settlement Agreements shall be allocated and distributed in accordance with the Settlement Agreements, the Plan and the Class Action Settlement Approval Orders;

(f) the release of a number of settling parties in accordance with the Settlement Agreements and compromises of the claims of the Senior Secured Lenders and the Secured Noteholders; however, the Plan provides that nothing in the Plan shall release any claim that is not permitted to be compromised or released pursuant to the CCAA;

(g) the Plan is conditional upon the satisfaction or waiver of certain conditions on or before the Plan Implementation Date, including, among others, that:

(i) the Plan shall have been approved by the Required Majority of each Affected Creditor Class and the CCAA Court;

(ii) the Sanction Order shall have been made and shall be in full force and effect, and all applicable appeal periods in respect thereof shall have expired or any appeal shall have been dismissed;

(iii) the terms of the Settlement Agreements shall have been approved by the Class Action Courts; and

(iv) the U.S. Recognition Order shall have been made and shall be in full force and effect provided, however, that the Plan Implementation Date shall not be conditional upon the U.S. Recognition Order in the event that the U.S. Recognition Order is not granted due to a lack of jurisdiction of the U.S. Court.

Aziz Affidavit at para. 27; Motion Record, Tab 2.

14. Pursuant to the Plan, each Senior Secured Lender with an Allowed Senior Secured Credit Agreement Claim, being Coliseum and 8028702, shall receive payment in full of the outstanding principal owed to them plus accrued interest to the date of implementation of the Plan, less certain amounts to be paid as part of the Settlements as agreed to by Coliseum and 8028702 (the "**Senior Lender Plan Payment**"). Pursuant to the D&O/Insurer Global Settlement Agreement to which 424 is a party, 424 has agreed that its Senior Secured Credit Agreement Claim (in the amount of $2,000,000 (the "**424 Debt**")) will be cancelled pursuant to the Plan and 424 will receive no consideration in respect thereof, other than as a beneficiary of the releases contained in the Plan and the D&O/Insurer Global Settlement Agreement.

Aziz Affidavit at para. 28; Motion Record, Tab 2.

15. Pursuant to the Plan, each Secured Noteholder shall be entitled to its pro-rata share of the Applicants' Cash on Hand following the Senior Lender Plan Payment, less certain reserves and other payments set forth in the Plan and as more fully described in the Aziz Affidavit (the "**Secured Noteholder Initial Plan Payment**"). Each Secured Noteholder shall also be entitled to its pro-rata share of any proceeds recovered by the Applicants following the implementation of the Plan (the "**Secured Noteholder Subsequent Plan Payment**"). In the event that the aggregate of the Secured Noteholder Initial Plan Payment and the Secured Noteholder Subsequent Plan Payment exceed the full amount of principal, interest, fees and expenses due in respect of the Secured Notes, any and all

such excess amounts shall revert to the Applicants for distribution in accordance with a further Order of the Court.

Aziz Affidavit at paras. 30-31; Motion Record, Tab 2.

E. MEETINGS

16. It is proposed that the Meetings to vote on the Plan will be held at a location to be determined on November 10, 2015.

Aziz Affidavit at para. 37; Motion Record, Tab 2.

Meetings Order at para. 24; Motion Record, Tab 3.

17. The draft Meetings Order provides for, *inter alia*, the following in respect of the governance of the Meetings:

(a) delivery of the Information Package to Affected Creditors, including the Notice of Meeting and the Information Statement, as well as the publication of the same on the Monitor's Website for the CCAA proceedings;

(b) calling of a separate meeting for each of the Senior Lender Class and the Secured Noteholder Class;

(c) appointment of an officer of the Monitor to preside as the chair of the Meetings;

(d) the only parties entitled to attend or to speak at the Meetings are the Senior Secured Lenders or the Secured Noteholders, representatives of the Monitor, the Applicants, the CRO, the Ad Hoc Committee, the Indenture Trustee, all such parties' financial and legal advisors, the Chair, the Secretary and the Scrutineers;

(e) the quorum for each of the Meetings is one Affected Creditor of the applicable Affected Creditor Class;

(f) the Scrutineers shall tabulate the vote(s) taken at the Meetings and the Monitor shall determine whether the Plan has been accepted by the Required Majority of each Affected Creditor Class;

(g) the filing of a report of the Monitor after the Meetings with respect to the voting results of the Meetings, including whether the Plan has been accepted by the Required Majorities;

(h) if the approval or non-approval of the Plan may be affected by the votes cast in respect of a disputed Secured Noteholder Claim, if any, the results shall be reported to the Court at the Sanction Hearing and the Monitor may make a request to the Court for directions; and

(i) the results of any vote conducted at a Meeting of an Affected Creditor Class shall be binding upon all Affected Creditors of that Affected Creditor Class, whether or not any such Creditor was present or voted at the Meeting.

Aziz Affidavit at para. 38; Motion Record, Tab 2.

18. The classification of creditors as contemplated by the Meetings Order is fair, having regard to the creditors' legal interests, the remedies available to them, the consideration offered to them under the Plan and the extent to which they would recover their claims by exercising those remedies. The Meetings Order does not involve the unsecured creditors of the Applicants because, based on the amount of Asset Sale Proceeds and other recoveries that are available for distribution, the Applicants' secured claims will be compromised.

Aziz Affidavit at para. 39; Motion Record, Tab 2.

19. If the Plan is approved by the Required Majorities, the Applicants intend to seek Court approval of the Plan at a hearing before this Court on November 19, 2015, or such later date as the Court may set. Pursuant to the Court-to-Court Protocol, the Applicants, the Consumer Class Action Plaintiffs and the Securities Class Action Plaintiffs will

simultaneously seek approval of the Settlements by the Class Action Courts supervising each of the class actions involved in the Settlements.

Aziz Affidavit at para. 40; Motion Record, Tab 2.

20. If the Plan is approved at the Sanction Hearing, it is intended that the Monitor will seek a recognition order under chapter 15 of the United States Bankruptcy Code in the U.S. Bankruptcy Court recognizing the CCAA proceeding and recognizing and enforcing the Plan and the Sanction Order in the United States as they relate to the D&O/Insurer Global Settlement Agreement (the "**U.S. Recognition Order**"). Notice of the Monitor's motion will be provided and will include the applicable objection deadline and time and date of the hearing before the U.S. Bankruptcy Court.

Aziz Affidavit at para. 41; Motion Record, Tab 2.

F. FURTHER BACKGROUND FACTS

21. Additional facts concerning the Applicants, the Plan and the Meetings and the requested relief are more fully set out in the Aziz Affidavit and the Prior Aziz Affidavits.

PART III – ISSUES AND THE LAW

22. The issues to be considered on this motion are whether:

(a) it is appropriate to permit the Applicants to file the Plan and call the Meetings; and

(b) the proposed classification of creditors is appropriate.

B. IT IS APPROPRIATE TO PERMIT THE APPLICANTS TO FILE THE PLAN AND CALL THE MEETINGS

23. The Applicants request authorization to file the Plan and call the Meetings as set out in the Meetings Order. The test for filing the Plan and calling the Meetings has been met.

24. The Court has authority under Sections 4 and 5 of the CCAA to order a meeting of creditors or class of creditors, whether secured or unsecured:

> Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
>
> CCAA, s. 4.
>
> Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
>
> CCAA, s. 5.

25. The threshold to be satisfied for the filing of a plan and the calling of a meeting of creditors is low. In *Nova Metal Products Inc. v. Comiskey (Trustee of)*, the Ontario Court of Appeal held that:

> I agree that the feasibility of the plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors: S.E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act," at pp. 594-595. I would not, however, impose a heavy burden on the debtor company to establish the likelihood of ultimate success from the outset. As the Act will often be the last refuge for failing companies, it is to be expected that many of the proposed plans of reorganization will involve variables and contingencies which will make the plan's ultimate acceptability to the creditors and the Court very uncertain at the time the initial application is made [emphasis added].
>
> *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289, 1 C.B.R. (3d) 101 at para. 90 (Ont. C.A.); Book of Authorities of the Applicants (**"Book of Authorities"**), Tab 1.

26. In determining whether to order a meeting of creditors or class of creditors, the Court should examine carefully all of the material filed and must ensure that any reorganization

plan submitted by a debtor company constitutes a compromise or an arrangement – that is the reorganization plan must comprise a mutual or consensual arrangement between the debtor company and those of its creditors which the plan purports to bind.

> *Ursel Investments Ltd., Re* (1990), 2 C.B.R. (3d) 260 at paras. 24, 25 and 35 (Sask. Q.B.); Book of Authorities, Tab 2.

27. The Court is not required to address the fairness and reasonableness of the Plan at this stage. Unless it is obvious that a plan would not be approved by the affected creditors, a debtor company should not be prevented from presenting a plan to its creditors at a meeting.

> *ScoZinc Ltd., Re,* 2009 NSSC 163, 55 C.B.R. (5th) 205 at paras. 4-7; Book of Authorities, Tab 3.

28. The Plan and an Information Statement in respect thereof are included at Tabs 2A and 3, respectively, of the within Motion Record. The Plan contemplates a compromise of the rights, interests and claims of the Senior Secured Lenders (to the extent of the settlement payments made by Coliseum and 8028702 and the cancellation of the 424 Debt) and of the claims of the Secured Noteholders that, if approved by the Required Majorities of the Affected Creditors at the Meetings, would comprise a mutual or consensual arrangement among the Applicants and the Affected Creditors.

29. The Meetings Order and the Plan have been developed by the Applicants in consultation with, and have the support of, the Monitor, all three of the Applicants' Senior Secured Lenders (all of whom support the Plan) and the Ad Hoc Committee (which represents the holders of approximately 70% of the principal outstanding amount of the Secured Notes), the Consumer Class Action Plaintiffs, the Securities Class Action Plaintiffs and the other settling parties under the Settlement Agreements.

30. The Monitor has stated in its Nineteenth Report at paragraph 10 that the Monitor has reviewed and was consulted with respect to the development of the Plan and is of the view that it is appropriate and reasonable for the Applicants to file the Plan and seek the approval of the Plan by affected stakeholders at this time. The Monitor will be filing a further report with respect to the Plan in advance of the Meetings.

31. The Applicants respectfully request that the Meetings Order be granted at this time in order to allow the Meetings to proceed.

C. THE PROPOSED CLASSIFICATION OF CREDITORS FOR VOTING PURPOSES IS APPROPRIATE

32. The Applicants request approval of the classification of Affected Creditors as set out in the Plan.

33. Section 22(1) of the CCAA provides that:

> A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.
>
> CCAA, Section 22(1).

34. Section 22(2) of the CCAA further provides that, for the purposes of Section 22(1), creditors with a "commonality of interest" may be included in the same class.

> CCAA, Section 22(2).

35. Creditors must be classified with the underlying purpose of the CCAA in mind – to facilitate successful restructurings. A fragmentation of classes that would render it excessively difficult to obtain approval of a CCAA plan would be contrary to the purpose of the CCAA and ought to be avoided.

> *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20, [1988] A.J. No. 1226 at paras. 21-25, 42-43 (Alta. Q.B.); Book of Authorities, Tab 4.

36. Caselaw has established that the "commonality of interest" test for classifying creditors is determined by a consideration of creditors' legal rights in relation to the debtor company.

> *Stelco Inc., Re* (2005), 15 C.B.R. (5th) 307 [*Stelco*] at para. 21 (Ont. C.A.); Book of Authorities, Tab 5.
>
> *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 12 at para. 17 (Alta, Q.B.); Book of Authorities, Tab 6.

37. Prior to the 2009 amendments to the CCAA, the Ontario Court of Appeal endorsed the following principles for assessing commonality of interest:

(a) commonality of interest should be viewed on the basis of a "non-fragmentation" test, not on an "identity of interest" test;

(b) the interests to be considered are the legal interest that the creditor holds qua creditor in relationship to the debtor, prior to and under the plan as well as on liquidation;

(c) the commonality of these interests is to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganizations if possible;

(d) in placing a broad and purposive interpretation on the CCAA, the Court should be careful to resist classification approaches that might jeopardize viable plans;

(e) absent bad faith, the motivations of creditors to approve or disapprove a plan are irrelevant; and

(f) the requirement that creditors can consult together means they can assess their legal entitlements as creditors before or after the plan in a similar manner.

Stelco, *supra* at paras. 23-24 (Ont. C.A.), Book of Authorities, Tab 5.

ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp. (2008), 43 C.B.R. (5th) 269, 47 B.L.R. (4th) 74 at para. 73 (Ont. Sup. Ct. J. [Commercial List]), aff'd (2008), 45 C.B.R. (5th) 163 (Ont. C.A.); Book of Authorities, Tab 7.

38. The Ontario Court of Appeal in *Stelco* cautioned that the flexibility at the heart of the CCAA precludes the adoption of fixed rules governing classification and held that the circumstance of the individual case needed to be considered:

> It is clear that classification is a fact-driven exercise, dependent upon the circumstances of each particular case. Moreover, given the nature of the CCAA process and the underlying flexibility of that process – a flexibility which is its genius – there can be no fixed rules that must apply in all cases.

Stelco, *supra* at para. 22; Book of Authorities, Tab 5.

39. The factors to be considered in determining whether creditors have a "commonality of interest" have since been codified in Section 22(2) of the CCAA. These factors do not change in any material way or exclude the factors that were articulated in the case law prior to the amendments:

> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.
>
> CCAA, Section 22(1).

40. The Plan contemplates two classes of creditors: the Senior Lender Class and the Secured Noteholder Class. These creditors are classified in accordance with their priorities and legal rights: the Senior Secured Lenders are first-ranking secured creditors of the Applicants and the Secured Noteholders are second-ranking secured creditors of the Applicants. Accordingly, it is appropriate for the Senior Secured Lenders and the Secured Noteholders to vote in separate classes.

41. The Meetings Order does not involve the unsecured creditors of the Applicants because, based on the amount of Asset Sales proceeds and other recoveries that are available for distribution, the Applicants' secured claims will be compromised. The Asset Sale Proceeds and other assets of the Applicants available for distribution are not sufficient to satisfy the obligations in respect of the Secured Notes in full. If the Secured Noteholders were to enforce their security, there would be a shortfall in the amounts owed to them and there would be no residual value left over to pay the Applicants' unsecured creditors.

42. At this time, it is anticipated that there will be no recovery for junior creditors and their claims will remain unaffected by the Plan. The Applicants' unsecured creditors are not entitled to distributions under the Plan (other than in respect of the Settlement

Agreements) and will not be provided a vote on the Plan. Pursuant to the Plan, in the event that subsequent proceeds are realized which are sufficient to repay the Secured Noteholders in full, any excess amounts will revert to the Applicants for distribution on further Order of this Court.

D. MONITOR'S RECOMMENDATIONS

43. As set out in the Nineteenth Report of the Monitor dated September 25, 2015, the Monitor reviewed and was consulted with respect to the proposed terms of the Meetings Order and is of the view that the proposed terms of the Meetings Order are fair and reasonable, that the notice procedures contemplated in the Meetings Order are sufficient to ensure that the Information Package is appropriately distributed among the Affected Creditors and that other interested parties receive notice of the Applicants' intention to seek a Sanction Hearing and that the Monitor supports the procedures for the conduct and voting at the Meetings and notice procedures in respect thereof.

PART IV – ORDER REQUESTED

44. The Applicants submit that the threshold for filing of the Plan and entry of the Meetings Order has been met, and that the notice, voting and other terms and procedures of the Meetings Order are fair and reasonable and the contemplated timeline is appropriate. The Monitor supports this position. For the reasons set out above, the Applicants request that this Court grant the proposed form of Meetings Order at this time.

45. ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 25, 2015

Patriek Riesterer

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289, 1 C.B.R. (3d) 101 (Ont. C.A.).

2. *Ursel Investments Ltd., Re* (1990), 2 C.B.R. (3d) 260 (Sask. Q.B.).

3. *ScoZinc Ltd., Re,* 2009 NSSC 163, 55 C.B.R. (5th) 205.

4. *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20, [1988] A.J. No. 1226 (Alta. Q.B.).

5. *Stelco Inc., Re* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.).

6. *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 12 (Alta, Q.B.).

7. *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 43 C.B.R. (5th) 269, 47 B.L.R. (4th) 74 (Ont. Sup. Ct. J. [Commercial List]), aff'd (2008), 45 C.B.R. (5th) 163 (Ont. C.A.).

SCHEDULE "B"
STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, as amended

s. 4

Compromise with unsecured creditors - Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s. 5

Compromise with secured creditors - Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s. 22(1)

Company may establish classes - A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

s.22(2)

Factors - For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM OF THE APPLICANTS
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