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MORAWETZ

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May 17, 2014

To

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Counsel

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Court File Number: CV-14-10518-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

CASH STORE FINANCIAL

Plaintff(s)

AND

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
SEE ATTACHED		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

Cash Store Financial and its affiliates (collectively "Cash Store" or the "Applicants" brought this motion to ^{approve and} authorize the amended and restated Debtor-in-Possession term sheet ("the Amended DIP Facility") and related relief. Cash Store also sought an extension of the Stay Period until June 17, 2014 and for Approval of the Parties Pre-Filing, at First, Second, Third and Supplement to the Third Reports.

Heard May 16, 2014
 Released May 17, 2014
 Date


 Judge's Signature

Additional Pages 1 of 13

Since the outset these CCAA proceedings have been hotly contested. The two major creditor groups have divergent interests.

One group is comprised of the senior secured lenders under the Credit Agreement and the Senior Secured NFAHs. Debt to this group total approximately \$140 million.

The other group is comprised of Third Party Lenders (TPLs). Included in this group are Trimon and M^cCann. This group is owed approximately \$42 million.

Certain background with respect to the position of the two creditor groups has been the subject of ~~the~~ previous orders, 2014 ONSC 2372 (April 15, 2014) and a second order erroneously cited as 2014 ONSC 2372 but dated April 23, 2014.

A hearing has been scheduled for June 11, 2014
to address certain priority issues
between the two groups.

Approval of the initial DIP Facility was
provided in the April 23, 2014
order. The record establishes that the
initial DIP Facility is no longer adequate
and an Amended Facility is required.

The Affiant of Mr. William Aziz, who
through Blue Tree Advisors, acts as Chief
Restructuring Officer of Cash Store, states
that the Amended DIP Facility is critical

His affidavit provides an overview
of the DIP Facility Negotiations, a
Summary of the Amended DIP Facility,
and the Need for further DIP Financing.

The Affidavit is sworn May 15, 2014

and I understood that the affidavit was not available until late in the day. 4

The ITC has commented on the Roberts proposed Amended Facility in its Fourth Report, also dated May 15, 2014. It was completed after Mr. Roberts swore the affidavit.

I am satisfied that additional DIP Financing is required, and no party expressed a contrary position.

However, there was "concern" and ~~opposite~~ "opposition" to certain terms contained in the facility and the process that was followed.

I can readily understand the positions put forward by CompuLink, ITC

ad Trimar, but for the following reasons,⁵
 I have decided that the Amended DIP
 Facility has to be approved.

- ① The position of Computershare was not one
 of opposition. Rather, Ms. Corne expressed
 concern that 35% ~~the~~ of the NSTA/Dors
 were not represented by the Ad Hoc
 Committee and they could be prejudiced
 by not being able to participate in the
 facility. In particular Ms. Corne ^{referred} ~~referred~~
 the Exit Fee. She also expressed
 concerns with certain breaches of the
 Trust Indenture. Counsel indicated that
 her client wanted to reserve its
 rights to ~~challenge~~ on the issue
 until another day.

In my view reservation of rights

is not a viable option. The granting of ~~an~~ ^{an} order approving a DIP Facility results in certain actions being taken - i.e. - the flow of funds with court ordered priority. It is not realistic, in these circumstances, to revisit this issue at a later date. I also have to take into account the submissions of Mr. O'Neill who advised that the ad hoc Committee was not aware of ^{other} ~~an~~ ^{Mr. O'Neill} who wanted to participate with his group.

Although I recognize Mr. Cowie's concerns, ~~that~~ his clients did not oppose the Amended Facility.

- (2) The position of Trimmer, supported by McLean, raised more serious concerns. They are process related and include:

(i) the Amended Facility was negotiated⁷
in the hours leading up to the motion.

ii) the terms are onerous (see paragraph
17 of the Aziz Affidavit and
paragraph 25 of the Taitwi Report
and certain of the comments of the
Taitwi

~~and~~ ~~no~~ ~~detail~~ ~~is~~ ~~provided~~ ~~is~~ ~~provided~~
iii) little or no ~~detail~~ ^{was} provided
with respect to the ~~competency~~
competency DIP

iv) the Amended DIP Facility is not
sufficient to provide adequate
funds to complete the Sales
Process

v) the Amended DIP Facility essentially
puts the DIP debtor in de facto
control of the proceedings

vi) the DIP deed, which includes participants of the NPA's could put Cashstay into bankruptcy prior to the June 11, 2014 court hearing to adjudicate the priority dispute

viii) the effective interest rate on the initial funding when ~~it~~ repaid with associated fees, results in an effective interest rate of 68%

The arguments and submissions put forth by counsel ^{to Trimer as it can} were prepared at the last minute. For this, they cannot be faulted. They were responding to positions put forth by the Applicants at the 11th hour. ~~on the same~~
~~on~~ The Market Report came in after the affidavits.

The process was both chaotic and unfair, and should not be repeated.

However, I have to balance this against reality. The reality is that

① Cashstop is in a critical condition.

As Mr. A313 states at paragraph 24

"The Amedeo DIP Facility is critical, as it is projected (if the Extension Option is exercised and funded) to provide Cash Store with the minimum necessary liquidity to operate as a going concern during the projected stay extension period and to continue a sales process to seek a value maximizing going concern outcome. Absent an immediate injection

~~of~~ of cash, Cash Store will be unable to meet immediate payroll and other expenses and will be forced to shut down its operations, with a significant loss of employment and disruption to those who rely on its services:

~~The reality~~
(2) There is no alternative DIP available.

In making this statement I have to rely on the business judgment of the Applicants. I have also taken into account the recommendations of the Trustee as expressed at paragraph 35 of the Fourth Report.

The submissions of Mr. O'Neill on behalf of the NAC/Advisors are also worthy of comment.

In essence, he submitted that for ^{the} creditors to have a meaningful recovery three things have to occur.

(1) a ^{relicensing} ~~relicensing~~ of the business in certain jurisdictions

(2) a going concern sale

(3) a review of pre-filing transactions.

He repeated the view of the Appellate that it was essential to ^{immediately} approve the Amended DIP Facility and that the fees were reflective of reality.

I also have to take into account the relative economic position of the creditor groups. The expense of the ~~senior~~ ^{senior} lenders is substantially more than the TPLs. The large group

is supportive of the Amended DIP Facility.
 Without the approval, the parts of
 the largest creditor group would be,
 in my view, seriously prejudiced.

In the result, I have concluded that
 the Amended DIP Facility has to be approved,
 with one caveat. The proposed priority
 adjustment for the KEAP was not
 addressed. This issue was not clearly
 identified in the Notice of Motion.
~~pertinent~~ ~~out~~ ~~to~~ ~~the~~ ~~FIPs~~. It will
 have to be addressed at a later date.

It should also be noted that the priority
 issue, scheduled for June 11, 2014, is not
 affected by this endorsement.

The Applicants also request an extension of
 the stay to June 17, 2014. I am satisfied
 that the CCAA proceedings are being
 conducted in good faith and with

due diligence, and that the extension is warranted and
is granted. 13

Finally,

~~Mr. Oppenheimer~~ there was no

opposition to the request of the Member to
have its Pre Filing, First, Second, Third and
Subsequently Third Reports approved together
with the activities described. The Reports
and activities are approved.

An order shall issue to reflect the foregoing.

[subject to
edit when
typed.]

[Signature] PSJ

17 May 2014
12:30 p.m.