

**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 THE CASH STORE FINANCIAL SERVICES
INC., THE CASH STORE INC., TCS CASH STORE INC.,
INSTALOANS INC., 7252331 CANADA INC., 5515433
MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS
AS "THE TITLE STORE"

APPLICANTS

**NOTICE OF CROSS-MOTION
(Returnable June 11, 2014)**

The lenders under the Applicants' Amended and Restated Debtor-in-Possession Term Sheet, dated as of May 16, 2014, (collectively, the "**DIP Lenders**") will make a cross-motion to a judge presiding over the Commercial List on Wednesday, June 11, 2014 at 10 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order :
 - (a) declaring that:
 - (i) the Applicants are the beneficial owners of funds described as "Trimor Funds", "McCann Funds", "Trimor Receipts" and "McCann Receipts" (collectively, the "**Disputed Post-Filing Receipts**") in the Fresh As Amended Notice Of Motion Of Trimor Annuity Focus Limited Partnership

#5 ("**Trimor**"), dated May 14, 2014, and the Fresh As Amended Notice Of Motion Of 0678786 B.C. Ltd. ("**McCann**"), dated May 15, 2014, respectively (collectively, the "**TPL Notices of Motion**");

(ii) the following transactions constitute preferences under applicable legislation:

- (1) the designation by the Applicants of any advances or loans, including brokered loans, as advances or loans in the names of Trimor or McCann, and
- (2) any assignment, whether as capital protection or otherwise, by the Applicants to Trimor or McCann, or in their names, of non-brokered loans made in the name of the Applicants

(collectively, the "**Reviewable Transactions**");

(iii) the Reviewable Transactions shall be reversed such that the Applicants are the beneficial owners of assets described as "Trimor Loans", "Trimor Accounts Receivable", "McCann Loans", and "McCann Accounts Receivable" in the TPL Notices of Motion;

(iv) neither Trimor nor McCann shall take any steps to collect any advances or loans made to the Applicants' customers, irrespective of whether such loans or advances have been designated in the name of Trimor or McCann or otherwise assigned to Trimor or McCann by the Applicants, and any recoveries or collections on such advances or loans by Trimor or McCann shall be deemed to be held in trust for the Applicants;

- (v) in the alternative to (ii) through (iv) above, declaring that no steps be taken by Trimor or McCann to assert an interest in, collect or otherwise recover any of the advances or loans made to the Applicants' customers, whether in the names of Trimor or McCann or otherwise, unless the Monitor determines that the Reviewable Transactions will not be challenged by the Monitor; and
- (b) that grants such other relief as counsel for the DIP Lenders may request and this Court deems fit.

2. **THE GROUNDS FOR THE MOTION ARE:**

Background

- (a) The Applicants have stated that they carried on business both as a broker and direct lender of short-term advances to their customers;
- (b) Trimor and McCann provided funds to the Applicants to support the Applicants' brokered loan business;
- (c) Those funds were commingled with the Applicants' monies in the Applicants' operating accounts;
- (d) Accounting entries were made to label certain of the Applicants' cash as "restricted cash" attributable to the funds provided by Trimor or McCann and the proceeds of brokered loans,
- (e) The concept of "restricted cash" was solely an accounting concept and did not imply that any individual dollar in the Applicants' account could be traced and

identified as either a contribution by Trimor or McCann or proceeds of a brokered loan;

- (f) While the written contractual arrangements between Trimor or McCann and the Applicants provide for the possibility of physical segregation of funds provided by Trimor or McCann to the Applicants as well as the proceeds of any brokered loans in separate bank accounts, no such arrangements were ever put in place;
- (g) The loan documentation entered into by customers in connection with a brokered loan would identify a third party lender, such as Trimor or McCann, as the lender under the brokered loan and the Applicants as brokers, but in substance no principal-broker relationship now exists between Trimor or McCann and the Applicants:
 - (i) the brokered loan business required customers to complete an application and documentation process similar to that used in the Applicants' direct lending business;
 - (ii) upon approval of a customer, the Applicants would forward a cash advance to the customer from the Applicants' own general operating bank accounts;
 - (iii) when an advance under a brokered loan was repaid by the customer, the repaid funds were returned to the Applicants' operating bank accounts and made available, with the knowledge of Trimor and McCann, for general lending purposes;

- (iv) through this process Trimor and McCann ceased to have any proprietary claim to any funds in the Applicants' hands and no principal-broker relationship remained;

A Debtor-Creditor Relationship Exists Between the Applicants and each of Trimor and McCann

- (h) Trimor and McCann have engaged in a debtor-creditor relationship with the Applicants, as indicated by their conduct:
 - (i) the funds provided by Trimor and McCann to the Applicants in support of the Applicants' brokered loan business were held in the Applicants' general operating accounts commingled with the Applicants' other funds, and Trimor and McCann were aware of this;
 - (ii) Trimor and McCann received regular periodic "retention payments" from the Applicants that were in substance interest payments for funds advanced by Trimor and McCann to the Applicants to support the brokered loan business;
 - (iii) additional payments were periodically made by the Applicants to Trimor and McCann to provide a pre-determined fixed 17.5% financial return on the funds advanced by Trimor and McCann to the Applicants in support of the brokered loan business;

The Preferences

- (i) By designating brokered loans, which were made with funds from the Applicants' operating accounts, as loans and advances in the names of Trimor or McCann, the Applicants have transferred these assets to Trimor and McCann but neither

Trimor nor McCann have any higher or better claim to these assets than any other creditor of the Applicants;

- (j) Certain loans and advances made by the Applicants to their customers were assigned to Trimor and McCann to compensate for calculated deficiencies in the balance of restricted cash recorded on the Applicants' balance sheet and to compensate for amounts that were not being recovered on brokered loans;
- (k) As Trimor and McCann have no priority claim to the restricted cash, they similarly have no priority claim to any loans assigned to compensate for apparent deficiencies in the restricted cash;
- (l) As a result of the designation of brokered loans in the names of Trimor and McCann and the assignment of non-brokered loans to Trimor and McCann, those parties have received a transfer of assets to which they have no priority claim and that should be available to satisfy the claims of the general pool of the Applicants' creditors in accordance with their priorities;
- (m) Trimor and McCann were provided with the benefit of these transactions in preference to other creditors, who remain unpaid;
- (n) These transactions occurred at a time when the Applicants were insolvent or, in some cases, on the eve of insolvency;
- (o) The Disputed Post-Filing Receipts are proceeds of these preferences to which Trimor and McCann have no priority claim and should be deemed to be beneficially owned by the Applicants' as part of the process of remedying these preferences;

General

- (p) Sections 11, 11.02 and 36.1 of the CCAA;
- (q) Section 2 of the *Fraudulent Conveyances Act*, RSO. 1990, c F. 29;
- (r) Section 4 of the *Assignments and Preferences Act*, RSO 1990, c A. 33;
- (s) Sections 2 and 3 of the *Fraudulent Preferences Act*, RSA 2000, c. F-24; and
- (t) such further and other grounds as counsel for the DIP Lenders may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (u) Affidavit of Steven Carlstrom, sworn April 14, 2011 and the exhibits attached thereto;
- (v) Affidavit of Erin Armstrong, sworn April 13, 2014 and the exhibits attached thereto;
- (w) Affidavit of Murray McCann, sworn April 22, 2014 and the exhibits attached thereto;
- (x) Affidavit of Sharon Fawcett, sworn April 22, 2014 and the exhibits attached thereto;
- (y) Affidavit of Erin Armstrong sworn May 8, 2014;
- (z) Affidavit of Donald MacLean, sworn May 15, 2014, and the exhibits attached thereto; and
- (aa) such further and other material as counsel for the DIP Lenders may advise and this Court may permit.

May 20, 2014

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¹ Bodnar et al. v. The Cash Store Financial Services Inc. et al., Supreme Court of British Columbia, Vancouver Reg. No. S041348;
 Stewart v. The Cash Store Financial Services Inc. et al, Supreme Court of British Columbia, Vancouver Reg. No. S126361;
 Tschritter et al. v. The Cash Store Financial Services Inc. et al, Alberta Court of Queen’s Bench, Calgary Reg. No. 0301-16243;
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH
STORE FINANCIAL SERVICES INC., et al.

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

Proceeding commenced at Toronto

NOTICE OF CROSS-MOTION

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