

**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

**FACTUM OF THE CHIEF RESTRUCTURING OFFICER
OF THE APPLICANTS**

June 12, 2014

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TO: SERVICE LIST

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**FACTUM OF THE CHIEF RESTRUCTURING OFFICER ("CRO") OF THE
APPLICANTS (JUNE 16 MOTIONS)**

PART I – NATURE OF THIS MOTION

1. The Cash Store Financial Services Inc. and the other applicants listed above (the "Applicants") obtained relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") by an Amended and Restated Initial Order dated April 15, 2014 (the "Initial Order"). The relief requested by the Applicants was supported by the Affidavit of Steven Carlstrom, sworn April 14, 2014 (the "Carlstrom Affidavit"). The Initial Order granted a stay of proceedings (the "Stay") until May 14, 2014, which was extended until May 16, then again until May 19, and then again until June 17, 2014 by orders dated May 13, 16 and 17, 2014, respectively.¹

¹ Fourth Affidavit of William E. Aziz, sworn June 12, 2014 [Fourth Aziz Affidavit], paras. 17 and 18.

2. This factum is being filed in support of a motion to extend the Stay until August 15, 2014 (the “Stay Extension Period”) and to approve a sale process (the “Sale Process”) to be conducted by the Applicants and their financial advisor, Rothschild Inc. (“Rothschild”), with the assistance of the Monitor and in consultation with Houlihan Lokey Capital, Inc. (“Houlihan”), the financial advisor to the DIP Lenders and the Ad Hoc Committee.²

3. The Applicants are seeking an extension of the Stay and the approval of the Sale Process in order to continue their efforts to effect a restructuring of their businesses under the CCAA, and in particular a going concern sale transaction, with the objective of obtaining the best possible result for the benefit of all stakeholders,³ including maintaining employment for as many as possible of their approximately 1,840 employees.⁴

4. The Applicants have, to date, been proceeding in good faith and with due diligence. An extension of the Stay until August 15, 2014 is warranted, among other things, in order to allow the Applicants to continue with efforts to regularize matters with the various payday regulators, including the Manitoba and Ontario regulators, and to implement the proposed Sale Process. The proposed Stay Extension Period coincides with the deadline under the Amended DIP Facility for the Applicants to seek a sale approval order or plan filing and meeting order.

5. The Sale Process is, in the judgment of the Applicants and their advisors, the best course of action to maximize value for all stakeholders. The initial efforts of Rothschild to identify interested parties with the capacity to complete such a transaction demonstrate that there

² The Sale Process is attached as Exhibit E to the Fourth Aziz Affidavit.

³ Fourth Aziz Affidavit, para. 21.

⁴ Carlstrom Affidavit, para. 5.

is a realistic possibility that the Applicants can achieve a sale or other restructuring solution through the Sale Process for the benefit of the Applicants' stakeholders as a whole. The Sale Process is built on the initial efforts of Rothschild and, in the Applicants' submission, is fair, transparent and objective. The time period for completion of the Sale Process is reasonable in light of the need to balance the objective of obtaining the best possible transaction against the liquidity issues and similar exigencies facing the Applicants.

6. References to "Cash Store" in this factum refer to all of the Applicants in this proceeding.

PART II – FACTS

7. The facts with respect to this motion are more fully set out in the Fourth Aziz Affidavit. Capitalized terms in this Factum not otherwise defined have the same meanings as in the Fourth Aziz Affidavit.

Steps Taken to Date

8. Since the date of the Initial Order, the Applicants, under the supervision of the CRO and the Monitor, have carried out a number of steps in furtherance of the restructuring of the Applicants' business. A number of these steps have already been outlined in prior affidavits.⁵

9. Since the date of the last Stay Extension Order on May 17, 2014, the Applicants have taken a number of additional measures in furtherance of their restructuring efforts. Such efforts have been focused on the priority objective of regularizing the business from a regulatory perspective.⁶ In addition, the CRO has engaged in ongoing discussions with the Monitor, Cash

⁵ Fourth Aziz Affidavit, Exhibits A, B and C.

⁶ Fourth Aziz Affidavit, para. 14

Store senior management and financial advisors, as well as with key stakeholders, including the Ad Hoc Committee and the DIP Lenders, regarding the status and progress of the CCAA proceedings.⁷

10. The steps taken by the CRO are set out in detail in the Fourth Aziz Affidavit, and include:

- (a) The CRO has held several meetings with provincial regulators, including with regulators in Ontario, Nova Scotia, Alberta, and Saskatchewan. In addition, the Applicants' Chief Compliance and Regulatory Affairs Officer ("CCRO") has arranged a meeting with the British Columbia regulator.⁸
- (b) The CCRO has independently held discussions with provincial regulators.⁹
- (c) The CRO, after evaluating the interests of Cash Store's business, and based on discussions with key stakeholders and provincial regulators, terminated the employment of five senior management personnel and two individuals operating under service contracts.¹⁰
- (d) The CRO is now working with the remaining Cash Store management team to implement a revised leadership structure that will allow the business to operate

⁷ Fourth Aziz Affidavit, para. 19.

⁸ Fourth Aziz Affidavit, para. 10.

⁹ Fourth Aziz Affidavit, para. 11

¹⁰ Fourth Aziz Affidavit, paras. 14 and 15.

efficiently going forward, and be acceptable to key stakeholders, including lenders and regulators.¹¹

- (e) The CRO has participated in negotiations of the Amended DIP Facility with Cash Store's financial advisors.¹²
- (f) The CRO has worked with Cash Store management and employees to implement the cessation of Cash Store's brokered lending business.¹³
- (g) The CRO has negotiated an interim resolution of an important supplier issue with DirectCash Payments Inc., a third party service provider to Cash Store with respect to prepaid debit and credit cards and other critical services.¹⁴
- (h) The CRO has worked with Rothschild to develop the Sale Process.¹⁵

The Sale Process

11. Even prior to the date on which the Initial Order was granted, the Applicants had engaged Rothschild to seek a sale or significant investment transaction for Cash Store. In furtherance of this objective, Rothschild contacted 145 parties in Canada and the United States, including 103 financial buyers and 42 strategic buyers. 76 of these parties received public teasers and 55 requested non-disclosure agreements ("NDAs") in order to move to the next stage of the

¹¹ Fourth Aziz Affidavit, para. 16.

¹² Fourth Aziz Affidavit, para. 19.

¹³ Fourth Aziz Affidavit, para. 19.

¹⁴ Fourth Aziz Affidavit, para. 19.

¹⁵ Fourth Aziz Affidavit, para. 19.

process. By June 4, 2014, 32 parties had executed NDAs and received access to a virtual data room in order to conduct due diligence.¹⁶

12. On April 29, 2014, Rothschild requested interested parties to send non-binding letters of intent to Cash Store by May 23, 2014.¹⁷ In addition, the DIP Lenders agreed to revise the deadline in the Amended DIP Facility for obtaining court of approval of the Sale Process until June 17, 2014.¹⁸

13. As of June 3, 2014, a number of non-binding letters of intent had been received. The CRO reviewed these letters in consultation with the Monitor and Rothschild. Several of these parties were contacted and invited to proceed to the next phase of the Sale Process, which will involve further due diligence, as well as meetings with senior management and the CRO, among others.¹⁹

14. The Sale Process for which this Court's approval is sought is a truncated process that reflects the fact that a number of initial steps in the process have already been taken and a pool of interested parties has already been identified. The purpose of the Sale Process is to efficiently take these initial steps to the next stage, with a view to achieving a completed transaction that maximizes value for Cash Store's stakeholders.²⁰

¹⁶ Fourth Aziz Affidavit, paras. 23 and 24. The pre-CCAA efforts by Rothschild were described in the Carlstrom Affidavit.

¹⁷ Fourth Aziz Affidavit, para. 25. The deadline for receipt of these non-binding letters of intent was extended several times, in consultation with the Monitor and pursuant to the Initial Order, in part in order to accommodate Cash Store's decision to cease the brokered lending business.

¹⁸ Fourth Aziz Affidavit, para. 25.

¹⁹ Fourth Aziz Affidavit, para. 27.

²⁰ Fourth Aziz Affidavit, para. 30.

15. The terms of the Sale Process are reflected in the proposed Sale Process Order²¹ and summarized in the Fourth Aziz Affidavit.²² Bids must be submitted by July 11, 2014, unless this deadline is extended by Cash Store and the Monitor in consultation with Rothschild and Houlihan.²³

16. A number of criteria apply in order for a bid to be a “Qualified Bid”.²⁴ Cash Store, in consultation with Rothschild and Houlihan and with the Monitor’s consent, may waive any of these criteria, or may aggregate several bids to create one Qualified Bid.²⁵ These criteria are designed to permit the CRO, the Monitor, Houlihan and Rothschild to fully understand the scope and terms of the bids and any related conditions attached to them, for purposes of comparison and selection.

17. Specific measures apply in the event that more than one Qualified Bid is received.²⁶ In addition, there are a number of evaluation criteria that may be taken into account in determining whether a particular bid will be the Successful Bid.²⁷ The CRO and Rothschild are not obliged to accept the highest or best offer and have discretion, in consultation with Houlihan and subject to the consent of the Monitor, in selecting the Successful Bid.²⁸

²¹ Fourth Aziz Affidavit, para. 29 and Exhibit E. See also Schedule A to the proposed Sale Process Order.

²² Fourth Aziz Affidavit, paras. 31-36.

²³ Fourth Aziz Affidavit, para. 31.

²⁴ Fourth Aziz Affidavit, para. 32.

²⁵ Fourth Aziz Affidavit, para. 33.

²⁶ Fourth Aziz Affidavit, para. 34.

²⁷ Fourth Aziz Affidavit, para. 35.

²⁸ Fourth Aziz Affidavit, para. 36.

18. The Successful Bid is subject to court approval and may take the form of a sale transaction, or a plan of compromise or arrangement.²⁹ Under the Amended DIP Facility, a sale approval order or plan filing and meeting order must be obtained by August 15, 2014 (assuming that the Sale Process is approved by this Court on June 16, 2014).³⁰

PART III – ISSUES AND THE LAW

19. The issues on this motion are as follows:

- (a) should the Stay be extended until August 15, 2014?;
- (b) should this Honourable Court approve the Sale Process?

A. **THE APPLICANTS MEET THE TEST FOR EXTENSION OF THE STAY**

20. In determining whether to grant an extension of an initial order beyond the first 30 day period, the CCAA requires the debtor company to demonstrate that it has acted and is acting in good faith, and with due diligence.³¹ This additional requirement is flexibly drafted and does not set out any prescribed list of rules that must be satisfied in order to demonstrate these criteria.

21. As the Supreme Court held in *Ted LeRoy Trucking*, the CCAA court's discretion to make orders facilitating the debtor's restructuring subsists as long as it is not clear that the debtor's restructuring efforts are "doomed to failure":

It is well-established that efforts to reorganize under the CCAA can be terminated and the stay of proceedings against the debtor lifted if the reorganization is "doomed to failure" [citations omitted]. However, when an

²⁹ Fourth Aziz Affidavit, para. 37.

³⁰ Fourth Aziz Affidavit, para. 38.

³¹ CCAA, s. 11.02(3)(b).

order is sought that does realistically advance the CCAA's purposes, the ability to make it is within the discretion of a CCAA court.³²

22. Since the Initial Order was granted on April 15, 2014, Cash Store has been proceeding in good faith and with due diligence. A number of steps have been taken with a view to stabilizing the business, addressing regulatory concerns and developing the Sale Process.³³

23. The extension of the Stay for the proposed Stay Extension Period will be in keeping with the purposes of the CCAA including: (a) allowing the Applicants a reasonable breathing space to achieve a successful reorganization where there is a realistic chance that they will be able to do so; and (b) preventing manoeuvring by creditors during that period.³⁴ The Stay Extension Period is a reasonable period of time to allow the Applicants to proceed to the next stage with the Sale Process and to determine whether a successful transaction can be achieved. The Stay Extension Period will also provide further opportunities to maintain open communication with regulators with a view to ensuring continued licensing of the business.³⁵

24. It is forecast that the Applicants will have sufficient liquidity to continue operations during the proposed Stay Extension Period if the Extension Option (as set out in the Amended DIP Facility) is funded.³⁶ It is the Applicants' understanding that the Stay Extension Period is supported by the DIP Lenders, the Ad Hoc Committee and the Monitor.³⁷

B. APPROVAL OF THE SALE PROCESS

³² *Re Ted LeRoy Trucking [Century Services] Ltd.*, 2010 SCC 60, 2010 CarswellBC 3419 (S.C.C.) at para. 71.

³³ Fourth Aziz Affidavit, paras. 10-15, 19-20.

³⁴ *Re Sharp-Rite Technologies Ltd.* (2000), 19 C.B.R. (4th) 130, 2000 CarswellBC 1365 (B.C. S.C.) at para. 22; leave to appeal refused 2000 BCCA 402, 2000 CarswellBC 1356 (B.C. C.A.) and *Re Rio Nevada Energy Inc.*, 2000 CarswellAlta 1584, [2000] A.J. No. 1596 (A.B. Q.B.) at para. 32.

³⁵ Fourth Aziz Affidavit, para. 12.

³⁶ Fourth Aziz Affidavit, paras. 8 and 9.

25. It is well recognized that a CCAA court has jurisdiction to approve a sale process in relation to a CCAA debtor's business and assets, prior to the development (or even in the absence) of a plan of compromise and arrangement.³⁸

26. This Court has identified a number of factors that should be considered in determining whether to authorize a sale. These include:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole economic community?
- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- (d) is there a better viable alternative?³⁹

27. Although the above *Nortel* criteria were formulated under the CCAA prior to the significant amendments that took effect in September 2009, the Court in *Brainhunter* confirmed that the same criteria apply under the amended CCAA.⁴⁰ In addition, the Court in *Brainhunter* noted that, even though s. 36 of the amended CCAA directly applies only in the context of the approval of a sale, not of a sales process, the *Nortel* criteria should be considered in light of the considerations that may ultimately apply under s. 36.⁴¹

28. The Applicants submit that the *Nortel* criteria are satisfied in these circumstances:

³⁷ Fourth Aziz Affidavit, para. 21.

³⁸ See *Re Nortel Networks Corp.*, 2009 CarswellOnt 4467 (S.C.J.) [*Nortel*] at para. 48.

³⁹ *Nortel*, *supra* at para. 49.

⁴⁰ *Re Brainhunter Inc.*, 2009 CarswellOnt 8207 (S.C.J.) [*Brainhunter*] at paras. 15 to 17.

- (a) A possible sale transaction is warranted at this time in order to maximize value for stakeholders and a sale process will provide further certainty and stability in the CCAA proceedings.⁴²

- (b) A sale, particularly on a going-concern basis, would benefit the general body of the Applicants' economic stakeholders. In particular, a sale transaction could assist in improving recoveries for existing creditors. Depending on its form, a sale represents the best chance of preserving employment for as many of Cash Store's employees as possible. Bids are required, among other things, to identify the proposed number of the Applicants' employees who will become employees of the bidder and the proposed terms of employment for those employees. Under the Sale Process, this factor is among those that are to be evaluated in determining whether a bid is a "Qualified Bid" and whether a Qualified Bid is a Successful Bid.⁴³

- (c) The Applicants are not aware of any *bona fide* reason for any of their creditors to object to a Sale Process at this time. The proposed Sale Process was developed in consultation with Rothschild, the Monitor, the DIP Lenders and the Ad Hoc Committee.⁴⁴ Rothschild's initial activities in exploring a potential sale transaction were outlined in the Carlstrom Affidavit that was before this Court when it granted the Initial Order. Rothschild's progress has been conveyed to this Court

⁴¹ *Brainhunter*, *supra* at para. 17.

⁴² Fourth Aziz Affidavit, para. 30.

⁴³ Fourth Aziz Affidavit, para. 32. See also Sale Process, clause 7(d) and clause 10(i).

⁴⁴ Fourth Aziz Affidavit, para. 30.

when the Applicants subsequently applied to extend the Stay.⁴⁵ No creditors have come forward to object to the pursuit of a sale transaction at any stage.

- (d) Given the complexities of the Applicants' business and the pressures to which it is subject, there is no better alternative to a sale transaction and no stakeholder has proposed one. It is the judgment of the CRO, the financial advisors, the Monitor and key stakeholders such as the DIP Lenders and the Ad Hoc Committee that a sale, while the Applicants' business continues as a going-concern, is in the best interests of stakeholders as a whole.⁴⁶

29. In anticipation of the criteria that may eventually have to be satisfied under s. 36 of the CCAA if the Successful Bid takes the form of an asset sale, the Applicants submit that the Sale Process is fair, transparent and objective. Given the liquidity issues faced by the Applicants, the Sale Process is designed to facilitate obtaining the best possible price, without unduly prolonging the process.

30. The Sale Process builds on the prior efforts of Rothschild. Those efforts began with a broad canvass of financial and strategic buyers, which has been narrowed to a smaller field of interested competitors.⁴⁷ The Sale Process is designed to take the process from initial offers of interest to a completed transaction.

31. The Monitor has been consulted extensively to date in relation to Rothschild's activities. The Monitor is expected to be heavily involved in the remainder of the Sale Process, including in the selection of any Successful Bid and the evaluation of the consideration provided

⁴⁵ Fourth Aziz Affidavit, paras. 23 and 24.

⁴⁶ Fourth Aziz Affidavit, para. 30.

⁴⁷ Fourth Aziz Affidavit, paras. 23 and 27.

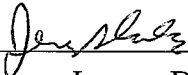
by the Successful Bid. In addition, unlike in *Nortel*, the Monitor must consent to any waiver of compliance with the requirements for Qualified Bids.⁴⁸

32. The Stay Extension Period coincides with the deadline for the Applicants to apply for a sale approval order or a plan filing and meeting order under the terms of the Amended DIP Facility.⁴⁹

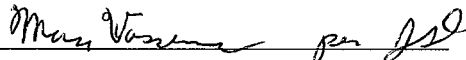
PART IV – NATURE OF THE ORDER SOUGHT

33. For all of the reasons above, the Applicants submit that this Honourable Court should grant the Sale Process Order, substantially in the form of the draft Order attached as Tab 3 to the Motion Record.

34. ALL OF WHICH IS RESPECTFULLY SUBMITTED:



Jeremy Dacks



Marc Wasserman

⁴⁸ *Nortel*, *supra* at para. 59.

⁴⁹ Fourth Aziz Affidavit, para. 38.

Schedule "A"

LIST OF AUTHORITIES

Case Law

1. *Re Brainhunter Inc.*, 2009 CarswellOnt 8207 (S.C.J.)
2. *Re Nortel Networks Corp.*, 2009 CarswellOnt 4467 (S.C.J.)
3. *Re Rio Nevada Energy Inc.*, 2000 CarswellAlta 1584, [2000] A.J. No. 1596 (A.B. Q.B.)
4. *Re Sharp-Rite Technologies Ltd.* (2000), 19 C.B.R. (4th) 130, 2000 CarswellBC 1365 (B.C. S.C.); leave to appeal refused 2000 BCCA 402, 2000 CarswellBC 1356 (B.C. C.A.)
5. *Re Ted LeRoy Trucking [Century Services] Ltd.*, 2010 SCC 60, 2010 CarswellBC 3419

Schedule "B"

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36, as amended

Burden of proof on application

11.02 (3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate;
and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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., The Cash Store Inc., TCS Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd Doing Business as "The Title Store"

Ontario

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF THE CHIEF RESTRUCTURING
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