CITATION: Cash Store Financial Services (Re), 2014 ONSC 4326
COURT FILE NO.: CV-14-10518-00CL
DATE: 2014-08-05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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, 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"

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *Jeremy Dacks*, for the Chief Restructuring Officer of the Applicants

Heather Meredith, for the FTI Canada Consulting Canada Inc., Monitor

Robert W. Staley and *Raj S. Sahni* and *Jonathan Bell,* for 0678786 B.C. Ltd.

Alan Merskey and *Orestes Pasparakis*, for Coliseum Capital Partners LP, Coliseum Capital Partners II LP, Blackwell Partners LLC, Alta Fundamental Advisors Master LP and the Ad Hoc Committee of Cash Store Noteholders in their representative capacities as DIP Lenders, First Lien Noteholders and Holders of Senior Secured Notes

Brendan O'Neill, for the Ad Hoc Committee of Cash Store Noteholders

Andrew Hatnay, *James Harnum* and *Adrian Scotchmer*, for Tim Yeoman,

Brett Harrison, for Trimor Annuity Focus LP, No. 5

HEARD: June 11 and June 16, 2014

ENDORSEMENT

Introduction

[1] Cash Store (as defined below) is a payday lending company operating under CCAA protection.

[2] Cash Store is not a conventional lender. When operating in the "normal course", Cash Store acts as a broker charging a fee of 23% of funds advanced, paid by its customers with the fee being taken directly off the loan proceeds.

[3] On paper, Cash Store obtains funding from sources which include a number of third party lenders ("TPLs"). On paper, these TPLs provide Cash Store with funds which Cash Store, as broker, then lends to Cash Store customers. On paper, the loans are assigned to the TPLs. On paper, the TPLs "own" all payments received from the customers. These payments are comprised of principal and interest. Interest is charged at a rate of 59% per annum. On paper, Cash Store is required to keep TPL funds segregated. On paper, the operating model leads to a conclusion that the relationship between TPLs and Cash Store is not a debtor-creditor relationship, but is one where Cash Store functions as a broker.

[4] However, the manner in which Cash Store business operations were conducted differed substantially from that set out "on paper". Specifically, interest payments did not flow to the TPLs at the contract rate of 59% - or even at 59% less a bad debt expense, or after an allowance for impaired loans. Rather, Cash Store would make "voluntary payments" or "retention payments" at the rate of 17.5% (in some cases 20%) to the TPLs as "an inducement" to ensure the continued support of the TPLs.

[5] Payments received from Cash Store customers were used in the operations of Cash Store. Cash Store did not keep payments that it received from its customers in a segregated account for TPLs. The TPLs did not audit the accounts of Cash Store.

[6] Cash Store breached a number of contractual agreements. Cash Store defaulted on its obligations. The management team of Cash Store has departed and Cash Store has filed for protection under the CCAA. The parties that provided Cash Store with funds are now trying to recover those funds.

[7] At the core of this motion is a dispute over whether these TPLs loaned their funds *to Cash Store*, which in turn made its own loans to its customers; or whether the funds were loaned by the TPLs *to Cash Store's clients*, with Cash Store merely operating as a broker. If the conclusion is the former, the TPLs must stand in line as creditors of Cash Store. If the latter is true, the TPLs argue they, and not Cash Store, are the beneficial owners of certain funds in the possession of Cash Store and of certain outstanding loans.

[8] The circumstances, and the relief sought on this motion, are set out below. I begin with the relief sought by the various parties on the motion and cross motion. I then set out the relevant history of the CCAA proceedings, followed by the positions of the respective parties. Finally, I turn to an analysis of the issues.

I. Relief Sought

[9] 0678786 B.C. Ltd. (formerly the McCann Family Holding Corporation) ("McCann") is a TPL and brings this motion for a declaration that the following property (collectively, the "McCann Property"), including, without limitation, the McCann Loans as defined in the order of April 30, 2014 is owned by McCann free of any interests or claims of any creditor:

a. Any loans made in the name of any third party lender and brokered by the Cash Store Inc. and 1693926 Alberta Ltd. (collectively, "Cash Store") on

behalf of their customers ("Customers") using funds made available by McCann for that purpose (the "McCann Funds");

b. Any advances originated by Cash Store and subsequently purchased with the McCann Funds;

c. Any loans or advances originated by Cash Store and subsequently assigned to McCann as capital protection or otherwise (together with (a) and (b) above, the "McCann Loans");

d. Any amounts received by Cash Store from its customers in repayment of the McCann Loans (the "McCann Receipts");

e. Any accounts receivable in respect of the McCann Loans (the "McCann Accounts Receivable"); and

f. The McCann Funds.

[10] Trimor Annuity Focus Limited Partnership No. 5 ("Trimor") is also a TPL and brings a similar motion for a declaration that the following property (the "Trimor Property") is owned by Trimor free of any interests or claims of any creditor of the Applicants:

a. Any loans made in the name of Trimor and brokered by the Cash Store on behalf of their Customers using funds made available by Trimor for that purpose (the "Trimor Funds");

b. Any advances originated by Cash Store and subsequently purchased with the Trimor Funds;

c. Any loans and advances originated by Cash Store and subsequently assigned to Trimor as capital protection or otherwise (together with (a) and (b) above, the "Trimor Loans");

d. Any amounts received by Cash Store from its Customers in repayment of the Trimor Loans (the "Trimor Receipts");

e. Any accounts receivable in respect of the Trimor Loans (the "Trimor Accounts Receivable"); and

f. The Trimor Funds.

[11] The lenders under the Applicants' amended and restated Debtor and Possession Term Sheet, dated May 16, 2014, (collectively, the "DIP Lenders") bring a cross-motion for a declaration 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 and the Fresh as Amended Notice of Motion of McCann (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 loan 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 names of the Applicants (collectively, the "Reviewable Transactions").

iii. The Reviewable Transactions shall be reversed such that the Applicants are the beneficial owners of the 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 advance or loans made to the Applicants' Customers, whether in the names of Trimor or McCann or otherwise, unless the Monitor determines not to challenge the Reviewable Transactions.

II. Background of CCAA Proceedings

[12] On April 14, 2014, an initial order (the "Initial Order") was granted pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"), to the Cash Store Financial Services Inc. ("CSF"), Cash Store Inc., TCS Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manito Inc. and 1693926 Alberta Ltd. doing business as "The Title Store"

(collectively, the "Applicants" or "Cash Store"), providing protections to the Applicants under the CCAA, and appointing FTI Consulting Canada Inc. as monitor (the "Monitor").

[13] On April 15, 2014, an amended and restated Initial Order (the "Amended and Restated Initial Order") was granted, which, among other things, approved an interim CCAA credit facility (the "Initial DIP") by Coliseum Capital LP, Coliseum Capital Partners II LP, and Blackwell Partners LLC (collectively, "Coliseum"), and appointed Blue Tree Advisors Inc. as Chief Restructuring Officer of the Applicants (the "CRO").

[14] On April 20, 2014, an order was granted providing certain protections for third party lenders ("TPLs") (McCann and Trimor are TPLs) specifically relating to repayments of loans bearing the name of, attributable to, or assigned to, McCann and Trimor and requiring the Applicants to maintain the $3 million minimum cash balance (the "Additional TPL Protection Order").

[15] On May 13, 2014, the court granted an order (the "May 13 Order"), which extended the stay to May 16, 2014, approved a key employee retention plan and related charge, approved the cessation of the Applicants' brokered loan business (the "Broker Business") in all jurisdictions in which it was then carried out, and authorized the CRO, in consultation with the Monitor, to conduct an orderly cessation of such business.

[16] On May 17, 2014, an order was granted extending the stay and approving an amended and restated term sheet providing for a DIP Facility by the following lenders (together, the "DIP Lenders"): Coliseum, Alta Fundamental Advisors, LLC, and certain members of the Ad Hoc Committee (the "Ad Hoc Committee") of the Applicants' 11½% Senior Secured Notes (the "Notes").

[17] The TPL protections and provisions of the Additional TPL Protection Order provide as follows:

a. A charge in favour of the TPLs (the "TPL Charge") in the amount of Cash Store's cash on hand as of the effective time of the Initial Order, as security for any valid trust or other proprietary claim of a TPL to such cash on hand;

b. A declaration that the TPLs' entitlement to TPL brokered loans in existence at the effective time of the Initial Order (the "TPL Brokered Loans") is to be determined based on the legal rights as they existed immediately prior to the effective time, and that post-filing treatment of receipts is not relevant to determination of the TPLs alleged entitlement to or ownership of and will not prevent the TPLs from arguing that segregation would have been required by them, but for the Initial Order; and

c. Restrictions on the treatment of post-filing receipts and new TPL Brokered Loans and requirements to keep certain minimum cash balances.

III. Facts

a. Monitor's Reports

[18] As the Monitor noted in the pre-filing report, according to the Applicants the TPLs had provided approximately $42 million of funding (the "TPL Funds") over time in relation to various brokered loans. The original $42 million could be accounted for as follows:

a. Restricted cash (TPL Funds received by Cash Store that are not redeployed to other broker customers as referenced on Cash Store's financial statements), estimated to be approximately $14.7 million as at March 31, 2014; and

b. Amounts on loan to Customers pursuant to the Broker Agreements (defined therein) of which approximately $8.5 million were "historic bad loans" which the Monitor understood were outstanding since at least 2012, unlikely to be recovered and all brokered with Trimor.

[19] The Monitor is of the understanding that the relief sought by Trimor and McCann relates specifically to TPL Brokered Loans that existed immediately prior to the commencement of the CCAA proceedings and amounts collected by Cash Store in relation to the Brokered Loans after the commencement of the CCAA proceedings (the "TPL Post-Filing Receipts").

[20] The Monitor also noted that the question of ownership of the TPL Brokered Loans and the specific relief sought on this motion may have broader implications on the question of compliance with regulatory restrictions and on potential class action claims arising therefrom.

[21] The Monitor compiled and updated data relevant to these foregoing issues.

[22] As of April 13, 2014 (the day before the Initial Order), TPL Brokered Loans in the following value were recorded in the Applicants' books and records:

a. $5.7 million of McCann loans, which included:

   i. 673 loans with a total face value of $449,000 that were written off prior to April 13, 2014 all of which had been Cash Store direct loans that had been assigned to McCann; and

   ii. 7,855 line of credit loans in Ontario with a face value of $5.26 million, all of which had been written in Trimor's name and subsequently transferred to McCann

b. $16.8 million of Trimor loans, which included:

i. $4.4 million in loans that were written off prior to April 13, 2014, which included $2,155,464 of loans that had been Cash Store direct loans that had been assigned to Trimor;

ii. $12.4 million of brokered loans that had not been written off that had been written in Trimor's name;

c. $799,114 in loans in the name of other TPL Lenders of which $292,021 were written off prior to April 13, 2014.

[23] The brokered line of credit product was discontinued in Ontario as at February 12, 2014 and no TPL Brokered Loans were made in Ontario during the CCAA proceedings.

[24] New TPL Brokered Loans were made by the Applicants outside Ontario after the Initial Order (pursuant to the Amended and Restated Initial Order and additional TPL Protections Order) until May 12, 2014 when the Applicants ceased the broker business. The Monitor understands that, during this time, TPL Brokered Loans totalling $5,911,141 were made in the name of Trimor, with no new TPL Brokered Loans made in the name of McCann.

[25] As at May 31, 2014, TPL Brokered Loans in the following value were recorded in the Applicants' books and records.

a. McCann: $4,274,924 of which $242,614 have been written off;

b. Trimor: $13,288,913 of which $3,059,224 have been written off;

c. Other TPL: $649,060 of which $266,823 have been written off.

[26] Trimor post-additional TPL Protection Order loans (*i.e.* loans made after the date of the additional TPL Protection Order and before the business broker ceased in the name of Trimor for which a declaration had been made that Trimor is the owner) totalled $2,520,540.

TPL Post-Filing Receipts

[27] After the additional TPL Protection Order was issued, segregated accounts were opened to maintain the McCann Post-Filing Receipts and the Post-Filing Trimor Ontario Receipts. After the broker business ceased, the Post-Filing Trimor Non-Ontario Receipts were also deposited into the Trimor account for post-filing receipts.

[28] The Monitor reported the following amounts in the segregated accounts as of May 6, 2014:

a. McCann Post-Filing Receipts of $699,558

b. Post-Filing Trimor Ontario Receipts of $690,380.

[29] The balances in the segregated accounts as of May 27, 2014 were as follows:

a. McCann Post-Filing Receipts of $927,774

b. Post-Filing Trimor Ontario Receipts and Post-Filing Trimor Non-Ontario Receipts of $2,092,824.

[30] The balances in the segregated accounts as of June 4, 2014 were as follows:

a. McCann Post-Filing Receipts of $1,236,053

b. Post-Filing Trimor Ontario Receipts and Post-Filing Trimor Non-Ontario Receipts of $2,686,089

c. Other TPL Lender Receipts of $175,788.

The Monitor's Position on the Reviewable Transactions

[31] The cross motion by the DIP Lenders seeks a declaration that any designation of TPL Brokered Loans in the name of Trimor or McCann and any assignment of non-brokered loans to Trimor or McCann are preferences pursuant to the CCAA and/or provincial legislation.

[32] The Monitor has advised the DIP Lenders that it is of the view that it is the Monitor who has standing to proceed with such a challenge using the provisions of the CCAA (absent an order equivalent to a *Bankruptcy and Insolvency Act* s. 38 Order authorizing the DIP Lenders to do so) and that, at this time, the Monitor is not bringing a preference or transfer at under value application. The Monitor advised that it continues to investigate relevant facts and is evaluating the merits of such an application, together with its assessment of other transactions made prior to the Initial Order.

[33] The Monitor does not take a position on the DIP Lenders' motion pursuant to provincial reviewable transaction legislation.

[34] McCann has requested that its legal and other professional fees incurred in or in connection with the CCAA proceeding be paid by the Applicants and be included in the Administration Charge. The Monitor notes that Trimor (which has not made a similar request for relief) does not have its legal or professional fees listed in the Administration Charge although Trimor's legal counsel (McMillan LLP) is listed in the Amended and Restated Initial Order among counsel whose reasonable fees and disbursements the Applicants "shall also be entitled to pay". The Monitor is of the understanding that this was included on the understanding that the Applicants would not fund any Trimor fees for challenges made by Trimor against the Applicants.

[35] The Monitor notes that it is mindful of the limited resources available in the CCAA proceedings and that any party requesting coverage of fees pursuant to the Administration Charge must establish that such coverage would be necessary for their effective participation in proceedings under s. 11.52 of the CCAA.

b. Submissions of TPLs

[36] McCann and Trimor take the position that they entrusted millions of dollars to the Applicants for the sole purpose of brokering loans between the TPLs and Borrowers and at all times, the TPLs retained ownership of their funds and of all the loans ultimately brokered with those funds or otherwise purchased by or assigned to the TPLs. They also take the position that they own any accounts receivable in respect of their loans in any amounts actually received by the Applicants from their customers in repayment of the loan. The TPLs take the position that this arrangement was memorialized in written broker agreements.

[37] The fundamental problem with this position, as I discuss in the next section, is that the written agreements did not accord with reality.

[38] McCann requests a declaration that, among other things, McCann is the sole legal and beneficial owner of these funds, loans and receivables, as reflected in its broker agreement. Trimor takes the same position with respect to the funds it made available to the Applicants under its broker agreement.

[39] The TPLs take issue with the position being taken by the DIP Lenders to declare that the TPLs' property belongs to the Applicants. The TPLs submit that the DIP Lenders do not articulate any plausible legal theory in support of their request but rather, they simply insist that the TPLs are mere unsecured creditors.

[40] Further, the TPLs take issue with the DIP Lenders' preference arguments which they say are intended to attack ordinary course transactions between the Applicants and the TPLs. McCann submits that this issue is not properly before the Court as the right to impugn a transaction as a preference or transfer at undervalue belongs to the Monitor, and the Monitor has not challenged any of the transactions in question. The TPLs also take the position that the period for reviewing transactions as possible preferences has lapsed and, in any event, the evidence makes clear that the impugned transactions do not constitute preferences or transfers at undervalue. Rather, the TPLs take the position that TPL property is, and always has been, understood and intended to be, the property of the TPLs. They take the position that the transaction were not intended to prefer, defraud or otherwise hinder the Applicants' other creditors and the TPLs did not knowingly participate in any fraudulent scheme or preference.

The Broker Agreements

[41] The position of the TPLs is founded on various broker agreements.

[42] On June 18, 2012, McCann and Cash Store executed a broker agreement ("Broker Agreement"). McCann takes the position that, as financier, it made $13,350,000 in funds available (the "McCann Funds") to Cash Store, as broker, for the sole purpose of Cash Store brokering loans (the "McCann Loans") between McCann and Cash Store's customers (the "Customers").

[43] Before the McCann Funds could be loaned out, the Broker Agreement provided that Cash Store was required to ensure that extensive loan criteria were met or to obtain specific approval from McCann. Further, the McCann Funds were to be used for no other purpose. This requirement is set out in Article 2.10 of the Broker Agreement:

> 2.10 Usage of Loan Advances
>
> For greater certainty, funds, from time to time, advanced to broker from financier are solely intended to be utilized for the purposes of making advances to broker customers on financiers' behalf as contemplated hereunder. The broker agrees that any funds not otherwise being held by the broker as a "float" in anticipation of loan approvals shall not, without the consent of financier, be advanced or utilized for any other purpose.

Representations Allegedly Made to McCann

[44] McCann contends that in discussions leading up to the Broker Agreement's execution, and while Cash Store was administering the McCann Funds on McCann's behalf, it was expressed to be important to McCann that its funds be kept separate and apart from Cash Store Financial's general operating funds in accordance with the Broker Agreement. McCann takes the position that Cash Store Financial assured it that the McCann Funds were – and could continue to be – segregated at all times. McCann alleges that Cash Store represented to McCann, and it was a term of the Broker Agreement, that all of the McCann Funds would be placed in a "designated broker bank account", which would be separate and apart from Cash Store Financial's general operating account.

[45] McCann also takes the position that it understood McCann owned both the McCann Funds and the McCann Loans and that its accounts would be administered on a segregated basis from Cash Store's funds and be pooled safely with other "broker only" monies.

[46] In his affidavit, Mr. Murray McCann, former president of McCann, states that a number of account statements were received from Cash Store and that the "funding excess/deficiency" on the statements provided a summary of the McCann Loans. Mr. McCann goes on to state that when the McCann Funds exceeded the amount deployed as loans to customers, Cash Store described the undeployed monies as the "funding excess/deficiency". McCann states that at all times he understood this amount to be held separate and apart from Cash Store's other accounts in accordance with the Broker Agreement and McCann's instructions. Further, he states that Cash Store's public disclosure always showed the McCann Funds as McCann's property, not the property of Cash Store or Cash Store Financial.

[47] As recently as mid-March 2014, Mr. McCann states that Mr. Carlstrom, Vice President, Financial Reporting for Cash Store Financial, provided assurances to McCann that undeployed portions of the McCann Funds were secure and remained available to McCann and that Cash Store was administering McCann's property in accordance with the Broker Agreement.

Additional Submissions of McCann

[48] McCann takes the position that under the Broker Agreement, McCann owned loans made in the name of TPLs which were brokered by Cash Store on behalf of the customers using funds made available by McCann. In addition, McCann takes the position that it also owned advances originated by Cash Store which were subsequently purchased with the McCann Funds, and certain loans and advances originated by Cash Store which were subsequently assigned to McCann as capital protection or otherwise. McCann takes the position that it was entitled to receive a stated rate of 59% interest under these loans from the customers.

[49] McCann acknowledges that the McCann Loans were, by their nature, risky and accordingly, Cash Store historically made inducement payments to TPLs – referred to by Cash Store as "retention payments" – to induce TPLs to continue to make their funds available to Cash Store, which, in turn, enabled Cash Store to earn Broker Fees. In other words, these payments were intended to ensure that the TPLs were receiving a return commensurate with the considerable risk they were assuming. These "inducement payments" or "retention payments" were made by Cash Store on a monthly basis.

[50] Until March 2014, McCann states that it received monthly statements indicating the cash that McCann had made available to Cash Store and the amount that was deployed in loans to customers.

[51] In the Carlstrom affidavit, Mr. Carlstrom acknowledged that the so-called "restricted cash" in Cash Store's bank accounts totalled $12,961,000 as at February 28, 2014. However, by close of business on April 11, 2014, this amount had dwindled to approximately $2.9 million.

[52] McCann takes issue with Cash Store's disclosure of events when they moved for the Initial Order. Specifically, McCann contends that Mr. Carlstrom did not disclose in his affidavit that, in breach of the Broker Agreement and without the knowledge or consent of McCann, and contrary to the multiple representations made to McCann, Cash Store had misappropriated the TPLs monies and spent them on the Applicants' operating and professional costs leading up to the CCAA filing.

[53] McCann takes the position that the Special Committee must have made the decision to use the McCann Funds knowing that Cash Store and Cash Store Financial were acting in breach of the Broker Agreement and that they had misrepresented that McCann's monies had been properly segregated.

[54] McCann states that it is undisputed that Cash Store received approximately $42 million of TPL monies to broker but, in the Monitor's pre-filing report, the Monitor reported that only $18.66 million of brokered loans were outstanding and that Cash Store had only $2.94 million cash on hand. Combined, these two figures equal $21.6 million, which results in the remaining $20.4 million being misappropriated.

Increased Risk Created by the May 13 Order

[55] Subsequent to the granting of the Initial Order, McCann complains that the order of May 13, 2014 (the "May 13th Order") put the TPLs at further risk. The May 13th Order approved the cessation of the Applicants brokered loan business in all jurisdictions in which they operated that business. Also, the Chief Restructuring Officer (the "CRO"), in consultation with the Monitor, was authorized to take steps to conduct an orderly cessation of that business.

[56] The TPLs contend that not only did they not agree to allow their monies and receivables to be held and used by an insolvent Cash Store, the May 13th Order puts the TPLs in even greater jeopardy as it purports to create charges against the TPLs' property and treat it as if it is the Applicants' property.

[57] Paragraph 13 of the May 13th Order provides that the TPL charge is capped at $2.94 million and ranks third (*pari passu* the DIP Lenders) after the Administration Charge and the Director's Charge (up to a maximum of $1,250,000). They contend that this increases the risk that the costs of these proceedings would be paid out of the TPLs' remaining monies, after many millions of dollars of TPL Funds were already misappropriated by Cash Store for payment of costs not authorized by the TPLs leading up to the CCAA filing.

Trimor's Submissions

[58] Counsel to Trimor supported the submissions of counsel to McCann, as applicable to Trimor.

[59] Trimor transferred funds totalling $27,002,000 to Cash Store under the Broker Agreements for the sole purpose of brokering loans to customers (the "Trimor Funds").

[60] Trimor is a party to the following broker agreements with Cash Store (the "Broker Agreements"):

a. Broker Agreement between Trimor and Cash Store dated February 1, 2012 and made as of June 5, 2012;

b. Broker Agreement between Trimor and 1693926 Alberta Ltd. dated September 24, 2012 and made as of June 5, 2012.

[61] The Broker Agreements are similar (if not identical) to the broker agreements that Cash Store entered into with other TPLs, including McCann.

[62] Trimor takes the position that when Trimor funds were deployed as loans to customers, the creditor or lender is Trimor and Cash Store takes a brokerage fee. The supporting agreements and disclosure statements signed by customers named Trimor as the credit grantor and the customer as the borrower for the Trimor Loans.

[63] Trimor contends that the TPLs, including Trimor, only made the TPL Funds available as a result of representations that the Funds were segregated, held in trust, and used only for a specific purpose.

[64] Trimor contends that if the interest received by the TPLs was less than 17% of the TPL Funds, Cash Store would make a payment to bring cash received up to 17.5% (a "Retention Payment") and that Cash Store made the Retention Payments as an inducement to ensure that TPLs were receiving a return that was commensurate with the risk of lending.

[65] In January 2012, Cash Store offered $132.5 million in Senior Secured Notes due in 2017 through a private placement (the "Secured Note Offering"). Cash Store's offering circular dated January 12, 2012 (the "Circular") for the Secured Note Offering advised potential investors that Cash Store "currently acts primarily as a broker of short-term advances between our customers and third party lenders, the effect of which is that the loan portfolio we service is not financed on our balance sheets".

[66] These statements were repeated in financial statements. Trimor further contends that in its Circular, Cash Store advised potential purchasers of its bond that "we have made the decision to voluntarily make retention payments to the third party lenders as consideration for continuing to advance funds to our customers" and that "the decision has been made to voluntarily make retention payments to the Lenders to lessen the impact of loan losses experienced by the third party lenders".

[67] Trimor further contends that the DIP Lenders/Bond Holders were well aware of this practice and took no issue with it. However, this statement, which was made at paragraph 27 of the Factum, is not referenced to the evidence in the record.

[68] Similar to McCann, the Broker Agreements for Trimor provide that all funds advanced by Trimor were to be held in a designated broker bank account, which is a Cash Store bank account that is "designated by [Cash Store] for the purposes of temporarily receiving funds from [Trimor] ... before they are advanced to a [customer]". Trimor further contends that until January 2014 a separate bank account was used for the deposit of TPL Funds, including the Trimor receipts and the payment of Retention Funds.

[69] Trimor also contends that it received assurances from Cash Store that it would treat the Trimor Funds as being held in trust for Trimor's benefit.

[70] Trimor takes the position that since the CRO has determined, in consultation with the Monitor, that it is necessary and appropriate to implement a cessation of the brokered loan business and cease brokering new loans in all jurisdictions in which Cash Store operates, that Cash Store's intention to cease all brokered loan operations effectively terminates the Broker Agreements. In turn, Trimor now has the option to allow the Applicants to continue to administer the Trimor Loans, transfer their administration to a new service provider, or sell the Trimor Loans to a third party.

[71] Trimor contends that they will be seriously prejudiced if the Trimor Loans are not transferred to their control.

[72] On this motion, Trimor asks the Court to confirm Trimor's ownership of the Trimor Loans and receipts and to allow Trimor or its agent to assume administration of the Trimor Loans to maximize realizations in accordance with Trimor's contractual rights.

c. Submissions of the DIP Lenders

[73] Not surprisingly, the DIP Lenders, supported by the Ad Hoc Committee of Cash Store Noteholders (the "Committee") disagree with the position being taken by both McCann and Trimor. The TPLs base their claim upon the framework of the Broker Agreements. The DIP Lenders take the position that the TPLs' actual practices with Cash Store established that the TPSs varied the Broker Agreements, and in fact, entered into a debtor/creditor, or lending relationship with Cash Store. The focus of the inquiry is, in my view, whether the actual practices followed by the parties had the effect of varying the Broker Agreements.

[74] The DIP Lenders point out that the TPLs received a fixed rate of return on funds provided to Cash Store and did not directly bear the collection risk of any individual customer loan made by Cash Store.

[75] In addition, the DIP Lenders take the position that the funds advanced by the TPLs were comingled with Cash Store's general operating cash from which customer loans were made and there was no way to determine which funds belonged to the TPLs or which loans were made with funds advanced by the TPLs. The DIP Lenders take the position that it is uncontradicted that the funds were comingled and used from general operating accounts.

[76] Simply put, the position of the DIP Lenders is that of the TPLs became creditors and consented to Cash Store having use of all funds received back from customers and they became, in fact, lenders to Cash Store. As a result, Cash Store continues to be entitled to all funds received back from customers. The DIP Lenders contend that the TPLs sought and received the benefit of gratuitous retention payments and capital protections paid by Cash Store and, in so doing, they avoided the risk of their putative broker relationship. They also became creditors. Consequently, the TPLs are not entitled to disavow that creditor relationship and return to the status of broker.

[77] The DIP Lenders recognize that an understanding of the true nature of the relationship between Cash Store and the TPLs starts with the Broker Agreements. However, from their standpoint, it is necessary to review actual practice.

[78] The DIP Lenders concede that had the TPLs chosen to strictly follow their Broker Agreements, they could have had the benefit of specific fund recognition.

[79] The Broker Agreements contain a section entitled "Loan Funding by Financier" that details the means by which the financier (the TPL) can provide the money used by Cash Store to make loans to customers. Those means include payments made:

a. By wire transfer of funds to the designated broker bank account (for redirection/payment to, or for the benefit of, the broker customer); and

b. By cheque drawn by financier payable to broker (Cash Store) for deposit to the designated broker bank account (for redirection/payment to, or for the benefit of the, the broker customer).

[80] Further, the Broker Agreements go on to define "designated broker bank account" as:

> ... the bank account of broker designated by broker for the purposes of temporarily receiving funds from financier (if loans are made by financier way [sic] of cash advances) before they are advanced to a broker customer (...).

[81] With respect to receipts, the Broker Agreements entitle the TPL to designate a bank account for receipt of funds directly from Cash Store customers:

> "Designated financier bank account" means, the bank branch and account designated by financier from time to time where (and into which) deposits of cash and cheques received from broker customers, in respect of such financier funded loans, are to be cleared (deposited) from time to time ..."

[82] The Broker Agreements also grant the TPLs the opportunity to audit the records of Cash Store. The DIP Lenders take the position that the TPLs did not exercise those rights. Instead, they chose to accept variations to these agreements by which they benefited.

[83] As detailed in their factum at paragraph 16, the DIP Lenders describe the basis on which the third party lending business of Cash Store actually functioned:

a. The TPLs provided Cash Store with initial tranches of funds;

b. The funds were lent to Cash Store customers, in the name of the TPL (in Trimor's case, but not McCann's);

c. Cash Store customers, if not in default, repaid the borrowed funds to Cash Store, together with interest of 59%;

d. Cash Store deposited the returned funds and interest to a general account;

e. Cash Store made voluntary payments to the TPLs from Cash Store general revenue, in order to ensure that the TPLs received a fixed 17.5% return;

f. Cash Store provided voluntary "capital protection" to the TPLs, insulating them for customer credit risk;

g. Cash Store made new loans to customers, from the general account, in the name of the TPL; and

h. Cash Store recorded a receivable for the TPL, with respect to the re-lent funds.

[84] The DIP Lenders point out that Trimor and McCann were treated differently under the loan documentation. Specifically, when a customer took out a loan that was to be designated as being made on behalf of Trimor, the loan documentation explicitly stated that Trimor was the lender. When a customer took out a loan that was designated as being made on behalf of McCann, the documentation made no such specification. Rather, the loans listed another party as lender, and were then transferred into McCann's name.

[85] The DIP Lenders also point out that each of the processes described above were accepted by the TPLs, with the disputed exception of the general account comingling.

[86] The DIP Lenders recognize that on their surface the Broker Agreements contemplate a pass-through principal-broker arrangement. However, the practices adopted by the parties with regard to payments made by Cash Store to the TPLs reflected a different reality. The DIP Lenders reference Mr. McCann's email correspondence to Cash Store in which, from their standpoint, it was recognized that the TPLs, in substance, loaned funds to Cash Store and the TPLs were creditors of Cash Store. In an email dated March 14, 2014, Mr. J. Murray McCann stated to Mr. Gordon Reykdal as follows:

> Good morning Gord,
>
> I look forward to our call today and our visit in about a week.
>
> You mentioned that you were meeting with Steve and Craig this morning to discuss our loan to back stop Ontario payday loan customers and the requirements for funds in regulated provinces. We have attempted to redeploy the funds in Ontario since they are no longer being used to backstop payday loans there but so far with no success. Those funds are no longer secured by the payday creditors and the funds from those accounts collected were to be credited to us. It appears that those funds were credited to the account of Cash Store in contravention of our mutual understanding and agreement.
>
> Because the funds we have loaned are from a foundation it is even more important that we not place those funds at risk. As you know we went to considerable effort and legal cost to get the opinion and comfort that we required to assure that funds loaned to Cash Store were an ok investment because they were secured by loans and the promise of Cash Store for proper accounting of those loans. Now that the loans that supported our loans were collected we must ask for repayment. Should Cash Store require further loans as backup to payday loans in regulated provinces and secure those loans with payday loans, as in the past, we will be happy to make

funds available. We are happy with the return received from Cash Store and look forward to continuing our relationship for a very long time.

Please be assured that the interest Cash Store is paying us is going to very worthwhile causes that rely on our funding. We can never let them down. That is the main reason that we make sure that any agreements we enter into on their behalf is never at risk. On the other hand we will always live up to our side of the agreement.

I look forward to our call later today.

Cheers,
Murray

[87] On April 12, 2014, Mr. J. Murray McCann sent another email to Mr. Reykdal as follows:

Good afternoon Gord,

I have attempted to contact you on numerous occasions and have left messages on your cell, office phone with Sandy. Attempting to keep a creditor and friend in the dark by ceasing all communication is neither the way to treat a friend nor a creditor. As mentioned to you, on more than one occasion, the funds Rent Cash is improperly holding are used to support a large school, orphanage and girls residence in Zambia. Without those funds teachers, caregivers, food suppliers etc. cannot be paid and our school of 400 students will have to close. I told you this before and you assured me that Rent Cash was looking after our money diligently and there was no need to worry.

Please Gord do what you know is right and release our funds so that they can continue to be used for the good purposes they have been used for. You know that the money is not Rent Cash's and have stated that on many occasions and even as late as 2 weeks ago when we visited at your club and your home in Scottsdale. You, as president, promised and assured that all was well and our funds were being held by Rent Cash for our benefit.

Please contact me.

Sincerely,
Murray

[88] The DIP Lenders contend that, in reality, the TPLs were effectively guaranteed a rate of return of 17.5% of the advances (though it appears that Trimor earned interest at a rate of 20% prior to May 2011). Further, notwithstanding the actual fluctuations of payments of interest and principle seen by Cash Store's customers, the monthly reconciliations and interest schedule forwarded by Cash Store to each TPL calculate a simple return of 17.5% on the total principal advanced by each TPL.

[89] In order to make this guarantee possible, the DIP Lenders contend that Cash Store made "retention payments" each month. The retention payments effectively made up any shortfall between actual amounts recovered from customers and the 17.5% interest owed to the TPLs. They reference comments of Ms. Erin Armstrong, former Chief Operating Officer of Trimor who stated that these retention payments were in fact a "top up" to make sure Trimor received its expected interest payment each month.

[90] Up to April 2014, Cash Store's retention payments or "top up" ensured that McCann received total interest payments of $3,353,696.92 and Trimor received total interest payments of $7,839,676.14.

[91] The DIP Lenders also argued that in addition to compensating the TPLs with routine retention payments, Cash Store indemnified the TPLs for customer loan losses through use of a capital protection scheme to help the TPLs maintain the broad principal behind their loan portfolios. They contend that that scheme had two components:

a. An expensing mechanism, whereby Cash Store would credit the TPLs with a book entry in the amount of any losses suffered by the TPLs on brokered loans that remain unpaid after 90 days. This protected the TPLs' advances of principal from being eroded by bad loans; and

b. A purchasing mechanism (in Ontario and Manitoba), whereby Cash Store purchased past-due brokered loan fees at face value from the TPLs.

[92] As referenced in the PwC Report, in the summary of Trimor's holdings, the lines of credit assigned to Trimor were broken up by length outstanding, and with zero percent of Trimor's loans having been held for longer than 90 days. As such, the DIP Lenders contend that Cash Store had acquired all of Trimor's bad debt, insulating it completely from the credit risk of the PayDay lending products. The DIP Lenders contend that instead, the TPLs took on the risk of Cash Store's insolvency, and the concomitant effect on these gratuitous mechanisms.

[93] According to the DIP Lenders the simple fact is that in each and every month of the TPLs' relationship with Cash Store, each TPL earned its constant rate of return and experienced little or no erosion of its "restricted cash". In so doing, they converted their Broker Agreements into lending agreements.

[94] Further, the DIP Lenders point out that it was always Cash Store's practice to hold funds related to third party lending activities in its own corporate accounts, comingled with all of its other cash. The DIP Lenders note that this practice was, in Cash Store's view, well known to the TPLs and fully disclosed to the Court on the CCAA filing. The DIP Lenders point out that the TPLs first claimed to believe that the funds were held in accounts designated to be used solely to receive each individual TPL's advances as set out in the Broker Agreements – notwithstanding that the TPLs were aware of and benefited from other "extra contractual" arrangements. The DIP Lenders point out that that evidence varied somewhat under cross-examination and in light of contemporaneous documentary evidence.

[95] For example, in her affidavit, Ms. Fawcett stated that a segregated bank account was represented to be in use:

> As indicated in my prior Affidavit, it was represented to me and Mr. McCann at the time the Broker Agreement was entered into, and it is a term of the Broker Agreement, that all Restricted Cash would be placed in a Designated Broker Bank Account, which would be separate and apart from Cash Store Financial's general operating account.

[96] However, as pointed out by the DIP Lenders, Ms. Fawcett was aware that McCann Funds had been comingled with other funds. They referenced an email sent by Ms. Fawcett to Mr. Michael Zvonkovic, former CFO of Cash Store on July 19, 2012 where Ms. Fawcett asked whether McCann's Funds were actually maintained in an individual segregated account:

> On the Broker Agreement funds, so you keep a separate "designated broker bank account" for each financier such that all of the loans made using our funds are paid from and returned to that account, as well as all related interest and fees?

[97] In response, Mr. Zvonkovic stated:

> In the new agreement, we've tried to combine all these accounts and not to have a designated broker bank account. Your funds specifically would be tracked separately via our accounting system.

[98] The DIP Lenders point out that Ms. Fawcett, on cross-examination, stated that it was always her understanding that the designated broker bank account was to be used to hold the funds provided by or received by all TPLs, and not merely those related to McCann.

[99] The DIP Lenders point out that Trimor, for its part, asserted that it was assured its funds would be held in trust:

> … [Cash Store] consistently assured Trimor that Trimor's funds were not used for any purpose other than advancing loans in accordance with the Broker Agreement. In addition [Cash Store] assured Trimor that it would treat the Trimor funds as being held in trust for Trimor's benefit.

[100] On cross-examination, Ms. Armstrong stated that:

a. This statement was made regarding an earlier form of broker agreement which did contain trust language; and

b. The current Broker Agreement contained no such trust language whatsoever.

Restricted Cash and Assigned Loans

[101] The DIP Lenders also contend that a review of the monthly reconciliation process undertaken by Cash Store for the benefit of the TPLs suggested that the funds advanced by the TPLs were not segregated from Cash Store's general funds.

[102] The affidavit of Mr. Carlstrom points out that if the overall cash balance in Cash Store accounts fell below the recorded balance of theoretical restricted cash, Cash Store would assign its non-brokered loans to the TPLs to offset this deficiency. When made, these offsets were set out in each of the monthly reconciliations provided by Cash Store, and were distinguished from purchases of loan portfolios or other loans designated to the TPLs.

[103] Accordingly, from the standpoint of the DIP Lenders, the TPLs understood or ought to have understood that Cash Store would sometimes assign receivables for the benefit of the TPL rather than use TPL advances to actually make or purchase customer loans.

IV. Analysis

The Preference Issue and Cash Store's Insolvency

Cash Store's Insolvency

[104] The DIP Lenders contend that based upon book values, the value of Cash Store's liabilities exceeded the value of Cash Store's assets as at September 30, 2013 and the insolvency became increasingly severe and by December 31, 2013, Cash Store's liabilities exceeded assets on a book value basis by over $8 million.

[105] The DIP Lenders raise the issue of whether the designation or assignment of loans in the name of the TPLs was a preference.

[106] In my view, these issues are not properly before the court at this time. The issue properly before the court is the question of ownership of the funds advanced by the TPLs.

[107] In arriving at this conclusion, I am in agreement with the submissions put forth by counsel to McCann.

[108] Under ss. 95 and 96 of the *Bankruptcy and Insolvency Act* ("BIA"), a trustee in bankruptcy has the right to challenge a payment or transaction as a preference or transfer under value. Section 36.1 of the CCAA extends this right to a CCAA monitor. It does not extend it to individual creditors of the CCAA debtor.

[109] At this point, the Monitor is currently reviewing transactions involving the TPLs. The Monitor has not reported its findings in this regard. The right of the Monitor to challenge these transactions has not been the subject of any assignment to a specific creditor of the type contemplated by s. 38 of the BIA.

[110] In the absence of some form of assignment of the Monitor's rights, which has yet to take place, I have reached the conclusion that the DIP Lenders are not in a position to challenge transactions as preferences or transfers at under value pursuant to the provisions of the CCAA.

[111] With respect to the potential challenge under the *Fraudulent Conveyances Act*, or *Assignments and Preferences Act*, there is a degree overlap with respect to the statutory test and the remedies provided by these statutes and the use of the preference and transfer at undervalue provisions of the BIA and the CCAA.

[112] With respect to challenges under the *Assignments and Preferences Act*, an inquiry has to be undertaken as to whether or not the debtor was insolvent at the time of the transaction. The specific date of insolvency of Cash Store has not, in my view, been fully explored in the record. Rather, the record has focussed on the nature of the relationship between the TPLs and Cash Store which will be the subject of further discussion below. It seems to me that if the DIP Lenders wish to pursue the issue of whether certain transactions were preferential in nature, a formal trial of the issue will have to be directed on this point.

[113] Similarly, in considering whether a designation or assignment of loans in the names of the TPLs were fraudulent conveyances, the focus of the inquiry has to be on the intention of the parties. I am not satisfied that the record before me would enable such an inquiry to be undertaken. Again, it would seem more appropriate to address this issue through the direction of a formal trial of the issue.

[114] In summary, the Monitor can report further with respect to its inquiries on this issue and the DIP Lenders shall have the opportunity to revisit the issues arising out of the *Assignments and Preferences Act* and the *Fraudulent Conveyances Act* at a future date.

[115] The cross-motion of the DIP Lenders is accordingly dismissed, without prejudice for the DIP Lenders to renew their motion taking into account the foregoing comments.

Status of and Funds Advanced by McCann/Trimor

[116] Both McCann and Trimor made significant amounts of money available to the Applicants. The Broker Agreements expressly provides that McCann and Trimor own the funds, loans and receivables. McCann and Trimor requested declarations in respect of the funds each made available to the Applicants, that McCann and Trimor are the legal and beneficial owners of these funds, loans and receivables, as reflected in the Broker Agreements.

[117] The DIP Lenders take the position that the TPLs do not have a proprietary right to the funds, but rather, the TPLs are creditors of Cash Store.

[118] In order to determine the issue, it is necessary to examine the relationship as originally set out in the Broker Agreements and to trace the relationship between the Applicants and the TPLs subsequent to the execution of the Broker Agreements.

[119] The Broker Agreements expressly recognize that ownership of TPL property was intended to remain with the TPLs.

[120] The TPLs advanced funds to Cash Store for the purpose of enabling Cash Store to broker loans to its customers. At the outset, the TPLs understood that their funds were segregated from Cash Store's operating funds. This was provided for in the Broker Agreements and was confirmed in certain representations made by Cash Store and Cash Store Financial that TPL Funds would be maintained in a designated TPL account.

[121] The TPLs take the position that even if the Funds had been co-mingled with Cash Store's operating funds in breach of the Broker Agreement and without their knowledge, the TPL Funds have always been accounted for separately. Further, they take the position that Cash Store's creditors could always discern the amount of the TPL Funds that were deployed as loans to customers or held as a float for future loans.

[122] However, in practice, the Funds were not segregated from Cash Store's operating funds. The funds were co-mingled with Cash Store's operating funds. The TPLs may disagree based on the documents and what they were led to believe, but the TPLs' internal knowledge and belief does not determine the issue. Rather, the determining fact is that the Funds were co-mingled with Cash Store funds in the operating account. As such, regardless of what the TPLs believed, there was one account and it is not possible to identify the source of the funds.

[123] It is also necessary to look at the basis upon which the relationship between the TPLs and Cash Store developed. Pursuant to the Broker Agreements, the TPLs would provide funding to Cash Store and Cash Store would broker loans to its customers. The customers would pay a rate of interest of 59%. The interest payments were to flow through to the TPLs. However, in reality, this did not happen. By their nature, the type and quality of the loans made to Cash Store customers would be characterized as high-risk loans. There was a significant default rate. The practice developed that Cash Store would effectively provide a rate of return equivalent to 17.5% per annum to the TPLs and Cash Store made "voluntary payments" to the TPLs in this amount.

[124] It is also clear that the TPLs were aware that they were receiving this 17.5% payment. Indeed, such a payment was expected. The TPLs received monthly payments at a 17.5% rate of return and regardless of the status of the brokered loans obtained by Cash Store, the TPLs received their 17.5% and were insulated from any credit risk as a result of the capital protections used by Cash Store.

[125] During the period of time that Cash Store was making these payments of 17.5% to the TPLs, there is no evidence of any complaint being made by the TPLs to Cash Store. Rather, these payments were accepted by the TPLs and for all intents and purposes, gave the appearance of an "ordinary course" payment. There is no evidence that the TPLs ever took steps to challenge why interest at 59% was not being received. To state the obvious, this interest rate differential of 41.5% (less an amount to be written off as bad loans) is significant. It raises a question for which there is no recorded explanation, namely why were the TPLs apparently content to receive a return of 17.5%, when customers of Cash Store, borrowing funds supposedly

belonging to the TPLs, were paying 59% interest, in addition to Cash Store's brokerage fee. The inescapable conclusion is that the relationship as between the TPLs and Cash Store was such that the 59% interest payments were never expected to flow through to the TPLs. It also raises another question, namely whether the operations of Cash Store complied with payday loan regulations generally. I note, however, that this question is not before me on this motion.

[126] From the standpoint of the DIP Lenders, this ongoing payment equivalent to 17.5% of outstanding amounts is significant and leads me to a finding that the relationship between the TPLs and Cash Store was debtor-creditor relationship and that the payments which are equivalent to 17.5% of outstanding funding reflect a payment of interest. A payment of interest is clearly inconsistent with the position being put forth by the TPLs, namely that there was no debtor-creditor relationship.

[127] In this case, I have reached the conclusions that the parties did alter the relationship from what was set out in the Broker Agreements. I am satisfied that the evidence establishes that, in practice, the TPL business of Cash Store involved:

a. making of loans by Cash Store to retail customers that were either designated as being made on behalf of a TPL or assigned to a TPL (see references at footnote 59 of DIP Lenders Factum);

b. receipt of repaid retail loans and interest back into Cash Store's general accounts (see references at footnote 60); and

c. Cash Store paying the TPLs a guaranteed interest rate of 17.5% (see references at footnote 61).

[128] The presence of an "entire agreement" clause in the Broker Agreement does not assist the TPLs. The "entire agreement" clause has application with respect to various arrangements and agreements entered into by parties up to the time of entering into an agreement with such a clause. However, it does not follow that the parties cannot modify their arrangements subsequent to the execution of the Broker Agreement.

[129] As noted in the submissions of counsel to the DIP Lenders, notwithstanding the presence of a "non-waiver" clause in the contract, parties can still waive their contractual rights by election. Specific reference was made to *Barkley's Bank PLC* v. *Devonshire Trust (Trustee of)*, 2011 ONSC 5008, where Newbould J. explained the presence of an non-waiver clause is "not the end of the matter", going on to quote Swinton J.'s reasons in *Fitkid (York) Inc.* v. *1277633 Ontario Limited* (2002), O.J. No. 3959 (SCJ) as follows:

> Even where there is a term in the lease governing waiver, the cases on waiver indicate that courts look at the conduct of the landlord to determine whether it has elected not to terminate the lease in the circumstances after the right of forfeiture arises.

V. Disposition

[130] I conclude that the relationship as between the TPLs and Cash Store is one of debtor and creditor.

[131] The consequences of this finding is that the motion of the TPLs is dismissed. The TPLs are creditors of Cash Store.

[132] An order shall issue that the Applicants are the beneficial owners of funds described as the Disputed Post-Filing Receipts in the TPL Notices of Motion and 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.

[133] With respect to McCann's request that its professional fees in connection with the CCAA proceeding be paid by the Applicants and be included in the Administration Charge, the treatment accorded to Trimor outlined in [34] should also be provided to McCann.

MORAWETZ R.S.J.

Date: August 5, 2014