

m44124  
(m44123)

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., 1693926 ALBERTA LTD DOING  
BUSINESS AS "THE TITLE STORE"

COURT OF APPEAL FOR ONTARIO

BEFORE VANRENSBURG J.A.

DATE Aug. 15<sup>th</sup>, 2014.

DISPOSITION OF MOTION

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

MOTION RECORD OF THE MOVING  
PARTY, 0678786 B.C. LTD.

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The applicant TPLs seek a stay of the order of  
Morrow's dated Aug. 5, 2014 pending leave to  
appeal and if leave is granted the disposition of  
the appeal. The order was made in the  
context of their CCAA proceedings over which  
RST Morawaty has presided. The issue he  
determined was ownership of certain disputed  
funds - now approximately \$8 million which  
represent recoveries on Cash Store's loans to  
customers. The CCAA stay order was made mid-April  
and under an order dated April 30th the TPL  
loan amounts + recoveries were required to be  
held in segregated trust accounts. This was the  
'status quo' existing in the months before  
the decision in dispute.

Morrow's RST determined that while the "on paper"  
the TPLs owned the funds, as lenders to Cash  
Store's customers with Cash Store acting as broker,  
the relationship had been ~~de facto~~ and  
expressly recognized that ownership of TPL  
property was intended to remain with the TPLs,

the parties altered their relationship by their subsequent conduct, which as such the TPLs are creditors of the company and not owners of the disputed funds. The effect of the decision is that the TPLs are unsecured creditors who face the prospect of no or very little recovery in the CCA proceedings.

The test for a stay comprises three parts, all of which must be satisfied by the moving parties. The respondents argue that the applicants fail on each part of the test.

I begin with the second and third parts. The evidence is clear, despite suggestions to the contrary in argument, that if a stay is not granted, the funds in dispute will be dissipated and the appeal would be rendered moot. The Cash Store requires funds to continue its sale process and while there is an order extending the DIP financing, such financing is expensive and as a result has been described as "highly discretionary". It is a reasonable inference and held by the statements made in the respondents' joint facts of the DIP lenders + the Ad Hoc Committee that the disputed funds would be used to meet the cash flow requirement of the company and the sale process. As such,

refusal of a stay would result in irreparable harm to the TPLs. ~~if they~~  
~~use~~ With respect to balance of convenience, while it would no doubt be more onerous and costly to fund the remaining process through the DIP financing, ~~there is nothing~~

the DIP financing remains available on its terms at least until Sept 30th.

Mr. Aziz's affidavit sworn before the Dept 5th decision explains how the operating and other expenses were to be addressed with an retention of such financing. The stay would preserve the status quo that was put in place at the end of April + was in place when Mr. Aziz swore his affidavit. I am satisfied the balance of convenience favours a stay.

As for whether there is a serious issue to be determined, the respondents urged the court to consider a number of points. First, the order was made by ~~by~~ an experienced commercial judge who had carriage of the CCAA proceedings. Second, there is a high onus on a party seeking to reverse a decision made in the context of the CCAA. The respondents assert that there is no question of law raised and contends that the applicants have failed to put before the court any law to support their legal arguments.

While the first two points are important and will no doubt go to the merits if an appeal is considered by this court, in my view the respondents seek

A motion for a stay pending leave to appeal should not be transformed into a forum for arguing the appeal itself. It is a summary proceeding and the "serious issue" question should be determined by examining the decision in the court below in the context of whether there are arguments - serious and not frivolous - to be made on a question of law. In this case I am satisfied that the decision of Morawetz RST went beyond making findings about the circumstances that prevailed between the parties and involved a decision that the circumstances overrode their written agreement. This engaged a legal issue: ~~that~~ - ~~while analysed by the~~ in what circumstances will conduct prevail over a written agreement? The motion for leave and appeal raise this "serious issue". It is not for this court at this stage to deny a stay on the basis that the applicants may well face other challenges in succeeding in their leave application or indeed in the appeal. Accordingly, all 3 parts of the test for a stay have been met. The stay is granted, except that the provision in para. 3 of the Morawetz order that "neither Trimer nor McCann shall take any steps to collect any advances or loans made to [Cast Store's] customers" shall remain in effect and not stayed.

The following schedule shall apply to the leave motions:

- (a) moving parties to deliver their factums by Aug 22/14;
- (b) respondents to deliver their factum(s) by Aug 29/14;
- (c) reply factums, if any by Sept 4/14; and
- (d) the appeal motion to be heard in writing the week of September 8/14.

~~The leave panel shall determine whether to~~

If leave is granted, the hearing of the appeal shall be expedited, subject to any order to the contrary of this Court.

Order to go on consent permitting since in the proceedings in this court by email.

~~On~~ On consent no costs of these motions.

K. M. Mezza