

**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 MOTION
(TRANSFER AT UNDERVALUE)**

FTI Consulting Canada Inc., in its role as Court-appointed Monitor (the "**Monitor**") in the *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 ("**CCAA**") proceedings of the Applicants (collectively, "**Cash Store**"), will make a motion to a judge, on a day to be determined by the Court, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue.

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

THE MOTION IS FOR an Order:

- (a) Declaring the Portfolio Repurchase Transactions, defined herein, to be transfers at undervalue, within the meaning of section 96 of the *Bankruptcy and Insolvency Act* as incorporated by section 36.1 of the CCAA, and directing each TPL, as defined herein, except Assistive (defined below), to pay to Cash Store the difference between the value of the consideration received by Cash Store from it and the value of the consideration given to it by Cash Store;

- (b) Authorizing and directing the Monitor to file a proof of claim in the bankruptcy proceedings of Assistive in relation to the matters set out herein;
- (c) granting to the Monitor its costs of the motion on a substantial indemnity basis; and
- (d) granting such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background: The Parties

- (a) Cash Store is a provider of short-term advances to alternative financial services consumers through payday loans and lines of credit. Cash Store Financial Services Inc. (“**CSF**”) is a publicly held Ontario Corporation. The other Applicants are direct or indirect subsidiaries of CSF;
- (b) On April 14, 2014, Cash Store obtained an Initial Order granting it relief under the CCAA and appointing FTI Consulting Canada Inc. as Monitor;
- (c) The following parties received funds in the Portfolio Repurchase Transactions (as defined below) (collectively, the “**Third Party Lenders**” or “**TPLs**”): Assistive Financial Corp. (“**Assistive**”); 0678789 BC Ltd. (formerly McCann Family Holding Corporation)(“**McCann**”); 367463 Alberta Ltd. (“**367**”); Trimor Annuity Focus Limited Partnership, Trimor Annuity Focus Limited Partnership 2, Trimor Annuity Focus Limited Partnership 3, Trimor Annuity Focus Limited Partnership 4, Trimor Annuity Focus Limited Partnership 6 (collectively, “**Trimor Annuity Focus Limited Partnerships**”), Bridgeview Financial Corp.; Inter-Pro Property Corporation; Omni Ventures Ltd.; FSC Abel Financial Inc.; and L-Gen Management Inc.;

- (d) Certain but not all of the TPLs continued to be third party lenders involved with Cash Store at the time of the commencement of these CCAA proceedings and were parties to motions leading to the order of Regional Senior Justice Morawetz dated August 5, 2014 relating to the ownership of funds advanced by such third party lenders;

Portfolio Repurchase Transactions

- (e) On January 31, 2012, Cash Store completed a series of transactions (the “**Portfolio Repurchase Transactions**”) in which it acquired certain portfolios of consumer loans (the “**Consumer Loan Portfolio**”) from the TPLs (with the exception of McCann) in exchange for payments in cash and issued notes to the TPLs, totalling \$116.3 million, as follows:

Third Party Lenders	Total Paid on Closing	Notes	Cash
Assistive Financial Corp.	\$ 34.5	\$ -	\$ 34.5
367463 Alberta Ltd.	\$ 23.9	\$ 14.8	\$ 9.1
McCann Family Holding Corporation	\$ 11.0	\$ -	\$ 11.0
Trimor Annuity Focus Limited Partnership	\$ 13.1	\$ 0.3	\$ 12.9
Trimor Annuity Focus Limited Partnership #2	\$ 8.0	\$ 2.8	\$ 5.2
Trimor Annuity Focus Limited Partnership #3	\$ 7.0	\$ 2.3	\$ 4.7
Trimor Annuity Focus Limited Partnership #4	\$ 5.6	\$ 2.2	\$ 3.4
Bridgeview Financial Corp.	\$ 4.4	\$ -	\$ 4.4
Inter-Pro Property Corporation (USA)	\$ 4.0	\$ -	\$ 4.0
Trimor Annuity Focus Limited Partnership #6	\$ 2.9	\$ -	\$ 2.9
Omni Ventures Ltd.	\$ 1.0	\$ -	\$ 1.0
FSC Abel Financial Inc.	\$ 0.6	\$ 0.5	\$ 0.1
L-Gen Management Inc.	\$ 0.3	\$ -	\$ 0.3
Total	\$ 116.3	\$ 22.8	\$ 93.5

- (f) Amounts received by McCann in relation to the Portfolio Repurchase Transactions appear to have been a portion of amounts designated to be paid to Assistive. Consumer loans in the Consumer Loan Portfolio were not received from McCann;
- (g) The Portfolio Repurchase Transactions and associated legal, professional and other fees were funded through a \$132.5 million note offering, which closed the same day;

- (h) In its March 2012 Financial Statements, CSF reported as follows regarding the value of the purchased Consumer Loan Portfolio:

Consumer loan portfolio	\$ 80.3
Non-compete agreement	\$ 19.0
Favourable supplier relationships	\$ 17.4
Proprietary knowledge	<u>\$ 2.7</u>
Total acquired assets	<u>\$ 119.4</u>
Deferred tax liability	<u>\$ (3.1)</u>
Total purchase price	<u>\$ 116.3</u>

- (i) In its June 2012 Financial Statements, CSF reported the following revised figures, noting in Note 3 that CSF had “noted that the values assigned to the consumer loan portfolio and related intangible assets acquired in connection with the acquisition of the loans receivable from its third-party lending group were incorrect” and that the values had been corrected:

Consumer loan portfolio	\$ 70.3
Non-compete agreement	\$ 24.3
Favorable supplier relationships	\$ 22.2
Proprietary knowledge	<u>\$ 3.5</u>
Total acquired assets	<u>\$ 120.3</u>
Deferred tax liability	<u>\$ (3.9)</u>
Total purchase price	<u>\$ 116.4</u>

- (j) On December 10, 2012, CSF issued a press release stating, among other things that approximately \$36.8 million of the total consideration paid to acquire the Consumer Loan Portfolio represented a “premium paid on acquisition” and that the pre-existing contractual broker arrangements between CSF and the TPLs “did not obligate the Company to pay retention payments, compensate for loan losses without cause or provide a guaranteed rate of return on the pool of funds advanced”:

During the preparation of the September 30, 2012 annual consolidated financial statements the Company determined that approximately \$36.8 million of the total consideration paid to acquire the portfolio of loans represented a premium paid on acquisition. The pre-existing contractual broker arrangements between the Company and the third-

party lenders did not obligate the Company to pay retention payments, compensate for loan losses without cause or provide a guaranteed rate of return on the pool of funds advanced. However, the compensation paid to the third party lenders as part of the transaction recognized the loss of future retention payments and the ability to earn future returns on capital under the existing broker contracts. In accordance with U.S. GAAP, the Company has determined that the premium of \$36.8 million should have been recognized as an expense as a settlement of pre-existing business relationships with third-party lenders. The Company will restate the fair value of the loans receivable acquired to \$50.0 million and the fair value of intangible assets acquired to \$32.0 million with a corresponding deferred tax liability of \$2.5 million.

- (k) In restatements of its March 2012 and June 2012 Financial Statements made in December, 2012, CSF reported the following valuation associated with the acquisition of the Consumer Loan Portfolio:

Consumer loan portfolio	\$ 50.0
Non-compete agreement	\$ 15.5
Favorable supplier relationships	\$ 14.2
Proprietary knowledge	\$ 2.3
Premium paid to acquire loan portfolio	<u>\$ 36.8</u>
Total acquired assets	<u>\$ 118.8</u>
Deferred tax liability	<u>\$ (2.5)</u>
Total purchase price	<u>\$ 116.3</u>

- (l) Based on Cash Store's revised and restated financial statements, it appears that a significant premium was paid for the Consumer Loan Portfolio:
- (i) Assuming intangible assets were valued at approximately \$32 million as disclosed in the revised financial statements, the premium paid by Cash Store is approximately 42%;
 - (ii) Assuming intangible assets were valued at NIL, the premium paid by Cash Store was approximately 133%.

- (m) The notes to the restatements of the March 2012 and June 2012 Financial Statements also disclose, under the heading “Related Party and Other Transactions”, relationships with certain TPLs. In particular, the notes disclose the following, among other things:
 - (i) one TPL, later determined to be Assistive, is controlled by the father of Cameron Schiffner, the Senior Vice President of Operations of the Company. Cameron Schiffner’s brother was also member of management of Cash Store Australia Holdings Inc. (“AUC”), a member of management of Assistive, and signed the acquisition agreement relating to the Portfolio Repurchase Transaction on behalf of Assistive; and
 - (ii) each of an immediate family member of Michael Shaw, a CSF director, and Bruce Hull, a director of AUC, advanced funds to a TPL, later determined to be 367;

Transfer at Undervalue

- (n) The Portfolio Repurchase Transactions are transfers at undervalue within the meaning of section 96 of the *BIA* (as incorporated by section 36.1 of the *CCAA*). Other transfers or transactions involving the TPLs continue to be reviewed by the Monitor and may be addressed at a later time;
- (o) The TPLs were not dealing at arm’s length with Cash Store in the Portfolio Repurchase Transactions. The TPLs were “related persons” within the meaning of the *BIA* or, in the alternative, were not dealing at arm’s length as a matter of fact and law as evidenced by the parties acting in concert without separate interests and/or one party exercising de facto control over the other and/or with absence of consideration at fair market value indicative of a non-arm’s length relationship;

- (p) The Portfolio Repurchase Transactions occurred on January 31, 2012, which is within the five-year period prior to the day CCAA proceedings were commenced in respect of Cash Store on April 14, 2014;
- (q) Cash Store was rendered insolvent by the Portfolio Repurchase Transaction and/or intended to defeat, defraud or delay a creditor or creditors;
- (r) The consideration received by Cash Store was conspicuously less than the consideration paid by it. Cash Store's revised and restated financial statements resulted in the following differences from the original amounts reported:

		Original		Restated		Difference
Consumer loan portfolio	\$	80,334	\$	50,014	\$	(30,320)
Non-compete agreement	\$	18,998	\$	15,524	\$	(3,474)
Favorable supplier relationships	\$	17,369	\$	14,220	\$	(3,149)
Proprietary knowledge	\$	2,714	\$	2,280	\$	(434)
Premium paid to acquire loan portfolio	\$	-	\$	36,820	\$	36,820
Deferred tax liability	\$	(3,081)	\$	(2,524)	\$	557
Total purchase price	\$	116,334	\$	116,334	\$	-

- (s) Cash Store took steps to revise and restate their audited financial statements, including engaging third party consultants and auditors to review the changes in value. The revised fair market value of the consumer loan portfolio received by Cash Store for the transfer of cash and notes totalling \$116.3 million was \$50 million in the aggregate, or such other amount as the Monitor may determine upon review of any further evidence relevant to the matter.
- (t) Further particulars of the Portfolio Repurchase Transactions are within the knowledge of the TPLs; and
- (u) Such further and other grounds as counsel may advise and this Honourable Court may permit.

Statutes and Rules

- (v) The *Companies Creditors Arrangement Act*, RSC, 1985, c C-36, including sections 2(2), 10(1), 21 and 36.1;
- (w) The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, including sections 4 and 96;
- (x) Rules 1.04, 3.02, 37, 39 and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.

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

- (y) The Motion Record of the Monitor; and
- (z) Such further and other documentary evidence as counsel may advise and this Honourable court may admit.

September 18, 2014

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 Tschritter et al. v. The Cash Store Financial Services Inc. et al, Alberta Court of Queen’s Bench, Calgary Reg. No. 0301-16243;
 Efthimiou v. The Cash Store Financial Services Inc. et al, Alberta Court of Queen’s Bench, Calgary Reg. No. 1201-11816;
 Meeking v. The Cash Store Inc. et al, Manitoba Court of Queen’s Bench, Winnipeg Reg. No. CI 10-01-66061;
 Rehill v. The Cash Store Financial Services Inc. et al, Manitoba Court of Queen’s Bench, Winnipeg Reg. No. CI 12-01-80578;
 Ironbow v. The Cash Store Financial Services Inc. et al, Saskatchewan Court of Queen’s Bench, Saskatoon Reg. No. 1452 of 2012;
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE
FINANCIAL SERVICES INC. et al.”

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

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

NOTICE OF MOTION
(TRANSFER AT UNDERVALUE)

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