Court of Appeal File Nos.: C59377/C59379
Court of Appeal Motion File No.: M44123/M44126
Sup. Ct. J. File No.: CV-14-10518-00CL

COURT OF APPEAL FOR ONTARIO

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
(Responding to appeal by third party lenders ("TPLs"))

October 1, 2014

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
P.O. Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay – LSUC No. 31885W
Tel: 416-595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Adrian Scotchmer – LSUC No. 60593S
Tel: 416-542-6292 / Fax: 416-204--4926
Email: ascotchmer@kmlaw.ca

Agent to court-appointed representative counsel
to class action plaintiffs

TO: SERVICE LIST

PART I – OVERVIEW

1. This is the responding factum of the court-appointed representative counsel to the class members in the class proceeding *Timothy Yeoman v. The Cash Store Financial Services Inc. et al.*, Ontario Superior Court File No. 7908/12 CP (the "**Class Action**") in response to the appeal by 0678786 B.C. Ltd. ("**McCann**") and Trimor Annuity Focus Limited Partnership ("**Trimor**")(collectively, "**third party lenders**" or "**TPLs**").

2. The class members are a significant creditor group of Cash Store. The Class Action alleges, *inter alia*, that Cash Store's practice of charging fees on various financial products which were tied to their loan products, as well as interest on those fees, is unlawful and in contravention of the Ontario *Payday Loans Act*, S.O. 2008 ("**PLA**"). It is estimated that there are thousands of individual borrowers in the class. Damages owing to the class members are estimated at over $50 million, based on publicly available information. The Class Action was filed on August 1, 2012 against Cash Store Financial Services Inc. and various related parties (collectively, "**Cash Store**"), approximately 20 months before Cash Store obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("**CCAA**"). On August 26, 2014, Regional Senior Justice Morawetz (the "**CCAA Judge**") appointed representative counsel to the class members in the CCAA proceedings. [1]

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[1]Endorsement of Regional Senior Justice Morawetz dated August 26, 2014, *Cash Store Financial Services (Re)*, 2014 ONSC 4567: Brief of Authorities of Representative Counsel to Class Members ("**Representative Counsel BOA**"), Tab 1, p. 5, para. 27

3. In the decision that the TPLs appeal to this Court, the CCAA Judge found that the TPLs loaned funds to Cash Store, which in turn then loaned those funds to customers of Cash Store's loan products. As such, the CCAA Judge held that the relationship between the TPLs and Cash Store is that of debtor and creditor, rather than TPLs owning the funds. As a result "the TPLs must stand in line as creditors of Cash Store".[2]

4. The point on the appeal is a dispute between the TPLs and Cash Store over whether the terms of Broker Agreements those two parties entered into are conclusive, or whether the contractual relationship was varied by the parties' pattern of consensual conduct after the execution of the Broker Agreements.

5. The CCAA Judge correctly found that the parties varied their contractual relationship after the execution of the Broker Agreements. He focused on a number of factors to conclude that the TPLs are creditors of Cash Store, including the following:

a) the TPLs' funds were commingled with Cash Store's funds; [3]

b) the expectation of the TPLs that they would receive a guaranteed 17.5% return on the funds they advanced and their actual receipt thereof, despite the absence of such a provision in the Broker Agreements;[4]

c) the insulation of the TPLs from the credit risk associated with direct lending to customers, which risk was instead placed on Cash Store[5]; and

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[2] Endorsement of Regional Senior Justice Morawetz dated August 5, 2014, *Cash Store Financial Services(Re), 2*014 ONSC 4326 ("**Morawetz Endorsement**"): Joint Appeal Book and Compendium of the Appellants ("**Appellants' Compendium**"), Tab 4, p. 23, para. 7

[3] Morawetz Endorsement, Appellants' Compendium, Tab 4, p. 43, para. 122

[4] Morawetz Endorsement, Appellants' Compendium, Tab 4, p. 43, para. 123-124

d) the lack of complaint by the TPLs about being paid 17.5% interest, rather than the 59% interest that they would have been entitled to under the Broker Agreements.[6]

6. The CCAA Judge found that prior to Cash Store obtaining CCAA protection, the varied contractual arrangement between the parties functioned beneficially and without complaint by either party, and in particular without complaint by the TPLs.

7. Now, after Cash Store obtained CCAA protection, the TPLs seek to invoke the obsolete terms of the Broker Agreements to argue that they "own" the funds that they advanced to Cash Store. The TPLs' appeal is in substance an effort by the TPLs to jump the priority queue and be paid ahead of other creditors of Cash Store.

8. The CCAA Judge did not make any palpable or overriding error. The appeal should be dismissed.

PART II – THE FACTS

9. Representative Counsel agrees with the facts in the Joint Factum of the Respondent DIP Lenders and Ad Hoc Committee.

10. Representative Counsel accepts the facts in paragraphs 13 and 14 of the McCann Factum and paragraphs 11 and 12 of the Trimor Factum regarding the statements in the Circular and Financial Statements. Representative Counsel also accepts the facts in paragraph 15 of the McCann Factum and paragraph 13 of the Trimor Factum regarding the issuance of an Initial

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[5] Morawetz Endorsement, Appellants' Compendium, Tab 4, p. 43-44, para. 125
[6] Morawetz Endorsement, Appellants' Compendium, Tab 4, p. 44, paras. 4 and 126

Order in these CCAA Proceedings, and at paragraph 16 of the McCann Factum and paragraph 14 of the McCann factum regarding Cash Store's records.

11. Representative Counsel disagrees with the following facts in the McCann and Trimor facta:

a) At paragraph 7 (McCann and Trimor facta), the TPLs allege the sole purpose of the TPLs funds was to provide loans to customers. In fact, as found by the CCAA Judge, the funds were loans to Cash Store.[7]

b) At paragraph 8 (McCann and Trimor facta), the TPLs allege "the understanding" (by or among which parties is not specified) that a purported broker relationship existed. It did not; the TPL funds were not segregated.[8] No TPL designated a segregated account for the funds advanced to preclude commingling,[9] the Broker Agreements contained no trust language[10] and the parties functioned on the basis set out in paragraph 38 of the Joint Factum of the DIP Lenders and Ad Hoc Committee.

c) At paragraphs 9 and 10 (McCann) and paragraph 9 (Trimor), the TPLs allege that the purpose of the retention payments was to induce further loans and that without these payments, advances would not continue to be made. Instead, as found by the CCAA Judge, the purpose of the retention payments was to replace the uncertain return the TPLs could expect from Cash Store's customers with the certain return of a 17.5% interest

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[7] Morawetz Endorsement, Appellants' Compendium, Tab 4, para. 127
[8] E-mail from Michael Zvonkovic dated July 23, 2012, Responding Compendium, Tab 12; Morawetz Endorsement, Appellants Compendium, Tab 4, paras. 95-99.
[9] Affidavit of Steven Carlstrom sworn April 14, 2014, Responding Compendium, Tab 9, at para. 79.
[10] Cross-Examination of Erin Veronica Armstrong dated May 21, 2014, Responding Compendium, Tab 4 at qq 65-66.

rate.[11] The TPLs' assertion confuses the retention payments made with the capital protection payments, as explained in paragraph 13 of the factum of the DIP Lender and Ad Hoc Committee.

d) At paragraph 11 (McCann) and Trimor), the purported losses of the TPLs are misstated in view of the capital protection payments mentioned above.

e) At paragraph 12 (McCann) and paragraph 10 (Trimor), the characterization of the Broker Agreements is erroneous. Representative Counsel relies upon the description of the TPL and Cash Store's arrangement at paragraph 38 of the factum of the DIP Lenders and Ad Hoc Committee's factum.

f) At paragraph 16 (McCann), reference is made to loans assigned to McCann. In view of the capital protection payments made to the TPLs and the actual relationship existing between the parties as set out by the DIP Lenders and the Ad Hoc Committee at paragraph 38 of their factum, the notion that the loans had been "assigned" was an accounting concept only.

g) At paragraphs 17 and 18 (McCann) and paragraphs 15 and 16 (Trimor), reference is made to purported losses by the TPLs which are claimed to be a result of a misuse of funds, whereas in fact funds were not misused, as set out at paragraph 38 of the DIP Lenders and Ad Hoc Committee's factum.

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[11] Morawetz Endorsement, Appellants' Compendium, Tab 4, para. 125

h) At paragraphs 11 and 19 (McCann) and 17 (Trimor) the reference to losses ignores the impact of the capital protection payments.

i) At paragraphs 20-23 (McCann) and 18-20 and 22 (Trimor), reliance on the initial CCAA order and subsequent protections with respect to the TPLs is misplaced. Any such post-CCAA protections were without prejudice and intended to preserve parties' rights pending resolution of the dispute before the Court on this appeal. To claim what amounts to issue estoppel on the basis of these orders that were made in the CCAA proceeding is unsupportable.

j) At paragraph 24 (McCann) and 23 (Trimor), the notion that the TPLs sought a trust declaration is misplaced. The requested relief sought by both parties is set out by the CCAA Judge at paragraphs 9 and 10 of his Endorsement.[12]

k) At paragraph 21 of the Trimor factum, it is stated that Cash Store's brokered line of credit product was discontinued in Ontario as at February 12, 2014, but omits to mention the reasons for the discontinuance. Cash Store's licence under the PLA expired on July 3, 2013, yet Cash Store (contrary to s. 6(3) of the PLA) continued to offer "lines of credit" which were found to constitute payday loans in the decision of Morgan J. dated February 12, 2014. [13] Further, in November 2013, convictions were entered against Cash Store in Provincial Offences Court for operating as a payday lender in Ontario without a license.

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[12] Morawetz Endorsement, Appellants' Compendium, Tab 4, paras. 9 and 10
[13] *The Director v. The Cash Store*, 2014 ONSC 980, Representative Counsel BOA, Tab 2 at paras. 2 and 4

PART III – POSITION OF RESPONDENT ON APPELLANTS' ISSUES

Appellants' issue #1: Did the CCAA Judge err in improperly interpreting and applying the legal test for the variation or substitution of an agreement? Answer: No.

12. The issue on this appeal is one of mixed fact and law. The standard of review applicable to whether the CCAA Judge properly weighed the evidence in this case is that of palpable and overriding error[14], reversible only where there is an error that is so apparent that it can be "plainly seen".[15] The CCAA Judge made no such error.

13. As applied to contractual interpretation, the Supreme Court in *Sattva Capital Corp.v. Creston Moly Corp.* recently held that except in "rare" instances where an "extricable question of law" can be found, contractual interpretation is a matter of mixed fact and law, not a matter of law. Rothstein J. stressed that "courts should be cautious in identifying extricable questions of law in disputes over contractual interpretation":

> [50] ...**Contractual interpretation involves issues of mixed fact and law** as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.[16]

14. In *Hryniak v. Mauldin*, the Supreme Court of Canada addressed the standard of review by an appellate court in the context of an appeal of a summary judgment motion: "Where there is no extricable error in principle, findings of mixed fact and law, should not be overturned, absent

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[14] *Housen v. Nikolaisen,* [2002] 2 S.C.R. 235, Representative Counsel BOA, Tab 3, pp. 258-259 at para. 29; *Jaegli Enterprises Ltd. v. Taylor,* [1981] 2 S.C.R., Representative Counsel BOA, Tab 4 at p. 4.
[15] *Housen v. Nikolaisen,* [2002] 2 S.C.R. 235, Representative Counsel BOA, Tab 3 at para. 6.
[16] *Sattva Capital Corp, v. Creston Moly Corp.* (2014), 2014 SCC 53, Representative Counsel BOA, Tab 5 at para. 50-55 [emphasis added].

palpable and overriding error."[17] In *Royal Bank of Canada v. Hejna*, this Court held that *Hryniak* "limits our ability to review the decision on issues of fact or mixed fact and law even further" than before.[18] In *Rajmohan v. Solmon Family Trust,* this Court held that *Hryniak* "stressed that deference is owed to a motion judge's findings of fact as well as findings of mixed fact and law [made on summary judgment]."[19]

15. The CCAA Judge correctly determined that the relationship between the TPLs and Cash Store was that of debtor-creditor. In so finding, he applied the law of entire agreement clauses in contracts, as well as the doctrine of waiver. In paragraph 128 of his Endorsement, he states:

> [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.*** [Emphasis added][20]

16. In *Canadian Contractual Interpretation Law*, the author summarizes the law of entire agreement clauses:

> Related to the principle that an entire agreement clause applies only to events which have already occurred at the time of contracting is the well-accepted notion that an entire agreement clause will not prevail over an oral agreement (especially a subsequent oral agreement) where the written agreement was not intended to encompass the entire relationship between the parties:
>
> > To be sure, court have not always given effect to entire agreement clauses. See, for example, P.M. Perell, "A Riddle Inside an Enigma: The Entire Agreement Clause"

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[17] *Hryniak v. Mauldin,* [2014] 1 S.C.R. 87, Representative Counsel BOA, Tab 6 at paras. 81-84.
[18] *Royal Bank of Canada v. Hejna* (2014), 2014 ONCA 306, Representative Counsel BOA, Tab 7, p. 2 at para. 5
[19] *Rajmohan v. Norman H. Solmon Family Trust* (2014), 2014 ONCA 352., Representative Counsel BOA, Tab 8, p. 4 at para. 7
[20] Morawetz Endorsement, Appellants' Compendium, Tab 4, para. 128

> (1998) 20 Advocates' Q. 287; *Shelanu Inc. v. Print Three Franchising Corp.* (2003), 64 O.R. (3d) 533, 226 D.L.R. (4th) 577 (C.A.). But they have not done so where, for example, ***after signing a written contract, parties have entered into an oral agreement and by their conduct have shown that they did not intend to be bound by their previous written contract.*** [Emphasis added by author][21]

The CCAA Judge's statement and application of the law of entire agreement clauses in the Endorsement is correct. He committed no error.

17. Similarly, at paragraph 129 of his Endorsement, the CCAA Judge's application of the law relating to "non-waiver" clauses is correct:

> [129] [N]otwithstanding 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 op,* 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:
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> > 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.[22]

Again, he committed no error.

18. The TPLs' attempt to reframe the issue as being whether the parties' subsequent conduct could alter a pre-existing contract is a red herring. The law is clear that contracting parties can

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[21] *Canadian Contractual Interpretation Law*, Geoff R. Hall, LexisNexis, 2012: Representative Counsel BOA, Tab 9, p. 273

[22] Morawetz Endorsement, Appellants' Compendium, Tab 4, p. 44, para. 129

alter their contractual relationship after the execution of documents by their conduct.[23] At issue before the CCAA Judge was whether, considering the totality of the evidence, the two parties altered their contractual relationship from what was written in the Broker Agreements. The TPLs' arguments about the CCAA Judge's failure to use the appropriate test amounts to nothing more than an argument that the CCAA Judge improperly weighed the evidence. In other words, the TPLs seek that greater emphasis be placed on the obsolete terms of the Broker Agreements rather than on the evidence of the parties' actual conduct. The TPLs' arguments should be rejected.

Appellants' Issue #2: Did the CCAA Judge err in determining that the TPLs had altered their agreement from what was set out in the Broker Agreement, and determining that the nature of their relationship was one of creditor-debtor rather than lender-broker? Answer: No.

19. The CCAA Judge analyzed in detail the commercial relationship and pattern of conduct of the TPLs and Cash Store after their execution of the Broker Agreements, and correctly concluded that the two parties altered their relationship in ways that deviated from the text of the Broker Agreements, with full knowledge and no complaint by either party. The CCAA Judge concluded that the parties had waived their rights under the Broker Agreements and that the relationship between these two parties is that of debtor and creditor:

> [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

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[23] *Canadian Contractual Interpretation Law,* Geoff R. Hall, LexisNexis 2012, Representative Counsel BOA, Tab 9, p. 273.

> 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.
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> ...
>
> [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.*** ... [emphasis added][24]

20. The TPLs allege that the CCAA Judge placed too much emphasis on the fact that the TPLs in practice received a guaranteed rate of interest, were insulated from Cash Store's credit risk and that the "TPL funds" were commingled with other funds compared to the terms of the Broker Agreement, Financial Statement and Circular.

21. However, these are the most important factors for consideration in this case and the CCAA Judge correctly considered them. As the authors state in the *Waters' Law of Trusts in Canada:*

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[24] Morawetz Endorsement, Appellants' Compendium, Tab 4, p. 44, paras. 123-127

> The question which provides the most difficulty is whether the particular holder of title to assets who acknowledges another's interest is trustee or debtor. ***A trustee must keep the assets of the trust distinct***, but in the normal commercial transaction nothing specific is said about this. The duty to keep the assets distinct, if it exists, must be spelled out of the nature of the transaction, the environment in which the parties agree, the type of persons who are the holders of title and the transferor, and whether or not interest payments are to be made by the holder of the assets. ***If interest is to be paid, the relationship is nearly always that of creditor and debtor.***[25] [emphasis added]

22. The TPLs argue that the commingling of the funds by Cash Store is not determinative of their status as a creditor of Cash Store. As the TPLs' contract with Cash Store expressly disavowed any agency relationship,[26] nor was the contract for the provision of goods, the doctrines of consignment or agency are not available, neither of which are pursued by the TPLs in any event. In order to succeed, the TPLs must be able to establish that a trust relationship with Cash Store existed for their benefit, which they do not assert and cannot establish.

23. In order to establish an express trust, the three certainties must be in place: a) certainty of intention to create a trust, b) certainty of subject matter, in that the property subject to the trust must be clearly described or definitively ascertainable, and c) certainty of objects, in that there can be no uncertainty as to the beneficiaries of the trust. The commingling of funds is fatal to the

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[25] Donovan Waters, Mark Gillen & Lionel Smith, *Waters' Law of Trusts in Canada*, 4th ed. (Toronto: Thomson Reuters Canada Limited, 2012) Representative Counsel BOA, Tab 10 at p. 92.

[26] Broker Agreement between Trimor and Cash Store, Joint Exhibit Book of Trimor and McCann, p. 31-32, Section 8.5:

> Nothing contained in this Agreement shall be deemed or construed by the Parites, or any other third party, to create the relationship of partnership, **agency**, or joint venture or an association for profit between Financier and Broker, it being understood and agreed that neither the method of computing compensation nor any other provision contained herein shall be deemed to create any relationship between the Parties **other than the relationship of independent parties contracting for services**. Except as expressly provided in the Agreement, neither Party has, nor held itself out as having, any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon the other Party.
> Broker is not authorized to execute any document or agreement on behalf of Financier under this Agreement or in connection with the provision of the Broker Services.

certainty of subject matter[27] and, accordingly fatal to the existence of a trust. Further, no trust language was present in the amended agreements between Cash Store and the TPLs. Finally, the TPLs were aware and did not complain that the funds that they advanced were not being segregated by Cash Store.[28]

24. With regard to the CCAA Judge's emphasis on the steady 17.5% interest being paid to the TPLs, while the TPLs seek to downplay this significant departure from the Broker Agreements, the CCAA Judge correctly found on the evidence: "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".[29]

25. The CCAA Judge found as a fact that the TPLs received 17.5% interest instead of 59% interest without complaint, which conclusion is supported by the evidence. There is no palpable and overriding error. The TPLs traded the credit risk of lending to customers directly for a steady payment of 17.5% interest from Cash Store, and as such varied the contractual relationship with Cash Store.

Appellants' Issue #3: Did the CCAA Judge err in "enabling the expropriation of property that was held for the benefit and traceable to the TPLs and making it available for the use of Cash Store's creditors, thereby creating an unfair disadvantage to customers/lenders in a brokerage arrangement under the CCAA as compared to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3) ("BIA")? Answer: No.

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[27] *Henry v. Hammon,* [1913] 2 K.B.. 515, Representative Counsel BOA, Tab 11 at p. 521; *GMAC Commercial Credit Corp. Canada v. TCT Logistics Inc.* (2005), 74 O.R. (3d) 382 (C.A.), Representative Counsel BOA, Tab 12 at paras. 19-20.
[28] E-mail from Michael Zvonkovic Dated July 23, 2012, Responding Compendium, Tab 12.
[29] Morawetz Endorsement, Appellants' Compendium, Tab 4, para. 125.

26. First, this issue by the TPLs is irrelevant. The CCAA Judge cannot have erred such that reversal by the Court is warranted by virtue of his decision having a particular "effect" (i.e., "enabling the expropriation of property"). The *effect* of the CCAA Judge's decision is separate from its correctness when being reviewed by this Court.

27. Second, this issue by the TPLs is nonsensical as it assumes to predetermine an answer to the issue on this appeal i.e., whether the CCAA Judge erred in finding that TPLs are creditors of Cash Store, which the CCAA Judge correctly found them to be.

PART IV – ORDERS REQUESTED

28. Representative Counsel to the Class Members respectfully requests an order:

a) dismissing the TPLs' appeal; and

b) costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of October, 2014.

ANDREW J. HATNAY

ADRIAN SCOTCHMER

SCHEDULE "A"

LIST OF AUTHORITIES

TAB	AUTHORITY
1.	Endorsement of Regional Senior Justice Morawetz dated August 26, 2014, *Cash Store Financial Services (Re)*, 2014 ONSC 4567
2.	*The Director v. The Cash Store*, 2014 ONSC 980
3.	*Housen v. Nikolaisen,* [2002] 2 S.C.R. 235
4.	*Jaegli Enterprises Ltd. v. Taylor,* [1981] 2 S.C.R. 2
5.	*Sattva Capital Corp, v. Creston Moly Corp.* (2014), 2014 SCC 53
6.	*Hryniak v. Mauldin,* [2014] 1 S.C.R. 87
7.	*Royal Bank of Canada v. Hejna* (2014), 2014 ONCA 306
8.	*Rajmohan v. Norman H. Solmon Family Trust* (2014), 2014 ONCA 352
9.	*Canadian Contractual Interpretation Law*, Geoff R. Hall, LexisNexis, 2012
10.	Donovan Waters, Mark Gillen & Lionel Smith, *Waters' Law of Trusts in Canada,* 4th ed. (Toronto: Thomson Reuters Canada Limited, 2012)
11.	*Henry v. Hammon,* [1913] 2 k.b. 515 at 521
12.	*GMAC Commercial Credit Corp. Canada v. TCT Logistics Inc.* (2005), 74 O.R. (3d) 382 (C.A.)

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FACTUM
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KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Andrew J. Hatnay – LSUC No. 31885W
Tel: 416-595-2083 /Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Adrian Scotchmer – LSUC No. 60593S
Tel: 416-542-6292 / Fax: 416-204--4926
Email: ascotchmer@kmlaw.ca

Agents to court-appointed representative counsel to the class action plaintiffs