

CITATION: Cash Store Financial Services (Re), 2014 ONSC 6786
COURT FILE NO.: CV-14-10518-00CL
DATE: 2014-11-21

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* and *Marc Wasserman*, for the Chief Restructuring Officer of the
Applicants

Heather Meredith and *Stephen Fulton*, for the Monitor

Andrew Hatnay and *Adrian Scotchmer*, for Class Action Members

Peter Griffin, for G. Reykdahl

Jeffrey Carhart, for 424187 Alberta Ltd.

Virginie Gautier, for Coliseum as First Lien and the DIP Lenders

Robin Schwill, for National Money Mart (the Purchaser)

Ryan Baulke, for the Ad Hoc Committee of Noteholders

HEARD: November 21, 2014

ENDORSEMENT

[1] The applicants bring this motion to extend the Stay Period up to February 27, 2015 and for approval of the Third Amending Agreement as defined in the affidavit of William E. Aziz, dated November 18, 2014 (the "Tenth Aziz Affidavit") (the "Third Amended DIP Facility"), as well as approval of the Eleventh Report of the Monitor, dated October 10, 2014.

[2] The applicants also sought approval of the Litigation Counsel Retainer (as defined in the Tenth Aziz Affidavit). For reasons set forth below, consideration of the approval of the Litigation Counsel Retainer is adjourned until December 1, 2014.

[3] There was no opposition to the request to extend the Stay Period and for approval of the Third Amending Agreement.

[4] For the reasons set out in the Tenth Aziz Affidavit and the Twelfth Report of the Monitor, I am satisfied that the applicants, who operate under the direction of the Chief Restructuring Officer, are acting in good faith and with due diligence such that the request for extension is appropriate.

[5] There are many outstanding issues that have yet to be resolved. In particular, there is a pending sale transaction and depending on the outcome of that transaction, there are related priority issues that have not been determined. It is, in my view, both necessary and appropriate to extend the stay period.

[6] The Initial Order approved and authorized a Debtor in Possession (“DIP Loan”) Facility. The DIP Facility has been amended from time to time and the record establishes that without the Third Amended DIP Facility, Cash Store Financial will be unable to satisfy all of its ongoing obligations to its creditors, employees, landlords and other stakeholders. This would not be a desirable result at this point in the proceedings. I am satisfied, that it is appropriate and necessary to approve the Third Amended DIP Facility.

[7] With respect to the approval of the Eleventh Report of the Monitor, counsel to the Monitor has advised that no adverse comment has been received in respect of the Report. There have been some questions raised about the professional fees which are being addressed (the Monitor will be providing supplementary information), but this does not impact on my consideration of the request for approval of the Report. In my view, it is appropriate to approve the Eleventh Report of the Monitor, together with the activities described therein.

[8] The Chief Restructuring Officer takes the position that Cash Store Financial may have claims that can be advanced against certain former officers and/or directors, advisors, third party lenders and other parties. These potential claims are in addition to any transfer at undervalue or preference claims being advanced by the Monitor.

[9] With respect to the issue of the Litigation Counsel Retainer, The CRO has retained Thornton Grout Finnigan LLP and Voorheis & Co. LLP to investigate whether such claims have merit and to advance such claims on behalf of the applicants. The CRO also takes the position that the Litigation Counsel Retainer should be approved so as to allow the applicants to pursue these potential claims in a cost efficient manner.

[10] Counsel to the Class Action Members raised issues with respect to the Litigation Counsel Retainer. Although the concept of proceeding in this manner is not necessarily objected to by the Class Action Members, counsel takes the position that the motion materials were recently served and they have not had a full opportunity to consider whether or not the form of the agreement is appropriate in the circumstances. Counsel to the Class Action Members has requested further information with respect to this issue.

[11] In addition, counsel to 424187 Alberta Ltd. also wishes to have a further opportunity to consider the issue, insofar as his client would be affected by the \$1 million priority charge for disbursements which is contemplated in the Litigation Counsel Retainer.

[12] In the circumstances, it seems to me appropriate to adjourn the consideration of the request to approve the Litigation Counsel Retainer so as to provide these parties with a short

period of time to obtain further information on this issue. Accordingly, consideration of this issue is adjourned to be addressed on Monday, December 1, 2014 at 9:00 a.m.

[13] Counsel to the Class Action Members also raised the issue of which parties should be instructing the litigation counsel. They put forth the prospect that the process should operate much like inspectors in a bankruptcy. Without prejudging this issue, it seems to me that operating by way of a board of inspectors may be premature in these circumstances. There are secured creditors who claim priority over the Class Action Members and this position has been known throughout these proceedings. Counsel to the Class Action Members alluded to the possibility that the priority of the secured creditors may be challenged in some manner. However, until such time as the priority issue has been determined, the BIA inspector analogy may not necessarily be apt. However, it is not necessary to determine this issue at this time. Rather, I would encourage the Monitor to consult with the various stakeholders over the next week to see if this matter can be addressed in a consensual manner.

[14] An order has been signed to give effect to the foregoing.

A handwritten signature in blue ink, appearing to read "G.B. Morawetz RST".

Regional Senior Justice G.B. Morawetz

Date: November 21, 2014