

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
(returnable May 13, 2014)

Trimor Annuity Focus LP #5 ("**Trimor**") will make a motion to a judge of the Superior Court of Justice (Commercial List), on Tuesday, May 13, 2014 at 10 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR an order that:

- (a) The Cash Store Inc. and 1693926 Alberta Ltd. (collectively, "**Cash Store**") shall forthwith execute and deliver such documentation as is necessary or desirable to evidence the fact that Trimor is the sole legal and beneficial owner of:
 - (i) Any and all loans made in the name of Trimor and brokered by Cash Store on behalf of its customers ("**Customers**") using funds made available by Trimor for that purpose (the "**Trimor Funds**");
 - (ii) The Trimor Funds;
 - (iii) Any and all advances originated by Cash Store and subsequently purchased with the Trimor Funds;

- (iv) Any and all loans and advances originated by Cash Store and subsequently assigned to Trimor as capital protection or otherwise;
 - (v) Any and all amounts received by Cash Store from its customers in repayment of the forgoing loans and advances (the “**Trimor-owned Loans and Advances**”); and
 - (vi) Any and all accounts receivable in respect of the Trimor-owned Loans and Advances;

(collectively, the “**Trimor Property**”);
- (b) Cash Store shall forthwith transfer the Trimor Funds to Trimor;
 - (c) Cash Store shall forthwith, at Trimor’s expense, provide such assistance to Trimor as is necessary or desirable to facilitate the transfer of the administration of the Trimor-owned Loans and Advances to another service provider;
 - (d) Cash Store shall pay Trimor’s costs of this motion; and
 - (e) Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Cash Store provides alternative financial products and services to customers;
- (b) Cash Store brokers loans on behalf of Customers pursuant to broker agreements with third party lenders (“**TPLs**”), who agree to lend to Customers or to purchase advances to the Customers originated by Cash Store;

- (c) Trimor is a TPL and has made approximately \$27,002,000 available to Cash Store for the purpose of allowing Cash Store to broker advances to Customers (“**TPL Brokered Loans**”) or to purchase advances to the Customers originated by Cash Store;
- (d) On April 14, 2014, Cash Store obtained an initial order, which was amended and restated on April 15, 2014 (as amended, the “**Initial Order**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);
- (e) The Initial Order provided, among other things, that Cash Store shall continue to carry on business and retain and use funds received from TPLs, including the Trimor Funds, subject to certain conditions set out in the Initial Order;
- (f) The Initial Order specifically authorized Cash Store to use amounts received after the date of the Initial Order in connection with the repayment of the Trimor-owned Loans and Advances (the “**TPL Post-Filing Receipts**”) to make new TPL Brokered Loans;
- (g) On April 30, 2014, this Honourable Court issued an Order with additional protections for TPLs (the “**Additional Order**”);
- (h) The Additional Order provided, among other things, that the Applicants shall not use Trimor’s TPL Post-Filing Receipts that were connected to the Applicants’ Ontario operations to broker new TPL Brokered Loans;
- (i) The Applicants are entitled to use Trimor’s TPL Post-Filing Receipts from loans made in jurisdictions outside of Ontario to broker new TPL Brokered Loans in Trimor’s name (the “**Trimor Non-Ontario New Loans**”);

- (j) Pursuant to the Additional Order, any Trimor TPL Funds advanced in respect of a Trimor Non-Ontario New Loan are deemed to be owned by Trimor;
- (k) Cash Store is not a licensed payday lender in Ontario, and as a result, cannot broker any TPL Brokered Loans, make any direct loans, or take any steps to collect loans in Ontario;
- (l) The broker agreements governing the Trimor Funds expressly provide that Trimor owns the Trimor Property. In addition, Cash Store's affidavit evidence, past statements (both to the TPLs and in public disclosure), and conduct establish that Trimor owns the Trimor Property;
- (m) The broker agreements and notices given thereunder entitle Trimor to the return and transfer of the loan administration of the Trimor Property;
- (n) The balance of prejudice supports an immediate return of any Trimor Property to Trimor, and the transfer of the administration of any Trimor-owned Loans and Advances to a service provider selected by Trimor;
- (o) Trimor is significantly prejudiced by Cash Store's retention of Trimor Property connected to Cash Store's Ontario operations. Cash Store cannot redeploy the Trimor Property in new TPL Brokered Loans in Ontario. As a result, there is little to no incentive for Ontario customers to repay the TPL Brokered Loans;
- (p) Trimor is also significantly prejudiced by Cash Store's retention of Trimor Property connected with Cash Store's non-Ontario operations. In particular, Cash Store has admitted that during the CCAA proceeding it is likely that loan losses will be greater than they have been historically. Further, should Cash Store cease operations in any of these non-Ontario jurisdictions before the administration of the Trimor-owned Loans and Advances are transferred, it could have a devastating impact on the ability of Trimor to collect these loans. In addition, it has been admitted that

Cash Store improperly spent more than \$10 million of Trimor's funds on operational expenses to date. Trimor should not be required to bear the risk that Cash Store will misappropriate what is left of Trimor's assets;

- (q) The Applicants will suffer little if any prejudice from the transfer of the Ontario-based Trimor-owned Loans and Advances as it cannot operate in Ontario. With regard to the non-Ontario Trimor-owned Loans and Advances, the Applicants have provided no indication that they have a viable plan for the continuation of those operations. There is a real possibility that the Applicants will cease operations in those jurisdictions where they broker third party loans in the near future and therefore they have no need for the Trimor Property;
- (r) The provisions of the CCAA, as amended, and this Honourable Court's equitable and statutory jurisdiction thereunder;
- (s) Rules 1.04, 2.03 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (t) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The Affidavit of Steven Carlstrom sworn April 14, 2014 and the exhibits attached thereto;
- (b) The transcript of the Cross-Examination of Steve Carlstrom on his affidavit sworn April 14, 2014;
- (c) The Affidavit of Erin Armstrong sworn April 13, 2014 and the exhibits attached thereto;

- (d) The Affidavit of Murray McCann sworn April 22, 2014 and the exhibits attached thereto;
- (e) The Affidavit of Sharon Fawcett sworn April 22, 2014 and the exhibits attached thereto;
- (f) The Affidavit of Erin Armstong to be sworn and the exhibits attached thereto;
- (g) The Affidavit of Kurt Soost to be sworn and the exhibits attached thereto;
- (h) The Affidavit of Donald MacLean to be sworn and the Report of PricewaterhouseCoopers Inc. attached thereto; and
- (i) Such further material as counsel may advise and this Honourable Court may permit.

May 5, 2014

MCMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3
Facsimile: (416) 865-7048

Brett Harrison (LSUC# 44336A)
brett.harrison@mcmillan.ca
Tel: (416) 865-7932

Adam Maerov (LSUC# 48560H)
adam.maerov@mcmillan.ca
Tel: (403) 215-2752

Counsel to Trimor Annuity Focus LP #5

TO: SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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STORE"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE May 13, 2014)**

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Brett Harrison LS#: 44336A
Tel: (416) 865-7932
Fax: (416) 865-7048

Adam Maerov LS#: 48560H
Tel: (416) 215-2752
Fax: (416) 865-7048

Counsel to Trimor Annuity Focus LP #5