

**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)**

0678786 B.C. Ltd. (formerly the McCann Family Holding Corporation) ("**McCann**") 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 McCann is the sole legal and beneficial owner of:
 - (i) Any and all loans made in the name of any third party lender and brokered by Cash Store on behalf of its customers using funds made available by McCann for that purpose (the "**McCann Funds**");
 - (ii) The McCann Funds;

- (iii) Any and all advances originated by Cash Store and subsequently purchased with the McCann Funds;
- (iv) Any and all loans and advances originated by Cash Store and subsequently assigned to McCann 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 “**McCann-owned Loans and Advances**”); and
- (vi) Any and all accounts receivable in respect of the McCann-owned Loans and Advances;

(collectively, the “**McCann Property**”);

- (b) Cash Store shall forthwith transfer the McCann Funds to McCann;
- (c) Cash Store shall forthwith, at McCann’s expense, provide such assistance to McCann as is necessary or desirable to facilitate the transfer of the administration of the McCann-owned Loans and Advances to another service provider;
- (d) McCann's legal fees incurred in this CCAA proceeding shall be paid by the Applicants in the same manner as the bondholders' legal fees are paid and shall be covered by the Administration Charge granted in the Amended and Restated Initial Order;
- (e) Cash Store shall pay McCann’s costs of this motion;
- (f) McCann reserves all rights to assert any arguments in this proceeding in relation to claims (whether they be trust, proprietary or otherwise) it has against the Applicants resulting from monies it advanced to make third party loans; and

- (g) 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 (“**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) McCann is a TPL and has made approximately \$13,350,000 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 McCann 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 McCann-owned Loans and Advances (the “**TPL Post-Filing Receipts**”) to make new TPL Brokered Loans;
- (g) In obtaining the Initial Order, the Applicants' materials failed to make material disclosures regarding pre-filing conduct. The Applicants' failure

to satisfy their obligation to make full and frank disclosure to this Court is a factor that ought to be considered when the Court exercises discretion regarding the relief requested herein;

- (h) On April 30, 2014, this Honourable Court issued an Order with additional protections for TPLs (the “**Additional Order**”);
- (i) The Additional Order provided, among other things, that the Applicants shall not use McCann’s TPL Post-Filing Receipts to broker new TPL Brokered Loans;
- (j) 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;
- (k) The broker agreements governing the McCann Funds expressly provide that McCann owns the McCann Property;
- (l) Cash Store’s affidavit evidence, past statements (both to the TPLs and in public disclosure), and conduct establish that McCann owns the McCann Property;
- (m) The broker agreements and notices given thereunder entitle McCann to the return and transfer of the loan administration of the McCann Property;
- (n) The balance of prejudice supports an immediate return of any McCann Property to McCann, and the transfer of the administration of any McCann-owned Loans and Advances to a service provider selected by McCann;
- (o) McCann is significantly prejudiced by Cash Store’s retention of McCann Property connected to Cash Store’s Ontario operations. Cash Store cannot redeploy the McCann 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) The Applicants will suffer little if any prejudice from the transfer of the Ontario-based McCann-owned Loans and Advances as it cannot operate in Ontario.
- (q) The provisions of the CCAA, as amended, and this Honourable Court's equitable and statutory jurisdiction thereunder;
- (r) Rules 1.04, 2.03 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (s) 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 Donald MacLean to be sworn and the Report of PricewaterhouseCoopers Inc. attached thereto; and

- (h) Such further material as counsel may advise and this Honourable Court may permit.

May 7, 2014

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TO: SERVICE LIST

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

**ONTARIO
SUPERIOR COURT OF JUSTICE -
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Proceeding commenced at Toronto

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

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