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

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 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"

SUBMISSIONS OF THE AD HOC COMMITTEE OF CASH STORE NOTEHOLDERS

(Motions returnable on May 13, 2014)

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TO: SERVICE LIST

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I. OVERVIEW

1. These submissions are filed on behalf of the Ad Hoc Committee of Cash Store Noteholders (the "**Committee**") of The Cash Store Financial Services Inc. and its affiliates (the "**Applicants**" or the "**Company**"). The members of the Committee hold approximately 65% of the aggregate principal amount of $132,500,000 of 11½% Senior Secured Notes due 2017 issued by the Company. Based on the current financial information disclosed by the Company, the Committee represents the Company's largest stakeholder group and its members collectively hold the paramount economic interest in the Company.

2. These submissions are filed in response to:

(a) the Applicants' motion to extend the stay, to approve a key employee retention plan (the "**KERP**") and related charge (the "**KERP Charge**"), to suspend the

Company's brokered loan business, and for certain related relief concerning the collection and segregation of brokered loan receivables (together, the "**Applicants' Motion**");

(b) the motions by the third party lenders (the "**TPLs**"), Trimor Annuity Focus LP # 5 ("**Trimor**") and 0678786 B.C. Ltd. ("**McCann**"), for declarations that the TPL receipts are their property, for immediate delivery of existing TPL receipts to Trimor and McCann, and for the right to collect remaining TPL receipts themselves, independently of the Company (together, the "**TPL Motions**"); and

(c) the Company's ongoing effort to obtain additional DIP financing for the Company (the "**DIP Process**").

3. The Company sought CCAA protection on an emergency basis on April 14, 2014. The CRO was appointed on April 15, 2014. Shortly thereafter, the Special Committee resigned.

4. As detailed in the affidavit of Steven Carlstrom sworn April 14, 2014, and subsequent material filed by the CRO and the Monitor, the Company faces a complete shutdown of its Ontario business (which accounts for 1/3 of its revenues), regulatory issues in Manitoba, an RCMP investigation in Newfoundland into alleged violations of the interest provisions of the *Criminal Code*, issues and investigations in other jurisdictions, significant litigation claims, including various class actions, a liquidity crisis, and competing demands by various creditors, including mainly, its third party lenders. Most recently, the CRO and the Monitor have determined that the Company's brokered line of business with the third party lenders must also be shut down. Finally, as detailed in paragraphs 10 to 15 below, the Company has engaged in significant past transactions with its third

party lenders that may need to be analyzed in the context of sections 95-101 of the BIA, as incorporated into the CCAA.

5. At this juncture, the Committee continues to believe that the Company requires the benefit of the breathing room intended to be created by these proceedings so that it can carefully assess its assets, liabilities and appropriate next steps with the benefit of additional information and input from its stakeholders, the CRO and the Monitor. In particular, the Committee believes that the following factors are key in this case, and should be considered in connection with the various relief being sought at this time:

(a) **Breathing Room** – The CRO, the Monitor and the stakeholders must be given appropriate breathing room in order to determine the next best steps for the company and its stakeholders. Appropriate decisions in this case can only be made with the benefit of further information, much of which is not yet available, and the status quo should be maintained to the greatest extent possible in the interim;

(b) **Regulatory Effort** – The CRO, the Monitor and the stakeholders must focus on the key task of ensuring that the Company is up and running in all provinces, in compliance with all applicable regulation (the "**Regulatory Effort**");

(c) **Sale Effort** – The CRO, the Monitor and Rothschild, in consultation with the Committee and Houlihan Lokey, must continue to assess the viability of a going concern sale transaction for the Company, through a process and on terms acceptable to the Committee as the group most affected by the results of this effort (the "**Sale Effort**"); and

(d) **Transaction Review** – The CRO, the Monitor and the Committee must be given time and information to understand many of the significant, past transactions among the Company, its insiders and related parties, and the third party lenders, including in particular the use of approximately $116 million of the proceeds from the issuance of the Senior Secured Notes to repurchase certain impaired accounts receivable from third party lenders at face value, as discussed below (the "**Transaction Review**").

6. Based on the foregoing, and for the additional reasons set out below, the Committee supports (or does not oppose) the relief sought by the Applicants to:

(a) extend the stay period;

(b) implement the KERP and establish the KERP Charge;

(c) suspend the Company's brokered loan business in all jurisdictions in which it is currently carried on;

(d) authorize the Company to take all steps to effect the repayment of outstanding brokered loan receivables; and

(e) direct that all amounts received by the Applicants with respect to outstanding brokered loans be held in one or more separate bank accounts, separate and apart from the Applicants' operating or other accounts until further Order of this Court.

7. The Committee supports the above relief sought by the Applicants because (i) in the case of the stay extension and the KERP, it is necessary to afford breathing room and preserve the status quo and value in the interim (and may also be helpful to certain of the other key restructuring

matters outlined above) and (ii) in the case of the suspension or termination of the brokered loan business with the third party lenders, because the Committee understands that it is necessary and appropriate in light of further information now available to the CRO and the Monitor concerning the Company and its business and affairs.

8. The Committee does not support any of the relief sought by the TPLs because, for the reasons discussed below, it seeks to alter the status quo, to give one creditor an advantage over others (to the prejudice of the other creditors) and, in the case of direct collection of the brokered loan receivables by the TPLs from the Company's customers, because it could also have a significantly negative impact on the company's going concern value and the Sale Effort.

II. FACTS

9. The Company has provided background facts in its initial application record for CCAA protection, and in its subsequent filings. Only certain facts that inform the Committee's views on this application are provided or repeated here.

10. In January 2012, the Company issued $132,500,000 of 11½% Senior Secured Notes due 2017 (the "**Notes**"), pursuant to an Indenture dated as of January 31, 2012 (the "**Indenture**"). In the Offering Memorandum for the Note issuance, the Company explained that the proceeds of the Notes would be used to accelerate the transition of the Company's business from a brokered loan model (in which third parties provided the loans to costumers) to a direct lending model (in which the Company would be the lender directly), by purchasing loans receivable from the Company's third party lenders who were then lending to the Company's customers.[1]

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[1] Supplementary Affidavit of Erin Armstrong, sworn May 8, 2014, Exhibit "A" – Preliminary TSCI Circular at page 39; Motion Record of Trimor, Tab 3.

11. After the Note issuance, in a press release dated December 10, 2012, the Company announced that it would be restating its previously issued unaudited consolidated interim financial statements (the "**2012 Financial Statements**") for the three and six months ended March 31, 2012 and three and nine months ended June 30, 2012, which had disclosed that the Company had used the proceeds of the Note issuance to acquire a portfolio of loans from the Company's third-party lenders for total consideration of $116.3 million.

12. In the press release, the Company stated that 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 Company explained that 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.

13. As a result, the Company announced that it would restate the fair value of the loans receivable acquired for $116.0 million to $50.0 million, and the fair value of intangible assets acquired to $32.0 million (the "**Restatement**"). The Company further disclosed that of the $50 million of loans receivable acquired on January 31, 2012 (the date of issuance of the Notes) for $116.0 million, the Company had collected a net amount of $43.5 million to September 30, 2012. To address these matters, the Company announced that it expected to file amendments to its previously issued interim financial statements and MD&A for the three and six months ended March 31, 2012 and the three and nine months ended June 30, 2012 to reflect the corrections, and

accordingly, the referenced interim financial statements and MD&A should not be relied upon until such time as the Company files its restated interim financial statements.[2]

14. In connection with the Restatement, the Company stated that:

> "In connection with this matter, the Company has re-evaluated its conclusions regarding the effectiveness of its internal control over financial reporting for the affected periods and determined that material weaknesses existed at March 31, 2012 and June 30, 2012. As a result of the material weaknesses, the Company has now concluded that such controls were ineffective. Accordingly, the Company will restate its disclosure as of March 31, 2012 and June 30, 2012 to include the identification of material weaknesses related to the restatements."[3]

15. Multiple class action lawsuits are pending against the Company across Canada, and in the United States, including with respect to the Restatement. On March 31, 2014, the Company announced that it intended to settle one of the proposed class action proceedings against the Company and certain of its former directors and officers in respect of the Restatement for approximately $9.45 million, to be paid out of the Company's insurance.[4]

16. In February 2013, the Company commenced brokering a basic line of credit product as part of a wider initiative to offer a risk-based suite of line of credit products to its customers. On June 7, 2013, an application was commenced in the Ontario Superior Court of Justice pursuant to subsection 54(1) of the *Payday Loans Act, 2008*, S.O. 2008, c. 9 (the "**Payday Loans Act**") seeking a declaration that the basic line of credit product offered constitutes a payday loan under subsection 1(1) of the Payday Loans Act.

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[2] See, for example, the Company's Management Discussion and Analysis for the three months and year ended September 30, 2012, Supplementary Affidavit of Erin Armstrong, sworn May 8, 2014, Exhibit "D" at pages 14; 30-31, and 37; Motion Record of Trimor, Tab 3.

[3] News release of The Cash Store Financial Services Inc. dated December 10, 2012 (available on SEDAR).

[4] News release of The Cash Store Financial Services Inc. dated March 31, 2014 (available on SEDAR).

17. On February 12, 2014, the Ontario Superior Court of Justice ordered that the Company is prohibited from acting as a loan broker in respect of its basic line of credit product without a broker's license under the Payday Loans Act.

18. On February 13, 2014, the Registrar of the Ministry of Consumer Services in Ontario (being the regulator for the Payday Loans Act, the "**Registrar**") issued a proposal to refuse to issue a license to the Company and certain of its affiliates under the Payday Loans Act.

19. As a result of the Court's and the Registrar's mid-February announcements, the Company stopped offering its line of credit products in Ontario, which accounted for approximately 1/3 of the Company's overall business.

20. On February 28, 2014, the Company voluntarily delisted its common shares from The New York Stock Exchange.

21. On March 28, 2014, the Registar issued a final order refusing to license the Company in Ontario. As a result of that decision, the Company announced that it is currently not permitted to sell any payday loan products in Ontario and will not be eligible to re-apply for a license for 12 months from the date of issuance of the final order. The Company also stated that if the Company chooses to re-apply for a license after such time, the Company will be required to provide new or additional evidence for the Registrar to consider or demonstrate that material circumstances have changed. It is unclear what actions regulators in other provinces may take, where the Company continues to offer such products.

22. On April 14, 2014, the Company commenced CCAA proceedings seeking protection from its creditors.

23. On April 15, 2014, the CRO was appointed and, shortly thereafter, the Special Committee resigned.

24. On April 24, 2014, the CRO reached an agreement in principle with the Committee and the Initial DIP Lenders (Coliseum Capital Partners LP, Coliseum Capital Partners II, LP and Blackwell Partners, LLC (collectively, "**Coliseum**") and Alta Fundamental Advisors, LLC) for additional DIP financing to be approved at the hearing scheduled for Tuesday, May 13, 2014.[5] However, on Thursday, May 8, 2014, the Committee and the Initial DIP Lenders were advised that the CRO had received and was considering an alternative DIP proposal received from DirectCash Payments, Inc. ("**DCPI**").[6]

III. SUBMISSIONS

Support for Extension of Stay Period

25. As a result of the Company's significant regulatory problem in Ontario, 1/3 of the Company's business and revenue-stream has been shut down and the Company now faces significant near-term liquidity issues and uncertainty. In addition, the Company faces regulatory issues in Manitoba, an RCMP investigation in Newfoundland into alleged violations of the interest provisions of the *Criminal Code*, issues and investigations in other jurisdictions, and significant litigation claims, including various class actions.[7]

26. In addition, numerous parties, including mainly the TPLs, have made various kinds of demands against the Company and its assets. Indeed, in its latest material, the CRO states that "due

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[5] Affidavit of William E. Aziz, sworn May 9, 2014 (the "**Second Aziz Affidavit**"), para. 6.

[6] Second Aziz Affidavit, para. 9.

[7] Third Report of the Monitor dated May 9, 2014 ("**Monitor's Third Report**"), para. 10.

to competing claims and the attempts of certain stakeholders to jockey for priority positions since the date of the Initial Order, the Applicants have not yet had a reasonable opportunity to benefit from the breathing space that the Initial Order is intended to provide".[8]

27. The Committee supported the Company's initial request for breathing room in its application for CCAA protection on April 14, 2014, and supports its current request for a further extension of its stay protection. Per the fundamental tenets of the CCAA, the Company continues to require a stay of proceedings under section 11 of the CCAA to give it breathing room within which to carefully consider the appropriate next steps for the Company and its stakeholders, with the benefit of a CRO and a Monitor, and in consultation with the Committee, as the largest group of affected creditors in this case.

28. During the further Stay Period, the Committee expects that the Company, the CRO and the Monitor will continue to focus on and evaluate the key restructuring matters outlined above, in each case in consultation with the Committee as the largest group of affected creditors in this case.

Support for Approval of KERP and Granting of KERP Charge

29. The Committee has discussed the need for a KERP with the CRO and the Monitor, and supports the CRO's request for approval of a KERP program in the maximum amount of $400,000, with a KERP Charge for that amount and the priority set forth in the proposed Stay Extension Order.

30. The Committee supports the CRO's request for approval of the KERP and the KERP Charge because the Committee believes that the retention of key employees will assist in preserving the

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[8] Factum of the CRO dated May 11, 2014, para. 28.

status quo and enterprise value of the business, and may also be of assistance in the other key restructuring areas outlined above.

31. While the final terms of the KERP have not been finalized, the CRO has confirmed that he and the Monitor will work with the Committee to ensure that the definitive and final terms of the KERP are appropriate as applied to each KERP participant in terms of selection, structure and amount, and that the Order sought will be amended to reflect this agreement.

The CRO and the Monitor's decision to terminate the Brokered Loan Business

32. On May 6, 2014, the Committee was advised by counsel to the CRO that, following a review of the Cash Store's brokered loan business that it conducts with the TPLs, the CRO and the Monitor had come to the conclusion that the brokered loan business had to be suspended (effectively terminated) because, among other things, there was a material risk that the brokered loan business conducted with the TPLs is not legally defensible under the criminal interest rate provisions of the *Criminal Code*.[9]

33. The Committee has discussed this conclusion with the CRO and the Monitor, and having reviewed the terms of the broker loan arrangements among the Cash Store, the TPLs and the customers, and applicable law, and considered certain other factors, the Committee does not oppose the CRO and the Monitor's decision not to operate this line of business with the TPLs.

Collection of TPL Receipts

34. The Committee has throughout this proceeding urged that this is a case in which the Court must consider and grant relief sparingly given that relatively few facts are available to the creditors,

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[9] Second Aziz Affidavit, para. 30(c).

the Monitor and the CRO at this time. The decision to cease the Company's brokered loan business with its third party lenders (which was authorized under the Initial Order) is perhaps a good example of why such an approach is critical in this case.

35. The Committee believes that it is imperative and appropriate for the Company, under the supervision of the CRO and the Monitor, to realize upon all outstanding brokered loan receivables in an orderly manner, and to maintain such receipts in one or more segregated accounts until all potential claims to these funds can be fully and finally determined on a proper record, and with the benefit of all relevant information.

36. With each passing week, the members and advisors to the Committee have more – not less – questions about the past conduct of this business, and ask the Court to ensure that the stakeholders of this company have adequate time to work through these inquiries, without material dissipation of the Company's assets or their potential claims in the interim.

37. In their latest motion, the TPLs seek the immediate delivery of all brokered loan payments made to the Company to date, and the right to collect any remaining brokered loan receivables from the Company's customers directly.

38. There is considerable uncertainty – and lack of clarity and information – concerning the entitlement to the Company's cash, and numerous parties have security or other potential claims to that cash.[10] In the Committee's respectful submission, it is obvious that no single creditor should be entitled to take cash that they claim is theirs before the parties, the CRO, the Monitor and perhaps the Court have had a proper opportunity to evaluate the competing claims being asserted.

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[10] Second Aziz Affidavit, para. 34.

39. Among other matters, the Committee has a number of serious questions regarding the use of $116.3 million of the proceeds of the Senior Secured Note issuance to repay third party lenders (including, for example, Trimor, who based on a review of publicly available information appears to have received over $30 million of the Note proceeds), as discussed in paragraphs 10 to 15 above. As noted in the Company's Management Discussion & Analysis, concerns over the transactions led to the appointment of an independent accounting firm who conducted a four month "Special Investigation".[11] Copies of the report produced by that accounting firm have been requested by the Committee, but not yet provided. Until these and other key questions have been analyzed, the status quo should be preserved to the greatest extent possible.

40. Finally, allowing the TPLs direct access to the Company's customers could seriously jeopardize the value of the business as a going concern, which could be highly prejudicial to the recovery prospects for all of the Company's stakeholders.[12]

41. The CRO's request for an Order authorizing him and the Monitor to receive all brokered loan receivables into segregated accounts, with no right or ability to use those proceeds for any purposes pending determination by this Court of entitlement to those proceeds, constitutes a request for discretionary relief from this Court. Discretionary relief under the CCAA requires the balancing of prejudices in order to ensure that there is equitable treatment of stakeholders under the circumstances, and that no single creditor obtains an unfair advantage over others.[13] Taking into

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[11] See, for example, the Company's Management Discussion and Analysis for the three months and year ended September 30, 2013, Supplementary Affidavit of Erin Armstrong, sworn May 8, 2014, Exhibit "E" at page 46; Motion Record of Trimor, Tab 3.

[12] Second Aziz Affidavit, para. 35; Monitor's Third Report, para. 39(c)(ii).

[13] *Re Comstock Canada Ltd.*, 2013 ONSC 6043, 2013 CarswellOnt 13598 (Ont. S.C.J. [Commercial List]) at para. 17, citing *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 141, 1988 CarswellBC 553 (B.C. S.C.), Applicants' Book of Authorities, Tab 3.

account all of the circumstances, the Committee submits that the CRO and the Monitor's proposal to receive all brokered loan receivables into segregated accounts, with no right or ability to use those proceeds for any purposes pending determination by this Court of entitlement to those proceeds, clearly represents the best balancing of interests available under the circumstances. Under that process, none of the Company's assets (including its cash or its customer lists) will be dissipated to the detriment of any of the various stakeholders, including the TPLs, the Committee or the Company itself, who may have claims and entitlements to those assets.[14] This proposal is in keeping with the status quo intended to be created in a CCAA proceeding, as described by Justice Pepall in *Canwest*:

> "Section 11 provides an insolvent company with breathing room and by doing so, preserves the status quo to assist the company in its restructuring or arrangement and prevents any particular stakeholder from obtaining an advantage over other stakeholders during the restructuring process. It is anticipated that one or more creditors may be prejudiced in favour of the collective whole."[15]

42. On the other hand, the TPLs request for an immediate transfer of the broker loan receipts to them, and the right to collect any remaining receipts from the Company's customers directly, offends the status quo and constitutes a lift stay motion. For the reasons set forth in the Memorandum of Fact and Law of the DIP Lender, the Committee submits that it is clear that the TPLs have not met the very heavy onus that applies on a lift stay motion.

C. The Applicants' DIP Process

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[14] Second Aziz Affidavit, paras. 34 to 37.

[15] *Canwest Global Communications Corp. (Re)*, 2011 ONSC 2215, para. 25, Book of Authorities of the DIP Lender, Tab 1.

43. The CRO reached an agreement in principle with the Committee and the Initial DIP Lenders – as joint DIP lenders – on April 28, 2014, which was to be approved at the May 13, 2014 hearing. Thereafter, the CRO and the Monitor advised that they were also considering an alternative DIP proposal presented by DCPI on May 8, 2014.[16]

44. Like its position on all of the relief discussed above, the Committee will not support any DIP proposal that, as a result of the identity of the DIP lender or the terms of the DIP proposal, could have a negative effect on any of the Company's key restructuring efforts.

IV. SUMMARY

45. Many things remain unclear in this case, including: (i) the extent of the Company's assets; (ii) the extent of the Company's liabilities; (iii) the extent of the Company's regulatory problems in Ontario, and perhaps in other provinces as well (which go to the heart of the Company's business); (iv) the Company's prospects for sale; (v) the Company's prospects for any kind of viable plan; and (vi) the nature of many transactions between the Company and its insiders, related parties and counterparties.

46. The Committee represents the largest affected group of stakeholders in this proceeding and, in its view, the Court should continue CCAA protection to create a proper "sorting-out" period, but should not entrench other relief sought by third parties at this time that may not be appropriate, or even prejudicial, once additional information becomes available to the CRO, the Monitor and the stakeholders with the benefit of additional time and information.

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[16] Second Aziz Affidavit, paras. 6 and 9.

47. All parties will be in a better position to make informed decisions after a brief "sorting-out period" during which meaningful information and approaches can be discussed and explored among the CRO, the Monitor and the stakeholders, including the Committee. The Committee has every intention of working with the CRO, the Monitor and the other stakeholders on a cooperative, consensual and collaborative basis – in real time – to determine these matters with the benefit of better information and a brief period of time, and requests that the Court not grant any third party relief at this early stage that could prejudice other, larger stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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