

**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

**FRESH AS AMENDED NOTICE OF MOTION
(returnable June 11, 2014)**

Trimor Annuity Focus Limited Partnership #5 ("**Trimor**") will make a motion to a judge of the Superior Court of Justice (Commercial List), on Wednesday, June 11, 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) Grants a declaration that the following property (the "**Trimor Property**") and is owned by Trimor free of any interests or claims of any creditor of the Applicants including, without limiting the generality of the foregoing, any encumbrances or charges created by the Order of the Honourable Regional Senior Justice Morawetz dated April 14, 2014:
 - (i) Any loans made in the name of Trimor and brokered by The Cash Store Inc. and 1693926 Alberta Ltd. (collectively, "**Cash Store**") on behalf of their customers ("**Customers**") using funds made available by Trimor for that purpose (the "**Trimor Funds**");

- (ii) Any advances originated by Cash Store and subsequently purchased with the Trimor Funds;
 - (iii) Any loans and advances originated by Cash Store and subsequently assigned to Trimor as capital protection or otherwise (together with (i) and (ii) above, the “**Trimor Loans**”);
 - (iv) Any amounts received by Cash Store from its Customers in repayment of the Trimor Loans (the “**Trimor Receipts**”);
 - (v) Any accounts receivable in respect of the Trimor Loans (the “**Trimor Accounts Receivable**”); and
 - (vi) The Trimor Funds.
- (b) 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 the Trimor Property;
 - (c) Cash Store shall forthwith transfer the Trimor Funds and the Trimor Receipts to Trimor;
 - (d) 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 Loans and the Trimor Accounts Receivable to another service provider;
 - (e) Cash Store shall pay Trimor’s costs of this motion; and
 - (f) 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 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 Loans (the “**Trimor Post-Filing Receipts**”) to make new Trimor 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 Post-Filing Receipts that were connected to the Applicants’ Ontario operations to broker new Trimor 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 Trimor Loans (the "**Trimor Post-filing Loans**");
- (j) Pursuant to the Additional Order, any Trimor Funds advanced in respect of a Trimor Post-filing 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 third party loans, make any direct loans, or take any steps to collect loans in Ontario;
- (l) Cash Store's Chief Restructuring Officer has determined, in consultation with the Monitor, that it is necessary and appropriate to implement a cessation of the brokered loan business and cease brokering new loans in all of the jurisdictions where the Applicants operate. Accordingly, the Trimor Funds will no longer be used to broker new loans in any jurisdiction in which Cash Store operates;
- (m) The broker agreements governing the Trimor Property 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 show that Trimor owns the Trimor Property;
- (n) The broker agreements and notices given under them entitle Trimor to the return, and transfer of the loan administration of, the Trimor Property;
- (o) The balance of prejudice supports an immediate return of the Trimor Property to Trimor, and the transfer of the administration of any Trimor Loans and Trimor Accounts Receivable to a service provider selected by Trimor;
- (p) 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 Trimor Loans in Ontario. As a

result, there is little to no incentive for Ontario customers to repay the existing Trimor Loans;

- (q) Trimor is also significantly prejudiced by Cash Store's retention of Trimor Property connected with Cash Store's non-Ontario operations. 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 Loans is transferred, it could have a devastating impact on Trimor's ability to collect on 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;
- (r) The Applicants will suffer little, if any, prejudice from the transfer of the Trimor Property. The Applicants cannot operate in Ontario and they intend to end their brokered loan business and cease brokering new loans in all jurisdictions. Accordingly, the Applicants have no need for the Trimor Property;
- (s) The provisions of the CCAA, as amended, and this Honourable Court's equitable and statutory jurisdiction thereunder;
- (t) Rules 1.04, 2.03 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (u) 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 Armstrong sworn May 8, 2014 and the exhibits attached thereto;
- (g) The Affidavit of Donald MacLean sworn May 14, 2014 and the Report of PricewaterhouseCoopers Inc. attached thereto; and
- (h) Such further material as counsel may advise and this Honourable Court may permit.

May 14, 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 Limited
Partnership #5

TO: SERVICE 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"

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE June 11, 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 Limited
Partnership #5