

CITATION: Cash Store Financial Services (Re), 2014 ONSC 2372
COURT FILE NO.:
DATE: 2014-04-15

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: *Marc Wasserman* and *Jeremy Dacks*, for the Special Committee of the Board of
Directors of the Applicants

Robert Chadwick and *Brendan O’Neill*, for the Ad Hoc Committee of Noteholder
Heather Meredith and James Gage for FTI Consulting Canada, proposed Monitor

Brett Harrison for Timor Fund

Orestes Pasparakis and *Alan Merskey* for Coliseum Capital, proposed DIP
Lender

HEARD and
ENDORSED: April 14, 2014

RELEASED: April 15, 2014

ENDORSEMENT

[1] At the conclusion of argument, I endorsed the record: CCAA protection granted. Bluetree appointed CRO. Reasons will follow. Order to be prepared for my review. Counsel to re-attend at 10:00 a.m. on April 15, 2014 to finalize the Order.

[2] These are the reasons.

[3] The Cash Store Financial Services Inc. (“Cash Store Financial”), The Cash Store Inc., TCS Cash Store Inc., Instalozans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., 1693926 Alberta Ltd. doing business as “The Title Store” (collectively, the “Applicants”) seek relief under the *Companies’ Creditors Arrangements Act* (“CCAA”).

[4] The Applicants are seeking a stay of proceedings under the CCAA in order to attempt a restructuring of their business (as described in the affidavit of Steven Carlson, sworn April 13, 2014 (the “Carlson Affidavit”) with a view to emerging as a going concern. In addition, the

Applicants seek to maintain employment for as many as possible of their approximately 1,840 employees in Canada.

[5] The Applicants take the position that a stay of proceedings will provide them with the necessary “breathing space” to allow them to carry out this restructuring. The Applicants are of the view that a restructuring of their business will be in the interest of all stakeholders, including employees, customers, landlords, class action plaintiffs, bond holders, third party lenders and other creditors. They assert that without this “breathing space”, it is very likely that Cash Store Financial will face bankruptcy and liquidation resulting in materially worse recoveries for all stakeholders.

[6] Cash Store Financial is a leading provider of alternative financial products and services, servicing individuals for whom traditional banking may be either inconvenient or unavailable.

[7] Cash Store Financial owns and operates Canada’s largest network of retail branches in the alternative financial products and services industry with 509 branches across Canada (located in every Province and Territory other than Quebec and Nunavut), as well as 27 branches in the United Kingdom. The largest number of branches (176) are located in Ontario.

[8] Cash Store Financial offers a wide range of financial products and services such as bank accounts, prepaid MasterCard, private label credit and debit cards, cheque-cashing, money transfers, payment insurance and prepaid phone cards. A number of these products are offered by means of arrangements with third party providers.

[9] Cash Store Financial is a publically held Ontario corporation listed on the Toronto Stock Exchange. The other applicants are all privately held corporations that are direct or indirect subsidiaries of Cash Store Financial.

[10] The Applicants’ corporate headquarters and senior management are located in Edmonton, Alberta.

[11] Mr. Carlson states that The Cash Store Financial’s chief place of business is the Province of Ontario. There are 176 branches of Cash Store Financial located in Ontario, which is the largest number of Cash Store Financial branches in any province or territory where Cash Store Financial operates. Cash Store Financial has approximately 470 employees in Ontario, more people than Cash Store Financial employs in any other province or territory. Cash Store Financial’s Chief Compliance and Regulatory Affairs Officer is located in Toronto because Cash Store Financial is facing its most significant regulatory challenges in Ontario.

[12] The Ontario operations of Cash Store Financial accounted for \$57.6 million in revenue for the 2013 fiscal year, which is roughly 30% of Cash Store Financial’s total revenue, more revenue than any other province or territory. Furthermore, Cash Store Financial is listed on the Toronto Stock Exchange and files all of its public disclosure documents in Ontario. Cash Store Financial is a corporation incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B16 and its regulatory decisions have significantly curtailed Cash Store Financial’s Ontario revenues. Mr. Carlson states that addressing the Ontario regulatory issues will be one of the key aspects of Cash Store Financial’s proposed CCAA proceeding.

[13] The main act of subsidiaries of Cash Store Financial are The Cash Store Inc. and Instalozans Inc. which act as both lenders and/or brokers, operating in all of the Canadian Provinces and Territories in which Cash Store Financial has a presence.

[14] Cash Store Financial operates essential cash management systems, including all bank reconciliations, all accounts payable and payroll (with the exception of the UK corporations, which process their own accounts payable and payroll). Mr. Carlson states in his affidavit that cash is transferred between legal entities and bank accounts, as necessary, on a daily basis. The bank accounts do not segregate the cash belonging to each subsidiary into unrestricted and unrestricted cash.

[15] Cash Store Financial operates under two major business models: a direct lending business and the brokered lending business. Cash Store Financial acts as a direct payday lender (as opposed to a broker) in Alberta, British Columbia, Nova Scotia and Saskatchewan. It also formerly acted as a direct lender in Manitoba and Ontario, until the switch to offering line of credit products in those jurisdictions.

[16] The affidavit of Mr. Carlson also contains the required interim financial statements and based on these statements, as of December 31, 2013, Cash Store Financial had total assets of approximately \$176 million and total liabilities of approximately \$185 million.

[17] Of the liabilities, approximately \$140 million represents long-term debt. This debt is principally composed of two amounts: \$12 million owing to the senior secured lenders under the Credit Agreement and \$127.5 million owing to the Senior Secured Noteholders.

[18] The notes mature on January 31, 2017. Mr. Carlson states that upon commencement of the CCAA proceeding, Cash Store Financial will no longer be in compliance with the covenants in the Note Indenture and the full \$139.5 million in long-term debt will become immediately due and payable. Mr. Carlson states that Cash Store Financial does not have the ability to repay the notes at this time and is therefore insolvent.

[19] Cash Store Financial has received approximately \$42 million from third party lenders ("TPLs") (the "TPL Funds"). Mr. Carlson states that pursuant to the terms of broker agreements, these funds are contractually required to be used only for the purpose of lending to customers. He further states the TPL Funds that are not loaned to customers are held in Cash Store Financial's bank accounts and are designated, for accounting purposes, as "restricted cash". He further states that despite his nomenclature, "restricted cash" does not represent a segregated fund and is simply an accounting concept. He states that "Restricted cash" is a notional amount that represents the difference between the amount of TPL Funds provided to Cash Store Financial for brokered loans to consumers and the amount of the outstanding broker loans made with the TPL Funds that have not yet been repaid, together with cumulative losses. Mr. Carlson further states that all other cash held by Cash Store Financial is accounted for as "unrestricted cash".

[20] Mr. Carlson further states that although the broker agreements permit the TPLs to require Cash Store Financial to hold the TPL Funds in a specifically designated account, no TPL has ever exercised its contractual right to require Cash Store Financial to do so. As a result, Mr.

Carlson states that when TPL Funds are provided by the TPLs, no separate bank accounts for TPL Funds is, or is required to be, maintained.

[21] The Applicants have brought this application for relief under the CCAA and state that it is being brought on an urgent basis due to the confluence of a number of factors that have put extreme pressure on the combined ability of Cash Store Financial to operate as a going concern. Mr. Carlson describes the situation as “dire”.

[22] The factors identified by Mr. Carlson include:

- a. Cash Store Financial currently faces numerous regulatory challenges, arising in part out of the relatively recent introduction of payday loan legislation in certain jurisdictions and the transition generally from an unregulated market to a regulated market.
- b. Cash Store Financial has encountered specific regulatory issues in relation to its lending business in Ontario and its inability to secure a licence as a payday lender under applicable Ontario legislation.
- c. The regulatory environment is influx.
- d. Cash Store Financial is defending a number of significant legal proceedings across Canada and the United States. These proceedings include class actions regarding its business model (primarily involving fees and interest rates charged) and regarding its compliance with security laws.
- e. Cash Store Financial has recently incurred significant expenses for audit and special investigation fees.
- f. Due to Cash Store Financial’s inability to comply with market capitalization and share price requirements, Cash Store Financial voluntarily delisted its stock from the NYSE.
- g. Cash Store Financial does not have the cash to continue to operate.
- h. Two of the TPLs (“McCann” and “Trimor”) have requested the return of the Restricted Cash. It is noted that on April 11, 2014, McCann commenced litigation against Cash Store Financial in the Court of Queen’s Bench in Alberta seeking injunctive relief against Cash Store Financial in relation to the TPL Funds and asserting a trust over such funds. I am given to understand that a hearing is scheduled in Edmonton, Alberta for April 17, 2014.

[23] The issues on this application are as follows:

- a. Are the Applicants insolvent?
- b. Are the Applicants permitted to use existing cash on hand to meet their operating capital requirements during the post-filing period?

- c. Does this Court have jurisdiction to grant a DIP financing charge on a priority basis over the property of the Applicants and if so, should the Court exercise its discretion to do so?
- d. Does the Court have jurisdiction to grant an order entitling the Applicants to make pre-filing payments to critical suppliers and if so, should the Court exercise its jurisdiction to do so?
- e. Should the Court exercise its discretion to grant the applicants administration and directors charges? and
- f. Should this Court grant protection to the Chief Restructuring Officer (“CRO”) and to the Special Committee?

[24] CCAA applies to a “debtor company” or affiliated debtor companies where the total of claims against or its affiliates exceeds \$5 million. Pursuant to section 2 of the CCAA, a debtor company “means, *inter alia*, a company that is insolvent”.

[25] I am satisfied that the Applicants are all affiliated debtor companies with total claims against them exceeding \$5 million. Moreover, the evidence of Mr. Carlson is that the Applicants are insolvent.

[26] This application is brought in Ontario. Section 9(1) of the CCAA states that

Any application under this act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated.

[27] The Applicants have brought this application in Ontario. I am satisfied that there is sufficient evidence, including statements made at paragraph 23 of Mr. Carlson’s affidavit, to support the Applicants’ contention that its chief place of business is situated in Ontario. Based on the record, I am satisfied that I have jurisdiction to entertain this application. If this finding becomes an issue at a later date, I reserve the right to elaborate on this point more fully.

[28] I am also satisfied that the Applicants are facing a significant liquidity crisis, exacerbated by the regulatory issues in Ontario.

[29] I accept that Cash Store Financial’s liquidity has declined from \$13.1 million total cash at the end of February 2014 to \$12.6 million at the end of March 2014, and is projected to decline significantly to approximately \$5 million at the end of April 2014.

[30] I also accept that as of March 31, 2014, Cash Store Financial has defaulted under several covenants in the Credit Agreement, entitling the senior secured lenders to accelerate the obligations under the Credit Agreement and enforce their security. Further, Mr. Carlson states in his affidavit that Cash Store Financial does not have the funds to repay the Senior Secured Lenders.

[31] The materials in support of this application were provided only recently to the parties in attendance at Court. The parties have not, in my view, had sufficient time to respond to this application on the merits. I am therefore treating this application as if it is being presented on no notice.

[32] At this stage, I am of the view that urgency has been demonstrated and that creditor protection is required to stabilize the operating environment for the Applicants. I am satisfied that it is both necessary and appropriate to make declaration that the Applicants qualify for protection under the CCAA and a stay of proceedings is granted. With respect to the remaining relief, while I recognize that the Applicants have a liquidity crisis, I am not prepared to entertain the application for a DIP Financing Order until such time as the other stakeholders have had an appropriate time to respond.

[33] Counsel are to re-attend at 10:00 a.m. tomorrow, Tuesday, April 15, 2014 to finalize a draft order for my review.

[34] I understand there are two competing DIP Financing proposals. It would be helpful if the Monitor could prepare a report prior to the April 15, 2014 hearing which compares the merits of the two proposals.


Regional Senior Justice Morawetz

Date: April 15, 2014