

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) FRIDAY, THE 12TH
)
JUSTICE CONWAY) DAY OF MAY, 2023
)

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 LOYALTYONE, CO.

(the "**Applicant**")

ANCILLARY RELIEF ORDER

THIS MOTION made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order for relief ancillary to the Approval and Vesting Order of this Court made in this CCAA Proceeding of even date herewith (the "**AVO**"), including, *inter alia*, expanding the powers of KSV Restructuring Inc., in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), was heard this day by Zoom videoconference.

ON READING the Notice of Motion of the Applicant, the affidavit of Shawn Stewart sworn May 3, 2023 (the "**Stewart Affidavit**") and the Exhibits thereto, and the Third Report of the Monitor dated May 8, 2023 (the "**Third Report**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and the other parties listed on the counsel slip and no one appearing for any other party although duly served as appears from the affidavit of service of Behnoosh Nasri sworn May 3, 2023 and the affidavits of service of Alec Hoy sworn May 5 and May 10, 2023.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, unless otherwise indicated, capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court dated March 20, 2023 (the “**ARIO**”), the AVO or the Stewart Affidavit, as applicable.

DIRECTORS AND OFFICERS RESIGNATION

3. **THIS COURT ORDERS** that concurrent with the delivery of the Monitor’s Certificate contemplated by the AVO, all then current Directors and Officers of the Applicant, other than those officers of the Applicant that will remain as of Closing (as defined in the Asset Purchase Agreement) employed by the Applicant, shall be deemed to have resigned from their positions as directors or officers with the Applicant without any further act or formality.

TRANSACTION SUPPORT AGREEMENT

4. **THIS COURT ORDERS** that notwithstanding the occurrence of the Transaction Effective Date (as defined in the Transaction Support Agreement), until further order of the Court the Applicant shall continue to pay the reasonable and documented fees and expenses of the Consenting Stakeholder Advisors and consult with the Consenting Stakeholder Advisors with respect to motions brought by the Applicant or the Monitor in the CCAA Proceeding.

MONITOR’S ENHANCED POWERS

5. **THIS COURT ORDERS** that immediately following the resignation of the current Directors and Officers in accordance with paragraph 3 hereof, in addition to the powers and duties of the Monitor set out in the ARIO, any other Order of this Court granted in this CCAA Proceeding, the CCAA and applicable law, and without altering in any way the obligations of the Applicant in this CCAA Proceeding, including the Applicant’s obligations under the Transaction Support Agreement, the Monitor be and is hereby authorized and empowered, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the

Applicant to cause the Applicant, through the Applicant's Assistants (then engaged, if any), to, including without limitation:

- (a) take any and all actions and steps, and execute all agreements, documents and writings, on behalf of, and in the name of, the Applicant in order to facilitate the performance of any of the Applicant's powers or obligations, including, without limitation, as contemplated by the Transaction Support Agreement, the Asset Purchase Agreement, the Transaction (including any post-closing matters) or any Order of this Court (collectively, the "**Applicant's Powers & Obligations**");
- (b) engage, retain, or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor, in consultation with the Consenting Stakeholder Advisors on behalf of the Requisite Consenting Lenders (as defined in the Transaction Support Agreement), deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties and/or the Applicant's Powers & Obligations. For greater certainty, any such officer, employee, consultant, agent, representative, advisor, or other persons or entities engaged or retained pursuant to this paragraph 4(b) shall thereafter be deemed to be Assistants under the ARIO;
- (c) perform such other functions or duties, and enter into any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Applicant, the realization and/or sale of all of the Applicant's remaining assets and undertakings not transferred pursuant to the AVO (the "**Remaining Property**"), the distribution of any net proceeds of the Transaction and/or the Remaining Property (the "**Proceeds**"), or any other related activities, including, without limitation, in connection with terminating this CCAA Proceeding;
- (d) exercise any rights of the Applicant;
- (e) grant the Monitor access to all books and records that are the property of the Applicant or that are in the Applicant's possession or control (the "**Books and Records**");

- (f) initiate, prosecute, and/or continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicant, the Remaining Property, or the Proceeds, and, subject to the prior consent of the Requisite Consenting Lenders or further Order of this Court, to settle or compromise any such proceedings, including, without limitation, the proceedings between the Applicant and His Majesty the King pending before the Tax Court of Canada (2020-1038(IT)G). The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (g) in consultation with the Consenting Stakeholder Advisors on behalf of the Requisite Consenting Lenders, deal with any taxing or regulatory authority, including to execute any appointment or authorization form on behalf of the Applicant that any taxing or regulatory authority may require, in order to confirm the appointment of an authorized representative of the Applicant (which may be a representative of the Monitor) for such purposes;
- (h) engage, deal, communicate, negotiate and, with the prior consent of the Requisite Consenting Lenders or further Order of this Court, settle with any creditor or other stakeholder of the Applicant (including any governmental authority);
- (i) claim any and all insurance refunds or tax refunds to which the Applicant is entitled on behalf of the Applicant;
- (j) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Applicant, (i) any tax returns, and (ii) the Applicant's employee-related remittances, T4 statements and records of employments for the Applicant's former employees, in either case, based solely upon the information in the Applicant's books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents; and
- (k) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations.

6. **THIS COURT ORDERS** that as a result of the terms of this Order, the Applicant has the obligation pursuant to section 24 of the CCAA to provide the Monitor with access to the Applicant's information and documents, including privileged and confidential documents. Access by the Monitor pursuant to this Order to the Applicant's privileged and confidential documents and information constitutes a limited waiver of any applicable privilege which may attach to such documents and information in respect of the Monitor and its counsel only (the "**Limited Waiver**"), which is solely for the purpose of permitting the Monitor and its counsel access to the Applicant's privileged and confidential information and documents as required pursuant to section 24 of the CCAA and for no other purpose. The Limited Waiver applies only in respect of the Monitor and its counsel and only for the purpose identified herein and shall under no circumstances be extended to, or apply to any other person or for any other purpose, and any privilege of the Applicant and any persons attaching to such privileged documents and information is expressly confirmed and preserved as against any other persons and for any other purpose.

7. **THIS COURT ORDERS** that any consent on the part of the Requisite Consenting Lenders contemplated in this Order may, in the case of the Credit Facility Agent (as defined in the Transaction Support Agreement) or the R/TLA Group, be provided by Borden Ladner Gervais LLP or, in the case of the Term Loan B Lender Group, be provided by Bennett Jones LLP, on the basis of consent or non-objection after five business days' notice by the Applicant (which may be by email) to such applicable counsel of the matter for which such consent is sought.

8. **THIS COURT ORDERS** that, upon the delivery of the Monitor's Certificate contemplated by the AVO, the banks and/or financial institutions which maintain the Applicant's Cash Management System are directed to recognize and permit the Monitor and its representatives to complete any and all transactions on behalf of the Applicant in connection with such Cash Management System and for such purpose, the Monitor and its representatives are empowered and shall be permitted to execute documents for or on behalf of and in the name of the Applicant and shall be empowered and permitted to add and remove persons having signing authority with respect to the Applicant's Cash Management System. The financial institutions maintaining such Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor for and on behalf of the Applicant and/or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with

such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person.

9. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be a director, officer or employee of the Applicant.

10. **THIS COURT ORDERS** that, without limiting and subject to the provisions of the ARIO and the AVO, the Applicant shall remain in possession and control of the Remaining Property and the Proceeds, and the Monitor shall not take, or be deemed to have taken, possession or control of the Remaining Property or the Proceeds, or any parts thereof.

11. **THIS COURT ORDERS** that (a) without limiting the provisions of the ARIO, all employees and consultants of the Applicant as at the delivery of the Monitor's Certificate shall remain employees or consultants of the Applicant until such time as the Applicant at the direction of the Monitor, may terminate the employment of such employees or other contractual or consulting arrangements; (b) the Monitor shall not be liable for any employee-related liabilities of the Applicant, including any successor employer liabilities as provided for in Section 11.8(1) of the CCAA; and (c) nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicant, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

12. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court or otherwise at law, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the ARIO and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in carrying out the provisions of this Order and exercising any powers granted to it hereunder. Without limiting the generality of the foregoing, in exercising any powers granted to it hereunder: (i) the Monitor shall not be deemed to have taken or maintained possession or control of the Remaining Property, the Proceeds or any part of either of the foregoing; (ii) the Monitor shall be entitled to rely on the Books and Records without independent investigation; and (iii) the Monitor shall incur no liability or obligation as a result of exercising any powers granted to it hereunder, save and except for any gross negligence or wilful misconduct on its part.

13. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors, or legal representative of the Applicant or the Remaining Property within the meaning of any applicable legislation and that any distributions or payments by the Applicant made with the approval, assistance or by the Monitor on behalf of the Applicant will be deemed to have been made by the Applicant.

14. **THIS COURT ORDERS** that the powers and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicant with respect to such matters and, in the event of a conflict between the terms of this Order and those of the ARIO or any other Order of this Court, the provisions of this Order shall govern.

COOPERATION WITH THE MONITOR

15. **THIS COURT ORDERS** that the Applicant and its respective advisors and its current and former officers, directors, employees, agents and representatives shall co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court in this CCAA Proceeding, and shall provide the Monitor and the Applicant with such assistance as the Monitor or the Applicant may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order or any other Order of this Court in this CCAA Proceeding; provided, however, that in the case of the Applicant's former employees that are, at the time of any such requests for assistance or information by the Applicant or the Monitor, current employees of the Buyer(s), subject to further order of the Court, such co-operation and requests will be limited to reasonable requests for information or assistance that will not reasonably be expected to materially interfere with the day-to-day duties or activities of such employee for the Buyer(s), shall not cause or potentially cause liability to the Buyers (including in respect of any indemnification of or responsibility for the employees in question) and shall be at the Applicant's sole expense.

STAY EXTENSION

16. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including July 14, 2023.

AMENDMENT TO ARIO

17. **THIS COURT ORDERS** that, upon the delivery of the Monitor's Certificate contemplated by the AVO, any references to the "LoyaltyOne Entities" in the ARIO shall be amended hereby to be references to the Applicant alone and shall not include LoyaltyOne Travel Services Co./Cie Des Voyages LoyaltyOne.

GENERAL

18. **THIS COURT ORDERS** that the Applicant and the Monitor are each authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.


Conway, J.

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 LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

ANCILLARY RELIEF ORDER

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