



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00696017-00CL

DATE: 20 March 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **LOYALTYONE, CO.**

BEFORE MADAM JUSTICE: **Conway**

**PARTICIPANT INFORMATION**

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**For Defendant, Respondent, Responding Party, Defence:**

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## **ENDORSEMENT OF MADAM JUSTICE CONWAY**

**All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of LoyaltyOne, Co. dated March 17, 2023.**

[1] On March 10, 2023, the Applicant was granted protection under the CCAA pursuant to the Initial Order, which provides for a Stay of Proceedings up to March 20, 2023. This is the comeback motion. The Applicant seeks two orders today with a wide variety of relief.

[2] The first is the Amended and Restated Initial Order that, among other things, authorizes the DIP Financing Facility and the DIP Lender's Charge, authorizes the Applicant to enter into the Transaction Support Agreement *nunc pro tunc* and approves that agreement, extends the Stay of Proceedings to May 18, 2023, increases the Administration Charge and the Directors' Charge to the maximum of \$3 million and \$15.408 million, respectively, approves the Employee Retention Plans and grants the related charge to the maximum of \$5.35 million, and approves the retention of the Financial Advisor and grants the Financial Advisor Charge to a maximum of US\$6 million to secure the Transaction Fee.

[3] The second is the SISP Approval Order that authorizes the Applicant to enter into the Stalking Horse Purchase Agreement, approves the Bid Protections and related charge to the maximum of \$US 4 million, and authorizes the Applicant to conduct the SISP along with the Financial Advisor and the Monitor.

[4] All of the relief sought is supported by BMO, the Consenting Stakeholders representing over 66-2/3% of the Credit Agreement Lenders by value, the Monitor, and is otherwise unopposed.

[5] With respect to the DIP Financing Facility of US\$70 million, I have considered the interests of all of the Applicant's stakeholders and specifically the factors in s. 11.2(4) of the CCAA. The financing will provide sufficient financing to support the Applicant throughout the proposed SISP. The Applicant otherwise lacks the liquidity required to continue the business as a going concern during the sales process. It will permit the Applicant to pursue a going concern transaction for the business. No creditor will be materially prejudiced as a result of the charge given that it will rank behind the Reserve Account established for Collectors and, as noted, it has been consented to by the Consenting Stakeholders whose interests would be directly affected by the DIP Financing Facility. The Monitor considers the cash flow statement to be reasonable and is supportive of the financing.

[6] The DIP Financing Facility contemplates the making of the Intercompany DIP Loan from the Applicant to LVI of up to US\$30 million. This will enable LVI to continue to provide the Intercompany Services to Applicant and provide LVI with liquidity to pursue the U.S. Proceedings, including the establishment of a liquidating trust and a claim against Bread and others, which is expected to yield further recovery for stakeholders. Subject to the granting of an order in the U.S. Proceedings, the Intercompany DIP Loan will be secured by a charge in the U.S. Proceedings over LVI's current and future assets.

[7] I am approving the DIP Financing Facility.

[8] The Transaction Support Agreement between the Applicant and the Consenting Stakeholders is designed to support the Applicant in its efforts to find a going-concern solution. The Monitor supports the agreement. It will provide stability and certainty to the Applicant's stakeholders as it pursues the going concern solution. I approve it under s. 11 of the CCAA.

[9] The Employee Retention Plans (both the retention plan for approximately 500 employees and the KERP for 20 key executives and employees) were developed with the assistance of the Monitor. They will ensure that the Applicant has the continued services of those required to continue the business while these CCAA proceedings unfold. I approve those plans and the related Employee Retention Plan Charge.

[10] The Stay of Proceedings to May 18, 2023 is designed to tie into the milestones in the SISP. I am satisfied that the Applicant is acting in good faith and with due diligence and that the extension should be granted under s. 11 and 11.02 of the CCAA. In addition, I am staying any setoff of pre-filing against post-filing obligations subject to further court order.

[11] The increased Administration Charge and Directors Charge have been developed in consultation with the Monitor and are reasonable. I approve same.

[12] The Financial Advisor engagement and related charge for the Transaction Fee are approved in light of the complexity of the restructuring.

[13] The Stalking Horse Agreement and the Bid Protections Charge are acceptable to me. The agreement is designed to provide a floor for an acquisition transaction while the Applicant runs the SISP. The quantum of the Bid Protections are, according to the Monitor, well within the reasonable range, 2.5% of the purchase price. I note that the Applicant is NOT seeking approval of any transaction at this time.

[14] The SISP is approved. The milestones and timelines are reasonable. The process seeks to maximize the recovery for the Applicant and its stakeholders. It satisfies the requirements of s. 36 of the CCAA.

[15] Orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.