



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: May 12, 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated May 10, 2023.**
- [2] The Applicant seeks three orders today: (i) the Approval and Vesting Order; (ii) the Assignment Order; and (iii) the Ancillary Relief Order. All of those orders will implement the Transaction with BMO (through its subsidiaries) to acquire the assets and assume the liabilities of the AIR MILES[®] Reward Program business, as set out in the Asset Purchase Agreement.
- [3] At the conclusion of the hearing, I said that I was granting the orders (with the minor amendments discussed at the hearing). These are my reasons for doing so.
- [4] BMO was the stalking horse bid in connection with the SISP, both of which were approved by this court. The SISP process ran its course. Although 48 parties were contacted, BMO was the only bidder and was confirmed to be the Successful Bid.
- [5] The Transaction will see the AIR MILES[®] Reward Program continue as a going concern, with offers of employment for approximately 700 employees, as well as continuity for the approximately 10 million active Collectors, the Partners, Reward Suppliers and vendors. The Buyers will purchase all or substantially all of the operating assets of the Applicant, including the Travel Services Shares, and assume the Assumed Contracts. The Buyers will pay US\$160,259,861.40 in cash, less certain purchase price adjustments, and will assume the Assumed Liabilities and pay certain transfer taxes.
- [6] There is widespread support for the Transaction. It is supported by the Monitor. Mr. Staley and Mr. MacFarlane voiced their support for their respective secured creditors. There is no opposition from any stakeholder. Mr. Taylor addressed the court for the Bread parties and confirmed that they are not opposing the relief today. The Monitor, in its Third Report, states that the Transaction “provides for the greatest

recovery available in the circumstances and will be more beneficial to creditors than a sale or disposition in a bankruptcy”.

- [7] With respect to the **Approval and Vesting Order**, I am satisfied that the Transaction should be approved. I have considered the factors in s. 36 of the CCAA and in *Soundair*. Specifically, the process leading to the Transaction – the SISP – was developed in consultation with the Monitor, the Financial Advisor, BMO and certain Credit Agreement Lenders. It was approved by this court and followed by the Applicant. The market has been canvassed in accordance with that process and the Transaction is the only one that emerged. As noted, it is the only viable option and continues the business as a going concern. The purchase price will be sufficient to satisfy the Charges and the Employee Payables, and provide for a distribution to the Credit Agreement Lenders in partial recovery of their secured claims at a later date.
- [8] The repayment of the DIP and the payment of the Transaction Fee are satisfactory and approved.
- [9] I reviewed the Releases in detail with counsel at the hearing. I approve them pursuant to s. 11 of the CCAA. I am satisfied, among other things, that the Released Parties were necessary to the Transaction; the released claims are rationally connected to the purchase of the Transaction and are necessary for it; and the Released Parties contributed to the Transaction. The Releases do not extend to the Applicant or Travel Services. They exclude any obligations that may not be released under s. 5.1(2) of the CCAA, any obligations under the Asset Purchase Agreement and related documents, and any obligations of BMO to its own customers (the latter as directed by me at the hearing). There is no release of any Bread-related parties as set out in paragraph 24.
- [10] All other provisions of the Approval and Vesting Order are satisfactory and I approve it.
- [11] With respect to the **Assignment Order**, Newco (a subsidiary of BMO) will be assuming the Assumed Contracts. These are required for the ongoing business operations of the Applicant. There are approximately 231 contracts. The Applicant has served all counterparties, except for four who were served under the contract provisions but cannot be found. While the Applicant has obtained approvals for the transfer from a large number of counterparties, there are some for whom consent has not been obtained as yet (most of which are non-disclosure agreements (NDAs) and have no cure costs at issue). Ms. Dietrich advised the court that there have been no oppositions to the transfer.
- [12] The Assignment Order provide that any assignment is subject to payment of any cure costs, satisfying the requirement under s. 11.3(4) of the CCAA. The assignments are to Newco, which is a subsidiary of BMO, a sophisticated financial entity. Mr. Bish submitted that although the purchase has been structured this way, for all practical purposes BMO will be seeing that the obligations under these contracts are satisfied going forward. With respect to the NDAs, the assignment will enable Newco to protect any confidential data of the business through enforcement of those agreements. Considering all of these factors, I consider it appropriate to grant the Assignment Order.
- [13] With respect to the **Ancillary Relief Order**, the stay extension to July 14, 2023 is approved. This will give the parties time to close the Transaction and start the transition of the business. The Applicant is acting in good faith and with due diligence and no creditor will be prejudiced by the extension. I am expanding the powers of the Monitor under s. 11 and 23(1)(k) of the CCAA. This will enable it to seek additional avenues of recovery for the remaining assets of the Applicant, to assist in the transition of the business, and to bring this CCAA proceeding to an efficient conclusion for the benefit of stakeholders.

[14] I have signed the three orders and attached them to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

Conway J.