

COURT FILE NUMBER

2301 - 08305

COURT

COURT OF KING'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY



IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF
WALLACE & CAREY INC., LOUDON
BROS LIMITED, and CAREY
MANAGEMENT INC.

APPLICANTS

WALLACE & CAREY INC, LOUDON
BROS LIMITED, and CAREY
MANAGEMENT INC.

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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File No.: 0221652.0007

DATE ON WHICH ORDER WAS PRONOUNCED:

August 8, 2024

LOCATION WHERE ORDER WAS PRONOUNCED:

Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER:

The Honourable Associate Chief
Justice D. B. Nixon

UPON the application of Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros
Limited, and Carey Management Inc. (collectively, the "**Applicants**");

AND UPON having read the Application, filed July 29, 2024 (the "**Application**"), the Affidavit No. 5 of Patrick Carey sworn July 26, 2024, the Eleventh Report of KSV Restructuring Inc., dated July 30, 2024, in its capacity as Court-Appointed Monitor (the "**Monitor**");

AND UPON hearing counsel for the Applicants, counsel for the Monitor, and counsel for any other interested parties;

AND UPON reviewing the Affidavit of Service of Marica Ceko sworn August 6, 2024;

AND UPON reviewing the Secretarial Affidavit of Marica Ceko sworn August 7, 2024;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and this application is properly returnable today.

DEFINITIONS

2. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the Amended and Restated Initial Order of this Court pronounced June 30, 2023 (the "**ARIO**") and the Ancillary Order of this Court pronounced August 23, 2023.

APPROVAL OF THE CREDIT FACILITY AGREEMENT

3. The Credit Facility Agreement dated July 30, 2024, between The Bank of Nova Scotia ("**BNS**") and Wallace & Carey (the "**BNS CFA**") is hereby approved, authorized and ratified, with such minor amendments as Wallace & Carey and BNS, with the consent of the Monitor, may deem necessary. The Applicants are authorized and directed to take any and all actions as may be necessary or desirable to enter into the BNS CFA.
4. The Monitor is entitled to and shall be granted full and complete access (including electronic access) to all transaction and account information available to the Applicants pursuant to the BNS CFA and pursuant to paragraph 26 of the ARIO

5. BNS shall be entitled to the benefit of and is hereby granted a first priority charge (the "**BNS Charge**") solely on the cash collateral of Wallace & Carey in the amount of \$1,300,000 pledged pursuant to the BNS CFA (the "**Cash Collateral**") as security for any advances made under or amounts owing pursuant to the BNS CFA from and after the granting of this Order.
6. The BNS Charge shall have the priority set out in paragraphs 7 and 9 of this Order.

NON-ATTACHMENT OF CHARGES TO THE CASH COLLATERAL

7. The Administration Charge, Transaction Fee Charge, Lender Priority Charge, the D&O Charge, the Tobacco Tax Charge and any Encumbrances shall not attach to the Cash Collateral.
8. The filing, registration or perfection of the BNS Charge shall not be required, and the BNS Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the BNS Charge coming into existence, notwithstanding any such failure to file, register, record or perfect the BNS Charge.
9. The BNS Charge shall constitute a first charge on the Cash Collateral, and subject always to section 34(11) of the CCAA, the BNS Charge shall rank in priority to all other Encumbrances and any claims in favour of any Person.
10. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over the Cash Collateral that rank in priority to, or *pari passu* with, the BNS Charge, unless the Applicants also obtain the prior written consent of the Monitor, BNS, and the beneficiaries of the Charges, or further order of this Court.
11. The BNS Charge shall not be rendered invalid or unenforceable and the rights and remedies of BNS thereunder shall not otherwise be limited or impaired in any way by:
 - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;

- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any Agreement that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - i. neither the creation of the BNS Charge nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party;
 - ii. BNS shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the BNS Charge, or the execution, delivery or performance of the definitive documents associated with the Agreements; and
 - iii. the payments made by Wallace & Carey pursuant to this Order, and the granting of the BNS Charge, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

12. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - i. the persons listed on the service list created in these proceedings;
 - ii. any other person served with notice of the application for this Order;
and
 - iii. any other parties attending or represented at the application for this Order;
 - (b) posting a copy of this Order on the Monitor's website established in connection with these proceedings, for no less than six months from the date of this Order; and
 - (c) service on any other person is hereby dispensed with.
13. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier.



Justice of the Court of King's Bench of Alberta