

Clerk's Stamp:



COURT FILE NUMBER 2301 - 08305

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

C71517

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

Aug 8, 2024

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

DOCUMENT

APPLICATION

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
 Barristers and Solicitors
 525 - 8 Ave SW, 43rd Floor
 Calgary, AB T2P 1G1

Attention: James W. Reid / Pavin Takhar

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ptakhar@millerthomson.com

File No. 0221652.0007

NOTICE TO RESPONDENT(S):

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the justice.

To do so, you must be in Court when the application is heard as shown below:

Date August 8, 2024Time 2:00 p.m.Where Calgary Courts Centre (via WebEx)Before Whom The Honourable Associate Chief Justice D. B Nixon

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros Limited ("**Loudon Bros**"), and Carey Management Inc. ("**CMI**", and together with Wallace & Carey and Loudon Bros, the "**Companies**" or the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA**"), seek an order (the "**Order**") substantially in the form attached hereto as **Schedule "A"**, including, without limitation:
 - (a) abridging the time for service of the Application and the supporting material, if necessary, and deeming service thereof to be good and sufficient;
 - (b) authorizing and empowering Wallace & Carey to borrow an aggregate amount of \$1,300,000.00 under a credit facility agreement with the Bank of Nova Scotia ("**BNS**"), in accordance with the terms of the Credit Facility Agreement, dated July 15, 2024 (the "**BNS CFA**");
 - (c) granting a charge on the cash collateral of Wallace & Carey ("**Cash Collateral**") not exceeding an aggregate amount of \$1,300,000.00 incurred in relation thereto in favour of BNS as security for any advances made by BNS in accordance with BNS CFA (the "**BNS Charge**"); and
 - (d) such further and other relief as the Applicants may request and this Honourable Court may grant.
2. All terms otherwise not defined shall have the meaning given in the ARIO (defined below).

Grounds for making this application:

Background

3. On June 22, 2023, this Court granted an initial order under the under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA**") among other things, declaring that the Applicants were companies to which the CCAA applies, granting a stay of proceedings and appointing KSV Restructuring Inc. as Monitor (the "**Initial Order**").
4. On June 30, 2023, this Court granted an Order amending and restating the (the "**ARIO**"), and among other things:

- (a) granting the following charges in priority rankings (the “**Priority Charges**”):
 - (i) First – Administration Charge (to the maximum amount of \$750,000);
 - (ii) Second – Lender Priority Charge (to the maximum amount of \$55,000,000 plus interest, fees, and expenses);
 - (iii) Third – D&O Charge (to the maximum amount of \$4,000,000);
 - (iv) Fourth – the Encumbrances existing as of the date hereof in favour of the Lender securing the pre-filing obligations owing under the CIBC Credit Agreement including, for greater certainty, obligations in connection with the BCAP Loan; and
 - (v) Tobacco Tax Charge (to the maximum amount of \$26,000,000).
- 5. On August 23, 2023, the Court granted an order (the “**SISP Order**”), among other things, approving the Applicants engagement of Alvarez & Marsal Canada Securities ULC (the “**Financial Advisor**”) as financial advisor, and authorizing the Applicants, with the assistance of the Financial Advisor and the oversight of the Monitor, to conduct a sale investment and solicitation process.
- 6. On August 23, 2023, the Court granted an ancillary order (the “**Ancillary Order**”), among other things, amending the priorities of the Priority Charges and granting the Transaction Fee Charge.
- 7. On November 17, 2023, the Court granted an approval and vesting order related to the SISP Order. The approval and vesting order approved a transaction with 7-Eleven Canada Inc. (the “**Purchaser**”) as purchaser (the “**SISP Transaction**”).
- 8. The SISP Transaction contemplates that Wallace & Carey will continue to provide services to the Purchaser pursuant to a transition services agreement for up to a fifteen (15) month period (the “**TSA**”), subject to two ninety (90) day extensions.

The Bank of Nova Scotia Credit Facility Agreement

- 9. The Applicants are seeking this Court’s approval of the BNS CFA and the corresponding BNS Charge.

10. Wallace & Carey requires funding to facilitate its business operations and meet its obligations to the Purchaser during the terms of the TSA.
11. The BNS CFA contemplates the advance of the total principal amount of \$1,300,000 by way of:
 - (a) a Scotiabank VISA facility in the amount of \$300,000; and
 - (b) standby letters of credit and letters of guarantee in the aggregate amount of \$1,000,000.
12. The Applicants are seeking the court ordered BNS Charge to secure the BNS CFA, which shall be a priority charge on the Cash Collateral, and shall have priority to all charges granted in the within CCAA proceedings over the Cash Collateral.
13. The BNS CFA is conditional on Wallace & Carey, obtaining the BNS Charge.
14. Pursuant to the ARIO, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the Canadian Imperial Bank of Commerce, the beneficiaries of the Charges, or further order of this Court.
15. The BNS CFA is fair and reasonable in the circumstances and the BNS Charge is limited to the Cash Collateral only, and does not extend over all of Wallace & Carey's Property. The BNS CFA is necessary for Wallace & Carey to maintain and continue their obligations under the TSA.
16. The BNS CFA is in the best interest of all stakeholders.
17. The Monitor supports Wallace & Carey entering into the BNS CFA and the BNS Charge.

Material or evidence to be relied on:

18. Affidavit No. 5 of Patrick Carey sworn August 26, 2024, to be filed.
19. The Eleventh Report of KSV Restructuring Inc., the Monitor, to be filed.
20. Bench Brief of the Applicants.
21. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 22. *Alberta Rules of Court*, Alta Reg 124/2010.
- 23. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

- 24. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, including s 11, 11.2,
- 25. *Judicature Act*, RSA 2000, c J-2.
- 26. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

- 27. None.

How the application is proposed to be heard or considered:

- 28. Via Web-Ex, before the Honourable Associate Chief Justice D. B. Nixon.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"
Proposed Form of the Order

COURT FILE NUMBER

2301 - 08305

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

APPLICANTS

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

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Email: jwreid@millerthomson.com /
ptakhar@millerthomson.com

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 [●] (the "**Application**"), the Affidavit No. 5 of Patrick Carey sworn July 26, 2024, the Eleventh Report of KSV Restructuring Inc., dated July [●], 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 July [●], 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 15, 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, Encumbrances charge, and the Tobacco Tax Charge 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;
 - iii. any other parties attending or represented at the application for this Order; and
 - (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 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