

Clerk's stamp:

COURT FILE NUMBER	2301 - 08305
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , 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.
DOCUMENT	<u>AFFIDAVIT NO. 2 OF PATRICK CAREY</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MILLER THOMSON LLP Barristers and Solicitors 3000, 700 – 9 th Avenue SW Calgary, AB, T2P 3V4 Attention: James W. Reid / Pavin Takhar Phone: 403-298-2418 / 403-298-2432 Email: jwreid@millerthomson.com / ptakhar@millerthomson.com File No.: 0221652.0006

AFFIDAVIT NO. 2 OF PATRICK CAREY

Sworn on November 21, 2023

I, Patrick Carey, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. This Affidavit is made in support of the application (the "**Application**") by Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros. Limited ("**Loudon Bros**"), and Carey Management Inc. ("**CMI**", and together with Wallace & Carey, and Loudon Bros, the "**Applicants**" or the "**Companies**") returnable November 29, 2023, before the Court of King's Bench of Alberta (the "**Court**").
2. Wallace & Carey is a family owned business founded in 1921. Prior to filing for creditor protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), Wallace & Carey was servicing more than 7,000 customers across the country and had grown to become one of Canada's largest independent wholesale distribution and logistics companies.
3. Wallace & Carey has owned and operated Loudon Bros since 2011. Loudon Bros was Thunder Bay's leading foodservice wholesaler and distributor, serving convenience stores, grocery stores, restaurants, foodservice providers, not-for-profits, and various retail sector businesses throughout Northwestern Ontario.
4. Wallace & Carey and Loudon Bros (the "**Logistics Companies**") represent the Applicants' logistics business, while CMI is an inactive holding company with ten subsidiaries, including Wallace & Carey.
5. CMI is the sole shareholder of Wallace & Carey. CMI provides management services to the Logistics Companies.
6. I am the sole director of CMI, Wallace & Carey and Loudon Bros.
7. I have personal knowledge of the matters described in this Affidavit, except where I state that my knowledge is based upon information and belief, in which case I believe the statements to be true.

I. NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

8. This Affidavit is sworn in support of the Application for an order 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) extending the stay period (the “**Stay Period**”) up to and including February 29, 2024, or such other date as the Court may consider appropriate;
 - (c) approving the actions, conduct and activities of KSV Restructuring Inc. (the “**Monitor**”), as described in the Seventh Report of the Monitor, dated November 22, 2023 (the “**Seventh Report**”), and all preceding reports issued by the Monitor in these proceedings, including its pre-filing Report (collectively, the “**Monitor’s Reports**”);
 - (d) approving the professional fees and disbursements of the Monitor, and those of its legal counsel, as set forth in the Seventh Report and the Affidavits of Danielle Marechal and Robert Kofman, both of which are currently unsworn as of the date of this Affidavit; and
 - (e) granting such further and other relief as counsel may advise and this Honourable Court deems just and appropriate.

II. BACKGROUND

A. Circumstances Leading to the CCAA Filing

9. The Logistics Companies faced unprecedented challenges due to the COVID-19 global pandemic, the resulting supply chain disruptions and lockdowns, and the subsequent inflationary pressures and interest rate increases, all as set out in detail in the Affidavit No. 1 of Brian M. Birnie sworn June 21, 2023.
10. The Logistics Companies fell into arrears with many of their creditors, and could not meet their obligations to creditors generally as they become due.
11. On June 22, 2023, the Applicants obtained a CCAA Initial Order in these proceedings, which order was amended and restated on June 30, 2023 (the “**ARIO**”).

B. Circumstances since the ARIQ

12. Both prior to and following the ARIQ, the Applicants experienced significant liquidity challenges. After the commencement of the within proceedings, due to certain prepayment terms required by their vendors and suppliers, such liquidity challenges became even more pronounced.

13. Logistics Companies were unable to meet the “fill rate” requirements of their customers during these proceedings, resulting in the loss of the majority of their major customers.

14. Due to the decreased customer base, since August 2023, the Logistics Companies have been incurring increasing losses, requiring them to downsize their business.

15. This consolidation has included the wind-down of the operations of Loudon Bros, which is now substantially completed. On November 3, 2023, the Court approved the sale of Loudon Bros’ real property and the transaction closed on November 17, 2023.

16. The Applicants were required to commence a sale and investment solicitation process (“SISP”) due to the liquidity and cash flow challenges faced by the Applicants and in the absence of a viable restructuring plan.

17. On August 23, 2023, the Court granted an Order approving the Applicants’ form of SISP and approved the Applicants’ engagement of Alvarez & Marsal Canada Securities ULC (the “Financial Advisor”) as financial advisor to conduct the SISP under the oversight of the Monitor.

C. Freshslice Litigation

18. Prior to the CCAA proceedings, A&M Enterprise Ltd. dba “Freshslice Pizza” (“Freshslice”) and Wallace & Carey entered a cost-plus upcharge supply agreement made as of January 1, 2023 (the “Supply Agreement”) wherein Wallace & Carey would supply “Product” (as defined in the Supply Agreement) to Freshslice for use in its franchise locations.

19. Pursuant to the Supply Agreement, Wallace & Carey was the “exclusive supplier of Products”. Further, Freshslice was not to “directly, or indirectly, purchase Products from any source other than [Wallace & Carey]”.

20. Freshslice breached the terms of the Supply Agreement by using a competitor to supply its franchisees. Further, Freshslice failed to pay accounts receivable owing to Wallace & Carey and refused to fill purchase orders.

21. On September 26, 2023, Wallace & Carey brought an application to deal with the Freshslice issues.

22. On November 9, 2023, the Court granted an Order among other things, requiring Freshslice to pay \$497,521.26 to Wallace & Carey and directed that Freshslice resume its practice of having Wallace & Carey exclusively supply the Freshslice franchisees (the "**Freshslice Order**").

23. Freshslice has advised it intends to seek leave to appeal the Freshslice Order, which, if such an application is commenced, Wallace & Carey will need to respond to. Further, as the Freshslice Order has not been stayed or complied with to date, Wallace & Carey will need to pursue enforcement of the order in British Columbia.

E. 7-Eleven Canada, Inc. Transaction

24. Following the SISP, as set out in detail in Affidavit No. 3 of Eric Rolheiser sworn November 7, 2023, 7-Eleven Canada, Inc. (the "**Purchaser**") and the Applicants entered into a purchase and sale agreement (the "**Sale Agreement**"). The Sale Agreement was for the sale of the Applicants' personal property and equipment assets located in Alberta and British Columbia and the intellectual property, technology, software and systems relating to the entire Logistics Companies' logistics/distribution business across Canada (the "**Transaction**").

25. Pursuant to the Sale Agreement and concurrent with the closing of the Transaction, the Applicants and the Purchaser have entered into a transition services agreement ("**TSA**") pursuant to which the Applicants will continue to provide logistics services to the Purchaser in accordance with the terms and conditions contained therein, including that the Purchaser will fund substantially all of the Applicants costs from and after the effective closing time, being 12:01 a.m. on November 19, 2023.

26. The term of the TSA is 15 months for the Wallace & Carey business in Alberta and British Columbia, and nine months for the Wallace & Carey business east of Alberta. Each transition services period is subject to two 90-day extensions at the option of the Purchaser.

27. On November 17, 2023, the Court granted an Order approving the Applicants entering into the Sale Agreement and TSA and approving the Transaction. The Transaction closed on November 21, 2023.

III. EXTENSION OF STAY PROCEEDINGS

28. The Applicants are seeking an extension of the Stay Period up to and including February 29, 2024. The requested extension of the Stay Period is necessary and appropriate in the circumstances to, among other things:

- (a) continue litigation with Freshslice, including responding to any appeal that may be brought in respect of the Freshslice Order;
- (b) enforce the Freshslice Order, including having it recognized in the Province of British Columbia;
- (c) pursue outstanding accounts receivables;
- (d) work with the Monitor to realize upon and monetize remaining assets, not included in the Transaction for the benefit of all stakeholders; and
- (e) provide services to the Purchaser pursuant to the terms of the TSA, as approved by the Court.

29. The Applicants have been acting and continue to act in good faith and with due diligence. Since the Stay Period was last extended by this Honourable Court on August 23, 2023, the Applicants have been working diligently to, among other things:

- (a) operate the Logistics Companies in the ordinary course, as appropriate in the circumstances of these proceedings;
- (b) wind-down the operations of Loudon Bros;
- (c) conduct the SISF with the assistance of the Financial Advisor and under the oversight of the Monitor;
- (d) work with the Monitor and the Purchaser to negotiate the terms of the Sale Agreement and TSA;
- (e) source goods and services from vendors and suppliers;
- (f) work with Federated Co-operatives Limited to settle outstanding accounts receivables and the delivery of proprietary product;

- (g) report to secured lenders and key stakeholders;
- (h) have ongoing discussions with provincial tobacco tax authorities;
- (i) prepare financial models with the assistance of the Monitor;
- (j) obtain the Freshslice Order;
- (k) pursue accounts receivables collections;
- (l) close the Transaction; and
- (m) manage current operations, leadership and product flow to current customers.

30. The Applicants seek an extension of the Stay Period up to and including February 29, 2024, or such other date as this Court may consider appropriate.

31. The proposed extension of the Stay Period will allow the Applicants to operate in the normal course in order to carry out their obligations under the TSA, as approved and directed by the Court.

32. I understand the Monitor supports the extension of the Stay Period as sought by the Applicants and the Seventh Report will include, among other things, a cash flow forecast demonstrating that, the Applicants will have sufficient funds to continue their operations and fund the CCAA proceeding up to and including February 29, 2024.

IV. CONCLUSION

33. I swear this Affidavit in support of the Application.

SWORN BEFORE me at the City of Calgary,)
 in the Province of Alberta, this 21st day of)
 November, 2023.)
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David Allison

 A Commissioner for Oaths in and for Alberta.

Patrick Carey

 Patrick Carey

David Josiah Allison
 Student-at-Law
 Notary Public & Commissioner for Oaths
 in and for the Province of Alberta