

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</i> <i>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. 6 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. 6 OF PATRICK CAREY

Sworn on November 19, 2024

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 25, 2024 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. Loudon Bros. ceased operations in late 2023 and completed a wind-down in these CCAA proceedings..
4. Wallace & Carey and Loudon Bros (the "**Logistics Companies**") represent the Applicants' logistics business, while CMI is a 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 returnable November 25, 2024, and the relief sought in paragraph 1 of the Application.

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.

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**”). KSV Restructuring Inc. is the monitor in these proceedings (in such capacity, the “**Monitor**”).

B. Circumstances since the ARIO

12. Both prior to and following the ARIO, 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. The Logistics Companies were unable to meet the “fill rate” requirements of certain of their customers during these proceedings, resulting in the loss of many of their major customers.

14. Due to the decreased customer base, the Logistics Companies downsized their business during the CCAA proceedings.

15. This downsizing included the discontinuation of the operations of Loudon Bros, which is completed. On November 3, 2023, the Court approved the sale of Loudon Bros’ real property, which transaction closed on November 17, 2023. That was the final material step in the wind-down of the Loudon Bros business.

16. The Applicants commenced 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: (i) the Applicants' form of SISP; and (ii) the Applicants' engagement of Alvarez & Marsal Canada Securities ULC as financial advisor to conduct the SISP under the oversight of the Monitor.

18. Following the SISP, 7-Eleven Canada, Inc. (the "**Purchaser**") and the Applicants entered into an asset purchase 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 Applicants are continuing to operate in various provinces across Canada, including British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.

19. Pursuant to the Sale Agreement and concurrent with the closing of that transaction, the Applicants, the Monitor, and the Purchaser entered into a transition services agreement ("**TSA**") pursuant to which Wallace & Carey continues to provide logistics services to the Purchaser in accordance with the terms and conditions contained therein. Pursuant to the TSA, the Purchaser is required to fund substantially all of Wallace & Carey's and CMI's costs from and after the effective closing time, being 12:01 a.m. on November 19, 2023. The Purchaser is entitled to the profits generated from Wallace & Carey from and after the closing of the transaction, and is responsible to address any losses suffered by the business.

20. On November 17, 2023, the Court granted an Order approving the Applicants entering into the Sale Agreement and TSA and approving the associated transaction which closed on November 21, 2023.

C. A&M Enterprise Ltd.

21. On November 9, 2023, the Court granted an Order, among other things, requiring A&M Enterprise Ltd. ("**A&M**") to pay \$497,521.26 to Wallace & Carey for paid but undelivered post-filing product, and directing that the Freshslice entities take certain actions, including for its agent to direct franchisees to pay outstanding invoices (the "**Freshslice Order**").

22. In addition to the Freshslice Order, the Court also granted a costs award against A&M (the "**Costs Award**").

23. A&M applied to stay the Freshslice Order while it pursued an application for leave to appeal. On December 12, 2024, the Honourable Justice Sidnell dismissed A&M's application to stay the Freshslice Order and awarded the Applicants \$20,000.00 in costs and the Monitor \$5,000 in costs (the "**Stay Dismissal Order**").

24. A&M did apply for leave to appeal the Freshslice Order, and on January 24, 2024, the Court of Appeal of Alberta denied such application (the "**Court of Appeal Order**"). Pursuant to the Court of Appeal Order, A&M was required to pay costs related to the appeal.

25. The Applicant was required to attend an assessment hearing in respect of the Costs Award and Court of Appeal Order.

26. The assessment officer granted all costs claimed by the Applicants.

27. The Freshslice Order, the Costs Award, the Stay Dismissal Order and the Court of Appeal Order were registered in the Supreme Court of British Columbia for enforcement purposes.

D. Freshslice Group of Companies

28. As at May 2, 2024, Wallace & Carey was owed approximately \$401,000 (the "**Accounts Receivable**") from various franchisees of the Freshslice Group of Companies, which obligations were assumed by the franchisors of the Freshslice Group of Companies consisting of A&M, Freshslice Holdings Ltd. and RF Franchising Inc.

29. On May 27, 2024, Wallace & Carey brought an application to obtain summary judgment against the Freshslice Group of Companies.

30. On June 27, 2024, the Honourable Justice Neufeld awarded Wallace & Carey summary judgment against the Freshslice Group of Companies, jointly and severally, in the amount of \$401,101.43 plus pre-judgment interest in the amount of \$14,431.41 and costs (the "**Freshslice Group of Companies Order**").

31. The Freshslice Group of Companies Order was registered in the Province of British Columbia for enforcement purposes.

32. Pursuant to the Freshslice Group of Companies Order, Wallace & Carey was awarded costs which were to be agreed upon between the parties, failing which, the parties could make submissions to the Court to decide the appropriate costs award.

33. The parties could not agree to costs.

34. On October 23, 2024, counsel for Wallace & Carey, counsel to the Monitor, and counsel for the Freshslice Group of Companies appeared before Justice Neufeld for a costs hearing.

35. On November 18, 2024, Justice Neufeld provided his ruling on costs awarding Wallace & Carey \$36,000 in costs.

36. Wallace & Carey expects it will need to pursue enforcement and collection efforts in respect of the costs.

E. The Supreme Court of British Columbia Enforcement.

37. In order to enforce against the Stay Dismissal Order, the Court of Appeal Order and the Freshslice Group of Companies Order, actions were brought in the Supreme Court of British Columbia.

38. Wallace & Carey brought applications for garnishing orders related to these orders against Coast Capital Savings Federal Credit Union (the "**Garnishee**").

39. Pursuant to the garnishee orders, the following was paid into court by the Garnishee:

- (a) \$25,000 on April 15, 2024 in relation to Stay Dismissal Order;
- (b) \$65,534.24 on May 21, 2024 in relation to Court of Appeal Order (and the corresponding Bill of Costs entered on April 26, 2024); and
- (c) \$415,532.84 on August 15, 2024 in relation to the Freshslice Group of Companies Order.

40. On September 18, 2024, the Supreme Court of British Columbia made orders that the above amounts be paid out of court and in particular that they be paid and delivered to the Monitor.

41. On October 2, 2024, the Monitor confirmed that the amounts paid into Court in British Columbia were released to it.

F. Dakin News Systems Inc. Litigation

42. Wallace & Carey is owed approximately \$754,000 from Dakin News Systems Inc. dba INS News ("**INS News**") pursuant to a supply relationship between the parties.

43. INS News neglected or refused to pay its outstanding accounts payable to Wallace & Carey (the "**INS Dispute**").

44. On May 16, 2024, the Honourable Justice B.B. Johnston granted summary judgment in the amount of \$616,340.56 against INS News, and costs in the amount of \$30,000 to Wallace & Carey, and \$5,000 to the Monitor (the "**INS Order**").

45. The INS Order was not able to be enforced until this Honourable Court heard an application by INS News in relation to an alleged counterclaim, which was to be subject to an "Expedited Litigation Schedule" as that term is defined in the INS Order.

46. INS News failed to bring its application and the INS Order became enforceable.

47. Wallace & Carey has taken enforcement steps in the Province of Alberta against INS News including filing a writ and making a registration in the Alberta Personal Property Registry ("**PPR**").

48. On October 22, 2024, Wallace & Carey obtained an endorsement from the Ontario Superior Court of Justice recognizing the INS Order in the Province of Ontario where INS News has its head office.

49. Wallace & Carey will continue to pursue enforcement steps in Ontario.

G. Megabox Inc. and 0903219 BC Ltd. Litigation

50. Wallace & Carey pre-purchased products from Megabox Inc. ("**Megabox**") and 0903219 BC Ltd. ("**Pizza Club**") pursuant to various purchase orders in the amounts of approximately \$390,000 and \$80,000.

51. These purchase orders are and remain unfulfilled notwithstanding a demand for the return of payment (the "**Unfulfilled POs**").

52. Similar to the A&M, the Freshslice Group and INS News proceedings discussed above, Wallace & Carey intends to seek a return of all money spent on the Unfulfilled POs.

53. Wallace & Carey has scheduled time before the Court on December 3, 2024 to seek return of payment for the Unfulfilled POs.

54. Following any order that may be obtained, Wallace & Carey expects it will then need to take steps to enforce against any such order in British Columbia.

H. 7-Eleven Canada, Inc. Transaction

55. The term of the TSA is fifteen months from the closing date for the Wallace & Carey business west of Alberta (the "**Western Business**"), and nine months from the closing date for the Wallace & Carey business east of Alberta (the "**Eastern Business**"). Each transition services period is subject to two 90-day extensions at the option of the Purchaser.

56. Wallace & Carey remains subject to the TSA until February 21, 2025 for the Western Businesses (subject to two 90-day extensions at the option of the Purchaser). The TSA has been fully extended for the Eastern Business and will be expiring on February 17, 2025.

57. Pursuant to the Sale Agreement, there were certain assets excluded from the transaction (the "**Excluded Assets**").

58. The Monitor's Thirteenth Report filed in connection with these proceedings (the "**Monitor's Report**") will summarize the status of realizations of the Excluded Assets, as that term is defined in the Sale Agreement.

I. Monetization of Assets

59. The Applicants have been diligently working with the Monitor to monetize the assets of the Applicants, including certain shares held by CMI (the "**Subsidiary Shares**").

60. Further, the Applicants have been working with the Monitor to monetize the Excluded Assets as set out above.

61. The Applicants shall continue their assistance with the monetization of all remaining assets.

62. Further particulars of these efforts and the results thereof are provided in the Thirteenth Report.

III. EXTENSION OF STAY PROCEEDINGS

63. The Applicants are seeking an extension of the Stay Period up to and including April 30, 2025. The requested extension of the Stay Period is necessary and appropriate in the circumstances to, among other things:

- (a) enforce the costs award against the Freshslice Group of Companies;
- (a) continue litigation with Megabox and Pizza Club;
- (b) enforce the INS Order against INS News;
- (c) pursue other outstanding amounts and realize upon the remaining Excluded Assets;
- (d) continue to provide services to the Purchaser pursuant to the terms of the TSA, as approved by the Court;
- (e) to provide the Applicants, the Purchaser and the Monitor with time to negotiate and finalize an arrangement to conclude the TSA and these CCAA proceedings; and
- (f) monetize the Subsidiary Shares.

64. 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 May 29, 2024, the Applicants have been working diligently to (in addition to the items specifically listed above), among other things:

- (a) operate Wallace & Carey in the ordinary course, as appropriate in the circumstances of these proceedings;
- (b) prepare financial models with the assistance of the Monitor and the Purchaser;
- (c) continue and pursue litigation for the benefit of all stakeholders;
- (d) pursue collections of accounts receivable and amounts owing from vendors;
- (e) manage current operations and product flow to current customers;

- (f) assist the Monitor with monetizing the Excluded Assets and further existing assets;
and
- (g) provide services to the Purchaser in accordance with the terms of the TSA.

65. The proposed extension of the Stay Period will allow Wallace & Carey to operate in the normal course and carry out their obligations under the TSA, advance the ongoing litigation, continue to assist the Monitor in realizing assets for the benefit of its creditors, and assisting in discussions with the Monitor and the Purchaser to conclude the TSA and these CCAA proceedings.

66. I understand the Purchaser will continue to fund Wallace & Carey and its staff from the transition period.

67. I understand the Monitor supports the extension of the Stay Period as sought by the Applicants and it will file the Monitor's Report, which will include, among other things, a cash flow forecast demonstrating that the Applicants will have sufficient funds to continue their operations for the applicable extended Stay Period.

IV. CONCLUSION

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

SWORN BEFORE me at the City of Calgary,
in the Province of Alberta, this 19th day of
November, 2024.


A COMMISSIONER FOR OATHS IN AND
FOR ALBERTA.

Pavin Takhar
Barrister & Solicitor


PATRICK CAREY