

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.

DOCUMENT **APPLICATION BY A&M ENTERPRISE
LTD.**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT 1610 Ingleton Avenue
Burnaby, British Columbia V5C 5R9
Attention: Vincent Li
Telephone: 604.251.7444

NOTICE TO RESPONDENT(S): Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc.

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

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

Date:

Time:

Where: Calgary Courts Centre, 601 5 St SW, Calgary, Alberta, T2P 5P7

Before Whom: An Honourable Justice of the Court of King's Bench of Alberta,
Commercial List

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, A&M Enterprise Ltd. ("**AME**"), seeks an Order:
 - a. To stay the enforcement of the Order of the Honourable Justice E. J. Sidnell, pronounced November 9, 2023 and filed on November 15, 2023, pending the determination of the appeal of the Order;
 - b. To stay the enforcement of the Order of the Honourable Justice E. J. Sidnell, pronounced November 9, 2023, with respect to costs and any certification thereof by a Review Officer or any further judgment or order therefrom, pending the determination of the appeal of the Order;
 - c. Deeming service of this Application and the materials filed therewith good and sufficient or abridging the time for, or dispensing with, service, if necessary;
 - d. Granting costs of this Application in favour of AME on a solicitor and client basis or such other basis as this Honourable Court deems appropriate; and
 - e. Such further and other remedies as counsel may advise and as this Honourable Court deems just and equitable to grant.

Grounds for making this application:

Overview

2. On October 2, 2023, the Respondents, Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros Limited ("**Loudon Bros**"), and Carey Management Inc. ("**CMI**"), (collectively, the "**WC Companies**") filed an application against AME (the "**Payment Application**").
3. In the Payment Application, the WC Companies sought *inter alia*:
 - a. Payment of \$645,183.71 from AME; and
 - b. An order directing AME to instruct its franchisees to pay any accounts owing to Wallace & Carey, reinstate pre-authorized payment accounts, and purchase products exclusively from Wallace & Carey.
4. The Payment Application was first before the court on September 26, 2023, after which it was adjourned to September 29, 2023, then adjourned to November 9, 2023.
5. On October 2, 2023, AME filed eight response affidavits.
6. On or around October 27, the WC Companies sent unfiled copies of two further affidavits to AME.
7. On November 2, AME filed two affidavits in response.

8. On November 7, 2023, the WC Companies filed Affidavit No. 2 of Jason Spencer and a Bench Brief of Law. These documents were filed after the prescribed deadline.
9. At the outset of the November 9, 2023 hearing, AME sought an adjournment to enable filing of materials in response to Affidavit No. 2 of Jason Spencer and the Bench Brief of Law. An adjournment was not granted.
10. At the conclusion of the November 9, 2023 hearing, the Honourable Justice E. J. Sidnell granted an Order *inter alia* directing:
 - a. AME to pay to Wallace & Carey \$497,521.26; and
 - b. AME to instruct its agent to advise franchisees of the Freshslice group of companies ("**FSGC**") to pay any accounts payable to Wallace & Carey, reinstate pre-authorized payment accounts, and purchase products exclusively from Wallace & Carey(the "**Payment Order**").
11. Justice Sidnell also granted an order for costs in favour of the WC Companies (the "**Costs Order**").
12. Collectively, the Payment Order and Costs Order may herein be referred to as the "**Sidnell Orders**".
13. In accordance with the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, (the "**CCAA**") AME intends to seek leave to appeal the Sidnell Orders. To that end, AME seeks a stay of enforcement of the Sidnell Orders pending adjudication of AME's application for leave to appeal and, if granted, the appeal.

Serious Issue

14. In the case at bar, the Court must determine whether there is a serious issue to be decided by the Court of Appeal of Alberta. This involves a limited review of the proposed appeal on the merits, and the threshold to meet is low.
15. AME's grounds for appeal will be properly particularized in its leave to appeal application. AME's grounds of appeal are neither frivolous, vexatious, nor hopeless. AME has an arguable case, which should properly be put before the Court of Appeal of Alberta.
16. The stay of the Sidnell Orders is necessary to determine the above without further prejudicing AME.

Irreparable Harm

17. AME will suffer irreparable harm if enforcement of the Sidnell Orders is not stayed.
18. Firstly, payment to Wallace & Carey or into trust of the amount granted in the Payment Order would likely result in substantial financial strain for AME. AME has significant

accounts payable becoming due in the near future. AME's profits from its income-producing activities is not substantial. As AME cannot predict its income following the payment of the funds, AME may be in a position where it will be unable to pay its expenses and be driven towards insolvency. Refusing a stay would have the effect of denying AME its right to seek an appeal, which runs in stark contrast to the best interests of justice.

19. Secondly, the funds paid to Wallace & Carey will form a part of its assets. These funds could, and may likely, be used by Wallace & Carey towards the debt owing to high priority creditors, of which AME is not one. If AME is ultimately successful on appeal, Wallace & Carey may no longer be able to return the funds paid to AME as the funds may have already been distributed or otherwise utilized. AME's success on appeal would effectively be rendered nugatory.
20. Thirdly, Wallace & Carey already owes AME close to \$1,000,000. This is \$1,000,000 less that AME has to service its debt. Wallace & Carey's failure to pay to AME the \$1,000,000 owing has already put AME in a very difficult financial position. A further payment in an amount substantial to AME would simply worsen AME's financial wellbeing in the face of a significant outstanding debt.
21. These harms cannot be compensated for by a future costs or damages award.

Balance of Convenience

22. The balance of convenience favours granting a stay of the Sidnell Orders for the following reasons.
23. Staying enforcement of the Sidnell Orders would not unduly prejudice Wallace & Carey. Even if paid by AME, the funds would not result in a material impact for Wallace & Carey. Further, awarding a stay would not be detrimental to the public interest.
24. Staying enforcement of the Sidnell Orders would not delay the overall CCAA proceedings, including the Sale and Investment Solicitation Process.
25. By design, the appeal process under the CCAA already offers enhanced protection for Wallace & Carey through, among other means, an expedited deadline to file for appeal. On the other hand, AME will suffer the irreparable harms described above while already being owed nearly \$1,000,000 by Wallace & Carey.
26. Even if the Honourable Court finds that Wallace & Carey will suffer harm or be prejudiced if a stay is granted, AME will suffer greater harm than Wallace & Carey in the event a stay is not granted. Likewise, AME will suffer the same irreparable harm should it be ordered to pay the funds into trust at no benefit to Wallace & Carey.
27. Wallace & Carey is a juggernaut logistics corporation operating successfully for decades. Its network spans the entire nation. Wallace & Carey likely deals in the multi-millions on a monthly, if not weekly, basis. AME on the other hand is a small business, a mere dough manufacturer operating primarily in British Columbia.
28. It does not accord with the public interest to put AME into a worse financial position while the leave to appeal application and, if granted, the appeal is being adjudicated.

Material or evidence to be relied on:

- 29. Affidavit of Frank Alexander, affirmed November 20, 2023.
- 30. Such further and other materials or evidence as counsel may advise and as the Honourable Court may permit.

Applicable rules:

- 31. *Alberta Rules of Court*, Alta Reg 124/2010, rr. 1.1-1.4, 6.1-6.3, 6.6, 6.9-6.11, 9.1, 9.2, 9.4, 9.6, 9.17, 10.20, 10.29-10.31, 10.33, 11.1, 11.2, 11.4, 11.9, 11.15-11.17, 11.20, 11.21, 14.48, and 14.68.
- 32. Such further and other rules as counsel may advise and as the Honourable Court may permit.

Applicable Acts and regulations:

- 33. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, ss. 9, 10, 11, 13, and 14.
- 34. Such further and other legislation as counsel may advise and as the Honourable Court may permit.

Any irregularity complained of or objection relied on:

- 35. None.

How the application is proposed to be heard or considered:

- 36. On the Commercial List, via WebEx before an Honourable Justice of the Court of King's Bench of Alberta, to be assigned by the Court.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the 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.