

Clerk' Stamp:

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

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
3000, 700 – 9th Avenue SW
Calgary, AB, T2P 3V4

Attention: James W. Reid / Larry Ellis

Phone: 403-298-2418 / 416-595-8639

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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	<u>September 26, 2023, or another date to be set by the Court</u>
Time	<u>To be set by the Court</u>
Where	<u>Calgary Courts Centre (in person and via WebEx)</u>
Before Whom	<u>An Honourable Justice of the Court of King's Bench of Alberta, Commercial List</u>

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 Applicants, 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**”), seek an Order substantially in the form attached as Schedule “**A**”, among other things:
 - (a) abridging the time for service of this Application to the time actually given, if necessary, and deeming service of notice of this Application good and sufficient;
 - (b) requiring that A&M Enterprise Ltd. dba ‘Freshslice Pizza’ (“**Freshslice**”) instruct its franchisees, with a copy to the Monitor, counsel to the Monitor, and counsel to the Applicants, no later than two business days to:
 - (i) pay any accounts payable owing to Wallace & Carey;
 - (ii) reinstate their respective pre-authorized payment accounts with Wallace & Carey; and
 - (iii) purchase products used in the operation of the franchisees’ businesses exclusively from Wallace & Carey consistent with historical practice, unless Wallace & Carey and the Monitor consent in writing otherwise;
 - (c) directing Freshslice pay to Wallace & Carey \$645,183.71 (the “**Unfulfilled Purchase Order Amount**”) within two business days; and
 - (d) granting costs of this application in favour of Wallace & Carey and the Monitor on a solicitor and client, full indemnity basis.

Grounds for making this application:

The ARIO

2. On June 22, 2023, this Court granted an Initial Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), among other things, declaring that the Applicants are companies to which the CCAA applies, granting a stay of proceedings up to and including July 1, 2023, and appointing KSV Restructuring Inc. as monitor (the “**Monitor**”).

3. The Initial Order was amended and restated pursuant to an Amended and Restated Initial Order granted June 30, 2023 (the “**ARIO**”).
4. Pursuant to paragraph 18 of the ARIO, “...no person shall...fail to honour, alter, or interfere with” any contract or agreement with Wallace & Carey, without the written consent of Wallace & Carey and the Monitor, or leave of the Court.

The Supply Agreement and Outstanding Accounts Receivable

5. Pursuant to a cost plus upcharge supply agreement made as of January 1, 2023 (the “**Supply Agreement**”), Wallace & Carey and Freshslice agreed, among other things, that Wallace & Carey would be the exclusive supplier of “Product” (as defined in the Supply Agreement) for Freshslice and that Freshslice would not purchase Product either directly or *indirectly* from any other source.
6. Pursuant to the Supply Agreement, until recently, Freshslice had directed its franchisees to purchase Product exclusively from Wallace & Carey, and Wallace & Carey had been the exclusive supplier for all of the Freshslice franchisee locations across Canada.
7. On Monday, September 18, 2023, in breach of the Supply Agreement and in contravention of the ARIO, Freshslice advised Wallace & Carey that it was splitting its services between Wallace & Carey, and a competitor wholesale provider, Pratts Limited.
8. In addition, Freshslice instructed its British Columbia franchisees to cancel the pre-authorized payment accounts they had with Wallace & Carey, which prevented Wallace & Carey from withdrawing the funds required to satisfy its outstanding and future invoices to the Freshslice franchisees for goods supplied by Wallace & Carey for such franchisees.
9. As a result of Freshslice having directed its franchisees to cease making payments to Wallace & Carey for products that were purchased from and shipped by Wallace & Carey, Wallace & Carey could not withdraw over \$600,000 last week from the Freshslice franchisees, which amount was due and owing to Wallace & Carey. Wallace & Carey will also be unable to withdraw accounts receivable that are coming due and owing this week from these franchisees, which is expected to be an additional amount of approximately \$200,000.
10. The Freshslice franchisees are getting the benefit of the Product it purchased from and had delivered to it by Wallace & Carey without paying for it.

Freshslice's Refusal to Fill Purchase Orders

11. Pursuant to Wallace & Carey's supplier relationship with the Freshslice franchisees, Wallace & Carey is required to purchase certain proprietary products directly from Freshslice, including pizza dough, that Wallace & Carey then sells and delivers to the franchisees.
12. As a result of this arrangement, Freshslice is a supplier of Wallace & Carey and has a pre-filing claim against Wallace & Carey for amounts owing by Wallace & Carey to Freshslice representing products supplied by Freshslice to Wallace & Carey, totalling approximately \$1,000,000.
13. Section 11.01 of the CCAA and paragraph 20 of the ARIO provide that a supplier is not restricted from requiring immediate payment for goods provided, or requiring the further advance of money or credit.
14. Since the ARIO was granted, the majority of the trade creditors that supply Wallace & Carey and Loudon Bros, including Freshslice, have demanded that Wallace & Carey and Loudon Bros prepay for inventory purchases prior to the shipment of any such purchases.
15. In an effort to address the potential risks to Wallace & Carey that pre-paying for product orders would cause, prior to Wallace & Carey agreeing to pre-pay for product, suppliers, including Freshslice, were required to execute an agreement with Wallace & Carey that, among other things: (i) acknowledged and confirmed that title to prepaid goods transfers to Wallace & Carey or Loudon Bros, as applicable, immediately upon payment by Wallace & Carey to the supplier; (ii) the supplier will immediately ship the goods that are pre-paid by Wallace & Carey and Loudon Bros; and (iii) confirmed the suppliers would not set-off any post-filing goods payments against any pre-filing debts owing to the supplier by the Applicants (each, an "**In-Transit Agreement**").
16. Freshslice executed an In-Transit Agreement with Wallace & Carey on July 28, 2023.
17. In breach of the In-Transit Agreement and the ARIO, beginning in late August, Freshslice stopped shipping to Wallace & Carey the products that it has bought and paid for.
18. Further, in breach of the ARIO and the In-Transit Agreement, when Wallace & Carey has attended Freshslice's warehouse to pick-up the product for which Wallace & Carey had paid for, Freshslice has failed or refused to fill Wallace & Carey's purchase orders.

19. After failing to fulfill Wallace & Carey's purchase orders for several weeks, and with Wallace & Carey having learned that Freshslice had directed its franchisees to purchase product from Pratts Limited, on Tuesday, September 19, 2023, Wallace & Carey demanded that Freshslice cancel its outstanding purchase orders and refund the amounts paid by Wallace & Carey to Freshslice for the unfulfilled orders. Freshslice has refused.
20. The In-Transit Agreement requires that Freshslice "as soon as practicable without undue delay proceed with shipping of the goods" for which post-filing goods payments have been made. Further, the In-Transit Agreement requires that Freshslice return any amounts for products that are not delivered, unless Wallace & Carey agrees such amounts can be applied against future purchases. Wallace & Carey has not so agreed.
21. As of the date of filing this Application, Freshslice has refused to fulfill \$519,657.27 in pre-paid purchase orders, and has short supplied a further \$125,526.44 of product for a total of \$645,183.71 owing to Wallace & Carey (the "**Unfulfilled Purchase Order Amount**").
22. Despite several requests from Wallace & Carey and the Monitor, Freshslice has refused to refund the Unfulfilled Purchase Order Amount, and has refused to direct its franchisees to pay their accounts receivable owing to Wallace & Carey.

The Need for Urgent Relief

23. As set out in the Fourth Report of the Monitor dated September 18, 2023, the Applicants are in an extremely challenging liquidity situation.
24. The actions of Freshslice in directing its franchisees to cease making payments that are due and owing to Wallace & Carey, as well as Freshslice refusing to refund the Unfulfilled Purchase Order Amount are materially detrimental to Wallace & Carey. Given the challenges that Wallace & Carey is presently facing, the actions of Freshslice are causing irreparable harm to Wallace & Carey and its stakeholders. As a result, this situation requires immediate remediation by this Honourable Court.
25. The Monitor supports the relief as sought by the Applicants.

Material or evidence to be relied on:

26. Affidavit No. 2 of Eric Rolheiser sworn September 25, 2023, to be filed.
27. Fourth Report of the Monitor dated September 18, 2023, filed.

28. The ARIO, filed.
29. Such further and other materials as counsel may advise and this Honourable court may permit.

Applicable Acts and regulations:

30. *Companies' Creditor Arrangement Act*, RSC 1985, c. C-36.
31. *Alberta Rules of Court*, Alta Reg 124/2010.

Any irregularity complained of or objection relied on:

32. None.

How the application is proposed to be heard or considered:

33. On the Commercial List, via WebEx before an Honourable Justice to be assigned by the Court.

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 Order

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DOCUMENT **ORDER**

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MILLER THOMSON LLP
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Attention: James W. Reid / Larry Ellis

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lellis@millerthomson.com

File No.: 0221652.0006

DATE ON WHICH ORDER WAS PRONOUNCED: ●, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice ●

LOCATION OF HEARING: Calgary Courts Centre via WebEx

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, Affidavit No. 2 of Eric Rolheiser sworn September 25, 2023, and the Fourth Report of KSV Restructuring Inc. in its capacity as Monitor dated September 18, 2023;

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

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the notice of application for this order is hereby abridged and this application is properly returnable today.
2. A&M Enterprise Ltd. dba 'Freshslice Pizza' ("**Freshslice**") is hereby ordered and directed to instruct its franchisees in writing (enclosing a copy of this Order), with a copy to the Monitor, counsel to the Monitor, and counsel to the Applicants, to be sent no later than two business days following the issuance of this Order, to:
 - (a) immediately and no later than three business days following issuance of this Order, pay any accounts payable owing to Wallace & Carey;
 - (b) take all steps to immediately and no later than three business days following issuance of this Order reinstate their respective pre-authorized payment accounts with Wallace & Carey; and
 - (c) subject to further Court Order, from and after the date of this Order, purchase products used in the operation of the franchisees' businesses exclusively from Wallace & Carey consistent with historical practice, unless Wallace & Carey and the Monitor consent in writing otherwise.
3. Freshslice shall pay to Wallace & Carey \$645,183.71 (the "**Unfulfilled Purchase Order Amount**") within two business days following the issuance of this Order.
4. Upon payment of the Unfulfilled Purchase Order Amount, pre-paid purchase orders issued by Wallace & Carey to Freshslice in a corresponding amount are hereby cancelled, with no further obligations owing thereunder by Wallace & Carey.
5. Wallace & Carey and the Monitor are entitled to the costs of this application on a solicitor-client full indemnity basis, payable by Freshslice in the amount of \$30,000.
6. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

7. The Applicants and the Monitor are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
8. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
9. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of King's Bench of Alberta