

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

BRIEF OF LAW

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TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	FACTS	2
	A. Background.....	2
	B. Further Actions Required Under CCAA Protection	3
	i) Freshslice Enforcement.....	3
	ii) Dakin News Systems Inc. Enforcement.....	4
	iii) Megabox Inc. and 0903219 BC Ltd. Litigation	4
	iv) 7-Eleven Canada, Inc. Transaction	5
III.	ISSUE	5
IV.	LAW AND ANALYSIS.....	6
	A. The Stay Period Should be Extended	6
V.	CONCLUSION	7
	TABLE OF AUTHORITIES	9

I. INTRODUCTION

1. 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**”) obtained an initial order on June 22, 2023, which was amended and restated on June 30, 2023 (together, the “**ARIO**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”).¹

2. This Bench Brief is submitted in support of the Application returnable November 25, 2024 (the “**Application**”) for an extension of the Stay Period from November 29, 2024, to April 30, 2025.

3. Capitalized terms used but not otherwise defined shall have the meanings given to such terms in Affidavit No. 6 of Patrick Carey, sworn November 19, 2024 (the “**Carey Affidavit**”).

II. FACTS

4. The facts relevant to the Application are set out in detail in the Carey Affidavit. A summary of the key facts as they relate to the relief requested is set out below.

A. Background

5. 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.²

6. Leading to the ARIO, the Logistics Companies fell into arrears with many of their creditors, and could not meet their obligations to creditors generally as they become due.³

7. Following the granting of the ARIO, the Applicants continued to experience significant liquidity challenges.⁴

8. The Logistics Companies downsized their business, including the discontinuation of Loudon Bros.⁵

¹ The Initial Order and the ARIO can be found on the Monitor’s website: <https://www.ksvadvisory.com/experience/case/wallace-and-carey>.

² Carey Affidavit at para 4.

³ *Ibid* at para 10.

⁴ *Ibid* at para 12.

⁵ *Ibid* at paras 14-15.

9. 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.⁶

10. 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.⁷

11. On November 17, 2023, the Court granted an Order approving the Applicants and the purchaser, 7-Eleven Canada, Inc. (the “**Purchaser**”), entering into the Sale Agreement and TSA and approving the underlying transaction (the “**Transaction**”).⁸ The Transaction closed November 19, 2023.⁹

12. On May 29, 2024, the Court extended the stay of proceedings up to and including November 29, 2024.

B. Further Actions Required Under CCAA Protection

i) Freshslice Enforcement

13. 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**”).¹⁰

14. On October 23, 2024, counsel for Wallace & Carey and counsel for the Freshslice Group of Companies appeared before Justice Neufeld for a costs hearing.¹¹

15. The determination of costs award in favour of Wallace & Carey is still outstanding, but Wallace & Carey expects it will need to pursue enforcement and collection efforts in respect of any awarded costs that may be granted.¹²

⁶ *Ibid* at para 16.

⁷ *Ibid* at para 17.

⁸ *Ibid* at para 19.

⁹ *Ibid*.

¹⁰ *Ibid* at para 31.

¹¹ *Ibid* at para 35.

¹² *Ibid* at para 36..

ii) Dakin News Systems Inc. Enforcement

16. 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.¹³

17. INS News neglected or refused to pay such amount to Wallace & Carey (the “**INS Dispute**”).¹⁴

18. 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**”).¹⁵

19. Wallace & Carey was required to register the INS Order in the Province of Ontario where INS News’ head office is located for enforcement purposes.

20. On October 22, 2024, the Honourable Justice Conway granted an endorsement recognizing the INS Order in the Province of Ontario.¹⁶

21. Wallace & Carey will be taking enforcement steps to collect under the INS Order and requires time for these enforcement steps.¹⁷

iii) Megabox Inc. and 0903219 BC Ltd. Litigation

22. Megabox Inc. (“**Megabox**”) and 0903219 BC Ltd. (“**Pizza Club**”), both supplied to Wallace & Carey, among other goods, pepperoni and pizza boxes which were then delivered to the Freshslice franchisees.¹⁸

23. There are outstanding purchase orders paid by Wallace & Carey to Megabox and Pizza Club which remain unfulfilled notwithstanding demands made by Wallace & Carey and its counsel.¹⁹

¹³ *Ibid* at para 42.

¹⁴ *Ibid* at para 43.

¹⁵ *Ibid* at para 44.

¹⁶ *Ibid* at para 48.

¹⁷ *Ibid* at para 49.

¹⁸ *Ibid* at para 50.

¹⁹ *Ibid* at para 51.

24. Wallace & Carey has scheduled time before the Court on December 3, 2024 to seek return of payment of the unfulfilled purchase orders.²⁰

25. Following any order that may be obtained, Wallace & Carey expects it will then need to enforce against this order in British Columbia to collect judgment.²¹

iv) 7-Eleven Canada, Inc. Transaction

26. The term of the TSA is fifteen months from the closing date for the Wallace & Carey business in Alberta and British Columbia (the “**Western Canada Business**”), and nine months from the closing date for the Wallace & Carey business east of Alberta (the “**Eastern Canada Business**”). Each transition services period is subject to two 90-day extensions at the option of the Purchaser.²²

27. Wallace & Carey remains subject to the TSA until February 2025.²³

28. Wallace & Carey continues to perform its obligations to the Purchase under the TSA for the remaining time under the TSA.

29. Pursuant to the Sale Agreement, there were certain assets excluded from the transaction (the “**Excluded Assets**”).²⁴

30. The Thirteenth Report of the Monitor filed in connection with this application, among other things (the “**Monitor’s Report**”), summarizes the status of the realization of the Excluded Assets, as that term is defined in the Sale Agreement.

31. The Applicants continue to monetize the remaining assets, including the Excluded Assets with the assistance of the Monitor.

III. ISSUE

32. The issue to be addressed before this Honourable Court is whether the Stay Period should be extended from November 29, 2024, up to and including April 30, 2025.

²⁰ *Ibid* at para 53.

²¹ *Ibid* at para 54.

²² *Ibid* at para 55.

²³ *Ibid* at para 56.

²⁴ *Ibid* at para 57.

IV. LAW AND ANALYSIS

A. The Stay Period Should be Extended

33. The current stay of proceedings expires on November 29, 2024. The Applicants seek an extension of the Stay Period up to and including April 30, 2025.

34. A court may grant an extension of the stay of proceedings where the court is satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the debtor has acted, and is continuing to act, in good faith and with due diligence.²⁵

35. The Applicants have been acting 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 among other things:

- (a) operate Wallace & Carey in the ordinary course and in accordance with the TSA;
- (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 accounts receivables collections;
- (e) manage current operations and product flow to current customers;
- (f) monetize the Excluded Assets and further existing assets of the Applicants; and
- (g) provide services to the Purchaser in accordance with the terms of the TSA.²⁶

36. The Applicants are projected to have sufficient liquidity to fund operations and the costs of these proceedings, as the Purchaser is required to fund all of Wallace & Carey's operational costs incurred from the date of the closing of the Transaction.

37. The Applicants are seeking an extension of the Stay Period up to and including April 30, 2025. This extension is largely premised on the need to ensure Wallace & Carey has sufficient time to, among other things:

²⁵ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") at ss. 11.02(2) and (3) [TAB 1]; see also *Re Federal Gypsum Co*, 2007 NSSC 347 at para 16 [TAB 2].

²⁶ Carey Affidavit, supra note 1 at para 62.

- (a) enforce any outstanding orders and costs awards against the Freshslice Group of Companies;
 - (a) continue litigation with Megabox and Pizza Club;
 - (b) enforce the summary judgment order against INS News;
 - (c) pursue other outstanding accounts receivables and realize upon the Excluded Assets;
 - (d) continue to provide services to the Purchaser pursuant to the terms of the TSA; and
 - (e) assist an affiliate of the Purchaser with the transition of the Logistics Companies.²⁷
38. The Monitor is supportive of the proposed extension of the Stay Period.
39. The Applicants and Monitor are not aware of any party objecting to the stay extension.

V. CONCLUSION

40. Based on the foregoing, the Applicants request that this Honourable Court grant the Orders in the form proposed in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19th DAY OF NOVEMBER 2024.

MILLER THOMSON LLP

Per:



Pavin Takhar / James W. Reid
Counsel for the Applicants,
Wallace & Carey Inc., Loudon
Bros Limited, and Carey
Management Inc.

²⁷ *Ibid* at para 61.

TABLE OF AUTHORITIES

TAB NO.	AUTHORITY
1	<i>Companies' Creditors Arrangement Act</i> , RSC 1985, C C-36 (Excerpts)
2	<i>Re Federal Gypsum Co</i> , 2007 NSSAC 347