

COURT FILE NUMBER

2301 – 08305

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

**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

**FIFTH REPORT OF THE MONITOR DATED OCTOBER 30,
2023**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) issued by the Court of King’s Bench of Alberta (the “**Court**”) on June 22, 2023 (the “**Filing Date**”), Wallace & Carey Inc. (“**Wallace & Carey**”), Loudon Bros Limited (“**Loudon**” and with Wallace & Carey, the “**Logistics Companies**”) and Carey Management Inc. (“**CMI**”, and together with the Logistics Companies, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. (“**KSV**”) was appointed monitor of the Applicants (the “**Monitor**”).
2. KSV is filing this report (the “**Report**”) as Monitor.

2.0 Background

1. CMI is an Alberta corporation and the sole shareholder of Wallace & Carey, which is the sole shareholder of Loudon. In addition to Wallace & Carey, CMI has ownership interests in several additional subsidiaries, none of which are relevant to this Report.
2. Wallace & Carey is an Alberta corporation that is extra-provincially registered to conduct business in most provinces and territories in Canada.
3. Loudon, located in Thunder Bay, Ontario, is an Ontario corporation which until recently operated as the Logistics Companies’ Northwestern Ontario branch. Earlier in these proceedings, the Applicants commenced a process to discontinue and wind-down Loudon’s operations, as part of its effort to consolidate its operations. As of the date of this Report, the wind-down has been substantially completed. In connection with Loudon’s wind-down, Loudon retained Royal LePage Lannon Realty (“**Royal LePage**”) to list its Real Property (as defined below) for sale (the “**Sale Process**”), which Sale Process is discussed in further detail below and is the primary focus of this Report.
4. Wallace & Carey is continuing to carry on active business operations. As of the date of this Report, CMI and Wallace & Carey are working on a transaction that is intended to see the majority of the Wallace & Carey business and operations continue to operate, as well as the sale of certain other assets owned by CMI. CMI and Wallace & Carey intend to seek Court approval of the transaction as soon as possible in November 2023.

5. CIBC provides CMI with a revolving asset-based loan and term loan facility, which is guaranteed by the other Applicants, as well as various other entities within the Carey corporate group (the “**CIBC Facility**”). Pursuant to the terms of a Forbearance Agreement dated June 22, 2023 between CIBC and the Applicants (the “**Forbearance Agreement**”), all amounts owing to CIBC as of the Filing Date under the revolving portion of the CIBC Facility (being approximately \$38.5 million) have been repaid through accounts receivables collections, and all amounts advanced by CIBC since that time are secured by the Lender Priority Charge (as defined below). As of the date of this Report, the amount owing under the CIBC Facility was approximately \$33 million.
6. KSV’s pre-filing report dated June 22, 2023 and its First Report provide additional background information about these proceedings. Those reports, and all other Monitor’s reports that pre-date this Report, are collectively referred to herein as the “**Previous Reports**”. Court materials filed in these proceedings, including this Report and all affidavits sworn by the Applicants’ representatives in these proceedings, are available on the Monitor’s case website at www.ksvadvisory.com/experience/case/wallace-and-carey.

2.1 Court-Ordered Charges

1. On June 30, 2023, the Court issued an Amended and Restated Initial Order (the “ARIO”) which established the present amounts of the Court-ordered charges (the “**CCAA Charges**”), which CCAA Charges are set out below in their amounts and priorities:
 - i. first, a charge in the amount of \$750,000 in favour of the Applicants’ legal counsel (Miller Thomson LLP), the Monitor, and the Monitor’s legal counsel (Cassels Brock & Blackwell LLP), to secure the fees and disbursements of those firms (the “**Administration Charge**”);
 - ii. second, a charge in the amount of \$55 million plus interest, fees and expenses for all post-filing advances (the “**Lender Priority Charge**”) made by CIBC under the existing CIBC Credit Agreement (as defined in the Initial Order), as amended pursuant to the terms of the Forbearance Agreement;
 - iii. third, a charge in the amount of \$4 million in favour of the directors and officers of the Applicants;

- iv. fourth, the Encumbrances¹ existing as of the date of the ARIO in favour of the Lender securing the pre-filing obligations owing under the CIBC Credit Agreement² including, for greater certainty, obligations in connection with the BCAP Loan³; and
- v. fifth, a charge in the amount of \$25 million in favour of provincial and territorial authorities for amounts required to be remitted by the Logistics Companies under the *Tobacco Tax Act*, RSA 2000, c. T-4 or under any other applicable provincial legislation or laws.

2.2 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information and a high-level update regarding these CCAA proceedings;
 - b) summarize the Sale Process for Loudon’s real property located at 830A Athabasca Street, Thunder Bay (the “**Real Property**”);
 - c) summarize a proposed transaction (the “**Transaction**”) between Loudon and Karimi Holdings Ltd. (the “**Purchaser**”) for the sale of the Real Property pursuant to an agreement of purchase and sale dated October 23, 2023 (the “**APS**”); and
 - d) recommend that the Court issue an approval and vesting order (the “**AVO**”):
 - i. approving the APS and the Transaction;
 - ii. transferring and vesting all of Loudon’s right, title and interest in and to the Real Property in the Purchaser, free and clear of all liens, charges, security interests and encumbrances, other than the Permitted Encumbrances (as set out in the APS), following closing of the Transaction;
 - iii. authorizing and directing, as more fully detailed below, the Monitor, on behalf of Loudon, to make distributions to CIBC to reduce the obligations of the Applicants under the Lender’s Priority Charge; and

¹ As defined in paragraph 45 of the ARIO.

² As defined in paragraph 36 of the ARIO.

³ As defined in the CIBC Credit Agreement, affixed as Exhibit “J” to Birnie Affidavit No. 1.

- iv. approving this Report; and
- e) recommend that this Court issue an order sealing, until the Transaction closes, Confidential Exhibit “1” to the Affidavit of Patrick Carey, sworn October 27, 2023 (the “**Carey Affidavit**”), containing a summary of offers received for the Real Property.

2.3 Scope and Terms of Reference

1. In preparing this Report, the Monitor has relied upon the Applicants’ unaudited financial information, books and records and discussions with the Applicants’ management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2.4 Currency

1. All references to currency in this Report are to Canadian dollars.

3.0 Sale Process

1. A summary of the Sale Process is as follows:
 - a) According to the Carey Affidavit, Royal LePage was retained on September 11, 2023. Royal LePage commenced its marketing process on September 20, 2023;
 - b) the Real Property was listed for sale on the Multiple Listing Service with an original listing price of \$2 million;
 - c) Royal LePage carried out an email marketing campaign;
 - d) Royal LePage directly solicited parties that it believed would have a high degree of interest in the Real Property, in conjunction with Cushman & Wakefield Winnipeg and Calgary as co-brokers;
 - e) interested parties were provided the opportunity to tour the Real Property;

- f) three offers were received for the Real Property by October 11, 2023, including the offer from the Purchaser;
- g) the highest offer received was conditional on additional due diligence and financing, while the Purchaser's offer was for a lesser amount but was unconditional. A third offer was also received, but for an amount less than the other two offers⁴;
- h) in consultation with the Applicants, Mr. Carey and the Monitor, Royal LePage requested that the highest bidder and the Purchaser submit further offers. The Purchaser's second offer was the highest and best offer received, in the opinion of the Applicants and the Monitor.

4.0 Transaction

1. A summary of the Transaction as set out in the APS (which is attached as Exhibit "A" to the Carey Affidavit) is as follows:
 - **Purchased Assets**: the Real Property, including any chattels and fixtures thereto as detailed in the original offer submitted by the Purchaser.
 - **Purchase Price**: \$1.4 million, payable to the Monitor, subject to customary real estate adjustments, including unpaid real property taxes.
 - **Deposit**: \$50,000, which has been paid.
 - **Excluded Liabilities**: All liabilities, other than the Permitted Encumbrances.
 - **Representations and Warranties**: Consistent with the standard terms of an insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.
 - **Closing Date**: the later of ten days following the AVO and November 17, 2023.
 - **Material Conditions**: none, other than Court approval.

⁴ A confidential summary of the offers is also appended to the Carey Affidavit.

5.0 Distributions

1. Pursuant to the APS, the sale proceeds from the Transaction are to be paid to the Monitor. As detailed below, the Monitor is recommending that the sale proceeds, net of any amounts owing to Royal LePage and customary real estate adjustments (the “**Net Sale Proceeds**”), be paid by the Monitor to CIBC forthwith following closing to partially reduce the obligations owing by the Applicants to CIBC which are secured by Lender Priority Charge.
2. In advance of these proceedings, and in order for the Monitor to seek approval of the Lender Priority Charge under the Initial Order, the Monitor requested that its counsel, Cassels, Brock & Blackwell LLP (“**Cassels**”) provide an opinion on CIBC’s security. Cassels provided the Receiver with an opinion that, subject to the standard assumptions and qualifications contained therein, CIBC has valid and enforceable security over the Applicants’ property, assets and undertaking, including the Real Property.
3. Only the Administration Charge ranks in priority to the Lender Priority Charge. The Monitor, Cassels and the Applicants’ counsel have been paid current in respect of their fees to-date, and the Applicants’ remaining property is sufficient to cover the full amount of the Administration Charge. The Monitor and its counsel, and the Applicants’ counsel, do not require a holdback from the sale of the Real Property in respect of their fees and costs. Accordingly, subject to the issuance of the AVO on the terms currently proposed by the Applicants, the Monitor intends to distribute forthwith the Net Sale Proceeds to CIBC.

6.0 Conclusion and Recommendation

1. The Monitor recommends the Court issue the proposed AVO approving the Transaction and authorizing and directing the Monitor to pay the Net Sale Proceeds to CIBC for the following reasons:
 - a) the Sale Process by Royal LePage was commercially reasonable and conducted in accordance with the procedures typically used to market real property;
 - b) Royal LePage has significant experience selling real estate, including in the Thunder Bay market;
 - c) Royal LePage canvassed the market for prospective purchasers;

- d) in Royal LePage's opinion, it is unlikely that exposing the Real Property to the market for additional time will result in a materially superior transaction;
 - e) Royal LePage and the Monitor are of the view that the Transaction provides for the greatest available recovery for the benefit of the Applicants' stakeholders;
 - f) the Purchaser has paid a non-refundable deposit and the Transaction is unconditional, except for Court approval;
 - g) Loudon supports the Transaction and CIBC consents to the Transaction;
 - h) payment of the Net Sales Proceeds to CIBC would reduce the amount owed to CIBC as secured by the Lender Priority Charge; and
 - i) as at the date of this Report, the Monitor is not aware of any objections to the relief being sought pursuant to the proposed AVO.
2. The Applicants are also seeking a Sealing Order, sealing on the Court file Confidential Exhibit 1 to the Carey Affidavit, which contains a summary of offers received on the Real Property. The availability of this information to other parties may negatively impact any future sale process if the Transaction does not close. In the Monitor's view, sealing this information is necessary to maximize recoveries in these proceedings and to maintain the integrity and confidentiality of key information in the Sale Process. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Monitor is of the view that the Sealing Order is appropriate in the circumstances, satisfies the test from *Sherman Estate v. Donovan* 2021 SCC 25, and that no stakeholders will be prejudiced if the information is sealed.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.
KSV RESTRUCTURING INC.,
in its capacity as monitor of
Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc.
and not in its personal capacity