

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

Nº: 500-11-057570-190

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

9348069 CANADA INC.

-and-

4295862 CANADA INC.

-and-

MOTOVAN CORPORATION

(collectively hereafter referred to as "**MTV**")

Petitioners

-and-

MONCY HOLDING COMPANY INC.

-and-

**MONCY FINANCIAL SERVICES COMPANY
INC.**

-and-

NICHOLS MOTORCYCLE SUPPLY INC.

-and-

MONCY LLC

-and-

MOTORCYCLE TIRES & ACCESSORIES LLC;

Mises en cause

(Petitioners and the Mises en cause are



- 2 -

collectively hereafter referred to as the « **CCAA
Parties** »)

-and-

BANK OF MONTREAL

-and-

INVESTISSEMENT QUÉBEC

-and-

EXPORT DEVELOPMENT CANADA

-and-

BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

**PETITIONERS' MOTION (I) FOR AN ORDER
EXTENDING THE STAY PERIOD, (II) TO AMEND THE INITIAL ORDER
AND (III) FOR THE ISSUANCE OF A DISTRIBUTION ORDER**

(Section 11 and ff. of the Companies' Creditors Arrangement Act)

**TO THE HONOURABLE JUSTICE MARIE-ANNE PAQUETTE, J.S.C. SITTING IN
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE CCAA
PARTIES RESPECTFULLY SUBMIT THE FOLLOWING:**

I. INTRODUCTION

1. On December 2, 2019, the Honourable Justice Marie-Anne Paquette, J.S.C., issued an initial order (the “**Initial Order**”¹) commencing these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in respect of the CCAA Parties, as appears from the Court record;
2. Pursuant to the Initial Order, the Court:
 - a) Declared that the CCAA Parties are debtor companies to whom the CCAA applies, or companies entitled to benefit from the protection arising from the Initial Order;
 - b) Ordered a stay of proceedings in favour of the CCAA Parties and their respective directors and officers and other general CCAA relief pursuant to, inter alia, sections 11, 11.02 and 11.03 thereof for an initial period of ten (10) days, i.e. until on or about **December 12, 2019** (hereinafter the “**Initial Period**”); and
 - c) Authorized the CCAA Parties to continue their operations in order to preserve their assets and make payments in the normal course of business;
 - d) Appointed KPMG Inc. (“**KPMG**”) (Dev A. Coossa, PAIR, SI) as Monitor pursuant to Section 11 of the CCAA;
 - e) Granted an Administration Charge to secure the Petitioners’ obligations towards its legal advisors (BCF LLP), the Monitor (KPMG) and the Monitor’s legal advisors (Norton Rose Fulbright Canada LLP);
 - f) Granted a D&O Charge to secure the Petitioners’ obligations towards its directors and officers in respect of potential liabilities that could arise after the Initial Order has been issued, but only to the extent that such potential liability is not covered by existing insurance policies;
 - g) Authorized Petitioners to file at a later date a plan of arrangement with their creditors pursuant to the CCAA (the “**Plan**”);

¹ Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Initial Order.

- h) Authorized various measures required in order to facilitate the proposed restructuring; and
 - i) Declared that the Petitioners may at all times address this Court in order to seek any other measures necessary in order to carry out the restructuring process;
3. On December 12, 2019, the Honourable Marie-Anne Paquette, j.s.c. issued an Amended and Restated Initial Order pursuant to which the Court:
- a) Extended the Stay Period in respect of the CCAA Parties until January 31, 2020;
 - b) Amended the Initial Order to increase the amount of the Administration Charge from \$335,000.00 to \$500,000.00;
 - c) Approved the SISP proposed by the CCAA Parties;
4. On January 31, 2020, the Honourable Marie-Anne Paquette, j.s.c., issued an order pursuant to which the Court extended the Stay Period in respect of the CCAA Parties until May 15, 2020, in order notably to:
- a) Allow for the continuation of the liquidation process undertaken in the U.S. by Gordon Brothers;
 - b) Finalize the SISP process and the sale of MTV's assets in Canada;
5. On February 19, 2020, the Honourable Marie-Anne Paquette, j.s.c. issued an Approval and Vesting Order pursuant to which the Court notably approved the sale of Motovan Corporation's assets and of certain assets of Motorcycle Tires & Accessories LLC (Motovan Corporation and Motorcycle Tires & Accessories LLC being collectively referred to as the "**Vendor**") and ordered the remittance of the sale proceeds to the Monitor (the "**Vesting Order**");

II. ORDERS SOUGHT

6. The CCAA Parties hereby seek (i) an extension of the Stay Period until November 16, 2020, and (ii) the amendment of the Amended and Restated Initial Order in respect of the CCAA Parties and (iii) the issuance of a distribution order, for the reasons more fully explained hereafter, but notably to:
- a) Maximize the collection proceeds in the U.S.;
 - b) Request and collect overpaid customs duties paid by MTV (the "**Duties**");

- c) Amend the Initial Order to provide powers to the Monitor with respect to:
 - i. Collecting the Duties;
 - ii. Filing a motion for final decree in the Chapter 15 Proceedings, upon receiving instructions to that effect from BMO;
- d) Distribute the sale proceeds currently held by the Monitor following the execution of the transaction pertaining to Vendor's assets;

III. CHAPTER 15 PROCEEDINGS UPDATE

- 7. On December 12, 2019, Motorcycle Tires & Accessories LLC ("**MTA**") entered into an agreement with Gordon Brothers with respect to the liquidation of its U.S. inventory. The Agency Agreement is attached as Appendix D to the Monitor's report communicated herewith as **Exhibit R-2** (the "**Monitor's Report**");
- 8. On December 20th, 2019, the CCAA Parties sought provisional relief under Chapter 15 of the *Bankruptcy Code* for the recognition of the present proceedings by the U.S. Court;
- 9. On January 23, 2020, the CCAA Parties obtained final relief under Chapter 15 of the *Bankruptcy Code* for recognition of the present proceedings by the U.S. Court;
- 10. Initially, the liquidation process of MTA was to continue until at least April 2020 with the help of Gordon Brothers;
- 11. However, since March, the Covid-19 pandemic has significantly hampered these efforts, as the collection proceeds are nearing 0 at the present time, a situation which was unforeseen prior the worldwide pandemic occurring;
- 12. The current situation must improve before funds can be collected at a satisfactory and sufficient level, which is why the CCAA Parties hereby request an extension of the Stay Period of six (6) months in order to proceed with such and allow sufficient time for the actual adverse effects of the pandemic to gradually subside;
- 13. The CCAA Parties anticipate that they may be in a better position to evaluate the likelihood and timeline of the potential collections in light of the state of the American economic and health situation within the next three (3) months;
- 14. The CCAA Parties submit that the extension is needed in order to maximize the collection proceeds in the U.S.;

IV. SISP UPDATE

15. Since the implementation of the SISP, on or about December 10, 2019, the CCAA Parties and KPMG CF carried out the process in accordance with the milestones approved by this Court;
16. The sole remaining step to be undertaken is the distribution of the sale proceeds currently held by the Monitor, as more detailed below;

V. EXTENSION OF THE STAY PERIOD

17. The CCAA Parties are seeking an extension of the Stay Period until November 16, 2020 for the following reasons:
 - a) MTA requires additional time to complete its liquidation process, as approved by the U.S. Court, and to maximize collection proceeds in the U.S., as explained hereabove;
 - b) MTV requires additional time to collect the Duties, which it estimates could reasonably be collected during the extension period proposed herein, as more detailed below;
 - c) The extension of the Stay Period is necessary in order for the Monitor to have sufficient time to present a motion for final decree and end the Chapter 15 proceedings with the US court;
 - d) As a result of the support of their operational lender, BMO, the CCAA Parties have sufficient liquidity to continue their current operations on a going concern basis during the extended Stay Period;

the whole as appears from the Monitor's Report, **Exhibit R-2**;

VI. POTENTIAL COLLECTION OF THE DUTIES

18. On or around April 20, 2020, the Monitor was informed of a potential receivable pertaining to MTV, in the form of overpaid Canadian customs duties;
19. In effect, and following a favourable ruling by the Canadian International Trade Tribunal rendered on June 3, 2019, it appears MTV has over the years overpaid a significant amount of customs duties on certain products, namely motocross helmets, as it namely appears from a copy of the CITT order, communicated herewith as **Exhibit R-3**;
20. However, it appears that MTV has not at this time completed the process to claim the Duties which was initiated before the present proceedings;

21. The Monitor and the CCAA Parties are informed that significant work must still be performed by a customs broker in order to resume this process and produce the claim before the relevant authorities, which would take approximately one (1) month;
22. In addition, it is foreseeable that an approximate period of four (4) months would be needed to receive payment of the Duties from the CBSA;
23. While subtracting the potential fees to be owed to the customs broker, it is likely that the amount to be collected will be substantial;

VII. AMENDMENT TO THE AMENDED AND RESTATED INITIAL ORDER

24. The CCAA Parties submit that certain amendments are desirable in order to provide the Monitor with super-monitor powers, the whole in accordance with the draft *Re-amended and Restated Initial Order* communicated herewith as **Exhibit R-4**, in order to:
 - a) Coordinate the collection of the Duties;
 - b) Provide instructions to the Foreign Representative in the Chapter 15 Proceedings to file a final decree in due course;
25. The CCAA Parties respectfully submit that the Monitor should notably be allowed to enter into an agreement and act as the contact person with the customs broker in order to coordinate the recovery of the Duties, and that the necessary orders should be issued in order to provide the Monitor with the powers to seek and obtain access from CBSA the relevant information in that regard and to provide instructions to CBSA on behalf of the CCAA Parties with respect to the payment of such Duties;
26. The CCAA Parties also consent that the Monitor be empowered to file the motion for final decree in due course and at the appropriate time, pursuant to instructions received from BMO;

VIII. ISSUANCE OF A DISTRIBUTION ORDER

27. The Vesting Order notably provides for the following:

"PROCEEDS"

[15] **ORDERS** that the proceeds from the sale of the Purchased Assets (the "**Proceeds**") shall be remitted to the Monitor and shall be distributed in accordance with applicable legislation.

[16] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.”

28. Following the transaction which was approved by the Vesting Order, the Proceeds which amounted to \$6,900,000 were duly remitted to the Monitor and accumulated \$5,000 of interests as of the date hereof, as stated notably in the Monitor’s report;
29. In the course of the CCAA Parties’ restructuring, the Monitor proceeded, at the direction of CCAA Parties and BMO, to issue the following payments from the Proceeds:

- a) Payment of certain obligations of the CCAA Parties towards employees not assumed by the purchaser with respect to the GCBI Revised Offer (as defined in the Third Report of the Monitor in the present matter);
- b) A payment to cover for insufficient funds in Motovan’s bank account with BMO;

the whole resulting in an approximate amount of \$6,790,000 as of the date hereof, to be distributed as Proceeds by the Monitor, as appears from the Monitor’s Report (**Exhibit R-2**);

30. Moreover, there are currently unpaid professional fees owed in the present file and covered by the Administration Charge (as this term is defined in the Amended and Restated Initial Order), which amount to \$410,000 approximately (including GST/QST) for the work done until the beginning of April 2020 (collectively, the “**Professional Fees**”), and a provision of \$109,000 is reasonable to provide for the remaining professional fees in the present matter;
31. At this time, and as provided for in the Vesting Order, the Monitor considers appropriate to undertake the distribution of the Proceeds held by the Monitor for the following reasons:
- a) The Monitor has obtained an independent security review from its counsels confirming the validity and the opposability of the security interest granted by the CCAA Parties to BMO over its assets;
 - b) The payment of the unpaid Professional Fees is secured by the first ranking Administration Charge;

- c) There is currently no claim known to the Monitor which payment would be covered by the D&O Charge (as this term is defined in the Amended and Restated Initial Order);
 - d) Although there has been no claim process in the present matter as it was not appropriate to do so in the absence of equity for the unsecured creditors, the BMO secured indebtedness pursuant to the CCAA Parties' line of credit is substantially higher (approximately \$12,000,000) than the amount of the Proceeds (\$6,790,000 before the payment of the Professional Fees and the amount of the \$109,000 provision mentioned above) and of any future realization in this matter;
 - e) Since the issuance of the Vesting Order in February 2020, the Monitor has not been contacted by any creditor alleging a claim in priority to BMO or the Administration Charge, and is not aware of the existence of such claims as of the date hereof;
 - f) It is appropriate in this context to distribute the Proceeds and prevent additional interests being incurred with respect to the BMO indebtedness;
32. In the absence of a formal claim process, the CCAA Parties respectfully request that a Distribution Order, in the form of **Exhibit R-5**, be issued in order to allow the Monitor to distribute the Proceeds in accordance notably with the provisions of the Vesting Order, the Initial Order and of the CCAA;
33. In accordance with the draft Distribution Order (**Exhibit R-5**), in abundance of caution, all secured creditor as well as the tax authorities will be notified with the present motion, and the draft Distribution Order provides for a comeback clause allowing such creditors, should they want to contest the Distribution Order once issued, to do so within a certain delay prior to the effective distribution;

IX. CONCLUSION

34. The CCAA Parties will continue their restructuring efforts with a view to preserve and maximize the value of their assets;
35. Since the issuance of the Initial Order, the CCAA Parties have acted, and continue to act, in good faith and with due diligence;
36. The Monitor supports the present Motion;
37. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

DECLARE that sufficient prior notice of the presentation of the Motion has been given to interested parties;

ISSUE an order substantially in the form of the draft Order (**Exhibit R-1**) communicated in support hereof;

ISSUE a *Re-amended and Restated Initial Order* in the form of the draft Order (**Exhibit R-4**) communicated in support hereof;

ISSUE a *Distribution Order* in the form of the draft Order (**Exhibit R-5**) communicated in support hereof;

THE WHOLE without costs, save and except in case of contestation.

Montreal, May 11, 2020

BCF LLP

BCF LLP

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SOLEMN DECLARATION

I, the undersigned, **JAMES PALADINO**, businessman, residing and domiciled at 690, Des Châtaigniers, in the City of Boucherville, District of Longueuil, Province of Quebec, J4B 8S2, solemnly affirm the following:

- 1- I am director of the Petitioners in the present case;
- 2- All of the facts contained in the *Petitioners' Motion (i) for an Order extending the Stay Period, (ii) to amend the Initial Order and (iii) for the Issuance of a Distribution Order* dated May 11, 2020, are true to my knowledge.

AND I HAVE SIGNED



JAMES PALADINO

SOLEMNLY DECLARED before me
By technological means,
in Marieville, Province of Québec,
this 11th day of May, 2020.



Commissioner of Oaths for Québec



NOTICE OF PRESENTATION

TO: **The Honourable Marie-Anne Paquette**
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TAKE NOTICE that the present *Petitioners' Motion (i) for an Order extending the Stay Period, (ii) to amend the Initial Order and (iii) for the Issuance of a Distribution Order* will be presented, by videoconference, before one of the honourable judges of the Superior Court sitting in commercial division and for the district of Montreal, on **Friday May 15, 2020, at 9:15 a.m. (Montreal time)**.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, May 11, 2020

BCF LLP

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Attorneys for the CCAA Parties

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-and-

KPMG INC.

Monitor

LIST OF EXHIBITS

EXHIBIT R-1: Draft Order;

EXHIBIT R-2: Monitor's Report;

- EXHIBIT R-3:** CITT Order;
- EXHIBIT R-4:** Draft *Re-amended and Restated Initial Order*;
- EXHIBIT R-5:** Draft *Distribution Order*.

Montreal, May 11, 2020

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ORIGINAL	
Me Bertrand Giroux	Our file: 8350-318
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