

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NELSON FINANCIAL GROUP LTD.

Applicant

AMENDED NOTICE OF MOTION
OF REPRESENTATIVE COUNSEL FOR NOTEHOLDERS
(Motion returnable November 22 , 2010)

DOUGLAS TURNER, Q.C., in his capacity as the Representative Counsel for the holders of promissory notes issued by the Applicant (the "Representative Counsel") appointed by this Court, will make a motion before a judge of the Ontario Superior Court of Justice sitting on the Commercial List on November 22, 2010 at 9:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An order that this motion is properly returnable at that time and dispensing with further service thereof;

- (b) An order approving arrangements entered into November 12 2010 between the Monitor, Representative Counsel, and Marc Boutet, to, *inter alia*, effect a change of the incumbent management of the Applicant, including the appointment of Sherry Townsend as the Interim Operations Officer of the Applicant, the release of certain claims that the Applicant may have against Marc Boutet or Stephanie Lockman Sobol, and the interim employment terms applicable to Stephanie Lockman Sobol under the direction of the Interim Operations Officer;_
- (c) An order appointing Ms. Sherry Townsend as the Interim Operations Officer of the Applicant to exercise all powers and authority as the chief executive officer and to be the sole signing officer on all bank accounts of the Applicant, under the supervision of the Monitor and on and subject to the remuneration, reporting and other terms and conditions of the draft order to be filed;
- (d) An order extending to the Interim Operations Officer the protections provided by the Initial Order made in this proceeding by this Honourable Court on March 23, 2010 (the “Initial Order”), including the indemnity of the Applicant under paragraph 19 of the Initial Order, the Directors’ Charge and the Administration Charge of that order;
- (e) An order, effective upon the appointment of the Interim Operations Officer, amending the Initial Order to increase the amount of the Directors’ Charge to \$1,000,000, for the benefit of the Interim Operations Officer only, under both paragraphs 20 and 31 of the Initial Order;

- (f) An order to amend that the functions and responsibilities of the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. appointed under the Order of this Honourable Court made on June 15, 2010 (the “Representative Counsel Order”) to provide that such shall include the following:
- (i) To take such steps, as he may be requested to take by any Noteholder and that he may determine in his professional judgment to be prudent and reasonable, for the preservation and protection of the rights of Noteholders generally in respect of their investment in and claims against the Applicant, including the prosecution of such proceedings including preference, fraudulent conveyance, derivative or oppression actions as the Representative Counsel may determine to be necessary to preserve, protect or enforce any such rights;
 - (ii) In consultation with representative Noteholders as he may determine, the Monitor and the Interim Operations Officer, to develop with any persons willing to invest capital or management skills in the Applicant or otherwise to sponsor any restructuring plan, transactions for the restructuring or refinancing of the Applicant or its business and assets to be implemented by way of a plan or plans of compromise and arrangement in ~~it~~ to be proposed by the Applicant or by one or more creditors respect of the Applicant or its assets and undertaking for the purpose of maximizing the recovery of the unsecured creditors of the Applicant;
 - (iii) To cooperate with and provide information to regulatory authorities and law enforcement officials in a manner that he determines to be consistent

with the best interests of the Noteholders and consistent with his duties of an officer of this Court;

- (iv) To inform and cooperate with the Monitor in respect to such functions and the taking of any such actions and proceedings and, subject to further order of this Court, to coordinate all such with the Monitor to ensure that such are conducted by the most appropriate party and without duplication of costs to the estate; and
- (v) To report to this Court on such activities from time to time as required by this Court and in conjunction with the Monitor;
- (g) To amend paragraph 6 of the Representative Counsel Order to read as follows:

“THIS COURT ORDERS that the remuneration and disbursements of the Representative Counsel, including professional fees and disbursements of the special counsel retained by the Representative Counsel, shall be submitted to the Monitor for review as to their reasonableness and consistency with the intent of the mandate conferred upon the Representative Counsel by this order as amended by subsequent orders of this Court and such remuneration and disbursements, as approved by the Monitor, shall be paid forthwith by the Applicant and further that the proper remuneration and disbursements of the Representative Counsel and his special counsel outstanding from time to time shall have the benefit of the Administration Charge established under the Initial Order made March 23, 2010.”;

- (h) To amend the Initial Order by adding powers and authorities to those of the Monitor to provide for the following:
 - (i) If the Monitor determines such to be necessary for the protection of the business, assets or undertaking of the Applicant, to take possession and

control as a receiver and manager of all or any part of you the business, assets and undertaking of the Applicant;

- (ii) To supervise, cooperate with and complement the work of the Interim Operations Officer and the Representative Counsel in the development of plans for the restructuring and refinancing of the business, assets and undertaking of the Applicant and the development and negotiation of transactions to implement such plans with a view to the maximization of recoveries for the unsecured creditors;
- (iii) To have full continuing access to all transactions in the bank accounts, payments and receipts of the Applicant while such shall be controlled and operated by the Interim Operations Officer;
- (iv) To provide full access, on the execution of confidentiality agreements satisfactory to the Monitor and its counsel, for the coordination and provision of opportunities for prospective investors or plan sponsors to conduct due diligence investigations with respect to any such restructuring opportunities as the Monitor, the Interim Operations Officer and the Representative Counsel shall determine may be beneficial to the interests of the unsecured creditors;
- (v) To provide that the Monitor is excused from filing reports as a receiver pursuant to Part XI of the *Bankruptcy and Insolvency Act* and that reports to be filed by the Monitor with this Court shall include the subject matter that would otherwise be included in any such reports pursuant to Part XI;

(vi) Such further and other amendments to be included in a draft order to be filed prior to the hearing of this Motion as this Honourable Court may approve; ~~and~~,

(i) an Order approving the fees and disbursements of the Representative Counsel and of its special counsel as set out in their respective fee affidavits filed with this Honourable Court; and

(j) Such further and other relief as the Representative Counsel may request and this Honourable Court determine to be just and equitable.

THE GROUNDS FOR THE MOTION ARE:

(a) The Representative Counsel was appointed by the Order of Madam Justice Pepall made on June 15, 2010 (the “Representative Counsel Order”) to represent the interests of all persons who, as at March 23, 2010, held promissory notes issued by the Applicant (the “Noteholders”) for the purpose of advising the Noteholders in respect of any plan of compromise or arrangement in this CCAA proceeding;

(b) Since his appointment, the Representative Counsel and taken steps to inform himself as to the business, assets and undertaking of the Applicant, the future prospects for such business and the competence and capability of its management and, further, has consulted with representative Noteholders to ascertain their circumstances, opinions, preferences and wishes with respect to their interests as unsecured creditors of the Applicant;

(c) With the assistance and cooperation of the Monitor, the Representative Counsel has convened a meeting of Noteholders at which the Noteholders were provided

by the Monitor with an outline of terms and conditions for a restructuring as contemplated by incumbent management of the Applicant;

- (d) The Representative Counsel has been advised that Noteholders with material interests and constituting over two thirds of the aggregate unsecured creditor claims have determined that they do not have confidence in the ability of incumbent management of the Applicant to implement and to perform under such proposed restructuring of the business of the Applicant, that they will not support a plan of arrangement involving the continuing control and management of the Applicant by such incumbent management and that they wished incumbent management to be changed;
- (e) Under the claims process as conducted by the Monitor in accordance with the Claims Procedure Order made by this Honourable Court on July 27, 2010, it has been established that the proven claims of Noteholders amount to \$36,764,199 and that such Noteholder claims constitute over 99 percent of the class of unsecured creditors of the Applicant;
- (f) The several viability reports and liquidation analyses made by the Monitor and reported to this Court show that there is no reasonable possibility of any arrangement under which the present value of any recovery for the unsecured creditors will approach the aggregate of their claims and, consequently, the only persons with a continuing economic interest in the Applicant, its business, its assets or its undertaking are the unsecured creditors, the overwhelming majority of whom are the Noteholders; The Applicant has failed to achieve the levels of new loan advances projected in its cash flow projections filed in this proceeding

and, as reported by the Monitor in the Eighth Report dated September 28, 2010, is materially falling short on its profit plan due to the shorter term of the consumer debt that it is currently placing;

- (g) The business of the Applicant has deteriorated materially under its incumbent management from the financial performance projected in support of the application for the Initial Order of March 23, 2010;
- (h) The sole director, president and sole holder of voting shares of the Applicant, Marc Boutet, has agreed with the Representative Counsel and the Monitor to resign as a director, officer and employee of the Applicant and to surrender for cancellation all of his shares in and claims against the Applicant all on the terms of the Heads of Agreement dated November 12, 2010 and subject to the approval of this Honourable Court;
- (i) The Representative Counsel, with the assistance of the Monitor, negotiated the terms of the Heads of Agreement with counsel for the Applicant and Mac Boutet and both the Representative Counsel and the Monitor are satisfied that its terms are, in the present circumstances of the Applicant, reasonable and in the best interest of all stakeholders of the Applicant, including the unsecured creditors;
- (j) The Representative Counsel and the Monitor recommend that this Honourable Court approve the Heads of Agreement, authorize the Applicant to enter the agreements and grant the releases provided for in the Heads of Agreement and appoint the Interim Operations Officer all on and subject to the terms of the draft order filed;

- (k) Sherry Townsend is a Noteholder with an allowed claim as a creditor of the Applicant of \$892,000.00 and a distinguished business career as the founder and chief executive officer of Promotional Print and Packaging Inc., an enterprise with over 45 staff and sales in excess of \$7 million CAD. She has served since June 2010 as a member of the advisory committee of Noteholders established by the Representative Counsel to assist him in his functions and is completely familiar with the business of the Applicant and the possibilities known to or located by the Representative Counsel for the restructuring of the Applicant or its assets and undertaking. Sherry Townsend is highly qualified to act as an interim chief executive of the Applicant, to preserve its assets and to stabilize its operations and she is willing to act as the Interim Operations Officer of the Applicant as an officer to be appointed by this Honourable Court;

- (l) The Representative Counsel has located and conducted discussions with third parties who are already engaged in various aspects of consumer lending and finance and who have expressed interest in acquiring the Applicant in conjunction with and by way of joint venture arrangements with the unsecured creditors in a manner that could produce an advantageous workout to maximize the future recovery of the unsecured creditors. The Representative Counsel has been advised by a number of Noteholders with material claims that they wish such possibilities to be developed with a view to negotiating a possible transaction most beneficial to the unsecured creditors. The Representative Counsel has been advised by other Noteholders with material claims they wish they want the Representative Counsel to explore the possibility of restructuring and refinancing the Applicant under the

ownership of the unsecured creditors and members of his advisory committee have developed business plans for such an alternative restructuring plan;

- (m) It is just and equitable that the scope of the mandate and responsibilities of the Representative Counsel and the provisions respecting payment of his fees and disbursements as set out in the Representative Counsel Order should be amended to approve and authorize the steps that he has taken and to permit him as this restructuring moves forward to take a more active role, in conjunction with the Interim Operations Officer and the Monitor, in the negotiation of transactions for the restructuring of the Applicant or its business, assets and undertaking with any available third parties and the implementation of such by way of a plan of arrangement to be proposed by the Applicant or by one or more unsecured creditors;
- (n) It is just and equitable that the powers of the Monitor should be expanded to permit it to supervise, control and otherwise preserve and protect the business, assets and undertaking of the Applicant and specifically to include powers to act, if the Monitor should determine that such is necessary, as a receiver and manager and, if such should occur, to take possession of the business, assets and undertaking of the Applicant or any part or parts thereof;_
- (o) The Representative Counsel and his special counsel have filed affidavits in respect of their fees and disbursements for the period from their respective appointment by this Honourable Court to October 21, 2010 and such fee affidavits, together with the First Report and the Second Report of the

Representative Counsel, detail the work done by them; and the utility of such to the interests of the Noteholders

- (p) *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and particularly s.101;
- (q) *Rules of Civil Procedure*, Rules 1.04(1) and 41;
- (r) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, ss. 4, 5.1(2), 11, 11.7, 23(1) and 23(1)(k);
- (s) Such further and other grounds as counsel may advise and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Initial Order made by Madame Justice Pepall on March 23, 2010;
- (b) The Representative Counsel Order made by Madame Justice Pepall on June 15, 2010;
- (c) The Third Report of the Monitor dated June 11, 2010;
- (d) The Eighth Report of the Monitor dated September 28, 2010;
- (e) The Ninth Report of the Monitor to be filed;
- (f) The First Report of the Representative Counsel dated November 3, 2010; _
- (g) The Second Report of the Representative Counsel dated November 15, 2010; _

- (h) [The fee affidavit of Douglas Turner Q.C. sworn November 16, 2010;](#)
- (i) [The fee affidavit of Richard B. Jones sworn November 17, 2010;](#) and
- (j) Such further and other material as counsel may advise and this Honourable Court may permit, including any subsequent reports by Representative Counsel.

November 12, 2010

**Douglas Turner Q.C. as Representative
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Special Counsel for the Representative
Counsel for the Noteholders

TO: **THIS HONOURABLE COURT**

AND TO: **THE ATTACHED SERVICE LIST**

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Court File No. 10-8630-00CL

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COURT OF
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(COMMERCIAL LIST)**

**NOTICE OF
MOTION OF**

**REPRESENTATIVE
COUNSEL
FOR**

NOTEHOLDERS

(Motion
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