CITATION: PCAS Patient Care Automation Services Inc. (Re), 2012 ONSC 2022
COURT FILE NO.: CV-12-9656-00CL
DATE: 20120413

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PCAS PATIENT CARE AUTOMATION SERVICES INC. AND 2163279 ONTARIO INC., Applicants

BEFORE: MORAWETZ J.

COUNSEL: Sam Babe and Ian Aversa, for the Applicants

John MacDonald, for PriceWaterhouseCoopers Inc., Proposed Monitor,

Derrick Bulas, for CastCan Investments

John Campbell, for ForStar Group

HEARD &
ENDORSED: March 23, 2012
REASONS: APRIL 13, 2012

ENDORSEMENT

[1] PCAS Patient Care Automation Services Inc. ("PCAS") and 2163279 Ontario Inc. ("TouchPoint" and, together with PCAS, the "Applicants") applied for protection under the *Companies' Creditors Arrangement Act* ("CCAA"). The relief sought by the Applicants on the initial hearing included a stay of proceedings, the appointment of PricewaterhouseCoopers Inc. ("PWC") as monitor ("Monitor"), a Debtor-in-Financing Facility ("DIP Facility") with 2310714 Ontario Inc. (the "DIP Lender") in the principal amount of $2,800,000; a priority charge for the DIP Facility (the "DIP Charge") over the property of the Applicants (the "Property"); a priority charge over the Property in the principal amount of $500,000 to secure the fees and disbursements of counsel to the Applicants, the Monitor and counsel to the Monitor (the "Administration Charge"); and a priority charge over the Property in the principal amount of $1,500,000 in order to protect the Applicants, directors and officers from potential liabilities (the "D&O Charge").

[2] The Applicants are technology companies in the pre-revenue stage of development and have run out of start-up capital. The most likely scenario in this proceeding is a going concern sale with respect to certain assets. However, counsel to the Applicants submits that there is also the possibility that there could be a restructuring of the Applicants' business. Counsel submits that protection under the CCAA will allow for a sale of assets under the supervision of the court for the benefit of all stakeholders and also allow for the prospect of a restructuring.

[3] PCAS is a corporation incorporated pursuant to the *Canada Business Corporations Act* under the name "PCAS Physician Clinic Automation Services Inc.". Articles of amendment were subsequently filed to change the name of the corporate entity to its current name.

[4] PCAS is a health-care technology company that has developed an automated pharmacy dispensing platform. PCAS's principal technology and product is the PharmaTrust MedCentre TM ("MedCentre") which is described as a pharmacist-controlled, customer-interactive, prescription dispensing system akin to a "pharmacy in a box" or prescription-dispensing ATM. Each MedCentre sells for approximately $130,000, and then the purchaser's licensed use of the technology generates an income stream for PCAS.

[5] PCAS's second technology and product is the PharmaTrust MedHomeTM ("MedHome"), a personal in-home device that dispenses unit doses to patients at pre-set times and provides patient monitoring and reminders to ensure patient health and safety.

[6] TouchPoint was incorporated pursuant to the *Business Corporations Act (Ontario)* as "PCAS Newco Pharmacy Inc.". Articles of amendment were subsequently filed to change the name of the corporate entity to "Direct Care Pharmacy Inc.". Further articles of amendment were filed to change the name to "Touchpoint Pharmacy Inc." and, finally, articles of amendment were filed to change the name to the current numbered company name.

[7] Counsel to the Applicants advises that under Ontario law, no corporation incorporated after 1954 can own or operate a pharmacy unless the corporation is majority-owned by pharmacists. TouchPoint is therefore 49% owned by PCAS and 51% owned by three pharmacists employed by PCAS. PCAS does, however, under the TouchPoint shareholders' agreement, hold veto power over any changes to the board and over most other board level decisions other than those relating to safety. PCAS also has a "call right" which the Applicants contend effectively means the three pharmacists hold their shares at PCAS's leisure.

[8] PCAS presently employs 191 full-time employees, 15 part-time employees and five contract employees in Canada as well as 2 employees in the United States and one contractor in the United Kingdom.

[9] The Applicants' primary operations are conducted in Oakville, Ontario.

[10] In the two weeks leading up to the application, PCAS has reduced its salaried employee headcount from 274 to 193 and reduced its contractors from 96 to 5. PCAS acknowledges that it has run out of cash and, without immediate funding, is not in the position to fund payroll.

[11] The Applicants are also in arrears to their communications and wireless providers.

[12] PCAS's liabilities total approximately $8.36 million and TouchPoint's liabilities total approximately $6.8 million (approximately $6.5 million of which are liabilities to PCAS).

[13] PCAS currently has approximately $3 million worth of manufactured MedCentres ready for sale, but will not sell them unless it has the financing necessary to maintain operations required to support MedCentres.

[14] Royal Bank of Canada ("RBC") is a secured creditor of PCAS. TouchPoint has guaranteed all of the obligations of PCAS to RBC up to the maximum principal amount of $3.8 million.

[15] The total indebtedness of PCAS to RBC outstanding is approximately $866,800.

[16] Kohl and Frisch Limited ("KFL") is a major drug supplier to TouchPoint. PCAS made an inventory purchase money security agreement dated February 26, 2008 in favour of KFL, registration of which was made pursuant to the *Personal Property Security Act* ("PPSA").

[17] The Applicants and Castcan Investments Inc. ("Castcan") entered into a factoring agreement (the "Castcan Factoring Agreement") pursuant to which Castcan purchased certain tax credits and all refunds in respect thereof. The Applicants have certain repurchase obligations under the Castcan Factoring Agreement, which obligations are secured and duly registered under the PPSA.

[18] PCAS also has certain equipment leases with IBM Canada Limited ("IBM").

[19] The Applicants have declared themselves to be insolvent and are unable to raise additional equity financing in time to cover pending payroll and other critical payables.

[20] The Applicants take the position that, in order to ensure the best possible recovery for their stakeholders, a restructuring and/or a sale of its business is required.

[21] I am satisfied that the Applicants are "debtor companies" to which the CCAA applies. The total claims against the Applicants exceeds $5 million.

[22] In addition, I also consider the companies to be affiliated companies. As described above, TouchPoint is 49% owned by PCAS and 51% owned by three pharmacists employed by PCAS. However, in view of the shareholders' agreement and the call right, in these particular circumstances, I am satisfied that the Applicants should be considered affiliated debtor companies with total claims against them in excess of $5 million who qualify for protection under the CCAA.

[23] The Applicants contend that they require a stay of proceedings in order to allow them to maintain operations while giving them the necessary time to consult with their stakeholders regarding the future of their business operations. I accept this submission and I am satisfied that it is appropriate in these circumstances to grant the stay of proceedings under the CCAA.

[24] The Applicants also seek an Administration Charge in the amount of $500,000 as security for the fees and disbursements incurred in connection with services rendered to the Applicants

both before and after commencement of the CCAA proceedings by the Applicants' legal counsel, the Monitor and Monitor's counsel.

[25] The jurisdiction to grant the Administration Charge is provided for in s. 11.52 of the CCAA.

[26] The secured creditors affected by the proposed Administration Charge have been notified. There are no objections with respect to the proposed Administration Charge, which I consider to be appropriate in the circumstances and is granted.

[27] The Applicants have also requested a DIP Charge in the maximum principal amount of $2.8 million.

[28] The jurisdiction to grant the DIP Charge and provide it with the requested priority is set out in s. 11.2 of the CCAA.

[29] The courts have stressed the importance of meeting the criteria set out in subsection 11.2(1) of the CCAA being:

(a) the DIP Charge does not purport to prime any secured party who has not received notice of this application;

(b) the amount to be advanced under the DIP Facility is appropriate and required, having regard to the debtor's cash flow statements; and

(c) the charge does not secure an obligation that existed before the order was made.

[30] In this case, the financing will be used to provide time for the management of the Applicants, with their advisors and in consultation with the Monitor, to formulate a plan to restructure the business and/or effect a going concern sale.

[31] Counsel to the Applicants has advised that the DIP Charge does not secure obligations to the DIP Lender that existed before the order being sought today.

[32] Section 11.2(4) of the CCAA sets out a number of factors to be considered by the court in determining if it is appropriate to grant a DIP Charge.

[33] The factum submitted by counsel to the Applicants at paragraph 60 outlines subsection 11.2(4) of the CCAA which sets out a number of factors to be considered by the court in determining if it is appropriate to grant a DIP Charge.

[34] The relevant factors in this case are summarized at paragraph 61 of the factum and have been considered by me. In particular, secured creditors affected by the proposed DIP Charge have been notified. In the circumstances, I have been satisfied that it is appropriate to approve the DIP Facility and to grant the DIP Charge.

[35] With respect to the D&O Charge, the Applicants are seeking a charge in the amount of $1,500,000 in order to protect their directors and officers from certain potential liabilities.

[36] Counsel to the Applicants advised that the directors have indicated that their involvement on an on-going basis is conditional upon the granting of an order under the CCAA which grants a charge.

[37] Section 11.51 of the CCAA provides the court with the statutory jurisdiction to grant the D&O Charge. It is also noted that the proposed Monitor supports the granting of the D&O Charge in the amount requested. It is also noted that the D&O Charge does not purport to prime any secured party who has not received notice of this application.

[38] Having considered the record, I am satisfied that the D&O Charge is reasonable in the circumstances, conforms with the requirements and restrictions of s. 11.51 of the CCAA and should be granted.

[39] In the result, an order shall issue substantially in the form of the Draft Initial Order attached to the Applicants' application record.

MORAWETZ J.

Date: April 13, 2012