

CITATION: PCAS Patient Care Automation Services Inc. (Re), 2012 ONSC 2423
COURT FILE NO.: CV-12-9656-00CL
DATE: 20120420

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: 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 PCAS Patient Care Automation Services Inc. and 2163279 Ontario Inc., Applicants

BEFORE: D. M. Brown J.

COUNSEL: S. Babe and I. Aversa, for the Applicants

M. Wasserman, for the Monitor, Pricewaterhouse Coopers Inc.

R. Thornton, for 2320714 Ontario Inc., the DIP Lender

D. Bulas, for Castcan Investments

S. Nassabi, for Royal Bank of Canada

HEARD: April 20, 2012

REASONS FOR DECISION

I. Request for extension of CCAA stay of proceeding and increase in DIP Lending Facility

[1] PCAS Patient Care Automation Services Inc. and 2163279 Ontario Inc. apply under the *Companies' Creditors Arrangement Act* for an extension of the Stay Period, an increase in the DIP Facility, a variation of the key employee retention plan approved earlier this week, authorization to use savings created by employee attrition to increase the salaries of certain essential, non-management employees who are not participating in the KERP, and a sealing order.

II. Events to date

[2] In his Reasons dated April 13, 2012 supporting the Initial Order granted on March 23, 2012 (2012 ONSC 2022), Morawetz J. observed that the Applicants are technology companies in the pre-revenue stage of development which have run out of start-up capital. PCAS is a health-care technology company that has developed an automated pharmacy dispensing platform, the

PharmaTrust MedCentre TM, a pharmacist-controlled, customer-interactive, prescription dispensing system akin to a “pharmacy in a box” or prescription-dispensing ATM. PCAS’s second technology and product is the PharmaTrust MedHomeTM, 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.

[3] In his Initial Order Morawetz J. authorized the applicants to borrow under a credit facility from 2320714 Ontario Inc., a special-purpose vehicle created to secure financing from PCAS shareholders and other investors, up to a maximum of \$2.8 million, and he also granted a DIP Lender’s Charge and settled its priority.

[4] Earlier this week the applicants came before me seeking an increase in the DIP Lending Facility to \$10 million and the approval of a KERP. The applicants stated that without additional financing they would not be able to meet the mid-week payroll. On April 16, 2012 I made the following endorsement:

PCAS applies for (1) an increase in its DIP facility to \$10M, (2) approval of a KERP plan (3) approval of allocation of payroll savings to increase the salaries of non-KERP employees and (4) extension of the stay.

The Monitor was not able to serve its Report until last night. As per the description in the endorsement of Morawetz J. released April 13/13, this company is in a pre-revenue start-up phase. It has exhausted the approved DIP Facility. It needs more money to meet payroll on Wed, Apr. 18. There is no doubt it is working hard and in good faith to find more DIP financing. Given the need for more interim financing, the applicants have not been able to focus on either a marketing plan or a restructuring plan.

The evidence discloses that by the middle of this week the applicants will have a much better understanding of the further availability of interim financing. Accordingly, I think it best to wait until week’s end to consider the applicants’ larger request to increase the DIP Facility to \$10M. Today I am prepared to consider their need for an increase to get through this week.

As to the request to increase the DIP Facility by \$1M on the amended DIP terms set out in the materials, the evidence supports approval of such an increase pursuant to CCAA 11.2. The affected secured creditors have been given notice. Neither RBC nor Castcan oppose. The applicants need the increase to meet payroll and they are working in good faith towards a viable plan or sale. It is clear that without the amended DIP terms the additional \$1M will not be forthcoming. Although the precise cost of the additional financing cannot be ascertained at this time due to conversion rights, there is no doubt that this will be expensive financing, but the only financing available at this time. The Monitor supports the financing. Having taken into account the factors set out in CCAA 11.2(4), I approve the increase in the DIP Facility by \$1M on the amended terms proposed.

As to the proposed KERP, the applicants have set out the guiding principles in paras. 38 to 43 of its Factum, including those in the *Grant Forest Products* case. I have considered

the evidence in light of those principles. It is clear that for this start-up company to have a realistic chance of making a proposal for a plan or a sale, it must retain the services of identified employees. I have reviewed the confidential schedule in the Monitor's Report. The Monitor supports the proposed KERP plan. I conclude that the proposed plan is both necessary and reasonable and I approve it. The Confidential KERP Schedule shall remain sealed: *Sierra Club*.

The applicants shall return before me this Friday, April 20, with any necessary additional evidence to seek approval of (1) increase in DIP Facility to \$10M, (2) allocation of payroll savings to certain non-KERP employees to increase their base salary and (3) a further extension of the stay.

Order to go in accordance with draft filed which I have signed.

III. Further evidence

[5] The applicants filed an affidavit from Mr. Donald Waugh, the Deputy Chair of PCAS, which explained the companies' further efforts to secure more interim financing from shareholders and others, as well as the progress which PCAS has made in fulfilling certain conditions required to enter into a long-term supply contract with a national pharmacy chain in the United States. Briefly put, intense efforts to solicit more DIP financing from the applicants' shareholders have resulted in commitments which would enable an increase in the DIP Lending Facility from \$3.8 million to \$4.37 million. Mr. Waugh helpfully included in his affidavit copies of the various communications the applicants have made to its shareholders over the past few weeks seeking more financing which explained the terms, and then the amended terms, of the DIP Lending Facility.

[6] PCAS reported significant progress in fulfilling the conditions necessary to secure a long-term supply contract with the U.S. chain, and the evidence disclosed that the applicants will know within the next week or two whether such a contract can be secured. It was also apparent from the evidence that a number of potential investors in the applicants are awaiting the results of those contract negotiations before committing any funds.

[7] The Monitor recommended approval of the applicants' request for an increase in the DIP Facility. The Monitor also supported the applicants' request for an extension of the stay of proceedings until May 4, 2012. In its Second Report dated April 19, 2012 the Monitor reported:

[A]s per the April 19 Revised Forecast, the Company is forecasted to have sufficient liquidity to allow it to operate in its current state to May 4, 2012. Assuming the finalization of the third-party technology assessment is completed by no later than April 23, 2012, the company has advised that the Potential Customer should be in a position to execute the contract not later than the week ending May 4, 2012. Furthermore, the Company expects that additional DIP financing and a support transaction for an investment in or acquisition of the business will be far more likely if the contract with the Potential Customer is executed. Accordingly, the Company will need to raise the additional DIP financing prior to the expiry of the proposed extension of the stay of

proceedings in order to be able to engage with the potential investors/financiers on a more stable footing to raise the capital required to implement a SISP.

The Monitor has advised the Company and counsel to the DIP Lender that the Monitor may not be in a position to continue to support a further extension of the stay of proceedings unless: (a) funds are committed by May 4, 2012 that are sufficient to provide the Company with the liquidity needed to negotiate and enter into a support transaction that is capable of being implemented through a SISP or to implement a SIS; or (b) the company has sufficient liquidity and there exists additional information or facts which enable the Monitor to support such an extension. The Monitor will report to the Court with respect to any further request for a stay extension.

IV. Request for an extension of the stay of proceedings

[8] In its Second Report the Monitor expressed the view that the applicants have acted, and are acting, in good faith and with due diligence. I agree that the evidence supports such a conclusion: *CCAA*, s. 11.03(b). The applicants obviously have been working very hard to bring to fruition the opportunity for a long-term contract with the Potential Customer and, at the same time, tirelessly working to raise interim financing to continue the operations of the company in order to preserve that opportunity. As noted, the Monitor filed an April 19 Revised Forecast and reported that the Company was forecasted to have sufficient liquidity to allow it to operate in its current state to May 4, 2012. I therefore had no hesitation in the circumstances in granting the requested extension of the stay of proceedings until May 4, 2012.

V. Request for an increase in the DIP Lending Facility

[9] Pursuant to the Initial Order the DIP Lender's Charge ranked in priority to all other interests "with the exception of valid, enforceable and perfected Encumbrances existing as at the date of filing". The proposed increase in the amount of the DIP Lending Facility will not affect those priorities. The two general secured creditors, RBC and Castcan, do not oppose the increase in the DIP Lending Facility. In the circumstances disclosed in the evidence an increase in the DIP Lending Facility is necessary in order to continue the operations of the applicants. Taking into account the factors set out in *CCAA* s. 11.2(4), I approve the increase in the DIP Lending Facility to \$4.37 million.

VI. Employee-related issues

[10] I amended the order approving the KERP to remove one employee who, through inadvertence, initially had been included in the plan. I also approved the applicants' plan to apply savings created by employee attrition to the salaries of certain remaining key, non-management employees who are not participants in the KERP. The amount of the re-allocation was minor, only \$15,000 on an annual basis. When balanced against the need to retain the employees, the amount is reasonable.

[11] Confidential Appendices "C" and "D" to the Second Report disclosed personal employee information relating to the KERP and the salary re-allocation. I granted an order sealing those Confidential Appendices since the criteria of *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 had been met.

V. Conclusion

[12] For these reasons I granted the order which I signed earlier today. The next return date of this matter will be before me on May 3, 2012 commencing at 8:30 a.m.

(original signed by)

D. M. Brown J.

Date: April 20, 2012