

CITATION: PCAS Patient Care Automation Services Inc. (Re), 2012 ONSC 2778
COURT FILE NO.: CV-12-9656-00CL
DATE: 201200508

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 and A. Shepherd, for 2320714 Ontario Inc., the DIP Lender

D. Bulas, for Castcan Investments

K. Kallish, for Royal Bank of Canada

HEARD: May 7, 2012

REASONS FOR DECISION

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

[1] PCAS Patient Care Automation Services Inc. and 2163279 Ontario Inc. move under the *Companies' Creditors Arrangement Act* for an extension of the Stay Period and an increase in the DIP Facility. Yesterday I granted and signed the order sought. These are my reasons for so doing.

II. Events since May 5, 2012

[2] The history of this matter is set out my Reasons of April 20, 2012 (2012 ONSC 2423) and May 5, 2012 (2012 ONSC 2714).

[3] The applicants report that the conditional commitment from a strategic financier for an additional \$3,000,000 in funding for the DIP Facility did not proceed. However, that financier has made available an additional \$500,000 in DIP financing. Combined with additional

commitments of \$325,000, the applicants seek approval of an increase in the DIP Facility to \$5,350,000.

[4] The applicants are enacting significant cost reductions, primarily by reducing their payroll from 98 employees to 42. Mr. Loreto Grimaldi, the Chief Legal Officer of the applicants, deposed that the increased DIP Facility, when coupled with the enacted cost reductions, should provide the applicants with sufficient funding to continue operating until May 28, 2012. The applicants filed a revised 15-week cash flow which showed positive available cash until the end of May, 2012.

[5] The applicants seek approval of amendments to the DIP Loan Agreement, specifically (i) to revise the conversion privileges feature to \$0.275 cents per share, down from the current \$0.38 cents per share, and (ii) to increase the Refinancing Success Fee from 5% to 10%. The upper cap of the maximum allowable rate of interest under the *Criminal Code* would continue. These changes would apply retroactively to include all parties who have contributed DIP funding to date. The Refinancing Success Fee would be payable at the completion of a transaction.

[6] The applicants also sought to increase the DIP Facility by an additional \$650,000 to account for accrued and unpaid fees of the President to the DIP Lender and counsel to the DIP Lender, as well as an estimate for additional fees for those parties to May 28, 2012. Mr. George Swan, the President of the DIP Lender, 2320714 Ontario Inc., filed a letter explaining the work performed to date by the DIP Lender and the reason for the request.

[7] The applicants are proposing to return to court next Monday, May 14, 2012, to seek approval of a sale and investor solicitation process (“SISP”). While the proposed SISP will not be as fulsome as initially planned, the applicants believe that a process run over a three week period offers the best, and likely the only, means to preserve their business as a going concern. The applicants therefore seek an extension of the Stay Period until, and including, May 28, 2012, so that they can run the SISP.

III. Request for an extension of the stay of proceedings

[8] In its Fourth 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 Monitor further reported:

Subject to this Court providing an Order increasing the limit on the DIP Facility..., the Company should have sufficient liquidity to continue to fund its operations during the extension of the Stay Period...

An extension of the Stay Period is necessary to provide the Company and the Monitor with the time to commence and implement an expedited SISP. Termination of the stay of proceedings against the Applicants would likely lead to the Company making an assignment in bankruptcy which would have a significant adverse effect on stakeholders.

The Monitor believes that, based on the information currently available and the additional funds provided to the DIP Lender and to the Company, an extension of the Stay Period is appropriate having regard to the circumstances. The Monitor is aware of the Company’s

liquidity difficulties and is working closely on a daily basis with the Company to monitor its cash flows.

[9] The events of the past two weeks have disclosed that the prospect for concluding an immediate definitive long-term contract with the Potential Customer is low given the applicants' current financial condition, and significant, multi-million dollar additional DIP financing is not available. The evidence discloses that a short SISP really is the only available option to secure the continued operation of the applicants. An extension of the Stay Period is necessary to pursue that option. Given those circumstances, I was satisfied that an extension of the Stay Period until May 28, 2012 should be granted pursuant to CCAA s. 11.01(2) and (3).

IV. Request for an increase in the DIP Lending Facility

[10] 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. The evidence disclosed that an increase in the DIP Lending Facility is necessary in order to continue the operations of the applicants.

[11] However, the proposed increase contained two components: (i) additional cash of \$825,000, and (ii) the inclusion of \$650,000 in accrued fees as part of the DIP Lending Facility. The Monitor recommended approval of both increases, but noted in respect of the inclusion of accrued fees:

The Monitor has not reviewed or approved any fees and expenses incurred by the DIP Lender. The Monitor has been advised by the DIP Lender that the Monitor and the Company will be provided with copies of relevant invoices detailing the fees and expenses of the DIP Lender prior to any distributions being made to or any credit bid made by the DIP Lender.

[12] The DIP Lending Agreement contemplated reimbursement of the fees of the DIP Lender on the "Maturity Date". We have not reached the Maturity Date. Moreover, according to the Monitor's Fourth Report, it is anticipated that the DIP Lender will make a stalking horse credit bid as part of the SISP. Given that the Monitor was not in a position to express a view about the reasonableness of the \$650,000 in accrued fees, and given the prospect of a credit bid from the DIP Lender, I indicated that I was not prepared to approve an increase in the DIP Lending Facility at this time to include the accrued fees. The issue can be addressed next Monday as part of the motion to approve the SISP.

[13] Taking into account the factors set out in CCAA s. 11.2(4), I approved an increase in the DIP Lending Facility to \$5.350 million.

V. Conclusion

[14] By way of summary, for those reasons I granted the orders extending the Stay Period until May 28, 2012, increasing the DIP Lending Facility to \$5,350,000 and approving the proposed changes to the DIP Loan Agreement. I approved the Fourth Report of

PricewaterhouseCoopers Inc., in its capacity as the Court-appointed Monitor of the Applicants, dated May 7, 2012, approved the actions of the Monitor described therein, and increased the powers of the Monitor in order to assist in the SISP.

[15] The next return date of this matter will be before me on May 14, 2012. Counsel for the applicants shall inform the Commercial List Office of the desired time for an appearance as soon as counsel is in a position to do so. Given the number of people involved at each hearing, it might be most convenient to set a time for Monday afternoon to deal with the return of the motion.

(original signed by)

D. M. Brown J.

Date: May 8, 2012