

File No. BK 17-01-04509

**THE QUEEN'S BENCH  
Winnipeg Centre  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985,  
c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE PROPOSAL OF  
5274398 MANITOBA LTD.**

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**ORDER**

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File No. 1702631

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THE QUEEN'S BENCH  
Winnipeg Centre  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE )  
Mr. JUSTICE DEWAR ) Thursday, the 7th day of September, 2017  
)

IN THE MATTER OF THE *BANKRUPTCY AND*  
*INSOLVENCY ACT*, R.S.C. 1985,  
c. B-3, AS AMENDED

AND IN THE MATTER OF THE PROPOSAL OF  
5274398 MANITOBA LTD.

ORDER

THIS MOTION, made by 5274398 Manitoba Ltd. (o/a Cross Country Manufacturing)("Cross Country") for an order extending the time in which the Proposal Trustee may file a proposal with the Official Receiver in the within proposal proceedings to 11:59 PM Central Daylight Time on Monday, October 23, 2017, approving interim financing, approving certain charges, approving a sale process and granting other ancillary relief was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Affidavit of Jonathan Doerksen sworn September 5, 2017 ("Doerksen Affidavit"), the Affidavit of Samantha Dunn sworn September 6, 2017 (sealed) ("Dunn Affidavit"), the DIP Loan Supplemental Affidavit of Jonathan

Doerksen sworn September 6, 2017 (“**DIP Loan Supplemental Affidavit**”) the First Report of the Proposal Trustee dated September 6, 2017, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for Cross Country, counsel for the Proposal Trustee, counsel for Bank of Montreal (“**BMO**”) and counsel for Business Development Bank of Canada (“**BDC**”) and no one appearing for any other person, although properly served as appears from the Affidavit of Service of Samantha Dunn sworn September 7, 2017.

**SERVICE VALIDATED**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF PROPOSAL FILING DATE**

2. THIS COURT ORDERS that the time within which the Proposal Trustee may file a Proposal with the Official Receiver in the matter of the Proposal of Cross Country in these proceedings be and is hereby extended to 11:59 p.m. Central Daylight Time on Friday, October 20, 2017.

**APPROVAL OF ENGAGEMENT OF FINANCIAL ADVISOR**

3. THIS COURT ORDERS that the engagement of PricewaterhouseCoopers LLP as financial advisor to Cross Country on the terms and conditions described in that

certain engagement letter dated August 3, 2017 (the "**Financial Advisor Engagement Letter**") executed by Cross Country, be and is hereby approved.

#### **ADMINISTRATION CHARGE**

4. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee, counsel to Cross Country and PricewaterhouseCoopers LLP (the "**Financial Advisor**") shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of Cross Country's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively the "**Property**"), which charge shall not exceed an aggregate amount of \$150,000.00, as security for (i) in respect of the Proposal Trustee, counsel to the Proposal Trustee and counsel to Cross Country, their respective professional fees and disbursements incurred at standard hourly rates and (ii) in respect of the Financial Advisor, its professional fees and disbursements in accordance with the Financial Advisor Engagement Letter, and in the cases of (i) and (ii) both before and after the making of this Order in respect of these proceedings. The Administration Charge hereby granted shall extend to and apply for the benefit of the Proposal Trustee and its counsel in the event of a bankruptcy of Cross Country, and in any bankruptcy proceedings taken in respect thereof under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), for those purposes having the priority provided for by the further terms of this Order. The Administration Charge shall have the priority set out in paragraphs 11 and 13 hereof.

**INTERIM FINANCING**

5. THIS COURT ORDERS that Cross Country is authorized and empowered to obtain and borrow under credit facilities from BMO and BDC (together the "**DIP Lenders**") in order to finance Cross Country's working capital and for other general corporate purposes and expenditures, provided that borrowings under such credit facilities shall not exceed a total of \$500,000.00 unless permitted by further Order of this Court.

6. THIS COURT ORDERS that such credit facilities shall be on the terms and subject to the conditions set forth in (i) the term sheet between Cross Country and the BMO dated as of September 1, 2017 (the "**BMO DIP Term Sheet**"), and (ii) the term sheet between Cross Country and the BDC dated as of September 5, 2017 (the "**BDC DIP Term Sheet**"), attached as Exhibits "3" and "2" respectively to the Supplementary Affidavit (together, the "**DIP Term Sheets**").

7. THIS COURT ORDERS that Cross Country is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (separately, the "**BMO Definitive Documents**" and the "**BDC Definitive Documents**" and collectively, the "**Definitive Documents**"), as are contemplated respectively by the DIP Term Sheets or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and Cross Country is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under

and pursuant to the DIP Term Sheets and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order or the BIA.

8. THIS COURT ORDERS that the DIP Lenders shall be entitled to the benefit of and are hereby granted charges (the "**DIP Lenders' Charge**") on the Property, which DIP Lenders' Charge shall not secure an obligation to either BMO or BDC that exists before this Order is made. The DIP Lenders' Charge shall have the priority set out in paragraphs 11 and 13 hereof.

9. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charges or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under either of the DIP Term Sheets, any of the Definitive Documents or the DIP Lenders' Charge, the DIP Lenders, or either of them, upon seven (7) business days' notice to Cross Country and the Proposal Trustee, may apply to this Court to exercise any and all of their respective rights and remedies against Cross Country or the Property under or pursuant to their respective DIP Term Sheets, their respective Definitive Documents and the DIP Lenders' Charge, including without limitation, to cease making advances to Cross

Country and set off and/or consolidate any amounts owing by such DIP Lender to Cross Country against the obligations of Cross Country to such DIP Lender under its respective DIP Term Sheet, its respective Definitive Documents or the DIP Lenders' Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against Cross Country and for the appointment of a trustee in bankruptcy of Cross Country; and

- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of Cross Country or the Property.

10. THIS COURT ORDERS AND DECLARES that the DIP Lenders shall be treated as unaffected in any proposal filed by Cross Country under the BIA, with respect to any advances made under the DIP Term Sheets and/or the Definitive Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

11. THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lenders' Charge, as among them, shall be as follows:

- First - Administration Charge, to the maximum amount of \$150,000.00; and
- Second - DIP Lenders' Charge, to the maximum amount of \$500,000.00, plus accrued and unpaid interest and other fees and charges pursuant to the respective DIP Term Sheets, which DIP Lenders' Charge priority, as between the

DIP Lenders, shall be in accordance with the priorities described in that certain Priority Agreement dated as of January 15, 2013 and that certain Priority Agreement dated September 1, 2017 among BDO, BMO and Cross Country, attached respectively as Exhibit "25" to the Doerksen Affidavit and Exhibit "4" to the DIP Loan Supplemental Affidavit.

12. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lenders' Charge (together the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. THIS COURT ORDERS that the Charges shall constitute charges on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person or entity (a "**Person**") except for (i) any security interests (other than as described in (ii) below) in the Property of any "secured creditor", as defined in the BIA, who did not receive notice of this Motion, and (ii) security interests in the Property of Blue Chip Leasing Corporation, Royal Bank of Canada, Hayworth Equipment Sales Inc., K.G. Industries Ltd., Cooper Tire & Rubber Company, Continental Tire Canada Inc., Rogers Wireless Inc., Workers Compensation Board, Workers Safety and Insurance Board, and Solar Power Network 001 Inc.; and



(iii) any statutory Encumbrance existing as at the date Cross Country filed its Notice of Intention to Make a Proposal, namely August 11, 2017 in favour of any Person which is a "secured creditor", as defined in the BIA, in respect of (A) any amounts under the *Wage Earners' Protection Program* that are subject to a priority claim under the BIA, including source deductions from wages, employer health tax, workers compensation, vacation pay and banked overtime for employees, and (B) any amounts that are subject to a priority claim pursuant to Section 81.5(1) of the BIA and subsections 227(4) and (4.1) of the *Income Tax Act*, subsections 23(3) and (4) of the *Canada Pension Plan* and subsection 86(2) and (2.1) of the *Employment Insurance Act*. Provided that the nothing in this Order shall prevent Cross Country and/or the DIP Lenders from making a motion to this Honourable Court for an Order (a "**Charge Amending Order**") that any or all of the Charges shall rank in priority to any or all of the security interests referred to in subparagraph (i) herein, upon such notice to secured creditors proposed to be affected by such Charge Amending Order as the Court may consider just.

14. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, Cross Country shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, either or both of the Charges, unless Cross Country also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Charges.

15. THIS COURT ORDERS that the DIP Term Sheets, the Definitive Documents and the Charges shall not be rendered invalid or unenforceable and the rights and remedies

of the chargees entitled to the benefit of the Charges (collectively the "**Chargees**") shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds Cross Country, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheets, or the Definitive Documents shall create or be deemed to constitute a breach by Cross Country of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Cross Country entering into the DIP Term Sheets, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by Cross Country pursuant to this Order, the DIP Term Sheets, or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent

conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

### **SALE PROCESS APPROVAL**

16. THIS COURT ORDERS that the sale process ("**Sale Process**") attached as Exhibit "3" to the Doerksen Affidavit be and is hereby approved and Cross Country is hereby authorized and directed to conduct the Sale Process and perform its obligations thereunder.

### **SEALING**

17. THIS COURT ORDERS that the Dunn Affidavit be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

18. THIS COURT ORDERS that a further copy of the Dunn Affidavit forthwith be filed with the numbers in paragraph 7 and the whole of paragraph 10 of Exhibit "B" thereto expunged.

### **SERVICE AND NOTICE OF THIS ORDER**

19. THIS COURT ORDERS that notice of this Order shall be posted by the Proposal on its website ("**Website**") at [www.lazergrant.ca/insolvency/current-proceedings/](http://www.lazergrant.ca/insolvency/current-proceedings/)

**SUPPLEMENTAL REPORT OF THE PROPOSAL TRUSTEE**

20. THIS COURT ORDERS that the Proposal Trustee shall file with this Court and post on the Website a Supplemental Report attaching:

- a. the cash flow of Cross Country, updated as of September 7 and provided to this Court at the hearing of this motion; and
- b. attaching a copy of the BMO Letter Agreement dated September 1, 2017 and accepted September 6, 2017 with the corrected page 4.

**GENERAL**

21. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Cross Country, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Cross Country and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist Cross Country and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

22. THIS COURT ORDERS that each of Cross Country and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and

for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

23. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01a.m. Central Daylight Time on the date of this Order.

September 11, 2017

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Dewar, J.