



Court File No. 06-CL-6746

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)
MR. JUSTICE GROUND)
MONDAY THE 30TH
DAY OF APRIL, 2007

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
WITH RESPECT TO 3791351 CANADA INC.
CARRYING ON BUSINESS AS "CU-CONNECT"

ORDER

THE MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order, *inter alia*, (i) abridging the time for bringing the Applicant's motion and dispensing with any further service of this Motion Record; (ii) approving the actions and activities of the Court appointed Chief Restructuring Officer (the "CRO") as described in the Affidavit of Terry Chapman, sworn the 11th day of April, 2007 (the "**Chapman Affidavit**"); (iii) approving the Fourth Report dated April 16, 2007 (the "**Fourth Report**") of KPMG Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), and the actions and activities of the Monitor described therein; (iv) seeking the sealing of an exhibit to the Chapman Affidavit; (v) confirming the recommended treatment of the D&O Claim filed pursuant to the Directors and Officers Claims Bar Order as set out in the Chapman Affidavit; (vi) authorizing and directing the CRO to file a voluntary assignment into bankruptcy for the Applicant; (vii) directing the Applicant to pay all amounts required to satisfy the Administration Charge; (viii) discharging the CRO; (ix) extinguishing the Directors' Charge; (x) discharging the Monitor; and (xi) for certain other ancillary relief, and the motion made by CU-Connection Limited for an Order, *inter alia*, (i) abridging the time for bringing the CU-

Connection Limited motion and dispensing with any further service of its Motion Record, and (ii) approving a distribution to CU-Connection Limited, in its capacity as a secured creditor of the Applicant, was heard on April 19, 2007, at the City of Toronto, with written reasons reserved to this date.

ON READING the Notice of Motion of the Applicant, the Fourth Report, the Chapman Affidavit, the Notice of Motion of CU-Connection Limited, the Affidavit of Robert Wellstood, sworn April 4, 2007, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for CU-Connection Limited, and counsel for the Receiver of Jawz Canada Inc.

1. **THIS COURT ORDERS** that the activities of the CRO, as described in the Chapman Affidavit, are hereby accepted and approved.
2. **THIS COURT ORDERS** that the Fourth Report and the activities of the Monitor described therein be and are hereby approved.
3. **THIS COURT ORDERS THAT** the Report of BDO LLP, dated April 5, 2007 (Exhibit "E" to the Affidavit of Terry Chapman, sworn April 11, 2007), shall be treated as confidential and shall be segregated from other documents or information filed in connection with this motion and shall be provided to the Court in a sealed envelope identifying the action and prominently marked with the following legend:

"CONFIDENTIAL INFORMATION

Pursuant to an Order dated April 19, 2007 (the "Order"), this envelope contains the Report of BDO LLP, dated April 5, 2007, Exhibit "E" to the Affidavit of Terry Chapman, sworn April 11, 2007 and shall remain sealed in the Court file and shall not be opened until further order of the Court."

and the sealed envelope shall not be opened until further order of the Court.

4. **THIS COURT DIRECTS THAT** the Monitor shall not post the Report of BDO LLP, dated April 5, 2007 (Exhibit "E" to the Affidavit of Terry Chapman, sworn April 11, 2007), on its website.
5. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed to them in the Directors and Officers Claims Bar Order of Madam Justice Pepall, dated February 14, 2007 (the "**Directors and Officers Claims Bar Order**").
6. **THIS COURT ORDERS** that the claim filed by CDSL Canada Limited be and is hereby disallowed as a D&O Claim for the purposes of the Directors and Officers Claims Bar Order.
7. **THIS COURT ORDERS** that any and all of the Directors and Officers and the CRO of the Applicant (which terms shall include any individual deemed to be a director under any applicable law, or who has any present or future liabilities of directors or deemed directors by virtue of acting in a director-like capacity in relation to, and *de facto* directors of, the Applicant) be and the same are hereby released from any and all claims arising in respect of acts, events or omissions occurring on or after November 20, 2006 up to and including the D&O Claims Bar Date (April 5, 2007) including, any and all demands, claims, actions, causes of actions, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, made against one or more of the Directors and/or Officers and the CRO, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter

arising, liquidated or unliquidated, fixed or contingent, disputed or undisputed, secured or unsecured, assessed or non-assessed, inchoate, including, without limitation, any and all existing and future claims, disputes, liabilities, charges, expenses and obligations relating to the failure of the Applicant to make any payments of any nature which the Directors and/or Officers and the CRO sustain or incur by reason of or in relation to their respective capacities as Directors and/or Officers or as CRO of the Applicant, however, the provisions of this paragraph will not operate so as to bar any claims relating to any matters arising prior to November 20, 2006.

8. **THIS COURT ORDERS** that the Directors' Charge (as provided for at paragraphs 28 to 30 of the Initial Order of Madam Justice Mesbur, dated November 20, 2006) (the "Initial Order") be and is hereby extinguished.
9. **THIS COURT AUTHORIZES AND DIRECTS** the CRO to file a voluntary assignment into bankruptcy (the "Assignment") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA") on behalf of the Applicant on or before May 14, 2007.
10. **THIS COURT ORDERS** that KPMG Inc. shall be at liberty to act as trustee in bankruptcy of the Applicant, should KPMG Inc. consent to such an appointment.
11. **THIS COURT ORDERS** that effective upon the filing of the Assignment, the appointment of Terry Chapman as CRO shall be terminated and the CRO shall be discharged and any claims of any nature whatsoever shall be forever barred and extinguished, save and except for claims arising from gross negligence or wilful

misconduct, and no proceeding alleging gross negligence or wilful misconduct shall be commenced against the CRO without leave of the Court.

12. **THIS COURT ORDERS** that the trustee in bankruptcy (the "Trustee") of the Applicant shall send a letter to all creditors in existence either before the date of the Initial Order or after such date and the service list concerning the termination of the proceedings commenced by the Applicant under the CCAA and the bankruptcy of the Applicant in substantially the form attached at Schedule "A" to this Order (the "Creditor Notice") which Creditor Notice shall be sent by ordinary mail by no later than May 25, 2007.
13. **THIS COURT ORDERS THAT** the Applicant is hereby authorized, empowered and directed to pay the Applicant's counsel, Miller Thomson LLP, the Monitor and the Monitor's counsel, Borden Ladner Gervais LLP, any unpaid amounts owing on account of their reasonable fees and disbursements in respect of the within CCAA proceeding prior to the bankruptcy of the Applicant (the "Unpaid Professional Fees") *upon approval of such fees and disbursements by the CRO*
14. **THIS COURT ORDERS THAT** upon the filing of a Certificate of the Monitor (the "Certificate"), in the form attached as Schedule "B" confirming the payment of the Unpaid Professional Fees, the Administration Charge (as provided for in paragraph 38 of the Initial Order) be and is hereby extinguished. *MO*
15. **THIS COURT ORDERS** that, upon filing of the Certificate, KPMG Inc. be and the same is hereby discharged as Monitor of the Applicant and the Monitor shall have no further duties or obligations as may be set out in the Initial Order and as required by the CCAA.

16. **THIS COURT ORDERS** that KPMG Inc. shall have no liability to any persons in connection with or arising from its appointment as Monitor in the CCAA proceedings of the Applicant.
17. **THIS COURT ORDERS** that notwithstanding the release and discharge of KPMG Inc. as Monitor, the terms beneficial to KPMG Inc. set out in the Initial Order shall remain in full force and effect.
18. **THIS COURT ORDERS THAT**, after payment of the Unpaid Professional Fees in satisfaction of the Administration Charge and setting aside a reserve of \$60,000 for the fees and disbursements of the trustee in bankruptcy of the Applicant, the Applicant is hereby authorized, empowered and directed to make a distribution to CU-Connection Limited in an amount equal to 75% of the funds on hand in the Applicant's estate on account of the amounts owing by the Applicant to CU-Connection Limited with respect to the CU-Connection Note (as defined in the Chapman Affidavit) (the "Secured Creditor Distribution").
19. **THIS COURT ORDERS THAT** upon the filing of the Assignment, as contemplated by paragraph 9 of this Order, that all of the funds in the Applicant's estate, after payment of the Secured Creditor Distribution and the Unpaid Professional Fees in satisfaction of the Administration Charge, (the "Funds"), and or any property of the Applicant, including the books and records of the Applicant, shall be turned over to the Trustee forthwith.
20. **THIS COURT ORDERS THAT** the Trustee shall be entitled to retain from the Funds, a reserve in the amount of \$60,000 to be applied against its proper fees and disbursements

as approved by this Court and shall be entitled to a charge in such amount (the "Trustee's Charge") ranking in priority to all other charges against the assets of the Applicant/Bankrupt, including the charge in favour of CU-Connection Limited.

21. **THIS COURT ORDERS THAT** upon the filing of the Assignment contemplated by paragraph 9 of this Order, that the within CCAA proceedings shall forthwith be terminated.

Approved as to form and content

Margaret Sims, counsel for the Applicant

Approved as to form and content

Roger Jaipargas, counsel for the KPMG Inc.,
in its capacity as Court-appointed monitor of the Applicant

Approved as to form and content

James Beamish, counsel for CU-Connection Limited

Approved as to form and content

Richard Finn, counsel for Receiver of Jawz Canada Inc.

May 7/07
Order to come
on above terms
as amended
J. Finn

SCHEDULE "A"

_____, 2007

**To: The Creditors of 3791351 Canada Inc., formerly carrying on business as "CU-Connect"
3791351 Canada Inc. c.o.b. as Cu-Connect (the "Company"),
Ontario Superior Court of Justice (Commercial List), *Companies Creditors Arrangement
Act* ("CCAA") proceeding under Court File No.: 06-CL-6746**

**Re: Termination of CCAA Proceeding
and Filing of Voluntary Assignment into Bankruptcy**

As you are aware, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an Order (the "Initial Order") granting 3791351 Canada Inc. protection from its creditors under the *Companies' Creditors Arrangement Act* ("CCAA") on November 20, 2006. The Initial Order provided that KPMG Inc. was appointed as Monitor of the Company in the CCAA proceedings (the "Monitor").

By Order of the Court made on April 30, 2007, the Court, among other things, authorized the Chief Restructuring Officer (the "CRO") to file a voluntary assignment into bankruptcy, and ordered the discharge of the CRO and the Monitor, and the termination of the CCAA proceedings.

Copies of all Court Orders can be obtained from the website of the Monitor (www.kpmg.cu/cu-connect) for a period of 3 months following the date of this letter. Any questions or inquiries should be directed to _____, in its capacity as the trustee in bankruptcy of the Company.

Yours truly,

_____, in its capacity as

Trustee in Bankruptcy of 3791351 Canada Inc.

SCHEDULE "B"

Court File No. 06-CL-6746

**ONTARIO
SUPERIOR COURT OF JUSTICE
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CARRYING ON BUSINESS AS "CU-CONNECT"

CERTIFICATE

RE: Order of Mr. Justice Ground dated April 30, 2007 (the "Order")

KPMG Inc., in its capacity as the monitor of 3791351 Canada Inc. (the "Monitor"), hereby certifies that the outstanding professional fees of the Applicant's counsel, Miller Thomson LLP, the Monitor and the Monitor's counsel, Borden Ladner Gervais LLP, as provided for in the Order have been paid.

DATED at Toronto, Ontario, this _____ day of _____, 2007.

KPMG INC.

Per: _____

(Authorized Signing Officer)

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OF
ARRANGEMENT WITH RESPECT TO 3791351 CANADA INC. CARRYING ON
BUSINESS AS "CU-CONNECT"

Court File No: 06-CL-6746

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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