

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF CERTAIN PROCEEDINGS
TAKEN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION
WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

SUPPLEMENTARY NOTICE OF MOTION

The Respondent will make a motion a Judge presiding over the Commercial List on May 18, 2012 at 10:00 a.m., or as soon after that time as the motion can be heard at the Court House, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

in writing under subrule 37.12.1(1);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

THE MOTION IS FOR

- (a) An order, in the form of Appendix A hereto,
 - (i) Permitting this motion to be brought on short notice, if required;
 - (ii) approving the Court-Appointed Information Officer's First, Second and Third Reports and the Supplement to the Third Report and its actions taken to date;
 - (iii) an order approving the Fees and Disbursements of the Information Officer and its Counsel;
 - (iv) an order discharging the Information Officer;
 - (v) an order dismissing these proceedings; and,
 - (vi) such further and other relief as counsel may request and this Honourable Court is prepared to grant.

THE GROUNDS FOR THE MOTION ARE

- (a) R. 37.07(2) and R. 37.12 of the *Rules of Civil Procedure*;
- (b) On June 28, 2011, a voluntary petition was filed in the United States Bankruptcy Court under Chapter 11 of the US Bankruptcy Code in respect of a group of debtors collectively known as the Elephant & Castle Group (the C.11 Debtors). .
- (c) Massachusetts Elephant & Castle Group, Inc., ("E&C") one of the C.11 Debtors, applied under section 46 of the CCAA to this court for recognition as the foreign

representative of the C.11 Debtors. Following an interim order, an Initial Recognition Order was made on July 4, 2011 by Mr. Justice Morawetz and, among other things, BDO Canada Limited was appointed to act as Information Officer (“IO”) in connection with the Chapter 11 US Bankruptcy Code proceedings.

- (d) The Initial Order of this Court requested that the Information Officer report to this court periodically in connection with the insolvency process. The IO most recently reported in December of 2011 to this court on those proceedings.
- (e) During the period from petition to the time of BDO’s First Report, the C.11 Debtors were operating their businesses in the ordinary course and with a restructuring process involving the sale of its assets. Various orders were made by the US Bankruptcy Court involving the sale process.
- (f) Pursuant to that sale process the assets of the C.11 Debtors were sold save for those of Repechage.. The sale of these assets was the subject of the IO’s Second Report to this court in late January of 2012. At that time, E&C sought a recognition in Canada of the sales process and the sale of the assets to the Stalking Horse Bidder pursuant to that process. The purchase price was approximately \$23 million. This Court approved the sale process and the sale to the Stalking Horse Bidder.
- (g) The sale approval by the US Bankruptcy Court was objected to by Mr. David Dobbin the principal of the C.11 Debtors, the Chairman of the Board of Elephant & Castle Group Inc. and others. Dobbin’s objections were not upheld by the US

Court and he then withdrew his objection. The sale was then consummated in February of 2012.

- (h) All of the sale proceeds less certain amounts were to be paid to the first secured creditor, GE Canada. Collections from accounts receivable (which were not part of the sale), were to be likewise turned over to GE Canada. Although the proceeds of sale were to go to GE Canada and would be insufficient to repay their debt, it was contemplated that there would be a limited amount available for priority claims under the US Bankruptcy Code and unsecured creditors in the US and Canada would be paid something.
- (i) One of the C.11 Debtors is Repechage Investments Limited (“Repechage”). It is a Canada corporation and the ultimate parent company of the C. 11 Debtors. Its assets were not part of the Sale process. Repechage was considering its option in the restructuring process and it was widely expected that a plan of reorganization would be circulated to deal with its position in the C.11 proceedings.
- (j) Most recently, there have been a number of significant developments in this file in particular the conversion of the Chapter11 Proceedings to Chapter 7 Proceedings in the wake of motions by Counsel to E&C to withdraw and the apparent unlikelihood of there ever being a Chapter11 Plan of Reorganization.
- (k) As a result:
 - (i) There is clearly no possibility of a reorganization plan of the C.11 Debtors and full Chapter 7 liquidation proceedings have commenced;

- (ii) The status of Massachusetts Elephant & Castle Group, Inc. as foreign representative of the C.11 Debtors in these proceedings has significantly changed;
 - (iii) The US Trustee's office does not intend to apply for status as a foreign representative or commence any proceedings in Canada;
 - (iv) There is presently some \$500,000 which is under the control of the US Trustee in the Chapter 7 Proceedings and which will be available for unsecured creditors in the US bankruptcy proceedings;
 - (v) Canadian creditors claims will be duly considered by the US Trustee;
 - (vi) A new claims process will be conducted by the US Trustee with a bar date in the Chapter 7 proceedings expected in October of 2012;
 - (vii) There does not appear to be any further reason for the proceedings under the Companies Creditors Arrangement Act in Canada as no Plan of Reorganization will be forthcoming..
- (l) The Third Report and the Supplement to the Third Report of the Information Officer has been posted on the Information Officer's web site and is available to the public. Notifications of the Third Report and the Supplemental Third Report and if requested, courtesy copies, have been provided to those parties on the Service List maintained by the Information Officer;
- (m) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Third Report and Supplement to the Third Report of the Court-Appointed Information Officer;
- (b) The Fee Affidavits of K.Pearl, J.Rosekat regarding fees of the Information Officer and Counsel;
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 16, 2012

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Lawyers for the Applicant,
GE Canada Equipment Financing G.P.

SCHEDULE “A”

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

herein, the proceedings having no further purpose, were heard this day at 330 University Avenue, 8TH Floor, Toronto, Ontario.

ON READING the Notice of Motion of May 3, 2012 and the Supplementary Notice of Motion of May 16, 2012, the first motion having been adjourned to this date, and on reading the the Third Report and Supplement to the Third Report of the Information Officer, and on hearing the submissions of counsel for the Information Officer no one else appearing though served as appears from the affidavits of K. Engelhardt, May 3 and May 16, 2012, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Supplementary Notice of Motion and the Motion Records is hereby abridged, that this motion is properly returnable today and that this court hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the activities of the Court Appointed Information Officer, as set out in the First, Second and Third Reports dated May 3, 2012 and the Supplement to the Third Report dated May 16, 2012, are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Information Officer in the amount of \$*, excluding HST, plus the Receiver's estimate of \$5,000 for completion inclusive of taxes, be and is hereby approved;
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel in the amount of \$* excluding HST, plus the Receiver's counsel's estimate of \$5,000 for completion inclusive of taxes, be and is hereby approved.
5. **THIS COURT ORDERS** and directs the Information Officer to pay to the US Trustee in the US Chapter 7 Proceedings any amounts held by the Information Officer surplus to the payments to the above and upon the Information Officer doing so or confirming to the US Trustee that there is no such surplus, the Information Officer shall be discharged from all of its responsibilities provided however that notwithstanding its discharge herein (a) the Information Officer shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO Canada Limited in its capacity as Information Officer.

6. **THIS COURT ORDERS** that the Information Officer shall maintain its website in these proceedings including the contact information for the US Trustee for the period up to and including the first meeting of creditors in the US Chapter 7 proceedings.

7. **THIS COURT ORDERS** that in all other respects this Application is hereby dismissed.

SCHEDULE “A”

15. Massachusetts Elephant & Castle Group, Inc.
16. Repechage Investments Limited
17. Elephant & Castle Group Inc.
18. The Elephant and Castle Canada Inc.
19. Elephant & Castle, Inc. (a Texas Corporation)
20. Elephant & Castle Inc. (a Washington Corporation)
21. Elephant & Castle International, Inc.
22. Elephant & Castle of Pennsylvania, Inc.
23. E & C Pub, Inc.
24. Elephant & Castle East Huron, LLC
25. Elephant & Castle Illinois Corporation
26. E&C Eye Street, LLC
27. E & C Capital, LLC
28. Elephant & Castle (Chicago) Corporation

RCP-E 37A (July 1, 2007)

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A"
HERETO(THE "CHAPTER 11 DEBTORS")MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

Court File No. CV-11-9279-00CL

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

(Re Information Officer's Third Report and Supplemental 3rd Report)

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RCP-E 4C (July 1, 2007)