

Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

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
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.
(collectively, the “**Applicants**”)

Applicants

NOTICE OF MOTION
(Returnable January 20, 2023)

The Applicants will make a motion to The Honourable Madam Justice Conway on Friday, January 20, 2023, at 12:00 p.m., or as soon after that time as the motion can be heard, via Zoom videoconference,

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In person
☐ By telephone conference
☒ By video conference

at the following location

Zoom Link to be updated on Caselines.

THE MOTION IS FOR:

1. An Amended and Restated Initial Order (the “**ARIO**”), substantially in the form attached as Tab 3 to the Motion Record, for the following relief, *inter alia*:
 - (a) abridging the time for and validating service of this notice of application and the application record and dispensing with service on any person other than those served;
 - (b) extending the stay of proceedings granted pursuant to the Initial Order of the Honourable Justice Conway dated January 12, 2023 (the “**Initial Order**”) to March 9, 2023 (the “**Extended Stay Period**”);
 - (c) approving a Key Employee Retention Plan (the “**KERP**”) and authorizing the Applicants to make payments in accordance with the terms of the KERP;
 - (d) granting a charge over the Property (as defined in the Initial Order) of the Applicants in favour of the proposed KERP beneficiaries (the “**KERP Charge**”) in the aggregate amount of \$350,000;
 - (e) declaring that, pursuant to section 5(5) of the *Wage Earner Protection Program Act* (“**WEPPA**”) Inscape is a “former employer” in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations (“**WEPP Regulations**”);
 - (f) authorizing either one of Inscape Corporation, or in the alternative to Inscape Corporation, Eric Ehgoetz, to act as the foreign representative (the “**Foreign Representative**”) in respect of these CCAA proceedings, for the purpose of having these CCAA proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532 (the “**US Bankruptcy Code**”);
 - (g) increasing the amount of the Administration Charge (as defined below) to \$800,000; and

2. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Initial Order

3. On January 12, 2023, Justice Conway granted the Initial Order in favour of the Applicants under the CCAA.

4. Pursuant to the Initial Order, among other things, the Court:

- (a) granted a stay of proceedings in favour of the Applicants and its directors and officers up to and including January 20, 2023 (“**Initial Stay Period**”);
- (b) appointed Alvarez & Marsal Canada Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”);
- (c) granted the following charges against the Property, in the following priority rankings (the “**Priority Charges**”):
 - (i) First, an administration charge in the amount of \$800,000 in favour of counsel for the Applicants, the Monitor and its counsel (the “**Administration Charge**”); and
 - (ii) Second, a directors’ and officers’ charge in the amount of \$750,000 (the “**Directors’ Charge**”);
- (d) authorized the Applicants to incur no further expenses in relation to the Securities Filings (as defined in the Initial Order); and
- (e) authorized the Applicants to continue utilizing their cash management system (the “**Cash Management System**”).

Amended and Restated Initial Order

5. The Applicants are seeking approval of the proposed ARIO, including the following relief:

Extended Stay Period

- (a) The Initial Stay Period expires on January 20, 2023;
- (b) The proposed Extended Stay Period expires on March 9, 2023;
- (c) The requested extension will afford time for the Applicants to, among other things: (i) permit the Foreign Representative to apply to the U.S. Bankruptcy Court for recognition of the within proceedings, (ii) continue to work with its advisors to develop and implement an orderly and commercially reasonable wind-down plan that will protect and maximize the interests of creditors; and (iii) develop a claims process for the timely and efficient determination of claims against the Applicants, and bring a motion to the Court for approval of same;
- (d) The Monitor supports the proposed Extended Stay Period;

KERP and KERP Charge

- (e) The Applicants seek this Court's approval of the KERP and authorization to make payments in accordance with the KERP. As security for the payments contemplated under the KERP, the Applicants also seek this Court's approval of the KERP Charge over the Applicants' Property in favour of the KERP beneficiaries, to rank third and behind the Priority Charges;
- (f) The purpose of the KERP is to facilitate and encourage the continued participation of senior management and key employees of the Applicants who are required to guide the business through these CCAA proceedings;

- (g) These employees have significant experience and specialized expertise that cannot easily be replicated or replaced, and will be faced with a significantly increased workload during these CCAA proceedings;
- (h) The KERP will provide participants with additional payments as an incentive to continue their employment throughout the CCAA proceedings. The KERP incentives are designed to provide the appropriate incentives for identified employees to remain in their current positions throughout the intended wind-down activities;
- (i) The proposed KERP ensures a level of continuity and stability that would otherwise potentially be placed at risk by key employee departures;
- (j) The KERP was developed in consultation with the Monitor. The Monitor is of the view that the KERP Charge is reasonable in the circumstances;

Foreign Recognition and Foreign Representative Appointment

- (k) The Applicants seek an Order authorizing either one of Inscape Corporation, or in the alternative to Inscape Corporation, Eric Ehgoetz, to act as the foreign representative (in such capacity, the Foreign Representative) in respect of these proceedings, and to apply for foreign recognition of these proceedings in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code;
- (l) The Foreign Representative is prepared to act in such capacity;
- (m) The Applicants have assets and manufacturing operations in Jamestown, New York, and maintain leased premises for showrooms in Chicago, Washington and New York City;
- (n) Recognition of these proceedings in the United States will result in the grant of a companion stay of proceedings in favour of the Applicants, and otherwise facilitate an orderly and equitable cross-border wind-down of the Applicants' business;

Increase to Administration Charge

- (o) The Applicants are seeking an increase to the amount of the Administration Charge;
- (p) The cross-border aspects of the Applicants' business and these proceedings, necessitate timely access to legal advisors in both Canada and the United States;
- (q) The Applicants seek an increase to the Administration Charge from \$250,000 to \$800,000 to better align with and secure the projected fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Applicants, including the Applicants' U.S. Counsel during the Extended Stay Period;
- (r) The Monitor assisted in the calculation of the quantum of the Administration Charge and is of the view that it is reasonable and appropriate in the circumstances.

Priority of Charges

- (s) In light of the proposed increase to the Administration Charge and the proposed KERP Charge, the Priority Charges in the Initial Order are proposed to be amended as follows:
 - (i) First, the Administration Charge in the amount of \$800,000;
 - (ii) Second, the Directors' Charge in the amount of \$750,000; and
 - (iii) Third, the KERP Charge in the amount of \$350,000.

General

- 6. The provisions of the CCAA, including sections 11, 46 and 47, and the statutory, inherent and equitable jurisdiction of this Court;

7. Rules 1.04, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

8. Such further other grounds as counsel may advise.

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

- (a) The Affidavit of Eric Ehgoetz sworn January 17, 2023;
- (b) The First Report of the Monitor, to be filed; and
- (c) Such further and other evidence as counsel may advise and this Court may permit.

January 18, 2023

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TO: THE SERVICE LIST

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Proceeding commenced at TORONTO

NOTICE OF MOTION
(Returnable JANUARY 20, 2023)

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