

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) MONDAY, THE 9th
JUSTICE CUMMING) DAY OF MAY, 2011

IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF PARLAY
ENTERTAINMENT INC., INSOLVENT PERSON

Applicant

ORDER

THIS MOTION, made by the debtor, Parlay Entertainment Inc. (the “**Debtor**”), for an order substantially in the form as appended to the motion record of Parlay dated May 4, 2011 (the “**Motion Record**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, the first report of BDO Canada Limited in its capacity as the proposal trustee (the “**Proposal Trustee**”) of Parlay dated May 4, 2011 (the “**First Report**”) and the memo of law of Parlay dated May 2, 2011 (the “**Memo of Law**”) and on hearing the submissions of the Proposal Trustee and of counsel for Parlay and upon being advised of the consent of MPProjects Assets S.A. (the “**DIP Lender**”):

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record, the Memo of Law and the First Report is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

ADMINISTRATION CHARGE

2. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the *Bankruptcy and Insolvency Act* ("BIA") or any applicable legislation.

3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to Parlay shall be paid their reasonable fees and disbursements, in each case, at their standard rates and charges, by Parlay as part of the costs of these proceedings. Parlay is hereby authorized and directed to pay the accounts of the Proposal Trustee, ~~counsel for the Proposal Trustee~~ and its counsel on a semi-monthly basis and, in addition, Parlay is hereby authorized to pay to the Proposal Trustee, ~~counsel to the Proposal Trustee~~, and counsel to the company, retainers in the amounts of \$25,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

4. **THIS COURT ORDERS** that the Proposal Trustee and ~~its~~ legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and ~~its~~ legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

5. **THIS COURT ORDERS** that the Proposal Trustee, ~~counsel to the Proposal Trustee~~, if any, and Parlay's counsel shall be entitled to the benefit of, and are hereby granted, a charge (the "Administration Charge") on the existing and after acquired real and personal property, intangible and tangible assets and undertaking of Parlay (the "Property"), which charge shall not exceed an aggregate amount of \$200,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and ~~such~~ counsel, both before, and after, the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 12 and 14 hereof.

INTERIM FINANCING

6. **THIS COURT ORDERS** that Parlay is hereby authorized and empowered to obtain and borrow under a credit facility entered into with the DIP Lender in order to finance the company's working capital requirements and other general corporate purposes provided that the borrowings under such credit facility shall not exceed the amount specified in the DIP Facility (defined below) unless permitted by further order of this Court.
7. **THIS COURT ORDERS** that the credit facility shall be on the terms and subject to the conditions as set forth in the term sheet entered into between Parlay and the DIP Lender dated April 25, 2011, and as contained in Appendix "C" to the First Report (the "**DIP Facility**").
8. **THIS COURT ORDERS** that Parlay is authorized and empowered to execute and deliver such credit agreements, mortgages, charges, and security documentation or other definitive documents (collectively, the "**Definitive Documents**") as are contemplated by the DIP Facility or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and Parlay is hereby authorized and directed to pay and perform, following the effective date of the DIP Facility, all of the indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Facility and the Definitive Documents as and when the same become due and are to be performed.
9. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is granted a DIP Charge on all the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Facility and the Definitive Documents. The DIP Charge shall have the priority set out in paragraphs 12 and 14 of this Order.
10. **THIS COURT ORDERS** that, notwithstanding any other provision of the BIA:
 - (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Lender, upon 5 days notice to Parlay and the Proposal Trustee, may exercise any and all of its rights and remedies against Parlay or the Property under or

pursuant to the DIP Facility, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to Parlay and set off and/or consolidate any amounts owing by the DIP Lender to Parlay against the obligations of Parlay to the DIP Lender under the DIP Facility, the Definitive Documents or the DIP 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 Parlay and for the appointment of a trustee in bankruptcy of Parlay and upon the occurrence of an Event of Default under the terms of the DIP Facility or the Definitive Documents the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the assets of Parlay and the cash flow of Parlay to repay amounts owing to the DIP Lender in occurrence with the terms of the DIP Facility and the DIP Charge but subject to the Administration Charge and the priority set out in paragraphs 12 and 14 of this Order; and

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

11. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by Parlay under any proposal filed by Parlay under the BIA, as the case may be, with respect to any advances made under the Definitive Documents or the DIP Facility, however the DIP Lender shall seek leave of this Court prior to taking any enforcement steps.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge; and

Second – DIP Charge.

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Charge (collectively, 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.

14. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Charge (all as constituted and defined herein) shall constitute a charge 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.

15. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, Parlay shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge or the DIP Charge, unless Parlay also obtains the prior written consent of the Proposal Trustee, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

16. **THIS COURT ORDERS** that the Charges, the DIP Facility and the Definitive Documents 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**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 Parlay, and notwithstanding any provision to the contrary in any such Agreement or otherwise:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by Parlay 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, Parlay entering into the

DIP Facility, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by Parlay pursuant to this Order, the DIP Facility 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.

COMEBACK

17. **THIS COURT ORDERS** that any interested party (including Parlay and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

GENERAL

18. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of Parlay, its business or the Property.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any court or any judicial, regulatory or administrative body of any other nation or state to give effect to this Order and to assist the parties 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 the parties, as may be necessary or desirable to give effect to this Order or to assist the parties and their agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that Parlay and the Proposal Trustee be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to Parlay's creditors or other interested parties at their respective addresses as last shown on the records of Parlay and that any such service or notice by courier,

personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

21. **THIS COURT ORDERS** that Parlay, the Proposal Trustee, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Proposal Trustee may post a copy of any or all such materials on its website at **www.bdo.ca/extranets/parlayentertainment**

22. **THIS COURT ORDERS** that the First Report and activities of the Proposal Trustee as described therein are hereby authorized and hereby approved.

May 9, 2011

Peter A. Cumming J.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF PARLAY ENTERTAINMENT INC., INSOLVENT PERSON

Court File No: 32-1494254
Estate File No. 32-1494254

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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May 9/11

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*After submissions, order
signed, & issue.*

Patricia J. T.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

APPLICANT'S MOTION RECORD

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