

**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**

**MOTION RECORD OF THE RESPONDENT
(MOTION: APPROVAL OF THIRD REPORT AND DISCHARGE OF INFORMATION OFFICER)**

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NOTICE OF MOTION

The Respondent will make a motion a Judge presiding over the Commercial List on May 8, 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 Third Report and its actions taken to date;
 - (iii) an order directing the Information Officer to seek its discharge and, if appropriate, to request the termination of the CCAA proceedings, such motion to be brought within 30 days of the return of this motion; and,
 - (iv) such further and other relief as counsel may request and this Honourable Court deem just 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,
 - (i) Due to irreconcilable issues that have arisen in the attorney-client relationship and apparently with Mr. Dobbin, the Eckert, Seamans, Cherin & Mellott, LLC (“ESCM”) and Heenan Blaikie LLP (“Heenan Blaikie”) firms, counsel in the US and in Canada for the C.11 Debtors, filed Motions to Withdraw;
 - (ii) In the circumstances, The United States Trustee under the US Bankruptcy Code requested the US Bankruptcy Court to consider converting the C.11

proceedings to Chapter 7 of the US Bankruptcy Code (liquidation) on May 2, 2012;

(iii) The US Bankruptcy Court granted those orders on May 2, 2012;

(iv) As a result:

(1) There is clearly no possibility of a reorganization plan of the C.11 Debtors and full Chapter 7 liquidation proceedings have commenced;

(2) The status of Massachusetts Elephant & Castle Group, Inc. as foreign representative of the C.11 Debtors in these proceedings has significantly changed;

(3) It is not clear if the US Trustee's office intends to apply as foreign representative under either the CCAA or the BIA;

(4) There does not appear to be any further reason for the proceedings under the Companies Creditors Arrangement Act in Canada though the recognition of a foreign representative, presumably the US Trustee's office, may be brought under section 269 of the Bankruptcy and Insolvency Act or under the CCAA, section 46 should it be considered necessary.

(k) 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 if requested, courtesy copies, have been provided to those parties on the Service List maintained by the Information Officer;

- (1) 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 of the Court-Appointed Information Officer;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 3, 2012

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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

Appendix A

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

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

**THE HONOURABLE) TUESDAY, THE 8TH DAY
)
JUSTICE G.MORAWETZ) OF MAY, 2012**

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ORDER

(Re Third Report of the Information Officer)

THIS MOTION, made by the Court Appointed Information Officer, BDO Canada Limited, for an Order approving the Third Report of the Court Appointed Information Officer, was heard this day at 330 University Avenue, Toronto, Ontario,.

ON READING the Information Officers Third Report and the Exhibits thereto and on hearing the submissions of counsel for the Information Officer, Massachusetts Elephant & Castle

Group, Inc. as foreign representative for the Chapter 11 Debtors referred to in Schedule A hereto, no one appearing for any other party although duly served as appears from the affidavit of service of Kellie Engelhardt sworn May 3rd, 2012,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record 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 Third Report dated May 3rd, 2012 are hereby approved.

3. **THIS COURT ORDERS** that the Information Officer is hereby directed to seek its discharge and to pass its and its legal counsel's accounts and, if it the Information Officer considers it appropriate, to request the termination of the CCAA proceedings, all of which shall be brought before this court within 30 days of the date hereof..

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)

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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)

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RCP-E 4C (July 1, 2007)

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
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Court File No. CV-11-9279-00CL

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

(Motion : Approval of Third Report and Discharge
of Information Officer)

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RCP-E 4C (July 1, 2007)