



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00696017-00CL

DATE: September 26, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: LOYALTYONE CO v BREAD FINANCIAL HOLDINGS INC

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Timothy Pinos Jeremy Bornstein	LOYALTYONE CO	tpinos@cassels.com jbornstein@cassels.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Eliot Kolers	BREAD FINANCIAL HOLDINGS INC	ekolers@stikeman.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Edward Park	CRA	edward.park@justice.gc.ca
Robert Staley	Ad Hoc Group of Term Loan B Lenders	StaleyR@bennettjones.com
Mark Dunn Christopher Armstrong Erik Axell	The monitor	mdunn@goodmans.ca Carmstrong@goodmans.ca eaxell@goodmans.ca

Alex Moser	Bank of America	amoser@blg.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of LoyaltyOne Co. dated September 20, 2024. The background references in this Endorsement are from the Eighth Report of the Monitor filed on this motion.**
- [2] LoyaltyOne Co. brings this motion seeking the Settlement Authorization Order that:
- (a) approves the Consent to Judgment and Minutes of Settlement between the Applicant and His Majesty the King (“HMK”) in connection with the proceeding pending before the Tax Court of Canada (2020-1038(IT)G), with any such minor amendments as may be approved by the Court, and directs the Applicant and HMK to comply with the terms thereof subject to entry by the Tax Court of an order consistent with the Consent to Judgment; and
 - (b) authorizes, empowers and directs KSV Restructuring Inc., in its capacity as Monitor, *nunc pro tunc*, to cause the Applicant to enter into the Consent to Judgment and Minutes of Settlement and do those things necessary to give effect to (a) above.
- [3] The motion is unopposed. The Monitor recommends the relief sought.
- [4] The Tax Appeal relates to CRA’s disallowance of deductions claimed by LoyaltyOne for the tax year ended December 31, 2013. This resulted in additional taxes (and related interest and penalties) payable by LoyaltyOne for the 2013 year in the amount of \$109.8 million.
- [5] The trial in respect of the Tax Appeal was scheduled to begin on September 9, 2024. Following negotiations over the summer, on September 3, 2024 LoyaltyOne and HMK entered into the Consent to Judgment and Minutes of Settlement in which HMK accepted LoyaltyOne’s position in the Tax Appeal on a without costs basis.
- [6] The Monitor states in s. 3.2 of the Eighth Report that the settlement “results in a complete acceptance of the Applicant’s position on the substantive tax dispute at issue on the Tax Appeal and avoids any further costs being incurred by the Applicant in connection with the Tax Appeal and the attendant risks of pursuing the Tax Appeal (which, in any event,

would serve no purpose given the settlement accepts the Applicant's original filing position on the substantive tax dispute in its entirety).”

- [7] With respect to the without costs term of the settlement, the Monitor states that “it is customary for tax appeals to be settled without costs, that there is risk of the Applicant being liable for costs if His Majesty the King were to be successful in reducing the Applicant's reserve claim by even a small amount and that, in any event, any cost award would ultimately be in the discretion of the Tax Court.”
- [8] LoyaltyOne expects to receive a refund for the 2013 taxation year and to have CRA reassess subsequent years in a consistent manner. However, there remain outstanding issues before any funds are received – in particular, CRA has asserted that it may seek to set-off certain claims it may have against amounts owing to LoyaltyOne. Paragraph 5 of the draft order provides that the order is without prejudice to CRA’s right, if any, to seek to set-off amounts owing and the right of any other party (including LoyaltyOne’s secured lenders and Bread) to oppose the set-off.
- [9] The Monitor states that LoyaltyOne and the Monitor kept key stakeholders (including the secured lenders and Bread) apprised on a regular basis of all material developments on the potential settlement, including consulting with them on the draft Minutes of Settlement and Consent to Judgment. Counsel for various key stakeholders attended today and confirmed that they are not opposing the order.
- [10] I am approving the Minutes of Settlement and Consent to Judgment pursuant to s. 11 of the CCAA. The settlement represents a complete acceptance of LoyaltyOne’s substantive position on the Tax Appeal. It avoids a trial and the costs and risks associated therewith. I accept the Monitor’s view that the settlement of the Tax Appeal on these terms is in the best interests of LoyaltyOne and its stakeholders.
- [11] I further authorize the Monitor to cause LoyaltyOne to enter into the Minutes of Settlement and Consent to Judgment *nunc pro tunc*. This is consistent with the Monitor’s expanded powers in paragraph 5(f) of the Ancillary Relief Order, which expressly empowered the Monitor, subject to court order (or consent of the Requisite Consenting Lenders), to prosecute and settle these tax proceedings.
- [12] Settlement Authorization Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.