CITATION: LoyaltyOne, Co. (Re), 2024 ONSC 3866
COURT FILE NO.: CV-23-00696017366651-00CL
DATE: 20240710

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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 LOYALTYONE, CO.

BEFORE: Conway J.

COUNSEL: *Timothy Pinos, Alan Merskey and Kiyan Jamal*, for LoyaltyOne, Co.

Peter Ruby, Kirby Cohen and Meghan De Snoo, for KSV Restructuring Inc.

Robert W. Staley and Dylan Yegendorf, for the Ad Hoc Group of Term B Lenders

Markus Kremer and Alex Moser, for Bank of America, N.A. as administrative agent and Term Loan A Lenders

Eliot Kolers, Maria Konyukhova, Lesley Mercer and RJ Reid, for Bread Financial Holdings, Inc.

Edward Park, CRA, Department of Justice Canada

HEARD: June 13 and 14, 2024

REASONS FOR DECISION
(RE: TAX MATTERS AGREEMENT)

[1] LoyaltyOne, Co. ("**LoyaltyOne**") operated the AIR MILES loyalty rewards business for three decades. In March 2023, it sought protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended ("**CCAA**"). In June 2023, Bank of Montreal ("**BMO**") bought the assets of the AIR MILES business as a going concern in the CCAA proceedings.

[2] LoyaltyOne's largest remaining asset is a claim against the Canada Revenue Agency ("**CRA**") for a refund of $96 million with respect to taxes LoyaltyOne paid in 2013 (the "**Tax Refund**"). The trial over the Tax Refund is scheduled to commence in September 2024.

[3] Until November 2021, LoyaltyOne was a subsidiary of Alliance Data Systems Corporation ("**ADS**"). At that time, ADS divested itself of the AIR MILES business through a "spin transaction", explained below. One of the documents signed in the spin transaction is a tax matters agreement dated November 3, 2021 (the "**TMA**").

[4] The issue on the motions before me is who is entitled to the Tax Refund – ADS or LoyaltyOne.

[5] LoyaltyOne and KSV Restructuring Inc. (the "**Monitor**"), supported by the ad hoc group of Term B loan lenders (the "**Lenders**"), say that LoyaltyOne and its creditors are entitled to the Tax Refund. Their motion seeks a declaration that the TMA is not binding on LoyaltyOne or alternatively that it is void as a transfer at undervalue ("**TUV**").[1] LoyaltyOne has issued a notice of its intention to disclaim the TMA dated October 27, 2023 (the "**Disclaimer**"). LoyaltyOne and the Monitor say that in any event, Bread's claim to the Tax Refund is only a provable pre-filing unsecured claim.

[6] ADS (now Bread Financial Holdings, Inc. ("**Bread**")) says that it is entitled to the Tax Refund pursuant to the terms of the TMA. It has brought a cross-motion to set aside the Disclaimer. It says that it is entitled to the full amount of the Tax Refund.

[7] For the reasons that follow, I have determined that (i) LoyaltyOne is bound by the TMA; (ii) the TMA is not void as a TUV; (iii) the Disclaimer is not approved; and (iv) it is premature to determine the nature of Bread's rights with respect to the Tax Refund at this time.

Background

[8] The following facts are undisputed, unless otherwise noted.

Divestiture of the Loyalty Rewards Business

[9] Prior to 2019, ADS had three distinct business units: (a) credit card and banking services; (b) consumer loyalty reward program services; and (c) data-driven marketing services. In 2018, ADS decided to shift its focus to the card business. In 2019, ADS sold the marketing business.

[10] Charles Horn, a former executive of ADS, became the Executive Vice President and Senior Advisor to oversee the divestment of the loyalty rewards business. ADS first tried to sell the business. Then, in 2021, ADS decided to divest itself of the business through a spin transaction (the "**Spin Transaction**"). Mr. Horn had a team of six ADS executives (the "**Spin Team**") who assisted him on the Spin Transaction and took positions with the new company.[2]

[11] The Spin Transaction was completed on November 5, 2021 (the "**Spin Date**"). The majority of shares of LoyaltyOne and another ADS subsidiary, BrandLoyalty Group B.V.

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[1] LoyaltyOne confirmed that it was not pursuing its claims based on oppression or unconscionability.

[2] Cynthia Hageman, Jeffrey Fair, Jeffrey Tusa, Jack Taffe, Jeffrey Chesnut, and Laura Santillan. The first four individuals have consulting agreements with the "LVI trustee" (defined in footnote 5).

("**BrandLoyalty**"),[3] were transferred to a new Delaware public company, Loyalty Ventures Inc. ("**LVI**"). ADS retained a 19% interest in LVI. The remaining shares of LVI were distributed to the ADS shareholders. These steps were documented in several key agreements, including a Separation and Distribution Agreement dated November 3, 2021 (the "**Separation Agreement**").

[12] One of the key agreements was the TMA. As detailed below, it provides that ADS is responsible for all taxes payable prior to the Spin Date and LVI is responsible for all taxes payable thereafter. Section 8(a) states that ADS is entitled to all tax refunds received by any member of the Loyalty Ventures Group (which includes LoyaltyOne), including those set out in Schedule C. That schedule lists the Tax Refund at issue on this motion.

[13] As part of the Spin Transaction, LVI entered into a credit agreement dated November 3, 2021 (the "**Credit Agreement**"), pursuant to which US$675 million was advanced to LVI and its subsidiaries. LoyaltyOne and BrandLoyalty guaranteed the obligations of LVI under the Credit Agreement.[4] LVI used the funds from the Credit Agreement and a further US$100 million dividend from LoyaltyOne and BrandLoyalty to pay ADS, which in turn used these funds to pay down its long-term debt.

[14] The distribution of debt between ADS and LVI was supported by a report prepared by ADS' professional advisors, Ernst & Young LLP.

Post-Spin Events

[15] The financial position of LVI and LoyaltyOne deteriorated following the Spin Date. In March 2023, those companies filed for creditor protection in the United States and Canada, respectively. As noted, the assets of the LoyaltyOne business were sold to BMO in June 2023.

[16] There are several outstanding pieces of litigation over the Spin Transaction. LoyaltyOne brought a claim in Ontario against Joseph Motes III (the sole director of LoyaltyOne until the Spin Transaction) and Bread in October 2023, seeking US$775 million in damages for breach of fiduciary duty in connection with the Spin Transaction. The LVI trustee[5] has commenced two actions against Bread in the courts of Delaware and Texas, alleging fraudulent transfer and seeking recovery of US$750 million and the Tax Refund. There is a U.S. securities class action against Bread based on the allegations in the bankruptcy actions. A central allegation in the U.S. proceedings is that ADS failed to disclose to its advisors and lenders that Sobeys had decided to terminate its relationship with the AIR MILES program.

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[3] BrandLoyalty was based in the Netherlands and provided customer loyalty campaign services to retailers in Europe, Asia, and the Middle East.

[4] The wording of the Credit Agreement is that LoyaltyOne is a primary obligor and not a surety. BrandLoyalty is also a primary obligor and not a surety under the Credit Agreement.

[5] Pirinate Consulting Group, LLC in its capacity as trustee of the Loyalty Ventures Liquidating Trust in the U.S. Chapter 11 Proceedings of LVI.

The Tax Matters Agreement

[17] The preamble to the TMA recites that it is being entered into as part of the transactions set out in the Separation Agreement. The TMA is governed by Delaware law.

[18] The TMA states that it is entered into between ADS, on behalf of itself and the members of the ADS Group, and LVI, on behalf of itself and the members of the Loyalty Ventures Group. LoyaltyOne is a member of the Loyalty Ventures Group. The TMA was signed by Jeffrey Fair as authorized representative for LVI. He was LoyaltyOne's Vice President, Taxation at the time.

[19] The purpose of the TMA is set out in the recitals – to deal with the administration and allocation of taxes incurred in the periods prior to the Distribution Date (the Spin Date), taxes resulting from the Distribution (of LVI shares to ADS shareholders), and various other tax matters. In s. 3, the general allocation of taxes is to ADS for the periods prior to the Spin Date and to the LoyaltyOne Group for the periods thereafter.

[20] Section 8 addresses tax refunds. Section 8(a) states that, except as provided by s. 8(b), ADS is "entitled to all Tax Refunds received by any member of the ADS Group or any member of the Loyalty Ventures Group, including but not limited to Tax Refunds resulting from the matters set forth on Schedule C." That schedule explicitly describes the Tax Refund that LoyaltyOne is claiming from the CRA with respect to taxes paid in 2013.

[21] Pursuant to s. 8(c), LoyaltyOne is required to pay over the amount of the Tax Refund to ADS within 30 days of receipt, net of reasonable costs associated therewith.

[22] Section 11 deals with indemnities. Each of the parties indemnifies the other for any tax liability allocated to it under the TMA, any breach of the agreement, and any costs associated therewith. It is common ground that if LoyaltyOne is unsuccessful in recovering the Tax Refund, Bread will have to indemnify LoyaltyOne for further tax liabilities, potentially in excess of $30 million, that it might have to pay to CRA.

[23] Section 15 provides that LVI has the right to control its tax proceedings. However, in the case of a tax refund to which ADS is entitled under s. 8, LVI is required to keep ADS informed of material developments related to the proceeding and not settle any proceeding without the consent of ADS. Further, ADS has the right to participate in the proceeding at its expense and to assume control of the proceeding if LVI does not comply with its obligations to prosecute the proceeding.

The Sobeys Issue

[24] Prior to the Spin Date, Sobeys had been one of the two primary sponsors of the LoyaltyOne business. In June 2022, Sobeys gave formal notice to LoyaltyOne that it would be exiting the program in March 2023.

[25] LoyaltyOne submits that as at the Spin Date, ADS knew Sobeys would be exiting the program by the end of 2022. Alternatively, it submits that the Sobeys exit was reasonably foreseeable on the Spin Date. It submits that based on that fact, revenues from Sobeys should not have been included in projections for the LoyaltyOne business and that LoyaltyOne was insolvent

on the Spin Date for purposes of the TUV analysis. The Lenders support LoyaltyOne's position on Sobeys and submit that Sobeys' intention to terminate was never disclosed to them.

[26] LoyaltyOne tendered two affidavits from Cynthia Hageman, former legal counsel at ADS, and conducted a Rule 39.03 examination of Blair Cameron, President and Chief Executive Officer of LoyaltyOne until April 2022. LoyaltyOne relies on documentary evidence from January and February 2021, including emails between Mr. Horn and Mr. Medline of Sobeys, and minutes of ADS board meetings. Those materials indicate that Sobeys had told ADS that it intended to leave the program but that its decision was not final and that ADS said that Sobeys' story kept changing. LoyaltyOne also relies on the amendment to the Sobeys sponsor agreement that provided for the contract to be terminated no earlier than July 1, 2022 and no later than February 1, 2023.

[27] Bread submits that the evidentiary record is insufficient to make the significant factual findings sought by LoyaltyOne. It notes that (i) neither Ms. Hageman nor Mr. Cameron were the individual that had direct dealings with Sobeys. That was Mr. Horn, who gave no evidence on this motion; (ii) there is no evidence from the members of the Spin Team who prepared the projections for the Spin Transaction that included revenue from Sobeys; and (iii) there is no evidence from the Lenders as to what they were told about sponsors of the business before they advanced funds under the Credit Agreement.

[28] Bread has tendered evidence from Mr. Motes. His evidence is that the Spin Transaction was a "pure play" strategy for all of its business units, that the transaction was intended to create two successful companies, and that it was undertaken with the benefit of numerous professional advisors. He says that at the time, people were optimistic about the future success of the spun-out loyalty rewards business.

[29] I accept Bread's submission with respect to the record. The evidence is insufficient to make any factual findings with respect to Sobeys. The allegations are serious, and the record leaves many questions unanswered. For example:

- Why did Mr. Horn purchase US$400,000 of LVI stock the month after the Spin Date if he knew Sobeys was leaving the program?

- Why did the Spin Team members prepare projections for the Spin Transaction that included Sobeys revenue? Why did LVI continue to include Sobeys' revenues in its projections after the Spin Date?

- Did the executives at ADS reasonably believe that Sobeys was simply posturing and trying to get more concessions and a better deal? Ms. Hageman admitted "[t]hat's what clients do". Mr. Cameron admitted that he continued to work with Sobeys through 2021 and 2022 with different initiatives to address their concerns and entice them to stay in the program.

- Did the executives at ADS reasonably believe that Sobeys was coordinating with a prospective bidder in acquiring the LoyaltyOne business? Did they think that Sobeys was posturing and putting pressure on LoyaltyOne in order to assist that

bidder? Mr. Cameron's email of January 28, 2021, to Todd Gulbransen at ADS, suggested that might be the case.

- Why did ADS retain a 19% interest in LVI if it thought a major sponsor was going to leave the program?

- Why did ADS not make any public disclosure about Sobeys before the Spin Date? Why did LVI not make any public disclosure about Sobeys until the formal notice was given in June 2022?

[30] The evidence before me is conflicting and does not provide sufficient context as to what was actually going on with Sobeys prior to the Spin Date. There are issues of credibility in making these determinations. The findings are critical and central to allegations made in the U.S. litigation. I simply cannot make these factual findings on the record before me. I have therefore not factored any findings with respect to Sobeys into my analysis of the issues.

Issues

[31] There are four issues on these motions:

a. Is LoyaltyOne bound by the TMA?

b. Is the TMA void as a TUV?

c. If LoyaltyOne is bound by the TMA and it is not void as a TUV, should the Disclaimer of the TMA be approved?

d. What are Bread's rights and remedies under the TMA?

Issue #1 – Is LoyaltyOne Bound by the TMA

[32] It is undisputed that LoyaltyOne was not a signatory to the TMA. LVI signed the TMA "on its own behalf and on behalf of the members of the Loyalty Ventures Group". LoyaltyOne is a member of the Loyalty Ventures Group. Jeffrey Fair signed the TMA as the authorized representative of LVI. As noted, he was also LoyaltyOne's Vice President, Taxation.

[33] Bread tendered expert evidence that under the law of the contract (Delaware), a parent is entitled to bind its subsidiary to a contract. LoyaltyOne submits that the law of the contract does not determine whether LoyaltyOne is bound by it. The law applicable to that issue can only be the law of Nova Scotia (LoyaltyOne's jurisdiction of incorporation) or Ontario (where LoyaltyOne's head office was located). It submits that under Ontario or Nova Scotia law, a subsidiary is only bound by a contract it expressly signs, authorizes another entity to sign on its behalf, or ratifies, none of which occurred here.

[34] Even accepting LoyaltyOne's submission on the applicable law, I am satisfied that on the facts of this case, Mr. Fair's signature of the TMA bound LoyaltyOne to that agreement. He was LoyaltyOne's Vice President, Taxation, and Senior Vice President, Tax, at ADS and LVI.

According to Mr. Motes, Mr. Fair was the executive who oversaw the structuring of the TMA and was the logical representative of both parties. On cross-examination, Mr. Fair confirmed that he understood that he was signing the TMA on behalf of all of LVI's subsidiaries. Mr. Motes was the sole director of LoyaltyOne at the time and clearly approved the entering into of the TMA as part of an overall transaction involving LVI and its wholly-owned subsidiaries. I note that in s. 27 of the TMA, LVI represents and warrants that it has the authorization to sign the agreement on behalf of each member of its group.

[35] Further, after the TMA was signed, LoyaltyOne conducted itself as though it was bound by it. According to Mr. Motes, LoyaltyOne and BrandLoyalty have been reimbursed by ADS for pre-separation tax obligations and ADS has received tax refunds and other receivables that arose from the pre-separation periods. In addition, Ms. Hageman requested indemnification from Bread for the costs of the tax litigation over the Tax Refund and provided the backup information Bread required in connection with that request.

[36] I therefore reject LoyaltyOne's submission that it is not bound by the TMA.

Issue #2 – Is the TMA Void as a TUV

[37] The Monitor seeks a declaration that the TMA was a TUV pursuant to s. 96(1)(b)(ii)(A) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), as incorporated by reference in s. 36.1(1) of the CCAA. Those sections state that the Monitor may declare that a TUV is void against the Monitor if:

> **(b)** the party was not dealing at arm's length with the debtor and
>
> …
>
> **(ii)** the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
>
> **(A)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it,

[38] The Monitor notes that the term "debtor" in the BIA is redefined as "debtor company" in the CCAA (s. 36.1(2)(c)) – in this case, LoyaltyOne.

[39] The TMA was entered into between ADS and LVI (on behalf of the members of the Loyalty Ventures Group, which included LoyaltyOne), who were not dealing at arm's length. The TMA was signed less than five years before LoyaltyOne's CCAA filing.

[40] In order to succeed on its TUV claim, the Monitor must establish that (i) LoyaltyOne was insolvent at the time the TMA was signed in November 2021; and (ii) the consideration received by LoyaltyOne under the TMA was less than the consideration given to Bread under that agreement.

[41] The Monitor has not established the first element of the test.

[42] First, LoyaltyOne's expert, Mr. Harrington, gave various ranges of the fair market value of LoyaltyOne as at the Spin Date. These values range from a low of $452 million (comparable companies approach) to $656 million (discounted cash flow approach). He then added the full amount of LoyaltyOne's $675 million liability under the Credit Agreement to conclude that the company was insolvent.

[43] Bread submits that I have been given no basis to attribute the full amount of the debt to LoyaltyOne. The debt was owed and reflected as a liability of LVI, which was solvent on the Spin Date. It was guaranteed by both of its subsidiaries (LoyaltyOne and BrandLoyalty), who were expected to contribute towards the debt. There is no analysis of how the debt was allocated among the three companies and whether the portion allocated to LoyaltyOne exceeded its fair market value.

[44] Second, the experts took different approaches with respect to Sobeys. Mr. Harrington was asked to assume that Sobeys' departure was reasonably foreseeable. He deducted 100% of the Sobeys revenue in his five-year cash flow calculations and concluded that LoyaltyOne was insolvent on that basis. He acknowledged on cross-examination that he did not know what the value would have been without this assumption.

[45] Mr. Davidson, Bread's expert, was not asked to make this assumption but nonetheless did the calculations based on various probabilities that Sobeys would exit the program. He concluded that LoyaltyOne was still solvent taking these probabilities into account. He attributed LoyaltyOne's subsequent decline to post-spin intervening factors and macroeconomic issues.

[46] As set out above, based on the record before me, I am not prepared to find that Sobeys' departure was reasonably foreseeable as at the Spin Date. I therefore prefer Mr. Davidson's analysis of the issue.

[47] I am not persuaded that LoyaltyOne was insolvent on the Spin Date. The Monitor has not established that the TMA is void as a TUV.

Issue #3 – Should the Disclaimer be Approved

[48] LoyaltyOne delivered the Disclaimer of the TMA pursuant to s. 32(1) of the CCAA. Bread applied to this court under s. 32(2) for an order that the TMA is not to be disclaimed or resiliated.

[49] The factors for the court to consider in upholding or setting aside a disclaimer are set out in s. 32(4):

> **(4)** In deciding whether to make the order, the court is to consider, among other things,
>
> **(a)** whether the monitor approved the proposed disclaimer or resiliation;

> **(b)** whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
>
> **(c)** whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

[50] The list of factors in s. 32(4) of the CCAA is not exhaustive and courts have added the requirement that the disclaimer be fair, appropriate, and reasonable in all circumstances: *Re Laurentian University of Sudbury*, 2021 ONSC 3272, 89 C.B.R. (6th) 183, at para 44.

[51] The first element of the test is met. The Monitor approved the Disclaimer. It states in its Fifth Report dated November 23, 2023, "the Tax Appeal is a significant remaining source of potential recovery for LoyaltyOne's creditors."

[52] Bread submits that the second element is not met because the business of LoyaltyOne has already been sold to BMO and there is no plan to be filed. I accept this submission.

[53] There are no timing requirements for issuing disclaimers under the CCAA. However, the court's focus is on whether the disclaimer of the contract will enhance the prospects of the debtor making a viable compromise or arrangement. It is clear from the cases that the purpose of the disclaimer is to relieve the debtor from the burden of performing a contract where it would prevent or delay a successful restructuring (*Laurentian*), a sale of the business (*Timminco Ltd. (Re)*, 2012 ONSC 4471, 93 C.B.R. (5th) 326), or an orderly winddown and distribution of assets to creditors (*Target Canada Co. (Re)*, 2015 ONSC 1028, 23 C.B.R. (6th) 303).

[54] Here, the Disclaimer of the TMA will accomplish none of those objectives. There is no restructuring in process. The business has been sold. LoyaltyOne is no longer an operating business. There is no suggestion of a plan to be put to creditors. There is no basis to find that LoyaltyOne's prosecution of the tax proceeding and payment of the Tax Refund to Bread under the TMA will impair or delay a restructuring, sale, or orderly distribution to creditors. Rather, in my view, the Disclaimer by LoyaltyOne is an attempt to secure funds for itself that it was never entitled to retain pursuant to the Spin Transaction.

[55] With respect to the third element, Bread's evidence is very limited. Mr. Motes says that Bread has already suffered losses as a result of the LoyaltyOne insolvency. He says that the disclaimer of the TMA will result in further financial hardship to Bread because it divested the loyalty rewards businesses on the basis that the transaction would be effected as set out in the transaction documents, including the TMA. Mr. Motes did not provide evidence as to the impact that failing to receive the Tax Refund will have on Bread's overall financial position.

[56] Apart from the enumerated factors in s. 32(4), the question is whether it is fair, appropriate, or reasonable for the Disclaimer to be approved: see *Laurentian*. Bread says that the Disclaimer is an attempt of the Lenders to shift the value of the Tax Refund from Bread to themselves since the Lenders represent approximately 90% of the unsecured claims of LoyaltyOne.[6] Bread submits that

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[6] The Lenders accounted for 96% of the unsecured creditors as at March 2023.

the unfairness is even greater because the Lenders knew about the TMA, required that it be signed as a condition of the Credit Agreement, and excluded the Tax Refund from their security.

[57] I agree. The Lenders constitute the vast majority of LoyaltyOne's creditors and are the creditors that will benefit the most from the Disclaimer. Indeed, they filed their own factum and made submissions in support of this motion.

[58] The Lenders accepted the terms of the TMA when they advanced funds to LVI in the Spin Transaction. It was a condition of the Credit Agreement that the TMA be entered into. The TMA explicitly states that the Tax Refund was payable to Bread. The Tax Refund was specifically excluded from the Lenders' security in the Credit Agreement.

[59] It would be entirely unfair, inappropriate, and unreasonable for LoyaltyOne to disclaim the TMA. The effect of the Disclaimer would be to reverse the bargain that LoyaltyOne made when it entered into the Spin Transaction and that the Lenders made when they entered into the Credit Agreement as part of the transaction. This is even more unfair when I consider that LoyaltyOne has already paid tax refunds to ADS under the provisions of the TMA and has sought indemnity for its costs of pursuing the Tax Refund.

[60] I find that the Disclaimer is being used to get out of the deal that was made in the Spin Transaction, secure the funds for LoyaltyOne that it was never entitled to retain, and assist the Lenders in recovering the losses that they sustained on the transaction. That is not the intended purpose of a disclaimer under s. 32(4) of the CCAA.

[61] I therefore grant Bread's motion and disallow the Disclaimer of the TMA. The TMA will remain in full force and effect.

Bread's Rights and Remedies under the TMA

[62] The parties disagree on the nature of Bread's rights under the TMA. The Monitor and LoyaltyOne say that even if the Disclaimer is not approved, Bread's only entitlement to the Tax Refund is a pre-filing unsecured claim.

[63] Bread disagrees. It submits that it is entitled to the entire amount of the Tax Refund through the remedy of a constructive trust or an order that LoyaltyOne comply with its obligations under the TMA.

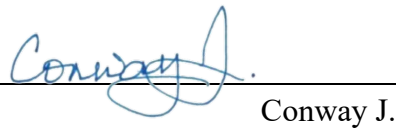
[64] In my view, it is premature to make any of the orders sought by the parties. The TMA remains in effect. LoyaltyOne remains subject to its obligations thereunder. Under the terms of that agreement, LoyaltyOne is required to pursue the tax proceeding and remit the Tax Refund to Bread if and when received. There is no need to consider the consequences of any prospective breach of those obligations should that occur.

[65] If LoyaltyOne fails to perform its obligations under the TMA, Bread can seek a remedy from this court and those issues can be considered at that time.

Decision

[66] The joint motion of LoyaltyOne and the Monitor is dismissed. Bread's motion is granted.

[67] If the parties are unable to agree on the costs of these motions, they shall arrange a scheduling appointment before me to address the process for costs submissions.



Conway J.

Date: July 10, 2024