



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

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

THE HONOURABLE) **WEDNESDAY, THE 29TH DAY**
)
JUSTICE *MORAWETZ*) **OF JUNE, 2011**

**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**

INTERIM INITIAL ORDER

THIS APPLICATION, made by Massachusetts Elephant & Castle Group, Inc. (the "Applicant") in its capacity as the proposed foreign representative (the "Foreign Representative") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the "US Court"), under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, filed, the affidavit of Keith Radford, sworn June 28, 2011, filed, the affidavit of Sara-Ann Wilson, sworn June 29, 2011, filed, the

Preliminary Report of BDO Canada Limited ("BDO"), in its capacity as proposed Information Officer (the "Proposed Information Officer"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, and upon hearing the submissions of counsel for the Foreign Representative, and counsel for GE Canada Equipment Financing G.P. ("GE"), and upon being advised that none of the other persons who might be interested in these proceedings was served with the Notice of Application:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that from the date hereof until and unless otherwise ordered by this Court (the "Stay Period"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding" and collectively, "Proceedings") including, without limitation, a Proceeding taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3, as amended, or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business in Canada (the "Business") or their current and future assets undertakings and properties of every nature and kind whatsoever, and wheresoever situate, including all proceeds thereof, of any of the Chapter 11 Debtors in Canada that relates to the Business (collectively, the "Property"), except with the written consent of the relevant Chapter 11 Debtor(s), or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

EXERCISE OF RIGHTS OR REMEDIES

3. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies in Canada of any individual, firm, corporation, agency, governmental or quasi-governmental body, or other entity (all of the forgoing, collectively being "Persons" and each being a "Person") in respect of

or affecting the Chapter 11 Debtors' Business or the Property, are hereby stayed and suspended except with the written consent of the relevant Chapter 11 Debtor(s) or leave of this Court, provided that nothing in this Order shall: (i) empower any of the Chapter 11 Debtor(s) to carry on any business in Canada that the Chapter 11 Debtor(s) are not lawfully entitled to carry on; (ii) empower the Chapter 11 Debtors to sell or otherwise dispose of, outside the ordinary course of business, any Property in Canada that relates to the Business or empower the Chapter 11 Debtors to sell or otherwise dispose of any of its other property in Canada, provided however, that nothing herein shall limit the Chapter 11 Debtors' right to seek approval in the Chapter 11 Proceedings or from this Court to sell or otherwise dispose of any of their Property; (iii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "CCAA"); (iv) prevent the filing of any registration to preserve or perfect a security interest; or (v) prevent the registration of a claim for lien. Subject to any order that the US Court may make in the Chapter 11 Proceeding, nothing in this Order shall impact on the Consent, Authorization and Acknowledgement, dated June 21, 2011, and granted by the Chapter 11 Debtors in favour of GE, McCarthy Tétrault LLP, and Alvarez & Marsal Canada ULC.

NO INTERFERENCE WITH RIGHTS

4. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by any of the Chapter 11 Debtors in respect of or affecting the Property or Business, except with the written consent of the relevant Chapter 11 Debtor(s) or with leave of this Court.

CONTINUATION OF SERVICES

5. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation logistics services, customs broker services, utility or other services provided in respect of the Property or Business or the Chapter 11 Debtors, are hereby restrained until further Order of this

Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of, among other things, their current premises, telephone numbers, facsimile numbers, internet (addresses and domain names) provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be agreed upon by the supplier or service provider, the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s), or as may be ordered by this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

6. **THIS COURT ORDERS** that during the Stay Period and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Chapter 11 Debtors with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of any of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations or unless otherwise ordered by this Court.

SERVICE OF COURT MATERIALS AND PUBLICATIONS OF NOTICE

7. **THIS COURT ORDERS** that the Applicant and its agents, or, if so requested by the Applicant, the Proposed Information Officer, are at liberty to serve this Order, any other orders in this proceeding, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party of the Chapter 11 Debtors at their addresses as last shown on the records of the Chapter 11 Debtors 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, or if sent by ordinary mail, on the fifth calendar day after mailing.

8. **THIS COURT ORDERS** that any party to these proceedings may serve any court materials in these proceedings (including, without limitation, the Application Record, any motion

records, factums and orders) on any person electronically by emailing a PDF or other electronic copy of such materials to parties' email addresses as recorded on the service list.

AID AND ASSISTANCE OF OTHER COURTS

9. **THIS COURT HEREBY ORDERS AND REQUESTS** that aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada the United States or elsewhere, to give effect to this Order and to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Proposed Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order.

MISCELLANEOUS

10. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any of the Chapter 11 Debtors may, by written consent of their counsel of record, agree to waive any of the Chapter 11 Debtors' protections provided in this Order.

11. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to Chapter 11 Debtor(s), the Proposed Information Officer and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 29 2011

PER/PAR:

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

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**ONTARIO
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COMMERCIAL LIST**

Proceeding commenced at Toronto

INTERIM INITIAL ORDER

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