

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
COUCH COMMERCE INC., DEALFIND.COM INC., MENUPALACE.COM CORPORATION  
and 8108773 CANADA INC.  
OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**SIXTH REPORT OF MNP LTD.,  
IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER  
THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF COUCH COMMERCE INC., DEALFIND.COM INC., MENUPALACE.COM  
CORPORATION AND 8108773 CANADA INC.**

**December 11, 2014**

## INTRODUCTION

1. On August 29, 2014 (the “**Filing Date**”), each of Couch Commerce Inc. (“**Couch**”), Dealfind.Com Inc. (“**Dealfind**”), Menupalace.com Corporation (“**Menupalace**”) and 8108773 Canada Inc. (“**810 Inc.**”) and (collectively with Couch, Dealfind and Menupalace, the “**Couch Group**” or the “**Companies**”) filed a Notice of Intention to Make a Proposal (the “**NOIs**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). MNP Ltd. (“**MNP**”) consented to acting as Proposal Trustee in these proceedings (the “**Proposal Trustee**”).
2. On September 8, 2014, Notice of the NOI’s filing as prescribed by the BIA was sent to all of the respective Companies’ known creditors with potential claims of greater than \$250.
3. On September 10, 2014, MNP in its capacity as Proposal Trustee filed its first report (the “**First Report**”) with the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) in connection with and in support of a motion by the Companies for certain relief which was heard on September 11, 2014.
4. On September 11, 2014, in response to the above noted motion, the Honourable Mr. Justice Newbould issued an Order (the “**September 11<sup>th</sup> Order**”) providing certain relief including:
  - a) approving an administrative consolidation of the Companies’ estates;
  - b) appointing John R. Sharpe (“**Sharpe**”) as Director of the Couch Group;
  - c) approving an interim financing facility (the “**DIP Facility**”) and a charge on the Companies’ assets, property and undertaking (the “**Assets**”) in favour of nCrowd, Inc. (“**nCrowd**” or the “**DIP Lender**”);
  - d) expanding the Proposal Trustee’s Powers to include, *inter alia*, the Proposal Trustee monitoring, managing, and controlling the Couch Group’s bank accounts, receipts, and disbursements;
  - e) extending the time within which the Companies are required to file a Proposal to October 30, 2014; and
  - f) approving the First Report and the activities of the Proposal Trustee as set out therein.

A copy of the September 11<sup>th</sup> Order is attached hereto as **Appendix “A”**.

5. On September 22, 2014 Justice Newbould issued an order (the “**nCrowd Approval and Vesting Order**”) and Endorsement (the “September 22<sup>nd</sup> Endorsement which, among others things, approved the sale of substantially all of the property assets and undertaking of the Couch Group to nCrowd Commerce, Inc. (“**nCrowd**”) pursuant to an Agreement of Purchase and Sale made among the Couch Group and nCrowd dated September 19, 2014. Copies of the nCrowd Approval and Vesting Order and the September 22<sup>nd</sup> Endorsement are attached hereto as **Appendix “B”** and **Appendix “C”**, respectively.
6. On September 24, 2014 the Sale Transaction closed and, as a result, the Companies effectively ceased operating with the exception of certain administrative functions, pursuing the collection of accounts receivable and pursuing the sale of the Tax Losses (as defined in the Second Report).
7. Following completion of the sale of the Couch Group’s business assets to nCrowd, the only material assets remaining to Couch Group are represented by cash on hand held by the Proposal Trustee totalling \$557,243.01.
8. On October 29, 2014, the Proposal Trustee filed its Third Report with the Court, in support of an extension of the time within which to file a Proposal to November 28, 2014.
9. On October 29, 2014, the Court issued an order (the “**October Stay Extension Order**”) that among other things extended the time for the Companies to make a Proposal to November 28, 2014. A copy of the October Stay Extension Order is attached hereto as **Appendix “D”**.
10. In accordance with the September 22<sup>nd</sup> Endorsement and the October Stay Extension Order, the Proposal Trustee continues to hold the sum of \$250,000 (the “**First Reserve Fund**”) pending consensual arrangements between the Proposal Trustee, NBX Merchant Services Inc. (a payment processor for the Couch Group) and B.E.S.T. Total Return Fund Inc., B.E.S.T. Active Fund 16

LP, B.E.S.T. Active Fund 17 LP, and B.E.S.T. Active 365 Fund LP, and the Business, Engineering, Science & Technology Discoveries Fund Inc. (the “**Senior Secured Creditor**”) or further Order of the Court.

11. In accordance with the Endorsement of Justice Newbould dated October 29, 2014, the Proposal Trustee continues to hold the sum of \$160,000 (the “**Second Reserve Fund**”) pending consensual arrangements between the Proposal Trustee, PayPal (another payment processor for Couch Group) and the Senior Secured Creditor or further Order of the Court.
12. Based on the Proposal Trustee’s review of the externally prepared income tax returns for the Couch Group, as at December 31, 2013, Couch Commerce Inc. had accumulated non-capital tax losses amounting to approximately \$20,425,992.
13. Following the sale of the Couch Group business to nCrowd, the Proposal Trustee sought expressions of interest from parties who might be interested in pursuing a transaction with Couch Commerce to maximize recoveries for creditors, including the Senior Secured Creditor, by monetizing the existing tax losses.
14. As a result of these efforts, 2440310 Ontario Inc. and 2441808 Ontario Inc. (together, the “**Initial Tax Loss Investor**”) entered into discussions with the Proposal Trustee, Couch Group and the Senior Secured Creditor to explore the possibility of a transaction and on November 6, 2014, entered into a term sheet with Couch Commerce for this purpose (the “**Initial Term Sheet**”).
15. On November 20, 2014, the Proposal Trustee, Couch Group and the Senior Secured Creditor were advised by the Initial Tax Loss Purchaser that it would not be proceeding with the transaction contemplated by the Initial Term Sheet and Couch Group attended and advised the Court accordingly on November 21, 2014.
16. On November 20, 2014 the Proposal Trustee filed its Fourth Report with the Court in order to, among other things, (i) update the Court on the Companies’ inability to arrange a transaction for the monetization of its sole remaining asset being approximately \$47.0 million of cumulative non-capital tax loss carry-forwards (the “**Tax Losses**”); and, (ii) advise the Court that absent any

expressions of interest to acquire the Tax Losses before the expiry of time to Make a Proposal being November 28, 2014, the Companies would be deemed bankrupt on that date.

17. On November 26, 2014, a new party, 2192273 Ontario Inc. (the “**Tax Loss Buyer**”), delivered a term sheet/letter of intent to the Proposal Trustee contemplating acquisition of the tax losses of Couch Commerce (the “**LOI**”).
18. On November 27, 2014, at the request of the Proposal Trustee, the Tax Loss Buyer paid a non-refundable deposit of \$10,000 in relation to its letter of intent concerning the Couch Commerce tax losses. The basic terms of the offer of the Tax Loss Buyer would see the sum of \$500,000, less transaction costs, being made available for the Senior Secured Creditor and, to the extent agreed by the Senior Secured Creditor, to the body of the creditors of Couch Commerce. A transaction with the Tax Loss Buyer will permit value to be realized on the existing Couch Commerce non-capital tax losses.
19. In order to permit the Couch Group, the Proposal Trustee and the Senior Secured Creditor to deal with the offer from the Tax Loss Buyer for the benefit of the estate, on November 28, 2014, the Court issued an Order extending the stay of proceedings and time to file a Proposal to December 12, 2014 (the “**November 28 Order**”). A copy of the November 28 Order is attached as **Appendix “E”**.
20. The affidavit of Sharpe, the Companies’ former Chief Financial Officer, sworn September 10, 2014 (the “**September 10 Sharpe Affidavit**”) and the affidavit of John R. Sharpe sworn September 15, 2014 and filed in support of this motion (the “**September 15 Sharpe Affidavit**”), provide, *inter alia*, a description of the Companies’ background, their obligations and the reasons for the commencement of these proceedings. The Proposal Trustee has not repeated those details in this Report.

## PURPOSES OF THIS REPORT

21. The purposes of this the Proposal Trustee's sixth report (the "**Sixth Report**") are to:
- a) advise the Court of the current cash balances held by the Proposal Trustee including the Reserve Funds totals \$557,243.01;
  - b) advise the Court that the Proposal Trustee is of the view that the proposed tax loss transaction imposes significant risk to the Couch Group because it might give rise to significant additional income tax being assessed against the Companies by Canada Revenue Agency ("**CRA**");
  - c) advise the Court that in light of the above, the Couch Group will not be filing a Proposal and will consequently be deemed bankrupt on December 12, 2014; and
  - d) advise the Court that as soon as possible after the Couch Group is deemed bankrupt, MNP in its then capacity as Trustee in Bankruptcy of the Couch Group's consolidated estates will be seeking an Order that dispenses with the requirements pursuant to BIA Section 102 for the Trustee to send, by ordinary mail, to all known creditors with claims > \$250 a copy of the Couch Group's Statement of Affairs, Proof of Claim and Form of Proxy and instead authorizing the Trustee to only send Notice of the Bankruptcy in the prescribed form and directing the creditors to the Trustee's website to obtain copies of these documents.
22. In preparing this Sixth Report and in making the comments herein, the Proposal Trustee has been provided with, and has relied upon information provided by:
- a) the September 10 Sharpe Affidavit and the September 15 Sharpe Affidavit (collectively, the "**Sharpe Affidavits**");
  - b) the Companies' audited financial statements;
  - c) unaudited financial information provided by the Companies;
  - d) the books and records of the Companies;
  - e) discussions with the Companies' directors, officers, management and employees;
  - f) the Companies' counsel, Gowling Lafleur Henderson LLP ("**Gowlings**");
  - g) discussions with other advisors to the Companies; and
  - h) as otherwise available to the Proposal Trustee and its counsel.

23. Except as described in this Sixth Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy and completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Professional Accountants Handbook.

24. Unless otherwise noted, all currency references in this Fifth Report are to Canadian dollars.

## **BACKGROUND AND HISTORY**

25. The Sharpe Affidavits provide, *inter alia*, the Companies' background, a description of its obligations and the reasons for the commencement of these proceedings.

26. A detailed summary of the Companies' background and history is provided in the First, Second, Third, Fourth and Fifth Reports, and is not restated here.

## **ACTIVITIES OF THE PROPOSAL TRUSTEE**

27. Additional activities of the Proposal Trustee since the Fifth Report include:

- a) attending at the Companies' Premises on a regular basis to monitor and provide assistance to the Companies' remaining management and staff in respect of the Companies' ongoing operations, including its dealings and communications with merchants, trade creditors, and/or their counsel;
- b) assisted the Companies in the collection of accounts receivable and other residual assets;
- c) maintaining a website with all public information related to these proceedings;
- d) maintaining a general email account for creditor inquiries and answering numerous telephone calls and emails from the Companies' creditors since the Filing Date;
- e) participating in negotiations with Optimal Payments and PayPal; and
- f) assisting in the negotiation and assessment of a potential sale of the Tax Losses with the Tax Loss Buyer.

## CASH ON HAND AND RESERVE FUNDS

28. As of the date of writing this report, the Proposal Trustee holds approximately \$557,000 including the First Reserve Fund in the amount of \$250,000 and the Second Reserve Fund in the Amount of \$160,000.

## PROPOSED TAX LOSS TRANSACTIONS

29. Following the issuance of the November 28 Order, the Proposal Trustee conducted due diligence on the Tax Loss Buyer and the transactions being proposed to monetize the Tax Losses for the benefit of the Couch Group's stakeholders.

30. On December 7, 2014, the Proposal Trustee met with the external accountant for the Tax Loss Buyer to review in detail the proposed transactions and potential benefits and risks to the Couch Group Estate.

31. On December 8, 2014, the Proposal Trustee prepared a memorandum (the "Tax Loss Memorandum") regarding the proposed transaction which concluded that undertaking the proposed transactions would likely result in a substantial tax liability to the Couch Group. An excerpt from the Tax Loss Memorandum is attached as **Appendix "F"**.

32. The Tax Loss Memorandum was provided to the Couch Group, the Senior Secured Creditor and their respective counsel who concurred with its conclusion and confirmed the Companies would not be able to file a Proposal.

33. On December 9, 2014, the Proposal Trustee advised the Tax Loss Buyer that the Couch Group:

- a) would not be proceeding with the proposed Transactions;
- b) would not be filing a Proposal; and
- c) would be deemed bankrupt on December 12, 2014



## NOTICE OF BANKRUPTCY

34. As set out above in paragraph 2, on September 9, 2014, Notice of the NOI filing including the requisite prescribed forms (the “**NOI Notice**”) was sent to the Companies’ over 3,600 known creditors with claims of >\$250. The estate incurred approximately \$35,000 for printing and postage costs for the sending of the NOI Notice.
35. BIA Section 102 requires *inter alia* that within five days of the date of bankruptcy the Trustee send to all known creditors in the prescribed form:
- a) Notice of the Bankruptcy and First Meeting of Creditors (the “**Bankruptcy Notice**”);
  - b) A copy of the Companies’ Statement of Affairs (the “**SOA**”); and
  - c) Proof of Claim and Proxy Form (the “**POC**”).
36. The Proposal Trustee is of the view that upon the deemed bankruptcy of the Companies, there is limited benefit to the estate and all stakeholders to incur the expenses for the mailing of the Bankruptcy Notice, SOA and POC. The creditors might be better served if the printing and postage costs above were avoided by sending only the Bankruptcy Notice and directing the recipients to the Trustee’s website where downloadable copies of the SOA, POC and other publicly available information in connection with these proceedings would be available. In addition, the Bankruptcy Notice offer to provide copies of the SOA and POC to any creditor requesting same. This is especially practical in the circumstances since the Couch Group operated an online commerce business.

## CONCLUSION AND RECOMMENDATION

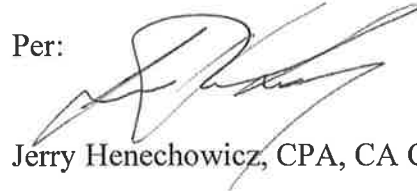
37. Upon the bankruptcy of the Companies, the Trustee intends to bring a Motion to the Court for an Order dispensing with the requirement that the Trustee send the SOA and POC to all known creditors pursuant to BIA section 102.

All of which is respectfully submitted on this 11<sup>th</sup> day of December 2014.

**MNP Ltd.**

In its capacity as Trustee under  
The Notices of Intention to Make a Proposal of  
Couch Commerce Inc., Menupalace.com Corporation, DealFind.com Inc.,  
and 8108773 Canada Inc.

Per:



Jerry Henechowitz, CPA, CA CIRP