

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL
TRADERS ENERGY LTD. and 2496750 ONTARIO INC.**

Applicants

**AIDE MEMOIRE OF
GLENN PAGE AND 26586568 ONTARIO INC.
(Motion for Appointment of a Chief Restructuring Officer)**

October 3, 2023

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TO: SERVICE LIST

A. OVERVIEW

1. There are three motions before the Court to be addressed on October 4, 2023:
 - (a) A motion to set aside/amend the Mareva. This motion has been settled and a form of order has been agreed among the parties.
 - (b) A motion for a sales process and other ancillary relief brought by the OTE Group¹. Today's attendance was not originally scheduled for the hearing of this motion. The full set of materials was not delivered until September 29th. The motion, as framed, is opposed by Glenn Page and 26586568 Ontario Inc. (together referred to as "**265**") and other stakeholders.
 - (c) A motion for the appointment of a Chief Restructuring Officer brought by 265.
2. Separately, there are production motions by OTE USA LLC and 265, which have been delivered, and they seek to schedule the motions in accordance with Justice Kimmel's Endorsement of July 17, 2023.
3. The OTE Group requires independent management prior to any sales process. A Chief Restructuring Officer ("**CRO**") will ensure an orderly restructuring or sale of the OTE Group, where the interest of all stakeholders are protected, free from any conflicting interests.
4. 265 has raised a number of concerns about conflicts of interest and a failure of the OTE Group to be fully transparent with this Court, all of which require the appointment of a CRO and the adjournment of the sale process motion.
5. 265 has delivered a Notice of Examination for the affiant, Scott Hill, for October 12, 2023, Scott Hill is a director and officer of OTE GP. This Honourable Court cannot adjudicate on the full extent of Scott Hill's conflict of interest without the benefit of the cross-examination.

¹ Original Traders Energy Ltd. ("**OTE GP**"), 2496750 Ontario Inc. ("**249**") and the Limited Partnership OTE LP ("**OTE LP**") (collectively, the "**OTE Group**").

(i) *The Role of Scott Hill and Miles Hill in the OTE Group*

6. OTE LP is a limited partnership formed to carry on the business of blending and selling gasoline to independent gas station businesses on First Nations reserves at advantageous prices.

7. Since July 2022, Scott Hill has managed the OTE Group and has sworn numerous affidavits on behalf of the Applicants in this proceeding. Miles Hill is the Vice-President of OTE GP. It is unclear whether he has any day-to-day responsibility for the operations of OTE GP.² Both have shareholding and other financial interests in the OTE Group.

8. The OTE Group has blending locations which were operational at the outset of the CCCA proceedings—Tyendinaga, Whitefish³ and Six Nations⁴. Each of these blending sites are subject to legislation.

9. To execute on OTE LP's business strategy, it was critical that Indigenous individuals with status under the *Indian Act* hold a majority interest in OTE LP and its general partner—in this case, Miles Hill and Scott Hill.

10. Scott Hill and Miles Hill are each registered as an “Indian” within the meaning of the *Indian Act* and each is a member of the Six Nations of the Grand River residing on the Six Nations Reserve in Ontario.

² Motion Record of the Respondents (“**MR Respondents**”), Tab 4, Affidavit of Brian Page sworn September 22, 2023, para 30, p. 420.

³ Provisions of the Framework Agreement on First Nation Land Management, the Framework Agreement on First Nation Land Management Act, SC 2022, c 19, s 121 and the Atikameksheng Anishnawbek (Whitefish Lake) Land Management Code 2008 apply to the possession and use of lands on the reserve that the Whitefish blending location is located.

⁴ Provisions of the *Indian Act*, RSC 1985, c I-5 apply to the possession and use of lands on the reserves that the Tyendinaga and Six Nations blending locations are located.

11. Scott Hill exercises control over the Six Nations Blending Location through a certificate of possession for the land held in his name.⁵ The Six Nations Blending Location currently houses significant assets of the OTE Group after the discontinuance by Scott Hill of the other blending sites.

12. Scott Hill has deposed there is an “informal, oral lease agreement in place” for the OTE Head Office and Six Nations Blending Location (of which he is personally the counterparty).⁶ No ministerial approval was obtained in respect of this lease.⁷

13. The situation for the two other blending locations is different and does not give rise to the same conflicting interests:

- (a) **Tyendinaga Blending Location** – A formal written lease, with a term of 20 years commencing as of February 2020, was concluded between Tom Maracle (an arms’ length party who holds the certificate of possession) and OTE LP. The lease purports to not be a lease entered into pursuant to the *Indian Act*, was not subject to ministerial approval pursuant to the *Indian Act*, and according to its terms is not assignable without the consent of the landlord.⁸
- (b) **Whitefish Blending Location** – Subject to a head lease between Atikameksheng Anishnawbek First Nation and Chi-Zhiingwaak Business Park Inc., and a sub-lease between Chi-Zhiingwaak Business Park Inc. and OTE LP. The sub-lease interest

⁵ MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, para 14, p. 127.

⁶ *Indian Act*, RSC 1985, c I-5, [s. 28\(1\)](#).

⁷ MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, para 2, p. 123.

⁸ MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, para 2, p. 124; MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde sworn October 2, 2023, Exhibit A, p. 149, 157.

of OTE LP is for a term of 35 years commencing September 2021 and is registered on First Nation Lands Register.⁹ The sub-lease is assignable.¹⁰

(ii) Scott Hill Directed the Discontinuation of Operations and Concentration of Assets on the Six Nations Blending Location

14. At some point following the Fourth Report of the Monitor, issued July 12, 2023, the Tyendinaga and Whitefish Blending Locations (the “**Discontinued Locations**”) were discontinued.

15. All movable assets and equipment belonging to the OTE Group were removed from the Discontinued Locations and transferred to the Six Nations Blending Location.

16. The OTE Group and Scott Hill first disclosed these facts to OTE Stakeholders and this Court in Scott Hill’s Seventh Affidavit, sworn September 25, 2023.

17. In addition, Scott Hill deposed that “certain key customers have ceased their relationships with the OTE Group”, resulting in a loss of revenue, and so the OTE Group devised a Reduced Operations Plan “with the assistance of the Monitor”¹¹ resulting in the Discontinued Locations.

18. To date, there has been no explanation as to what key customers were lost or why they were lost. There is no disclosure as to whether the lost customers include the three stations which are run or owned by Miles Hill (Townline Variety, Bearpaw Gas Bar)¹² or by Scott Hill (Renmar Energy).¹³

⁹ MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, para 2, p. 124.

¹⁰ MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, Exhibit B, Affidavit of Scott Hill, p. 180.

¹¹ Motion Record of the Applicants, Tab 3, Seventh Affidavit of Scott Hill, sworn September 25, 2023, paras 26-28, PDF p. 29.

¹² MR of the Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, para 39, 43, pp. 134-145.

¹³ MR of the Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, para 50, 43, p. 135.

19. Equally, there has been no explanation as to why all the operations were moved exclusively to the Six Nations Blending Location. There has also been no details as to the involvement of the Monitor in this process.

(iii) The Hills are in a Fundamental Conflict of Interest

20. The OTE Group's proposed bid process:

- (a) contemplates, as clarified in the Monitor's Fifth Report, that offers for the business and property of the OTE group shall be subject to the approval of the OTE Group, which is managed by Scott Hill and Miles Hill¹⁴;
- (b) does not address Scott Hill's conflict of interest;
- (c) does not address the fact that Scott Hill received his units of OTE LP on the understanding and with the expectation that OTE LP would receive the benefit of his certificate of possession in respect of the Six Nations Premises. OTE LP invested in the Six Nations Premises on this same basis and with this same expectation.

21. No buyer of the OTE Group assets will be able to conduct the business of the Six Nations Blending Location without the approval and cooperation of Scott Hill in his capacity as holder of the certificate of possession.

22. Scott Hill and Miles Hill cannot be objective in the bid process or the management of the businesses given their conflicting interest. Further, the Hills do not have adequate business experience to assess the viability of any potential bid.

¹⁴ MR Respondents, Tab 2, Affidavit of Lauren Nixon, sworn October 2, 2023, Exhibit C, para 38(vii) p. 58.

B. THE SALES PROCESS MOTION MUST BE ADJOURNED

23. This hearing date was not scheduled to hear the sales process motion brought by the OTE Group. This hearing was originally scheduled for the motion to set aside the Order of Justice Osborne dated March 15, 2023¹⁵ and for production of financial documentation by the OTE Group and the Monitor.

24. The complete materials for the sales process motion were not delivered until September 28, 2023. Those materials raise material issues of concern which must be addressed before that motion is heard.

25. There is no reason that the sales process motion must proceed on October 4, 2023. The Stay Period does not expire until November 3, 2023. While 265 is not opposed in principle to the commencement of a sale, there are issues concerning the administration of the sale and the restructuring that must be ironed out before the sales process motion and sale can take place. 265 must have an opportunity to cross-examine Scott Hill on these issues including the question of the extent of his and Miles Hill's conflicts of interest and competency to successfully restructure the OTE Group.

26. These issues include:

- (a) The reasons for the loss of key customers and the details regarding which customers these are;
- (b) The reasons for the removal of operations and assets from the Discontinued Locations;

¹⁵ MR Respondents, Tab 2, Affidavit of Lauren Nixon, sworn October 2, 2023, Exhibit A, p. 34.

- (c) The reasons for the non-disclosure of Mr. Hill's certificate of possession and lease for the Six Nations Blending Location to this Court;
- (d) The potential illegal import of machinery for the manufacture of tobacco products¹⁶;
- (e) The potential deliberate transition of the business of OTE LP or OTE Logistics LP to other parties in which he may hold an interest or gain a benefit;
- (f) The failure to remit taxes¹⁷; and
- (g) The financial statements of the OTE Group include notes payable by Scott and Miles Hill.¹⁸

27. In their factum, the OTE Group does not address any of the above issues. Further, OTE USA LLC has raised over 15 questions by letter to the Monitor respecting the Monitor's Fifth Report.¹⁹ Those questions remain unanswered.

C. APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

(i) William Aziz of BlueTree Advisors is an Appropriate CRO

28. William Aziz, President and CEO of BlueTree Advisors, ought to be appointed as the CRO.²⁰ The appointment of a CRO is appropriate where such expertise will assist the Applicants in achieving the objectives of the CCAA.

29. Scott Hill and Miles Hill are incapable of protecting the interests of all stakeholders and successfully restructuring the OTE Group. The OTE Group requires an independent CRO free of

¹⁶ MR Respondents, Tab 4, Affidavit of Brian Page sworn September 22, 2023, para 65, p. 431.

¹⁷ MR Respondents, Tab 4, Affidavit of Brian Page sworn September 22, 2023, para 5, p. 411.

¹⁸ MR Respondents, Tab 4, Affidavit of Brian Page sworn September 22, 2023, para 122, p. 106.

¹⁹ MR Respondents, Tab 3, Affidavit of Elizabeth Lalonde, sworn October 2, 2023, Exhibit TT, pp. 396-399.

²⁰ MR Respondents, Tab 2, Affidavit of Lauren Nixon, sworn October 2, 2023, Exhibit I, p. 109.

conflict and with the business acumen necessary to achieve a restructuring of the OTE Group. That CRO is Mr. Aziz:

- (a) Mr. Aziz is independent and has no relation with the OTE Group;
- (b) Mr. Aziz is a respected insolvency and restructuring specialist with 34-years of corporate restructuring experience, including in formal proceedings under the CCAA and *Bankruptcy and Insolvency Act*;
- (c) Mr. Aziz has a proven track record as a CRO and has acted as CRO of the Toronto Star Group, JTI Macdonald, US Canada Steel;
- (d) Mr. Aziz can lead discussions on marketing assets of the OTE Group on behalf of the OTE Group; and,
- (e) Mr. Aziz has consented to being appointed CRO.²¹

30. In short, the appointment of Mr. Aziz will ensure decisions made concerning the OTE Group will be independent and conducted with the business skills necessary in a CCAA situation by a party experienced in these matters.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of October, 2023.



Per: Monique J. Jilesen

²¹ MR Respondents, Tab 2, Affidavit of Lauren Nixon, sworn October 2, 2023, Exhibit I, p. 109.

ORIGINAL TRADERS ENERGY LTD. Et al
Applicants

-and- GLENN PAGE et al.
Respondents

Court File No. CV-23-00693758-00CL

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PROCEEDING COMMENCED AT TORONTO

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