

Form 27
[Rules 6.3 and 10.52(1)]



COURT / ESTATE FILE NUMBER 25-3038201
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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

C41347
COM April 23, 2024

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 TOOL SHED BREWING COMPANY INC.

APPLICANT 2594617 ALBERTA LTD.

RESPONDENTS TOOL SHED BREWING COMPANY and KPMG INC. IN ITS
CAPACITY AS PROPOSAL TRUSTEE FOR TOOL SHED BREWING
COMPANY INC.

DOCUMENT **APPLICATION BY 2594617 ALBERTA LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO RESPONDENTS: TOOL SHED BREWING COMPANY INC. and KPMG
INC. IN ITS CAPACITY AS PROPOSAL TRUSTEE
FOR TOOL SHED BREWING COMPANY INC.

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: **April 23, 2024**

Time: **11:00 a.m.**

Where: **Calgary Courts Centre (vie WebEx)**

Before Whom: **The Honourable Justice K.D. Yamauchi**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, 2594617 Alberta Ltd (“**259**” or the “**Purchaser**”) seeks an Approval and Reverse Vesting Order (the “**RVO**”), substantially in the form attached hereto as **Schedule “A”**, granting the following relief:
 - (a) Abridging the time for service of this Application and the supporting materials, if necessary, and deeming service thereof to be good and sufficient;
 - (b) Directing the Respondent, Tool Shed Brewing Company Inc. (“**Tool Shed**” or the “**Company**”) to execute the share purchase agreement between Tool Shed and 259 (the “**SPA**”); and
 - (c) Authorizing and approving the Transaction (defined below) by way of a reverse vesting process contemplated in the SPA;
 - (d) Releasing certain of the current officers and employees of the Company and ResidualCo (as defined in the SPA), independent contractors who provided legal or financial services to the Company and ResidualCo, legal counsel and advisors of the Company, the Proposal Trustee and its legal counsel, the Company and the Purchaser and each of its directors, officers, employees and its legal counsel from all claims.
 - (e) Approving the First Report of the proposal trustee KPMG Inc. (in such capacity, the “**Proposal Trustee**”) dated February 8, 2024, and the Second Report of the Proposal Trustee, dated April 8, 2024, as well as the actions, conduct and activities of the Proposal Trustee and its counsel described therein;
 - (f) Annulling and/or authorizing the withdrawal of the Company’s Notice of Intention to Make a Proposal under the BIA upon closing of the Transaction; and
 - (g) Such further and other relief as 259 may request, and this Honourable Court may deem appropriate.

Grounds for making this application:

Background

2. Tool Shed is an Alberta company with a registered office in Calgary, Alberta. It has been brewing craft beer for the last 11 years and brews alcoholic and non-alcoholic beverages. Tool Shed employs approximately 20 full-time and part-time staff. It leases its premises in the Franklin Industrial Area of Calgary where it operates (the “**Taphouse**”).
3. Tool Shed’s products are located in approximately 750 retailers and offered by 190 off-premise customers, such as restaurants, bars, pubs, and other establishments that serve alcoholic beverages. Tool Shed’s products have been carried in retail stores such as Ace Liquor, Liquor Depot, Wine & Beyond, Sobeys, and Calgary Co-ops.
4. In Alberta, Tool Shed’s products are sold to the Alberta Gaming, Liquor, and Cannabis Commission (“**AGLC**”), who then sells the products to customers located in Alberta. Tool Shed also supplies its product to BC Liquor Stores, an entity controlled by the Liquor and Distribution Branch of the province of British Columbia. Tool Shed also distributes its products in the provinces of Saskatchewan and Manitoba.
5. Tool Shed is indebted to various judgment creditors, lenders, investors, and trade creditors. Tool Shed also owes a significant amount to the Canada Revenue Agency (the “**CRA**”) on account of source deductions dating back to January 2020.
6. According to the materials filed by Tool Shed in these proceedings, on January 9, 2024, the CRA issued a notice to Tool Shed advising that a writ in the amount of \$564,237.84 was obtained in the Federal Court on December 8, 2023, and that, as of January 9, 2024, \$571,091.70 (the “**CRA Debt**”) was immediately due and owing.
7. On February 1, 2024, Tool Shed filed a notice of intention to make a proposal (“**NOI**”) under Section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), and the Proposal Trustee was appointed in that capacity in the resulting proceedings (the “**NOI Proceedings**”).
8. Subsequent to Tool Shed commencing the NOI Proceedings, Tool Shed negotiated a form of share purchase agreement with 2582568 Alberta Inc., a company controlled by

James Costello, the CEO of Tool Shed, to purchase the shares of Tool Shed pursuant to a reverse vesting transaction, which was ultimately designated as a stalking horse bid (the “**Stalking Horse Bid**”) for use in the SISP (defined below).

9. On February 12, 2024, Justice M.J. Lema granted an Order in the NOI Proceedings which, among other things:
 - (a) Approved an Interim Loan Agreement between Tool Shed and 2582568 Alberta Inc. (in this capacity, the “**Interim Lender**”);
 - (b) Approved a stalking horse sales and investment solicitation process (the “**SISP**”), and designated the share purchase agreement between 2582568 Alberta Inc. and Tool Shed as the Stalking Horse Bid in the SISP;
 - (c) Approved an interim lender’s charge in the amount of \$300,000.00 (the “**Interim Lender’s Charge**”);
 - (d) Approved an administration charge in the amount of \$250,000.00 (the “**Administration Charge**”); and
 - (e) Extended the time for the Company to file a proposal to its creditors to April 15, 2024 (the “**Initial Stay Period**”).
10. The SISP commenced on February 12, 2024. The only bid received by the Proposal Trustee (other than the Stalking Horse Bid) was a bid by 259 in the form of the SPA (the “**259 Bid**”).
11. On April 15 and 16, 2024, the Honourable Justice E.J. Sidnell heard the Company’s application to, amongst other things, seek the approval of the Stalking Horse Bid and the transaction contemplated by it. 259 opposed the application. As of the date of this Application, Justice Sidnell has not released her decision; however given the return date of this Application, 259 is submitting its materials in advance of the Court rendering its decision on the Stalking Horse Bid.

The transaction contemplated in the 259 Bid should be approved

12. The 259 Bid is the only other bid for the business and assets of Tool Shed arising from the SISP. The 259 Bid contemplates a going concern reverse-vesting transaction whereby 259 would acquire all of the Company's issued and outstanding shares, with certain excluded assets and liabilities to be vested into a newly-formed corporation (the "**Transaction**").
13. Under the 259 Bid, closing of the Transaction is expected to occur within 10 business days after the date which the conditions to closing have been satisfied or waived, or any earlier or later date as may be agreed to between the Purchaser and the Company. 259 intends, and is prepared, to close the Transaction no later than April 30, 2024.
14. The approval of the Transaction and implementation through the RVO will provide a net benefit to the landlord, suppliers, and customers of Tool Shed because it will permit Tool Shed to continue as a going concern. To the extent employees of Tool Shed are retained following closing of the Transaction, it will also benefit those employees.

Reverse Vesting Transaction

15. In order to produce and distribute its alcoholic beverages, Tool Shed holds several licenses and permits, including permits issued by the AGLC, the City of Calgary, and Alberta Health Services, and licenses from British Columbia, Saskatchewan, and Manitoba (the "**Licenses and Permits**"). These Licenses and Permits are non-assignable, many are tied to the Taphouse, and Tool Shed's business cannot operate without them.
16. The Company's customers could not purchase Tool Shed products without the Licenses and Permits in place. None of the Licences and Permits are transferable in an asset sale or liquidation, and the Company cannot continue as a going concern without them. A reverse vesting transaction would allow the Licenses and Permits to remain with the Company, such that the RVO is the only means to preserve going concern value.
17. Retention of the Licenses and Permits results in value for 259 and, as a result, an optimal outcome for all of the Company's stakeholders, including its landlord, suppliers, customers, and employees.

18. The purchase price under the SPA is sufficient to pay all of the Assumed Liabilities (as defined in the SPA), including all amounts owing under the Administration Charge, all amounts owing under the Interim Lender's Charge, all amounts owed to the secured creditors of the company, all rental arrears owed to the Company's landlord, if any, the deemed trust portion of the CRA Debt, and amounts owed to some of Tool Shed's trade creditors.
19. The SPA also provides recovery to three of the Company's secured creditors, who hold first and second priority security over the Company's present and after-acquired personal property, through their indirect ownership interest in Tool Shed via 259.
20. As the Licenses and Permits are not transferrable in a bankruptcy or other asset sale transaction, the Transaction creates more value for the Company's creditors than any other alternative.
21. The alternative to approving the Transaction is for the Company to make an assignment in bankruptcy, resulting in liquidation of the Company, loss of employment for its 20 employees, remediation costs for the Company's landlord, and a loss of a customer for the Company's suppliers.

The Release

22. Under the RVO, 259 seeks a Court-ordered release (the "**Release**") in favour of certain third parties, defined in the RVO as the "**Released Parties**". The proposed Release covers all present and future claims against the Released Parties based upon any fact, matter of occurrence in respect of the Transaction or the Company and its assets, business or affairs, except claims that cannot be released pursuant to section 50(14) of the BIA.
23. The Released Parties have contributed to negotiating the Transaction and will contribute to closing the Transaction, such that the proposed Release is necessary and appropriate.
24. To close the Transaction, 259 has requested that this Court grant the RVO in a form satisfactory to 259. The RVO proposed by 259 includes a release of the Released Parties. Absent the proposed Release, the Transaction will not close and the funds to be paid to creditors and other stakeholders thereunder would not materialize.

Annulment or Withdrawal of the NOI

25. The BIA does not contemplate a situation where a company that has filed an NOI ceases to be insolvent and seeks to terminate the insolvency proceeding. The BIA only contemplates a debtor company exiting from NOI proceedings upon the successful filing of a proposal, failing which the debtor is deemed bankrupt. Neither outcome is appropriate where the debtor company completes a going concern sale by way of a reverse vesting order.
26. Without court intervention, this legislative gap risks that the now-solvent debtor entity will be deemed bankrupt upon stay expiry.
27. The Company will be solvent at the close of the Transaction, and therefore, no longer an entity to which the BIA applies. 259 is therefore seeking that the NOI be annulled.

Material or evidence to be relied on:

28. The Affidavit No. 1 of James Costello, sworn February 1, 2024.
29. The Affidavit No. 2 of James Costello, sworn February 5, 2024.
30. The Affidavit No. 4 of James Costello, sworn April 8, 2024.
31. The First Report of the Proposal Trustee dated February 7, 2024.
32. The Second Report of the Proposal Trustee, dated April 8, 2024.
33. The Affidavit of John Donovan sworn April 11, 2024.
34. The Brief of Law of Tool Shed Brewing Company, dated April 8, 2024.
35. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

36. Rules 1.3, 1.4 and 6.3 of the *Alberta Rules of Court*, Alta Reg 124/2010; and

37. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

38. Section 65.13 of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3;
39. The Bankruptcy and Insolvency General Rules, CRC, c 368; and
40. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

41. N/A.

How the application is proposed to be heard or considered:

42. Via WebEx, on the Commercial List before the Honourable Justice K.D. Yamauchi.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.