



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00717664-00CL

DATE: Wednesday, June 26, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: HERITAGE CANNABIS HOLDINGS CORP. et al v HMKRC

BEFORE: MISTER JUSTICE OSBORNE

**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE OSBORNE:**

[1] The Applicants seek an order:

- a. approving the amended and restated stalking horse subscription agreement dated June 17, 2024 and the Transactions contemplated therein;
  - i. upon the delivery by the Monitor of the Closing Certificate,
    1. adding Residual Co. as an Applicant in these CCAA proceedings;
    2. vesting all title in the Purchased Entities, the Excluded Assets and Excluded Liabilities in Residual Co.;
    3. directing the Companies to issue the Purchased Shares to the Purchaser, and ordering that the Purchased Entities' Property other than the Excluded Assets shall be retained by the Purchased Entities;
    4. terminating without consideration Equity Interests of the Companies outstanding prior to the issuance of the Purchased Shares;
    5. ordering that the Purchased Entities shall cease being Applicants in these CCAA proceedings;
    6. for the purposes of determining the nature and priority of Claims from and after the Closing Time, and subject to the funding of the Priority Payment Amount and the CCAA Process Expense Amount, Claims and Encumbrances shall attach to the Excluded Assets, with the same nature and priority as they had previously; and
    7. granting releases in favour of the Released Parties to the extent set out in the materials;
- b. extending the Stay Period to and including August 30, 2024;
- c. approving the extension of the maturity date of the DIP Term Sheet to the same date;
- d. amending the Administration Charge to reflect the change in corporate counsel for the Applicants;
- e. granting enhanced powers to the Monitor to facilitate the wind-down of the CCAA proceedings;

- f. authorizing but not requiring the Applicants or the Monitor to make assignments into bankruptcy; and
- g. approving the Pre-Filing Report of the Monitor dated April 2, 2024 and the First Report dated April 10, 2024, together with the activities and conduct set out in both reports.

[2] The Service List has been served with the motion materials. The relief sought is either unopposed or on consent, and is strongly recommended by the Monitor.

[3] The Applicants rely upon the affidavit of David Schwede sworn June 20, 2024 and the Second Report of the Monitor dated June 21, 2024. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Second Report, unless otherwise stated.

[4] For the reasons set out below, I am satisfied that the requested relief should be granted.

[5] The SISP declared the Stalking Horse Bid to be the Successful Bid. There were no other Qualified Bids. Subsequently, the parties entered into the Amended and Restated Stalking Horse Agreement which incorporates certain revisions as set out in the motion materials.

[6] The result is that most of the employees of the Companies will be preserved, as well as customer and supplier relationships and the payment of priority payments.

[7] The reverse vesting structure is required to preserve the Health Canada and Canada Revenue Agency licences of the Purchased Entities which are non-transferable yet critical to both operations and going concern value. The structure will not result in any material prejudice to creditors or the impairment of their rights such as they would have under an asset sale or any other available alternative.

[8] Cancellation of the Equity Interests was required by the Purchaser as part of the Transactions and does not create any additional prejudice since there is no alternative transaction available that would offer any recovery for Equity Interests. The alternative to approval of the Transactions is a likely bankruptcy. That is not preferable for stakeholders, and would also render the Equity Interests without value and subordinate to other claims.

[9] Jurisdiction to approve the transaction like this is found in the discretion of section 11 of the *CCAA*, and section 36(3) which sets out the factors to be considered and which overlap with the *Soundair* Principles, and the additional factors set out in *Re Nortel Networks*. The RVO structure is necessary to preserve the value derived in significant part, through the licences which are non-transferable, and the *Harte Gold* factors have been met here.

- [10] I am satisfied that the proposed Releases in favour of the Released Parties are appropriate, since those parties made significant contributions to these proceedings, the Transactions and the restructuring, and their continued involvement is key to the successful implementation of the Transactions. The Releases do not contemplate the release of any party not closely involved with these CCAA proceedings and the SISF, or any claims not permitted to be released pursuant to the *CCAA*.
- [11] The Monitor is of the view that the Releases are fair, reasonable and appropriate in the circumstances. The factors relevant to the approval of releases in CCAA proceedings (see: *Lydian International*) have been satisfied here.
- [12] In particular, in this case, I note that the claims to be released do include matters relating to the cannabis excise licence excise duties and tax arrears and GST/HST arrears accrued and owing pre-filing. No other pre-filing conduct or obligations are sought to be released. In approving these releases, I specifically note that the Releases and the scope thereof were specifically disclosed to and discussed with the CRA in advance of this motion by the Applicants and the Monitor. The CRA confirmed that it does not oppose the Releases.
- [13] The extension of the Stay Period is necessary to provide stability and time required to close the Transactions and complete various administrative or “cleanup” matters, including the wind up and/or dissolution of the Applicants, including Residual Co. The updated cash flow forecast appended to the Second Report shows that the Applicants are expected to have sufficient liquidity through the proposed extension period after taking into account the Transactions and availability under the DIP Term Sheet. I am satisfied that the Applicants have acted and continue to act in good faith and with due diligence, and that the proposed extension will not materially prejudice any stakeholders.
- [14] The proposed amendments to the ARIO and particularly the Administration Charge simply reflect the change in the law firm of counsel.
- [15] The DIP Term Extension is required since the DIP Term Sheet currently expires on August 2, 2024 and should be extended to facilitate the Transactions and ongoing matters. The DIP Lender has agreed to the amendments and the Monitor recommends them.
- [16] The Monitor should have the enhanced powers sought to facilitate the wind-down of these proceedings, including controlling the remaining unpurchased Applicants, including Residual Co. Enhanced powers are consistent with the non-exhaustive list of duties and functions of a Monitor under section 23 of the *CCAA*, which may be expanded at the discretion of the court pursuant to section 23(1)(k).
- [17] For all of these reasons, the motion is granted. Both orders to go in the form signed by me today. They are effective immediately and without the necessity of issuing and entering.

Owen, J.