



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-23-00700581-00CL DATE: 15 June 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **Fire & Flower Holdings Corp *et al***

BEFORE JUSTICE: **P. Osborne**

**PARTICIPANT INFORMATION**

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**ENDORSEMENT OF JUSTICE P. OSBORNE:**

1. This is the comeback hearing in respect of this CCAA proceeding. Justice Steele granted the Initial Order on June 5, 2023.
2. Today, the Applicants seek:
  - a. a stay extension to and including September 1, 2023;
  - b. approval of a key employee retention plan (“KERP”) and related charge;
  - c. a sealing order in respect of the unredacted KERP;
  - d. authority for the Applicants to draw down on the remainder of the aggregate principal amount of \$9.8 million under the interim facility loan agreement (the “DIP Facility Agreement”)
  - e. authority to pay pre-filing amounts owing to Critical Suppliers up to a maximum amount of \$250,000;
  - f. authority to incur no further expenses in relation to Securities Filings that would otherwise be required of a public company;
  - g. an extension of time to hold the annual general meeting until after the conclusion of these proceedings;
  - h. an Administration Charge in the amount of \$600,000;
  - i. a DIP Lender’s Charge in the amount of \$9.8 million;

- j. a D&O Charge in the amount of \$2.8 million;
  - k. a KERP Charge in respect of the KERP, if approved; and
  - l. approval of a sales and investment solicitation process (“SISP”) including a stalking horse bid agreement and corollary relief.
3. The Applicants rely on the Affidavit of Stephan Trudel sworn June 14, 2023 and exhibits thereto.
4. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or in the First Report of the Monitor dated June 14, 2023 and/or the Supplement to the First Report dated June 14, 2023.
5. All of the relief sought today is unopposed save for approval of the SISP, in respect of which one party, Green Acre Capital LP, (“Green Acre”), requests an adjournment for 30 days to facilitate the exploration of possible alternatives to the proposed SISP and stalking horse bid agreement. The relief sought today is recommended by the Monitor and is fully supported by Alimentation Couche-Tard (“ACT”).
6. ACT wears five hats: senior secured creditor; unsecured creditor; DIP Lender; shareholder; and proposed Stalking Horse Bidder.
7. Green Acre is a minority shareholder. It is not, by its own admission, a creditor. It seeks an adjournment of the approval of the SISP and stalking horse bid agreement proposed by ACT in order to explore alternatives, submitting that if such approval is granted, the sale of the company on potentially unfavourable terms is likely to occur.
8. Green Acre says its position is supported by other stakeholders, though none appears today.
9. The Applicants oppose the request for an adjournment, supported by the Monitor and ACT, relying on the 13 week cash flow forecast to emphasize the urgency of the situation and the fact that the Applicants will be out of money and unable to continue operations, by July 7, 2023, to the detriment of all stakeholders. They point out that Green Acre is not a creditor, let alone a fulcrum creditor, and will, overwhelmingly likely, not be “in the money” or directly economically affected by the outcome of the process it now seeks to postpone.
10. ACT observes that a failure to achieve milestones, including commencement of the SISP, constitute events of default under the various facilities including the terms of the DIP facility.
11. The challenge for me is that, while the Notice of Motion was served on June 10, and made direct reference to the fact that the Applicants would be seeking approval of a SISP, the full motion record, including for the first time the proposed stalking horse bid agreement, was served on the Service List for the first time yesterday, less than 24 hours ago.
12. In all the circumstances, I think that stakeholders and in particular Green Acre are entitled to a reasonable, if brief, opportunity to digest the motion materials, consider the relief sought and take a position. That opportunity is greater than 24 hours. At the same time, I am not prepared to adjourn the matter for 30 days as requested, to a date well beyond the date by which the uncontroverted evidence before me establishes the Applicants will be out of money and unable to continue operations, to the detriment of all stakeholders.
13. Accordingly, the motion for approval of the SISP and related relief including approval of the stalking horse bid agreement is adjourned to the only date on which the Court has availability - **Monday, June 19, 2023 commencing at 9:00 AM via Zoom before me.** The Applicants and the Monitor confirm that there are no cash flow issues created by the short adjournment and the next advance under the DIP is not contemplated until July 7 when the Applicants will be out of cash.

14. At my request, counsel for ACT, the DIP Lender, sought and received during the hearing instructions to the effect that ACT would not take the position that there had been a default under the relevant DIP facilities caused by the adjournment of that motion until next Monday.
15. Accordingly, the adjournment of the SISP process and related relief is granted until June 19.
16. As noted above, the balance of the relief sought today by the Applicants is unopposed and fully supported by ACT and recommended by the Monitor.
17. I am satisfied that such relief is appropriate.
18. The stay currently in effect expires today. It should be, and hereby is, extended to including September 1, 2023. That stay is absolutely critical to the maintenance of the stability necessary to maximize value for stakeholders.
19. The Applicants are permitted to draw up to a maximum of \$9.8 million under the DIP Facility. The 13 week cash flow forecasts demonstrate ably why this authority is necessary. It follows that the corresponding charge should also be approved.
20. The KERP is approved. Those individuals referenced in the plan are, as submitted by the Applicants and as agreed by the Monitor and ACT, integral to the maximization of success in this proceeding. Their loss would have a materially detrimental effect on that success and they should be incentivized to stay.
21. The KERP contains sensitive commercial and, more importantly, personal information related to those employees. I am satisfied that the *Sierra Club* and *Sherman Estate* tests have been met and that the sealing relief sought is appropriate, proportionate and necessary. The sealing order is in effect only until further order of this Court. The Applicants and their counsel are directed to file forthwith, with the Commercial List Office, a hard copy of the sealed material in a sealed envelope marked: "Confidential, sealed and not to form part of the public Court record pending further order of this Court".
22. I am also satisfied that the Applicants should be authorized to incur no further expenses in relation to the Securities Filings or holding an AGM pending the currency of these proceedings. There is no appropriate interest served or advanced by incurring those expenses at this time. The Ontario Securities Commission is on the Service List, its counsel is present today, and consents to the language in the draft order which is consistent with that previously required by the Commercial List in such circumstances.
23. Finally, the pre-filing arrears owed to Critical Suppliers affect the outcome of this restructuring, and I am satisfied that the Applicants should be authorized to pay them, subject to Monitor approval.
24. Order to go in the form signed by me today, which are effective immediately and without the necessity of issuing and entering.

O'Shea, J.