



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00711935-00CL

DATE: April 5, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING:

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TREES CORPORATION,
ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OHC ONTARIO
CONSULTING CORP., and 11819496 CANADA INC.**

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent:

Name of Person Appearing	Name of Party	Contact Info
Dylan Chochla	DIP Lender/Proposed Purchaser (One Plant Retail Corp)	dchochla@fasken.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicants seek an approval and vesting order and a stay extension and termination order, both in the form described in the Notice of Motion.
2. The Service List has received the motion materials. They were served on March 25, 2024. The relief sought today is unopposed by any party, and is strongly recommended by the Court-appointed Monitor. It is also strongly supported by the Purchaser who is also the Applicants' principal and senior secured creditor and DIP lender.
3. The Applicants rely upon the Affidavit of Jeffrey Holmgren sworn March 25, 2024, together with exhibits thereto, and the Second Report of the Monitor dated March 27, 2024.
4. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Second Report, or my earlier Endorsement made in this proceeding, unless otherwise stated.
5. On January 29, 2024, I granted the SISP Approval Order approving the proposed SISP and Stalking Horse Agreement.
6. The SISP had two phases, with the first requiring non-binding letters of intent, and the second requiring binding purchase agreements. By the Phase II Deadline, the Monitor had received two binding offers that were Portion Bids which, when combined, did not include any overlap for the Assets to be purchased by each of the Portion Bidders. When aggregated into the Aggregate Bid, those two offers exceeded the Minimum Bid Amount.
7. The Monitor recognized the Aggregate Bid as a Superior Offer and declared an Auction, which was scheduled to be conducted on March 21, 2024.
8. On March 18, 2024, the Stalking Horse Bidder delivered assignment agreements to the Applicants and the Monitor related to the purchase and assignment of certain secured convertible promissory notes issued by Trees to various noteholders, in the aggregate principal amount of \$1,005,000. The Monitor so advised the Portion Bidders on March 20, 2024.
9. On March 21, 2024, one of the Portion Bidders advised the Monitor that it opted to withdraw from the SISP because it did not wish to materially increase its bid at the Auction. The result was that the remaining Portion Bid no longer qualified as a Qualified Phase II Bid, with the further result that the Stalking Horse Bidder was declared the Successful Bidder.
10. The Share Purchase Agreement for which approval is sought today contemplates the Purchaser acquiring 100% of the issued and outstanding shares of Trees through a reverse vesting order. The Purchase Price includes the Credit Bid Consideration, and the Cash Consideration, which in turn includes the Administrative Expense Amount, and funds sufficient to cover any Post-Filing Tax Obligations.
11. The Purchaser will also assume specific liabilities, post-closing, including Post-Filing Claims and liabilities arising post-closing. The Purchaser has also agreed to employ a minimum of 95% of the store level employees, albeit without an obligation to employ any specific individual.
12. Conditions to closing include necessary approvals and regulatory clearances, with a Closing Date fixed to be five days after the meeting of all conditions, no later than April 30, unless extended by consent of all parties.
13. The issue before the Court is therefore whether the transaction should be approved.

14. This Court has broad jurisdiction pursuant to s. 11 of the *CCAA*, and that broad jurisdiction has been held to include the jurisdiction to approve a reverse vesting order. In considering whether to grant a reverse vesting order, the Court must be satisfied that the structure is appropriate, and that analysis is informed by a consideration of the following factors, in addition to the *Soundair* Principles and the statutory test in s.36(3) of the *CCAA*: *Harte Gold Corp. (Re)*, 2022 ONSC 653, at para. 38.
15. When exercising its jurisdiction under section 11 of the *CCAA* to approve a reverse vesting transaction, this Court is to concurrently consider the non-exhaustive factors enumerated under subsection 36(3) of the *CCAA* and the *Soundair* Principles: *CCAA*, s. 36(3); *Harte Gold (Re)*, 2022 ONSC 653 at paras 20-21; *Royal Bank v Soundair Corp*, 1991 CanLII 2727, 4 OR (3d) 1(ONCA).
16. Together, these factors include the following:
 - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the Monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the Monitor filed with the Court a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties;
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value; and
 - (g) whether sufficient effort has been made to obtain the best price and that the debtors have not acted improvidently.
17. I am satisfied that these factors have all been met here. The process was reasonable. The Monitor broadly canvassed the market by sending a Teaser Letter to 144 known potential bidders pursuant to the terms of the SISP that was developed by and previously approved by this Court.
18. The alternative to approval of the proposed transaction is a liquidation. The review and recommendation of the Monitor is clear in the Second Report that the proposed transaction is significantly more favourable to the stakeholders than the alternative, and the Monitor recommends approval of the transaction, including the reverse vesting structure.
19. Stakeholders were consulted through the process. The Purchaser is acknowledged as the principal and senior secured creditor of the Applicants. The proposed transaction allows various stakeholders to maintain their rights, and no stakeholder is worse off than they would have been under any other viable alternative. Sufficient effort has been made to obtain the best price and the Applicants have not acted improvidently.
20. I observe that the SISP resulted in a competitive process and the ultimate Purchase Price was increased by approximately \$1.1 million along with recoveries for the former holders of the Senior Convertible Notes, the most senior secured creditor group of Trees other than the Purchaser. Moreover, prior to the commencement of this *CCAA* Proceeding, the Applicants had pursued various debt or equity opportunities to address liquidity issues, none of which was successful.

21. I further observe that bill bidder proposed an asset transfer transaction, or indeed any potential transaction that did not contemplate a reverse vesting structure. While this is not surprising given that the core value in the business derives from the brand and not from hard assets, this fact as further inform the conclusion that no stakeholder is worse off than they would have been under any other viable alternative.
22. Particularly given the strong recommendation from the Monitor, I am satisfied that the proposed transaction should be approved.
23. I am also satisfied that while a reverse vesting structure remains the exception, and not the rule, it is appropriate in the particular circumstances of this case (see: *Validus Power Corp et al v. Macquarie Equipment Finance Limited*, 2024 ONSC 250 (“*Validus*”), paras. 43-44; *NextPoint Financial, Inc. (Re)*, 2023 BCSC 2378 (“*NextPoint*”), para. 14). As noted above, the value of the transaction derives from the brand which in turn depends upon the continuity of the business and the customer relationships all of which in turn flows from the continuation of the licences and regulatory approvals.
24. Just as Justice McEwen observed in *Just Energy Group Inc. et. al. v Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 at para. 33, a reverse vesting structure may be appropriate where the debtor operates in a highly regulated environment in which its existing permits, licenses or other rights are difficult or impossible to reassign to a purchaser, the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser, and where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.
25. That is the case here, for the reasons expressed above. The Applicants operate in the cannabis industry which is heavily regulated, and requires essential licences and permits. The Applicants operate nine cannabis retail stores across British Columbia and Ontario pursuant to cannabis retail and operator licences that would be at considerable risk of being lost if an asset transfer were proposed to be implemented (and indeed, as noted above, there was no such bid. In any event). Moreover, and as observed by the Monitor, a reverse vesting structure will take significantly less time to implement, than the time that would be required to obtain regulatory approvals associated with a change in management. In the present case, the Applicants lack sufficient liquidity to remain in a CCAA process for the extended amount of time that would require.
26. The proposed transaction here produces an economic result more favourable than any other viable alternative. I further observe that the reverse vesting structure is a condition of the Share Purchase Agreement, and as noted above, the SISP did not yield any other qualified bids, such as would provide for better collective recoveries to stakeholders.
27. It follows that stakeholders are not worse off under the proposed reverse vesting structure and the only realistic alternative is a liquidation. The value of the proposed transaction reflects the brand of the Applicants and the going concern continuation of the business, as opposed to significant hard assets, of which there are very few here.
28. Moreover, most of the approximately 100 employees will be maintained, and the Purchaser will assume various liabilities as set out above, all of which constitute further benefits to stakeholders. I am satisfied that the consideration to be paid is fair, reasonable and reflects the importance of the assets being preserved under the proposed structure. The Purchase Price is approximately \$4.9 million, which is directly attributable to the value and importance of the permits and licences held by the Applicants.
29. I am also satisfied that in the particular circumstances of this case, the proposed releases, including third party releases, are appropriate and can be granted under s. 11 of the *CCAA*. The factors set out

in *Metcalf & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, at para. 70 (leave to appeal to SCC dismissed, 2008 CanLII 46997) and *Lydian International Limited (Re)*, 2020 ONSC 4006, at para. 54, have been satisfied here. Moreover, Courts have held that it is not necessary for each of those factors to apply in order for the Court to conclude that it is appropriate to grant a release: *Green Relief Inc. (Re)*, 2020 ONSC 6837 at para. 28.

30. The claims to be released are rationally connected to the transaction and are fair, reasonable, and not overly broad. Here, they are limited to and directly connected to the CCAA Proceedings and the proposed transaction. They carve out and preserve claims not permitted to be released pursuant to s.5.1(2) of the CCAA and claims arising from fraud or wilful misconduct.
31. The continuation of the current officers, directors and employees of the Applicants are critical to the proposed transaction and required by the Purchaser as a condition. Those parties have all made a contribution to this proceeding, and the results sought to be achieved. I also observe that, as noted above, the Purchaser is also the senior secured creditor, and in the capacity as creditor acquired the debt of other creditors, all with the result that potential litigation and conflict was reduced or eliminated, thereby resulting in another benefit to stakeholders of a material nature.
32. The releases benefit stakeholders generally in that, since they are a condition of the proposed transaction, that transaction would not occur absent them. The Monitor supports the proposed releases. The Service List has been served and no party appears today to object to this relief.
33. The proposed releases are approved.
34. I am further satisfied that it is appropriate to discharge the Monitor upon the filing of the Termination Certificate.
35. Further, I am satisfied that the proposed stay extension to May 31, 2024 is necessary and appropriate in order to allow time for the proposed transaction to close and to complete the wind down of the outstanding liabilities of the Applicants and Residual Co. The Applicants are projected to have sufficient cash to continue operations during the proposed extension which is supported by both the Monitor and the DIP Lender. The Applicants have acted and continue to act in good faith and with due diligence such that the requirements of section 11.02(2) of the CCAA are satisfied here.
36. I am also satisfied that the activities of the Monitor as well as its fees and those of its counsel are reasonable, appropriate and should be approved. The activities of the Monitor are consistent with the terms and scope of its appointment and were necessary in this proceeding. Moreover, they are consented to by the Purchaser who bears the full economic brunt of the fees in any event. The fees are consistent with those activities and are reasonable and satisfy the required factors. See: *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 45.
37. Finally, I am satisfied that the CCAA Termination Order should be granted providing for termination of this proceeding upon the filing of the Termination Certificate. Such an order is appropriate when there are no material steps left in the proceeding.
38. For all of these reasons, the proposed relief is granted.
39. Approval and Vesting Order and State Extension and CCAA Termination Order to go in the form signed by me today which are effective immediately and without the necessity of issuing and entering.

40. This proceeding has been completed in a relatively short period of time and with considerable success in the circumstances. This is due in large part to the efforts and cooperation of the professionals involved.

Oleau, J.