



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO: CV-24-00730212-00CL

DATE: January 29, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: Royal Bank of Canada v. Chesswood Group Limited et al.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE OSBORNE:

- [1] The Court-appointed Monitor moves for:
- a. an approval and vesting order in respect of the Purchased Assets and the sale thereof to Vault or an affiliate pursuant to the Rifco Asset Purchase Agreement; and
 - b. a stay extension order extending the Stay Period to and including March 31, 2025.
- [2] The Monitor relies upon the Third Report dated January 23, 2025, together with Appendices thereto.
- [3] The Service List has been served with the motion materials and draft orders. The relief sought today is supported by the senior lenders and the DIP Agent, and is not opposed by any party.
- [4] Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
- [5] The background for the Rifco Transaction is fully set out in the Third Report. In November, 2024, the Monitor received an unsolicited offer from Vault to acquire a 100% equity ownership interest in the Vendors.
- [6] I pause to observe that the founder and CEO of Vault was a director of Chesswood until July 20, 24, that Vault is related to the Sold Vault Entities, and that Rifco and the Sold Vault Entities have the same CFO. Accordingly, the Rifco Transaction is a related party transaction for the purposes of section 36(4) of the CCAA.
- [7] Following receipt of the Vault Offer, the Monitor, Chesswood and Vault had discussions regarding a potential transaction, culminating in the execution of a share purchase agreement on December 13, 2024. That contemplated a reverse vesting order and included a fiduciary out permitting Chesswood and the Monitor to have discussions with interested parties and a termination in the event of a superior transaction being identified.

- [8] An approval motion was ultimately adjourned, following which the key parties worked to develop an asset acquisition structure to facilitate the acquisition of the business of the Vendors while addressing the reasons that had previously informed the request for an RVO. Those discussions ultimately culminated in the execution of the asset purchase agreement now before the court between the Vendors and Vault on January 23, 2025. As noted, that Rifco APA has the support of the DIP Lenders.
- [9] Pursuant to the Rifco APA, Vault will acquire all assets owned by the Vendors (excluding Excluded Assets) for CAD \$12.5 million less the aggregate amount of the Vendors' cash paid to the DIP Agent as a mandatory repayment under the DIP Term Sheet (which is anticipated to be zero), plus the value of the Accrued Liabilities.
- [10] Importantly, Vault will make an offer of employment to be all or substantially all of the employees of the Vendor. A closing condition is the consent and waiver of certain rights with certain Securitization Parties.
- [11] In this APA, as with the previous RVO, there is a fiduciary out permitting the Monitor to engage in negotiations with third parties for an alternative proposal if received prior to closing, and if determined to be superior. In the event the Rifco APA is terminated, there is an expense reimbursement (no break fee beyond expense reimbursement) to Vault in the amount of CAD \$250,000.
- [12] I am satisfied that the Rifco APA should be approved. Such approval is authorized pursuant to section 36(1) of the CCAA, provided the requirements of section 36(3) are met. I am satisfied that those factors have been met here. I am also satisfied that the *Soundair Principles*, which overlap to a significant extent with the section 36(3) factors, are satisfied.
- [13] In short, the process leading to the proposed sale is reasonable in the circumstances. It is fully supported by the Court-appointed Monitor, who has filed with the Court its report, including its opinion that the sale would be more beneficial to the creditors than a sale or disposition in a bankruptcy.
- [14] The creditors, and particularly the senior creditors and the DIP Lenders, have been consulted and are supportive. The effects of the proposed sale on the creditors and other interested parties have been considered, and as noted, the proposed transaction is beneficial to the employees. The consideration to be received is reasonable and fair in the opinion of the Monitor. The Monitor is made sufficient efforts to get the best price and has not acted improvidently, the integrity and efficacy of the process has been maintained, and there has been no unfairness. This is reinforced by the presence of the fiduciary out clause discussed above.
- [15] In addition, I am satisfied that the section 36(4) criteria that apply where the proposed sale is to a person related to the debtor company have been satisfied here. Good faith efforts were

made to sell the assets to unrelated persons, the consideration to be received is superior to the consideration that would be received under any other offer made (which, in this case, there were none) and I am satisfied overall that sufficient safeguards were adopted to ensure that a related party transaction is in the best interests of the stakeholders and the risks to the estate associated with a related party transaction have been mitigated.

[16] For all of these reasons, the Rifco APA and the AVO are approved.

[17] I am also satisfied that the proposed stay extension should be granted pursuant to section 11.02(2) of the CCAA. The circumstances are such that the order is appropriate, and the Applicant has acted and continues to act in good faith and with due diligence. The additional time will provide the parties with the necessary stability and breathing room to close the Rifco Transaction and advance the SISP. The cash flow forecast appended to the Third Report projects sufficient liquidity through the proposed extension period.

[18] Mr. Sheeley for the Monitor reviewed with me fully the terms of both draft orders and highlighted the relevant (and amended) provisions. The orders are appropriate, given the relief sought and the terms to be implemented.

[19] I have signed both orders and they are effective immediately without the necessity of issuing and entering.

A handwritten signature in green ink that reads "Osbe J." with a comma at the end.