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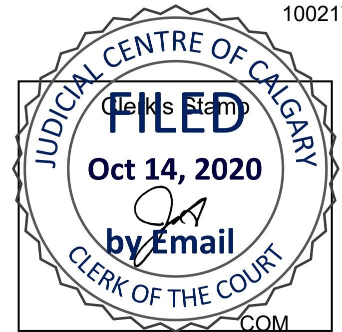

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Nov. 23 2020
Justice Romaine

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.
DOCUMENT	**BRIEF OF LAW AND ARGUMENT**
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BENCH BRIEF OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF THE APPLICANTS

APPLICATION SEEKING A SALE APPROVAL AND VESTING ORDER AND A REVERSE VESTING ORDER TO BE HEARD BY THE HONOURABLE JUSTICE EIDSVIK

OCTOBER 16, 2020 at 9:45 a.m.

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I. INTRODUCTION

1. This bench brief of FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (the "**Monitor**") of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", JMB and 216 are collectively referred to as, the "**Companies**"), is submitted in support of the remaining relief originally sought pursuant to the Monitor's application, filed on September 30, 2020 (the "**Application**"), and adjourned until October 16, 2020, seeking the: (i) approval of the Amended and Restated Asset Purchase Agreement, dated September 28, 2020 (the "**Mantle APA**"), between the Companies, as vendors, and Mantle Materials Group Ltd. ("**Mantle**"), as purchaser, and the transfer and vesting of the Mantle Assets (as defined below) in Mantle (the "**Mantle SAVO**"); and, (ii) transfer and vesting in 216 of all remaining right, title, and interest of JMB in and to the Remaining JMB Assets and the Remaining JMB Liabilities (each as defined below) (the "**Reverse Vesting Order**"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Seventh Report of the Monitor, dated September 30, 2020 (the "**Seventh Monitor's Report**").

2. The Mantle APA represents the highest and best offer received as a result of the Companies' court-approved sale and investment solicitation process ("**SISP**"). The Mantle APA contemplates a number of related and ancillary transactions (collectively, the "**Mantle Transactions**"). The Reverse Vesting Order is a critical component of the Mantle Transactions and a condition precedent to the Mantle APA.

3. As in recent proceedings, the Reverse Vesting Order is appropriate in the current circumstances and is necessitated by: (i) the need to preserve the approximately $40 million of paid up capital ("**PUC**") in the Class A Common Shares of JMB**,** which cannot be transferred to Mantle and which is a significant consideration in completing the sale of JMB, as a going concern; (ii) the need to preserve and utilize certain regulatory permits (the "**Designated Permits**") which may not be immediately transferable; and, (iii) the fact that a traditional plan of arrangement and compromise under the CCAA is not viable in the current circumstances, as a result of the following factors: (a) the Companies' severe liquidity constraints; (b) secured creditors who will suffer a significant shortfall are unwilling to fund continued operations; (c) a court-approved SISP which produced only one viable going concern transaction, the Mantle APA; and, (d) that no corresponding claims process will be conducted as the Companies' unsecured creditors are not expected to receive any distribution or recoveries, as both ATB and Fiera (each as defined below) will suffer significant shortfalls.

II. STATEMENT OF FACTS

The SISP

4. The Monitor was appointed as the monitor of the Companies, pursuant to the Initial Order.[1]

5. Prior to the commencement of the SISP, Canadian Aggregate Resources Corp. ("**CARC**"), the primary equity holder of the Companies, declared that it may submit a bid in the process and retained the Companies' legal counsel.[2]

6. In order to manage the potential conflict of interest, the Companies, the Monitor, and Sequeira Partners, in its capacity as sales agent under the SISP (the "**Sales Agent**"), took a number of steps, including, among others: (i) not sharing any information with CARC, Resource Land Fund V LP, RLF Canada Holdings Limited ("**RLF**"), or their legal counsel concerning bids, potential purchasers, or non-binding letters of intent; and, (ii) enhancing the role of the Monitor under and in connection with the SISP, including, *inter alia*, the authorization to (a) direct and manage any sale and investment solicitation process and all bids made therein, (b) assess bids in consultation with the Sales Agent, the Companies, and secured creditors, as appropriate, and, (c) seek approval from the Court for the consummation of any successful bid.[3]

7. In accordance with the terms of the SISP, the Monitor and the Sales Agent marketed the business and assets of the Companies, as detailed in the Seventh Monitor's Report.[4]

8. A summary of the bids received by the Monitor as part of Phase 2 of the SISP is set out in Confidential Appendix "B" to the Seventh Monitor's Report (the "**Confidential Appendix B**").

The Mantle APA and Mantle Transactions

9. Mantle, a RLF subsidiary, put forward the selected Phase 2 bid, which contemplated the acquisition of a large portion of JMB's assets and operations. The Mantle Phase 2 bid was

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[1] First Report of the Monitor, dated May 8, 2020 at para. 2 [**"Monitor's First Report**"]; Amended and Restated CCAA Initial Order, dated May 11, 2020 at para. 23 ["**Initial Order**"].

[2] Second Report of the Monitor, dated July 6, 2020 at para. 12 [**"Monitor's Second Report"].**

[3] Monitor's Second Report, *supra* at para. 13; First Report, *supra* at paras. 31-34; Initial Order, *supra* at para. 24(f); Initial Order, *supra* at Schedule "A" thereto ["**SISP**"], at page 1 and paras. 14, 18, 23-24, 27.

[4] Seventh Report of the Monitor, dated September 30, 2020 at paras. 18(a)-(d), 38 ["**Monitor's Seventh Report**"]. See also, Initial Order, *supra* at para. 24; Monitor's First Report, *supra* at para. 33; Monitor's Second Report, *supra* at paras. 11(d)-(e).

subsequently negotiated and expanded until it ultimately evolved into the Mantle APA and the Mantle Transactions.[5]

10. The Mantle APA provides, among other things, that:

(a) subject to the terms and conditions of the Mantle APA, in consideration of the payment of the purchase price contemplated therein, the Companies will sell, transfer, convey, assign and deliver to Mantle, and Mantle will purchase, acquire, and assume from the Companies, free and clear of all Claims and Liens other than Permitted Encumbrances (each as defined in the Mantle APA), all of the Companies' respective right, title, benefit, estate and interest in and to the "Acquired Assets", as described in the Mantle APA (collectively, the "**Mantle Assets**"); and,

(b) at Closing (as defined in the Mantle APA), in addition to paying the cash portion of the purchase price, Mantle shall assume, and become responsible for, and agree to discharge and perform when due the Assumed Liabilities (as defined below).[6]

11. The Mantle APA is conditional upon the closing of various related transactions and agreements which form part of the Mantle Transactions, including, among others:

(a) the issuance of: (i) the Mantle SAVO; (ii) the Reverse Vesting Order; (iii) the Assignment Order sought by the Companies; (iv) the Sanction Order sought by the Companies; and, (v) an order directing equipment lenders holding valid priority security interests to take possession of their equipment;[7]

(b) certain loan and/or assumption agreements to be entered into between Mantle and: (i) ATB Financial ("**ATB**"), with respect to the assumption by Mantle of certain of JMB's indebtedness to ATB (the "**ATB Liabilities**"); and, (ii) Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc. (collectively, "**Fund V**") and Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc. (collectively, "**Fund VI**", Fund V and Fund VI are collectively referred to as, "**Fiera**"), with respect to the assumption by Mantle of certain of

[5] Monitor's Seventh Report, *supra* at paras. 22, 28-30; Fifth Report of the Monitor, dated September 23, 2020 at paras. 11-12.

[6] Monitor's Seventh Report, *supra* at paras. 37(a), (c), (d), (g), and Confidential Appendix "B".

[7] See Monitor's Seventh Report, *supra* at paras. 4(d), 16, 37(f), 37(g)(ii).

JMB's indebtedness to Fiera (the "**Fiera Liabilities**", the ATB Liabilities and the Fiera Liabilities are collectively referred to as, the "**Assumed Liabilities**");[8]

(c) Mantle, ATB and Fiera shall enter into the Cooperation Agreement (as defined in the Mantle APA);

(d) Mantle and JMB shall have filed a plan of arrangement jointly under the CCAA and the *Business Corporations Act* (British Columba) (the "**Plan**"); and,

(e) Mantle must pay JMB the cash portion of the purchase price.[9]

12. The Plan contemplates that the Mantle Transactions shall occur in the following order:

(a) the vesting of the Mantle Assets pursuant to the Mantle SAVO shall become effective simultaneously with: (i) the assumption by Mantle of the Assumed Liabilities; and, (ii) the assignment of the Assigned Agreements pursuant to the Assignment Order and the Mantle SAVO;

(b) ***subsequently***, the Reverse Vesting Order shall become effective; and,

(c) ***subsequently***, the remainder of the relief sought in the Plan shall become effective, including, *inter alia*, the arrangement and compromise of the affected creditor claims as contemplated under the Plan.[10]

13. Due to the sequence in which the various Mantle Transactions are structured to occur, with the Reverse Vesting Order becoming effective prior to the compromise of any claims under the Plan, the only affected creditors (other than the equity holders of JMB), are ATB and Fiera.[11] All other creditors of JMB shall become creditors of 216 prior to such time, by operation of the Reverse Vesting Order, and, as set out below, will have recourse to the same assets and in the same priorities as they had prior to the Reverse Vesting Order taking effect.

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[8] See Monitor's Seventh Report, *supra* at paras. 37(c)(ii)-(iii). Further details are set out in the Mantle APA, a copy of which is attached to the Seventh Monitor's Report as Confidential Appendix "F". See also the Plan of Arrangement, attached as Appendix "A" to the Monitor's Seventh Report, at paras. 1.1(p), 1.1(pp), 4.1(a)-(e) ["**Plan of Arrangement**"].

[9] See Monitor's Seventh Report, *supra* at para. 37(g).

[10] Plan of Arrangement, *supra* at s. 5.1.

[11] Plan of Arrangement, *supra* at ss. 2.2, 2.3, 5.1.

14. The Companies' senior secured creditors, ATB and Fiera, being those creditors intended to be affected by the Plan, support the approval of the Mantle APA, the Plan, the Reverse Vesting Order, and the Mantle Transactions.[12]

The Reverse Vesting Order Component of the Mantle Transactions

15. The Mantle Transactions contemplate that Mantle may amalgamate with JMB, pursuant to the Plan, so as to allow Mantle to take the: (i) the tax benefits associated with the PUC; and, (ii) the benefit of the Designated Permits which cannot be transferred to Mantle and remain held by JMB, as bare trustee for and on behalf of Mantle.[13] To give effect to this, the Remaining JMB Assets and the Remaining JMB Liabilities (both as defined below) must be transferred out of JMB prior to the implementation of the Plan.[14]

16. As a result, the Monitor's proposed form of Reverse Vesting Order contemplates that: (a) all liabilities of JMB, other than those assumed by Mantle pursuant to the Mantle APA (the "**Remaining JMB Liabilities**") shall be transferred to and assumed by 216; and, (b) all (i) proceeds of the Fiera Disposed Equipment (as defined in the Mantle APA), (ii) proceeds derived by JMB under the Mantle APA, and (iii) Excluded Assets (as defined in the Mantle APA), other than (A) the Fiera Disposed Equipment, (B) the Eastside Equipment (as defined and set out in Schedule "A" to the proposed form of Reverse Vesting Order), and (C) the Edmonton Lease (as defined in the Mantle APA) (collectively, the "**Remaining JMB Assets**"), shall be transferred to 216, subject to appropriate trust conditions. In short, the Remaining JMB Liabilities and Remaining JMB Assets will be transferred to 216 in a "siloed" approach to preserve the priority of all claims and assets available to satisfy same.[15]

III. ISSUE

17. The primary issue for this Honourable Court to determine on the within Application is whether the Mantle SAVO and the Reverse Vesting Order should be approved.

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[12] Monitor's Seventh Report, *supra* at para. 38(e), 54, 56(c).

[13] Monitor's Seventh Report, *supra* at para. 48(e); Plan of Arrangement, *supra* at paras. 1.1(ii), 1.1(aaaa), 4.2, 5.3, 6.2(g).

[14] Monitor's Seventh Report, *supra* at paras. 43-44.

[15] Monitor's Seventh Report, *supra* at paras. 44-45.

IV. LAW

A. Approval of Asset Sales

18. Section 36 of the CCAA states that this Court may authorize a debtor company to sell assets outside the ordinary course of business, with reference to the factors under sections 36(3) and 36(4), which state:

> **Factors to be considered**
>
> (3) In deciding whether to grant the authorization, the court is to consider, among other things,
>
> > (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 their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
> >
> > (d) the extent to which the creditors were consulted;
> >
> > (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
> >
> > (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
>
> **Additional factors — related persons**
>
> (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
>
> > (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
> >
> > (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

B. Reverse Vesting Orders

19. Section 11 of the CCAA permits a Court to make any order that is appropriate in the circumstances, and has been expressly referred to, in conjunction with section 36 of the CCAA,

by Courts in recent proceedings when granting reverse vesting orders. Specifically, section 11 states:

> **General power of court**
>
> 11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

V. ARGUMENT

A. The Mantle APA is Appropriate in the Circumstances

20. The approval of the Mantle APA is appropriate in the circumstances and is in the best interests of the Companies' estate and stakeholders. The Mantle APA contemplates the sale of, among other things, the portion of JMB's operating business which is associated with the Mantle Assets. Specifically, the Mantle APA and the related Mantle Transactions, are intended to allow JMB's acquired business to continue as a going concern.[16]

21. Pursuant to section 36 of the CCAA, this Court has the authority to approve the sale of substantially all of a debtor company's assets, including where there is no plan of arrangement.[17] In addition to the factors set out under sections 36(3) and 36(4) of the CCAA, Courts will typically also examine those set out in *Royal Bank v. Soundair Corp.* ("***Soundair***").[18]

22. In accordance with the factors set out under section 36(3) of the CCAA and *Soundair*, the Mantle SAVO is appropriate in the circumstances, as:

(a) the Mantle Assets being conveyed pursuant to the Mantle APA were sufficiently exposed to the relevant market in a commercially reasonable and fair marketing process, in accordance with the terms of the SISP and the Initial Order, as:

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[16] Monitor's Seventh Report, *supra* at paras. 46, 57.

[17] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at s. 36(1) [***CCAA***] **(TAB 3)**; see *Re Komtech Inc.*, 2011 ONSC 3230 at paras. 26-29 **(TAB 4)** and *Re Brainhunter Inc*, 2009 CanLII 67659 at paras. 8, 13-14 **(TAB 5)**.

[18] *Royal Bank v. Soundair Corp.*, (1991) 83 D.L.R. (4th) at para. 16 **(TAB 1)**. The *Soundair* test being: (1) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently; (2) whether the interests of all parties have been considered; (3) the efficacy and integrity of the process by which offers have been obtained; and, (4) whether there has been unfairness in the working out of the process.

(i) the Mantle APA arose from a comprehensive two-step, court-approved SISP, which involved, among other things: (i) broadly canvassing the market; (ii) widely publishing the details of the SISP and marketing the Mantle Assets to strategic, financial, and other potential bidders; (iii) soliciting eight Phase 1 bids, seven of which were invited to participate in Phase 2; and (iv) obtaining four binding Phase 2 bids;[19] and,

(ii) upon reviewing the Phase 2 bids, a summary of which is set out in Confidential Appendix B, the Mantle APA was selected as the highest and best bid received as a result of the court-approved SISP, which was supervised by the Monitor and the Sales Agent;[20]

(b) the Monitor and the Court approved the SISP process leading to the proposed sale;[21]

(c) the Monitor has stated that the Mantle APA would be more beneficial to the Companies' creditors than a sale or disposition under a bankruptcy;[22]

(d) the Companies' creditors were extensively consulted. Specifically, during the SISP and the negotiation of the Mantle APA, related agreements, and the Mantle Transactions, the affected secured creditors were directly consulted and involved;[23]

(e) the Monitor is of the view that the Mantle APA represents the best available outcome for all stakeholders;[24]

(f) the price to be paid for the Mantle Assets, pursuant to the Mantle APA, represents the highest and best price that can be obtained for the Mantle Assets in the current circumstances and is reasonable and fair, taking into account their market value,[25]

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[19] Monitor's Seventh Report, *supra* at paras. 18(a)-(d); Monitor's Second Report, *supra* at paras. 11(d)-(e).

[20] Monitor's Seventh Report, *supra* at para. 38(d) and Confidential Appendix "B".

[21] Monitor's Seventh Report, *supra* at para. 38(a)-(b); Monitor's First Report, *supra* at paras. 34, 36, 51.

[22] Monitor's Seventh Report, *supra* at para. 38(h).

[23] See *e.g.* Monitor's First Report, *supra* at paras. 30, 34(b); Monitor's Seventh Report, *supra* at para. 20; Fourth Report of the Monitor, dated August 25, 2020 at paras. 13(e), 15, 17 [**"Monitor's Fourth Report"]**.

[24] Monitor's Seventh Report, *supra* at paras. 38(d)-(i).

[25] Monitor's Seventh Report, *supra* at para. 38(d).

as demonstrated by the summary of all bids received, as set out as Confidential Appendix B;

(g) the interests of the affected parties has been considered and the Mantle APA is supported by both ATB and Fiera,[26] the only creditors which have an economic interest in the Mantle Transactions; both of which will suffer a significant shortfall as a result of same.[27] While the creditors of the Remaining JMB Liabilities will not recover any outstanding amounts owing to them, there is no reasonable prospect of any alternative solution that would provide a recovery for such creditors;

(h) the efficacy and integrity of the SISP has been preserved; and,

(i) there is no unfairness in the working out of the court-approved SISP. The Monitor and Sales Agent undertook substantial efforts to obtain the best value and avoid any conflict of interest which might arise.

23. As the purchaser is a "related party", the factors set out under section 36(4) of the CCAA are also applicable and have been met in the circumstances, as:

(a) the Mantle APA is the result of the SISP, as approved by this Honourable Court, and the marketing efforts undertaken by the Monitor and the Sales Agent were extensive;[28] and,

(b) the Monitor has confirmed that the Mantle APA is the highest and best offer for the Mantle Assets, pursuant to the SISP[29] and there is no other transaction available to the Companies in the circumstances, as no other Phase 2 bid was received which would: (A) provide for a higher total consideration for the Mantle Assets; or, (B) permit a going concern sale of JMB's business.

B. The Reverse Vesting Order is Appropriate in the Circumstances

(a) Use and Effect of a Reverse Vesting Order

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[26] Monitor's Seventh Report, *supra* at para. 38(e).

[27] Monitor's Seventh Report, *supra*, *supra* at paras. 49, 54.

[28] Monitor's Seventh Report, *supra* at para. 18; Monitor's Second Report, *supra* at paras. 11(d), 11(e); Monitor's First Report, *supra* at para. 33.

[29] Monitor's Seventh Report, *supra* at para. 38(d).

24. In recent CCAA proceedings, where it was not practical to compromise amounts owed to creditors through a traditional plan of compromise and arrangement, but it was critical to the viability of a transaction to "cleanse" the debtor company, such that a prospective purchaser may: (i) utilize non-transferrable regulatory licences (by way of amalgamation or the purchase of the shares of the debtor company); or, (ii) make use of tax attributes of the debtor company, such as PUC, Courts have recently approved and utilized reverse vesting orders to achieve such objectives.

25. The purpose of a reverse vesting order is to transfer and vest all of the assets and liabilities of a debtor company, which are not subject to a sale, to another company within the same CCAA proceedings. The cleansed debtor company is then able to: (i) be utilized by a purchaser as a go-forward vehicle, without any concern regarding creditors and obligations that may otherwise be "laying in the weeds"; and, (ii) allow the purchaser to make use of the debtor company's tax attributes and non-transferable regulatory licences. This approach is necessary in situations where the parties would otherwise be unable to preserve the value of significant assets that are subject to restraints on alienation and to provide a corresponding realizable benefit for creditors and stakeholders.

(b) Authority to Grant a Reverse Vesting Order

26. Courts have recently held that the jurisdiction to grant reverse vesting orders exists under sections 11 and 36 of the CCAA.

27. Pursuant to section 11 of the CCAA, this Honourable Court has the jurisdiction to make any order that it considers appropriate in the circumstances, provided that it meets the following requirements identified by the Supreme Court of Canada in *9354-9186 Quebec Inc. v Callidus Capital Corp.*:

> "The anchor of this discretionary authority is s. 11, which empowers a judge "to make any order that [the judge] considers appropriate in the circumstances". **[…]** The discretionary authority conferred by the CCAA, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the CCAA, which we have explained above. ***Additionally, the court must keep in mind three "baseline considerations", which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate***

> ***in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence.***"[30] [citations and footnotes omitted].

28. Courts have recently approved reverse vesting orders in the following circumstances:

(a) in *Plasco*, the Ontario Superior Court of Justice approved the transfer of substantially all of the debtor company's assets into an acquisition corporation, and its liabilities into a "newco", by way of a settlement agreement. The reverse vesting was approved pursuant to section 11 of the CCAA, on the basis that the transaction furthered "the purposes of the CCAA... an orderly wind-up of the applicants' business and a maximization of recoveries for creditors and other stakeholders.";[31]

(b) in *Stornoway*, the Superior Court of Québec authorized a sale of the debtors' principal assets through a share purchase agreement where unsold assets and liabilities were transferred to a newly incorporated entity. The reverse vesting was approved pursuant to the Court's authority under section 36 of the CCAA;[32]

(c) in *Wayland*, the Ontario Superior Court of Justice approved the sale of substantially all of a debtor company's assets via a share purchase agreement where unsold assets and liabilities were transferred to a newly incorporated subsidiary. The reverse vesting was approved pursuant to the Court's authority under section 36 of the CCAA;[33] and,

(d) in *Beleave*, the Ontario Superior Court of Justice approved the sale of a debtor company's business, partly by asset purchase and partly by sale purchase, where excluded assets and liabilities were transferred to a newly incorporated subsidiary. The reverse vesting was approved pursuant to the Court's authority under section 36 of the CCAA and the test set out in *Soundair*.[34]

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[30] *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10 at paras. 48-49 **(TAB 2)**.

[31] Further Endorsement of Justice Wilton-Siegel, in the matter of *Plasco Energy et al.,* dated July 17, 2015, Toronto, Court File No. CV-15-10869-00C (ONSC [Comm. List]) ["***Plasco*** **Endorsement**"] **(TAB 6)**.

[32] Approval and Vesting Order, issued October 07, 2019, in the matter of *Stornoway Diamonds Inc et al.*, District of Montreal, Court File No: 500-11-057094-191 (QCSC [Comm. Div.]) at paras. 26, 34 **(TAB 7)**.

[33] Approval and Vesting Order, issued April 21, 2020, in the matter of *Wayland Group Corp. et al.*, Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]) **(TAB 8)**; Endorsement of Justice Hainey, dated April 21, 2020, in the matter of *Wayland Group Corp. et al.*, Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]) **(TAB 9)**.

[34] Endorsement of Justice Conway, dated September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]) [***Beleave*** **Endorsement**] **(TAB 10)**; see also,

29. The endorsement of Justice Wilton-Siegel in *Plasco* states:

> The Global Settlement contemplates implementation of a corporate reorganization by which the shares of Plasco will be transferred to an acquisition corporation owned by [the purchasers] and ***the remaining assets of the applicants will be held by a new corporation, referred to as "New Plasco", which will assume all of the liabilities and obligations of Plasco. I am satisfied that the Court has authority under section 11 of the CCAA to authorize such transactions*** notwithstanding that the applicants are not proceeding under s. 6(2) of the CCAA insofar as it is not contemplated that the applicants will propose a plan of arrangement or compromise.[35]

(c) The Reverse Vesting Order is Appropriate in the Current Circumstances

30. The Reverse Vesting Order is appropriate in the current circumstances.

31. Where a reverse vesting order was to be granted in connection with an agreement of purchase and sale, in addition to the *Soundair* factors and section 36 of the CCAA,[36] the Court in *Plasco* considered the following factors:

> The settlement ***advances the CCAA proceedings insofar as it provides for disposition of the assets*** loaned by these parties to the applicant and thereby for the decommissioning of the demonstration facility [in] a cost effective way through the Maynards transaction. As such, the Global Settlement ***satisfies the requirements of fairness and reasonableness and is consistent with the purpose of the CCAA*. […]** For this purpose, I consider that the Global Settlement is analogous to a plan in the context of these particular proceedings.[37]

32. In *Beleave*, Justice Conway referred to the following factors in approving a sale transaction and associated reverse vesting order:

> The order is structured as a reverse vesting order, in which excluded liabilities and assets will be transferred to "Residualco", which will then become one of the Applicants in the CCAA proceeding. Reverse vesting orders have been approved by the courts in other cases: see *Re Stornaway Diamond Corporation et al*, **[…]** and *Re Wayland Group Corp. et al*, **[…]**. ***The transaction is the culmination of a stalking horse sales process approved by the court***. The motion is unopposed. The Monitor recommends and supports the transaction in its Fourth Report. In particular, the Monitor states that ***the proposed transaction is economically superior to the estimated liquidation value of the Beleave Group's assets and operations, will allow the Purchaser to maintain***

Approval and Vesting Order, issued September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]) at paras. 5(a), 5(c), 14(c)-(d) **(TAB 11)**.

[35] *Plasco* Endorsement, *supra* at p. 3 (unnumbered para. 5) **(TAB 6)**.

[36] *Plasco* Endorsement, *supra* at pp. 1-2 (unnumbered para. 2) **(TAB 6)**.

[37] *Plasco* Endorsement, *supra* at pp. 2-3 (unnumbered para. 4) and pp. 3-4 (unnumbered para. 5) **(TAB 6)**.

> ***<u>operations and use of the Cannabis licenses</u> and will provide for continued employment for a majority of the existing employees***. In my view, ***the transaction satisfies both s. 36(3) of the CCAA and the Soundair test and should be approved***.[38]

33. The circumstances facing the debtors in *Plasco*, *Stornoway*, *Wayland*, and *Beleave* resemble those facing the Companies. In each case, the debtors/Companies: (i) conducted a SISP process that generated only a single <u>viable</u> transaction; (ii) faced significant funding challenges requiring an expeditious and cost-effective transaction; and, (iii) the transaction at issue represented the best option by which to generate value for creditors and stakeholders, who would otherwise have faced an even greater shortfall in a liquidation.

34. Furthermore, similar to in *Wayland*: (i) a traditional plan of arrangement and compromise is not possible in the circumstances, as there is no value for unsecured creditors; and, (ii) a reverse vesting order is necessary to preserve and utilize non-transferrable assets (*i.e.* cannabis licenses in *Wayland* and *Beleave*, and the Designated Permits in these proceedings)[39] and tax benefits, such as the PUC, which are "critical to the viability of the transaction".[40]

35. In the event the Mantle SAVO is approved and the transactions contemplated thereunder closed, the Reverse Vesting Order will not further prejudice any of the Companies' creditors. As there is no Newco in the within proceedings, the proposed form of the Reverse Vesting Order provides for a "siloed" approach to the transferring of the Remaining Assets and Remaining Liabilities, to ensure that the Companies' creditors' claims, the priority thereof, and the assets available to satisfy same, will all remain the same before and after implementation of the Reverse Vesting Order. Specifically, existing creditors of JMB shall have no recourse against the assets, which were held by 216 prior to the Reverse Vesting Order becoming effective and *vice versa*.[41]

(d) The Reverse Vesting Order is in the Best Interests of the Companies' Stakeholders

36. The Reverse Vesting Order is in the best interests of the Companies' stakeholders and is appropriate in the circumstances. Specifically, the transfer of the Remaining JMB Assets and Remaining JMB Liabilities pursuant to the Reverse Vesting Order meets the requisite criteria as:

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[38] *Beleave* Endorsement, *supra* **(TAB 10)**.

[39] *Beleave* Endorsement, *supra* **(TAB 10)**; Monitor's Seventh Report, *supra* at paras. 30(b), 43.

[40] Monitor's Seventh Report, *supra* at para. 43.

[41] Monitor's Seventh Report, *supra* at paras. 44-45.

(i) it advances the within CCAA Proceedings; (ii) furthers the remedial purpose of the CCAA – by permitting the going concern sale of JMB; (iii) is the result of a Court approved sales process, in which the Mantle APA was the only viable transactions which would see the continuation of JMB's operations; (iv) is a necessary part of the Mantle APA; (v) is reasonable and fair in the circumstances, as it is structured in a "siloed" approach to preserve creditors' priorities and claims and avoid any corresponding prejudice as a result of same; and, (iv) is in the best interests of stakeholders and creditors. Without the Reverse Vesting Order the Mantle Transactions cannot be completed, to the ultimate detriment of all of the Companies' stakeholders, as there is no reasonable alternative.

RELIEF REQUESTED

37. The Monitor respectfully requests that this Honourable Court grant the Mantle SAVO and the Reverse Vesting Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of October, 2020

McCarthy Tétrault LLP

Per: *"McCarthy Tétrault LLP"*

Sean F. Collins / Pantelis Kyriakakis / Nathan Stewart

Counsel for FTI Consulting Canada Inc., in its capacity as the court-appointed monitor of JMB Crushing Systems Inc. and 2161889 Alberta Ltd., and not in its personal or corporate capacity

LIST OF AUTHORITIES

1. *Royal Bank v. Soundair Corp.*, (1991) 83 D.L.R. (4th);

2. *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10.

3. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36;

4. *Re Komtech Inc.*, 2011 ONSC 3230;

5. *Re Brainhunter Inc.*, 2009 CanLII 67659;

6. Further Endorsement of Justice Wilton-Siegel, in the matter of *Plasco Energy et al.,* dated July 17, 2015, Toronto, Court File No. CV-15-10869-00C (ONSC [Comm. List]);

7. Approval and Vesting Order, issued October 07, 2019, at paras. 26, 34, in the matter of *Stornoway Diamonds Inc. et al.*, District of Montreal, Court File No: 500-11-057094-191 (QCSC [Comm. Div.]);

8. Approval and Vesting Order, issued April 21, 2020, in the matter of *Wayland Group Corp. et al.*, Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]);

9. Endorsement of Justice Hainey, dated April 21, 2020, in the matter of *Wayland Group Corp. et al.*, Ontario Superior Court of Justice, Court File No: CV-19-00632079-00CL (ONSC [Comm. List]);

10. Endorsement of Justice Conway, dated September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]);

11. Approval and Vesting Order, issued September 18, 2020, in the matter of *Beleave Inc. et al.*, Ontario Superior Court of Justice, CV-20-00642097-00CL (ONSC [Comm. List]).

TAB 1

Royal Bank of Canada v. Soundair Corp., Canadian Pension Capital Ltd. and Canadian Insurers Capital Corp.

Indexed as: Royal Bank of Canada v. Soundair Corp. (C.A.)

1991 CanLII 2727 (ON CA)

4 O.R. (3d) 1
[1991] O.J. No. 1137
Action No. 318/91

ONTARIO
Court of Appeal for Ontario
Goodman, McKinlay and Galligan JJ.A.
July 3, 1991

Debtor and creditor -- Receivers -- Court-appointed receiver accepting offer to purchase assets against wishes of secured creditors -- Receiver acting properly and prudently -- Wishes of creditors not determinative -- Court approval of sale confirmed on appeal.

Air Toronto was a division of Soundair. In April 1990, one of Soundair's creditors, the Royal Bank, appointed a receiver to operate Air Toronto and sell it as a going concern. The receiver was authorized to sell Air Toronto to Air Canada, or, if that sale could not be completed, to negotiate and sell Air Toronto to another person. Air Canada made an offer which the receiver rejected. The receiver then entered into negotiations with Canadian Airlines International (Canadian); two subsidiaries of Canadian, Ontario Express Ltd. and Frontier Airlines Ltd., made an offer to purchase on March 6, 1991 (the OEL offer). Air Canada and a creditor of Soundair, CCFL, presented an offer to purchase to the receiver on March 7, 1991 through 922, a company formed for that purpose (the 922 offer). The receiver declined the 922 offer because it contained an unacceptable condition and accepted the OEL offer. 922 made a

IN AGREEING TO SELL TO OEL?

Before dealing with that issue there are three general observations which I think I should make. The first is that the sale of an airline as a going concern is a very complex process. The best method of selling an airline at the best price is something far removed from the expertise of a court. When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver. The third observation which I wish to make is that the conduct of the receiver should be reviewed in the light of the specific mandate given to him by the court.

The order of O'Brien J. provided that if the receiver could not complete the sale to Air Canada that it was "to negotiate and sell Air Toronto to another person". The court did not say how the receiver was to negotiate the sale. It did not say it was to call for bids or conduct an auction. It told the receiver to negotiate and sell. It obviously intended, because of the unusual nature of the asset being sold, to leave the method of sale substantially in the discretion of the receiver. I think, therefore, that the court should not review minutely the process of the sale when, broadly speaking, it appears to the court to be a just process.

As did Rosenberg J., I adopt as correct the statement made by Anderson J. in Crown Trust Co. v. Rosenberg (1986), 60 O.R. (2d) 87, 39 D.L.R. (4th) 526 (H.C.J.), at pp. 92-94 O.R., pp. 531-33 D.L.R., of the duties which a court must perform when deciding whether a receiver who has sold a property acted properly. When he set out the court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1991 CanLII 2727 (ON CA)

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.

2. It should consider the interests of all parties.

3. It should consider the efficacy and integrity of the process by which offers are obtained.

4. It should consider whether there has been unfairness in the working out of the process.

I intend to discuss the performance of those duties separately.

1. Did the receiver make a sufficient effort to get the best price and did it act providently?

Having regard to the fact that it was highly unlikely that a commercially viable sale could be made to anyone but the two national airlines, or to someone supported by either of them, it is my view that the receiver acted wisely and reasonably when it negotiated only with Air Canada and Canadian Airlines International. Furthermore, when Air Canada said that it would submit no further offers and gave the impression that it would not participate further in the receiver's efforts to sell, the only course reasonably open to the receiver was to negotiate with Canadian Airlines International. Realistically, there was nowhere else to go but to Canadian Airlines International. In doing so, it is my opinion that the receiver made sufficient efforts to sell the airline.

When the receiver got the OEL offer on March 6, 1991, it was over ten months since it had been charged with the responsibility of selling Air Toronto. Until then, the receiver had not received one offer which it thought was acceptable. After substantial efforts to sell the airline over that period, I find it difficult to think that the receiver acted improvidently in accepting the only acceptable offer which it had.

1991 CanLII 2727 (ON CA)

TAB 2

SUPREME COURT OF CANADA

CITATION: 9354-9186 Québec inc. *v.* Callidus Capital Corp., 2020 SCC 10

APPEALS HEARD AND JUDGMENT RENDERED: January 23, 2020
REASONS FOR JUDGMENT: May 8, 2020
DOCKET: 38594

BETWEEN:

9354-9186 Québec inc. and 9354-9178 Québec inc.
Appellants

and

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier
Respondents

\- and -

Ernst & Young Inc., IMF Bentham Limited (now known as Omni Bridgeway Limited),
Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited), Insolvency Institute of Canada and
Canadian Association of Insolvency and Restructuring Professionals
Interveners

AND BETWEEN:

IMF Bentham Limited (now known as Omni Bridgeway Limited) and Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited)
Appellants

and

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier

Respondents

- and -

Ernst & Young Inc., 9354-9186 Québec inc., 9354-9178 Québec inc., Insolvency Institute of Canada and Canadian Association of Insolvency and Restructuring Professionals
Interveners

CORAM: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Kasirer JJ.

JOINT REASONS FOR JUDGMENT: (paras. 1 to 117)	Wagner C.J. and Moldaver J. (Abella, Karakatsanis, Côté, Rowe and Kasirer JJ. concurring)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

9354-9186 Québec inc. and
9354-9178 Québec inc. *Appellants*

v.

Callidus Capital Corporation,
International Game Technology,
Deloitte LLP, Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx and François Pelletier *Respondents*

and

Ernst & Young Inc.,
IMF Bentham Limited (now known as Omni Bridgeway Limited),
Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited), Insolvency Institute of Canada and
Canadian Association of Insolvency and Restructuring Professionals *Interveners*

- and -

IMF Bentham Limited (now known as Omni Bridgeway Limited) and
Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited) *Appellants*

v.

Callidus Capital Corporation,

International Game Technology,
Deloitte LLP, Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx and François Pelletier *Respondents*

and

Ernst & Young Inc.,
9354-9186 Québec inc.,
9354-9178 Québec inc., Insolvency Institute of Canada and
Canadian Association of Insolvency and Restructuring Professionals *Interveners*

Indexed as: 9354-9186 Québec inc. *v.* Callidus Capital Corp.

2020 SCC 10

File No.: 38594.

Hearing and judgment: January 23, 2020.
Reasons delivered: May 8, 2020.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Bankruptcy and insolvency — Discretionary authority of supervising judge in proceedings under Companies' Creditors Arrangement Act — Appellate review of decisions of supervising judge — Whether supervising judge has discretion

to bar creditor from voting on plan of arrangement where creditor is acting for improper purpose — Whether supervising judge can approve third party litigation funding as interim financing — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, ss. 11, 11.2.

The debtor companies filed a petition for the issuance of an initial order under the *Companies' Creditors Arrangement Act* ("*CCAA*") in November 2015. The petition succeeded, and the initial order was issued by a supervising judge, who became responsible for overseeing the proceedings. Since then, substantially all of the assets of the debtor companies have been liquidated, with the notable exception of retained claims for damages against the companies' only secured creditor. In September 2017, the secured creditor proposed a plan of arrangement, which later failed to receive sufficient creditor support. In February 2018, the secured creditor proposed another, virtually identical, plan of arrangement. It also sought the supervising judge's permission to vote on this new plan in the same class as the debtor companies' unsecured creditors, on the basis that its security was worth nil. Around the same time, the debtor companies sought interim financing in the form of a proposed third party litigation funding agreement, which would permit them to pursue litigation of the retained claims. They also sought the approval of a related super-priority litigation financing charge.

The supervising judge determined that the secured creditor should not be permitted to vote on the new plan because it was acting with an improper purpose. As

with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage. As we will explain, the architecture of the *CCAA* leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge.

(2) The Role of a Supervising Judge in *CCAA* Proceedings

[47] One of the principal means through which the *CCAA* achieves its objectives is by carving out a unique supervisory role for judges (see Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at pp. 18-19). From beginning to end, each *CCAA* proceeding is overseen by a single supervising judge. The supervising judge acquires extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.

[48] The *CCAA* capitalizes on this positional advantage by supplying supervising judges with broad discretion to make a variety of orders that respond to the circumstances of each case and "meet contemporary business and social needs" (*Century Services*, at para. 58) in "real-time" (para. 58, citing R. B. Jones, "The Evolution of Canadian Restructuring: Challenges for the Rule of Law", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 484). The anchor of this discretionary authority is s. 11, which empowers a judge "to make any order that [the judge] considers appropriate in the circumstances". This section has been described as "the engine" driving the statutory scheme (*Stelco Inc. (Re)* (2005), 253 D.L.R. (4th) 109 (Ont. C.A.), at para. 36).

[49] The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three "baseline considerations" (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

[50] The first two considerations of appropriateness and good faith are widely understood in the *CCAA* context. Appropriateness "is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*" (para. 70). Further, the well-established requirement that parties must act in good faith in insolvency proceedings has recently been made express in s. 18.6 of the *CCAA*, which provides:

> **Good faith**
>
> **18.6 (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.
>
> **Good faith — powers of court**
>
> **(2)** If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.
>
> (See also *BIA*, s. 4.2; *Budget Implementation Act*, *2019, No. 1*, S.C. 2019, c. 29, ss. 133 and 140.)

[51] The third consideration of due diligence requires some elaboration. Consistent with the *CCAA* regime generally, the due diligence consideration

TAB 3

CONSOLIDATION

CODIFICATION

Companies’ Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to September 22, 2020

Last amended on November 1, 2019

À jour au 22 septembre 2020

Dernière modification le 1 novembre 2019

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to September 22, 2020. The last amendments came into force on November 1, 2019. Any amendments that were not in force as of September 22, 2020 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 22 septembre 2020. Les dernières modifications sont entrées en vigueur le 1 novembre 2019. Toutes modifications qui n'étaient pas en vigueur au 22 septembre 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

2019, ch. 29, art. 136.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;

b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de dix jours qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(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 their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other

Restriction à la disposition d'actifs

36 (1) Il est interdit à la compagnie débitrice à l'égard de laquelle une ordonnance a été rendue sous le régime de la présente loi de disposer, notamment par vente, d'actifs hors du cours ordinaire de ses affaires sans l'autorisation du tribunal. Le tribunal peut accorder l'autorisation sans qu'il soit nécessaire d'obtenir l'acquiescement des actionnaires, et ce malgré toute exigence à cet effet, notamment en vertu d'une règle de droit fédérale ou provinciale.

Avis aux créanciers

(2) La compagnie qui demande l'autorisation au tribunal en avise les créanciers garantis qui peuvent vraisemblablement être touchés par le projet de disposition.

Facteurs à prendre en considération

(3) Pour décider s'il accorde l'autorisation, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la justification des circonstances ayant mené au projet de disposition;

b) l'acquiescement du contrôleur au processus ayant mené au projet de disposition, le cas échéant;

c) le dépôt par celui-ci d'un rapport précisant que, à son avis, la disposition sera plus avantageuse pour les créanciers que si elle était faite dans le cadre de la faillite;

d) la suffisance des consultations menées auprès des créanciers;

e) les effets du projet de disposition sur les droits de tout intéressé, notamment les créanciers;

f) le caractère juste et raisonnable de la contrepartie reçue pour les actifs compte tenu de leur valeur marchande.

Autres facteurs

(4) Si la compagnie projette de disposer d'actifs en faveur d'une personne à laquelle elle est liée, le tribunal, après avoir pris ces facteurs en considération, ne peut accorder l'autorisation que s'il est convaincu :

a) d'une part, que les efforts voulus ont été faits pour disposer des actifs en faveur d'une personne qui n'est pas liée à la compagnie;

b) d'autre part, que la contrepartie offerte pour les actifs est plus avantageuse que celle qui découlerait de

offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 131; 2007, c. 36, s. 78; 2017, c. 26, s. 14; 2018, c. 27, s. 269.

toute autre offre reçue dans le cadre du projet de disposition.

Personnes liées

(5) Pour l'application du paragraphe (4), les personnes ci-après sont considérées comme liées à la compagnie :

a) le dirigeant ou l'administrateur de celle-ci;

b) la personne qui, directement ou indirectement, en a ou en a eu le contrôle de fait;

c) la personne liée à toute personne visée aux alinéas a) ou b).

Autorisation de disposer des actifs en les libérant de restrictions

(6) Le tribunal peut autoriser la disposition d'actifs de la compagnie, purgés de toute charge, sûreté ou autre restriction, et, le cas échéant, est tenu d'assujettir le produit de la disposition ou d'autres de ses actifs à une charge, sûreté ou autre restriction en faveur des créanciers touchés par la purge.

Restriction à l'égard des employeurs

(7) Il ne peut autoriser la disposition que s'il est convaincu que la compagnie est en mesure d'effectuer et effectuera les paiements qui auraient été exigés en vertu des alinéas 6(5)a) et (6)a) s'il avait homologué la transaction ou l'arrangement.

Restriction à l'égard de la propriété intellectuelle

(8) Si, à la date à laquelle une ordonnance est rendue à son égard sous le régime de la présente loi, la compagnie est partie à un contrat qui autorise une autre partie à utiliser un droit de propriété intellectuelle qui est compris dans la disposition d'actifs autorisée en vertu du paragraphe (6), cette disposition n'empêche pas l'autre partie d'utiliser le droit en question ni d'en faire respecter l'utilisation exclusive, à condition que cette autre partie respecte ses obligations contractuelles à l'égard de l'utilisation de ce droit, et ce, pour la période prévue au contrat et pour toute prolongation de celle-ci dont elle se prévaut de plein droit.

2005, ch. 47, art. 131; 2007, ch. 36, art. 78; 2017, ch. 26, art. 14; 2018, ch. 27, art. 269.

TAB 4

In the Matter of the Proposal of Komtech Inc.

[Indexed as: Komtech Inc. (Re)]

106 O.R. (3d) 654

2011 ONSC 3230

2011 ONSC 3230 (CanLII)

Ontario Superior Court of Justice,
Kane J.
July 8, 2011

Bankruptcy and insolvency -- Sale of assets -- Court approval -- Presentation by debtor of proposal to its creditors or ability to present proposal not prerequisite for court approval of sale of debtor's assets under s. 65.13 of Bankruptcy and Insolvency Act -- Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 65.13.

K Inc. filed a Notice of Intention to make a proposal under s. 50.4 of the Bankruptcy and Insolvency Act ("BIA"), and a proposal trustee was appointed. K Inc. subsequently brought a motion for approval of a bidding process for the auction of its assets and the preliminary approval of an asset purchase agreement. The trustee recommended that the motion be granted. It was unlikely that K Inc. would be able to present a proposal for approval by its creditors.

Held, the motion should be granted.

Presentation of, or the ability to present, a proposal is not a condition to the exercise of the court's jurisdiction under

s. 65.13 of the BIA to authorize a sale of assets.

The position of K Inc.'s secured and unsecured creditors would not improve if the motion was dismissed, given the past unsuccessful attempts to sell the business and the estimate of the realizable value of the company's assets. The requirements under s. 65.13 of the BIA were met.

Cases referred to

Brainhunter Inc. (Re), [2009] O.J. No. 5578, 62 C.B.R. (5th) 41 (S.C.J.); Hypnotic Clubs Inc. (Re), [2010] O.J. No. 2176, 2010 ONSC 2987, 68 C.B.R. (5th) 267; Nortel Networks Corp. (Re) [Bidding Procedures], [2009] O.J. No. 3169, 55 C.B.R. (5th) 229 (S.C.J.) [page655]

Statutes referred to

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ss. 14.06(7) [as am.], 50.4, (1) [as am.], 64.1 [as am.], 64.2 [as am.], 65.13 [as am.], (1), (3), (4), 81.4(4), 81.6(2)

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 36 [as am.]

MOTION by the debtor for the approval of the sale of assets.

Keith A. MacLaren, for Komtech Inc.

John O'Toole and Andr Ducasse, for Business Development Bank of Canada.

Karen Perron, for Hubbell Canada LP.

[1] KANE J.: -- The applicant, Komtech Inc. ("Komtech"), designs and manufactures plastic injection products at two facilities in Ontario and employs approximately 150 employees. Faced with serious financial difficulties, Komtech filed a Notice of Intention ("NOI") to make a proposal ("Proposal") under s. 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ("BIA") on March 2, 2011. A. Farber & Partners Inc. was appointed Proposal Trustee ("Trustee").

2011 ONSC 3230 (CanLII)

considered on a motion under s. 65.13(4). Parliament could have, but did not include language in s. 65.13 requiring the presentation of or the ability to present a Proposal and the vote thereon by creditors, as a condition to the exercise of the court's jurisdiction to authorize a sale of assets.

[26] A comparable issue under the CCAA with wording remarkably similar to s. 65.13 of the BIA has concluded that the court has jurisdiction to authorize the sale of business assets absent a formal plan of compromising arrangement under s. 36 of the CCAA.

[27] Section 36 of the CCAA reads as follows:

Restriction on disposition of business assets

36(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition. [page659]

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(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 their opinion the sale or

2011 ONSC 3230 (CanLII)

disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors -- related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the

2011 ONSC 3230 (CanLII)

creditor whose security, charge or other restriction is to be affected by the order.

Restriction -- employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement. [page660]

[28] In Nortel Networks Corp. (Re) [Bidding Procedures], [2009] O.J. No. 3169, 55 C.B.R. (5th) 229 (S.C.J.), the court found jurisdiction under the CCAA absent a plan of an arrangement which was described as "skeletal in nature". That court held that an important consideration, in addition to whether the business continues under the debtor stewardship or under a new equity structure, is whether the business can be continued as a going concern in the form of a sale by the debtor.

[29] Following the amendments creating s. 36 of the CCAA, the court in Brainhunter Inc. (Re), [2009] O.J. No. 5578, 62 C.B.R. (5th) 41 (S.C.J.) determined that s. 36 of the CCAA expressly permits the sale of substantially all of the debtor's assets even in the absence of the presentation and vote upon a plan of arrangement.

[30] Section 65.13 of the BIA and s. 36 of the CCAA were introduced in 2005 in An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts (Bill C-55).

[31] There were two Senate Committee meetings. At one of those, the Honourable Jerry Pickard, Parliamentary Secretary to the Minister of Industry, stated:

It is widely accepted that inadequate provisions exist for workers whose employers becomes bankrupt. Previous attempts to bring about better protection for workers have failed, as

2011 ONSC 3230 (CanLII)

TAB 5

COURT FILE NO.: 09-8483-00CL
DATE: 20091204

2009 CanLII 67659 (ON SC)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER of a Plan of Compromise or Arrangement of Brainhunter Inc., TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and Protec Employment Services Limited

Applicants

APPLICATION UNDER SECTION 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Jay A. Swartz and James D. Bunting, for the applicants
Grant B. Moffat, for Deloitte and Touche Inc.
Edmond Lamek, for Toronto-Dominion Bank
Joseph Bellissimo, for Roynat Capital Inc.
Daniel R. Dowdall, for certain noteholders
Patrick F. Schindler, for an unsecured judgment creditor

HEARD: December 2, 2009

Newbould J.

[1] On December 2, 2009 after hearing submissions from the parties present, I made an initial order granting CCAA protection to the applicants, with reasons to follow. These are my reasons.

[2] There is no question that the Court has jurisdiction to hear the application pursuant to section 9 of the CCAA as the applicants' head offices are located in Toronto, Canada. At the time of the application, Brainhunter Inc. was listed on the TSX. The applicants qualify as debtor

[8] This application is in some respects unusual because the applicants state that they intend at the outset to solicit a going concern asset sale of the business, and that it is likely that there will be no plan of arrangement filed. The factum on their behalf states:

> 5. If protection is granted under the CCAA, the Applicants intend to bring a motion seeking approval of a bid process to solicit going concern asset purchase offers for the Applicants' business, as well as offers to sponsor a plan of arrangement (the "Bid Process"). The Applicants have entered into an agreement to sell substantially all of their assets as a going concern on the understanding that this agreement will serve as a stalking horse bid. The Bid Process will solicit competing offers from prospective investors to bid up the stalking horse bid.
>
> 24. Although the proposed Bid Process could result in the filing of a plan of arrangement or plan of compromise, it is more likely to result in the sale of the Applicants' business.

[9] The applicants submit that this Court has the jurisdiction to provide them with protection under the CCAA in circumstances such as these where the applicants may not file a formal plan of compromise or arrangement.

[10] I agree with the applicants that protection under the CCAA may be granted in these circumstances. I say that for the following reasons.

[11] The initial protection is supported by TD Bank and Roynat. It is also supported by the secured noteholders represented by Mr. Dowdall, being a little more than 60% of the noteholders. Mr. Dowdall has other concerns that I will deal with.

[12] It is well settled in Ontario that a court in a CCAA proceeding may approve a sale of all or substantially all of the assets of a debtor company as a going concern. In *Re Consumers Packaging Inc.* (2001) 27 C.B.R. (4th) 197 (Ont. C.A.), the Court stated:

> The sale of Consumers' Canadian glass operations as a going concern pursuant to the Owens-Illinois bid allows the preservation of Consumers' business (albeit under new ownership), and is therefore consistent with the purposes of the CCAA.

2009 CanLII 67659 (ON SC)

2009 CanLII 67659 (ON SC)

[13] Similarly, it is well settled in Ontario that a court in a CCAA proceeding may order the sale of a business in the absence of a plan of arrangement being put to stakeholders for a vote. In *Re Nortel Networks Corp*. (2009), 55 C.B.R. (5th) 229 Morawetz J. came to this conclusion after analyzing a number of cases that had made such an order. See paras 35 to 40 of his reasons for judgment.

[14] It seems to me that if at some point in time after an initial CCAA protection order has been made, it appears appropriate to undertake a sales process to sell the business without a plan of arrangement in place, there is no reason why CCAA protection should not initially be granted if at the outset it is thought appropriate to undertake a sales process without a plan of arrangement in place. It is simply a matter of timing as to when it appears appropriate to pursue a sale of the business without a plan of arrangement in place.

[15] *Re Nortel* was decided before the new CCAA provisions came into force on September 18, 2009. The new relevant provision does not, however, affect the principles accepted by Morawetz J. in that case. Section. 36(1) provides:

> 36.(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

[16] In *Re Canwest Global Communications Corp*. released November 12, 2009, Pepall J. stated the following regarding s. 36:

> The CCAA is remedial legislation designed to enable insolvent companies to restructure. As mentioned by me before in this case, the amendments do not detract from this objective. In discussing section 36, the Industry Canada Briefing Book on the amendments states that "The reform is intended to provide the debtor company with greater flexibility in dealing with its property while limiting the possibility of abuse."

TAB 6

July 17/15

R.J. Chadwick and R. Wiffen for the applicants
A. Taylor for the Monitor
S. Weisz for North Shore Power Group Inc., secured creditor
S. Van Allen for Canadian Water Projects, secured creditor
J. Mehra for the City of Ottawa
L. Brost for the Ministry of Research and Innovation of Ontario
M. Wiback for the Employees Committee

The applicants seek approval of (1) a sale transaction with Maynards Industries Ltd. ("Maynards) of certain equipment (the "Equipment"); and (2) settlement agreements among (i) the applicants, Plasco Energy ~~Group Inc.~~ L.P. Holdings S.L.U., North Shore Power Group Inc. ("NSPG") and Canadian Water Projects ("CWP"), referred to as the "Global Settlement", and (ii) among Plasco Energy Group Inc. ("Plasco"), Plasco Trail Road Inc. ("PTR") and the Ministry of Research and Innovation of the Province of Ontario ("MRI"), referred to as the "MRI Settlement". These agreements collectively form a package intended to sell the principal assets of the applicants and ensure the demolition of the applicants' demonstration facility with a view to advancing significantly the winding up and liquidation process of the applicants.

With respect to the Maynards sale agreement, the record establishes that the requirements of s. 36 of the *Companies' Creditors Arrangement Act* (the "CCAA") as well as the test set out in *Royal Bank v. Soundair Corp.* have been satisfied. In particular, the transaction is the result of an extensive sales process which failed to

produce any bids for the applicants' business as an entirety and represents the best of the remaining share and liquidation bids. The applicants also consulted with the secured creditors, who support the transaction, as well as the other creditors and stakeholders likely to be affected by the transaction. In this regard, there is no evidence of any unfairness in the sales process. Accordingly, this transaction is approved.

With respect to the settlement agreements, the CCAA gives the Court the authority to approve such agreements under section 11 provided always that the approval furthers the purposes of the CCAA which, in this case, entails an orderly wind-up of the applicants' business and a maximization of recoveries for its creditors and other stakeholders. The test for approval requires demonstration that: (1) the settlement is fair and reasonable; (2) the settlement will be beneficial to the debtor and its stakeholders generally; and (3) that the settlement is consistent with the purpose and spirit of the CCAA. I am satisfied that each of the proposed settlements meets this test for the following reasons.

With respect to the Global Settlement, the agreement ~~transfers~~ effectively transfers the current tax losses and the applicants' intellectual property on a basis which recognizes value for such assets after the failure of the sales process to identify a better offer for the applicants' business as an entirety. In doing so, it also recognizes the security in the intellectual property that currently exists in favour of

NSPG and CWP. The settlement advances the CCAA proceedings insofar as it provides for disposition of the assets leased by these parties to the applicants and thereby for the decommissioning of the demonstration facility in a cost effective way through the Maynards transaction. As such, the Global Settlement satisfies the requirements of fairness and reasonableness and is consistent with the purpose of the CCAA. While it appears the shareholders will have no economic interest in the applicants, the settlement is also supported by creditors having approximately 95% of all known unsecured obligations of the applicants, upon which, in addition to the facts above, the Court can rely as evidence that the settlement is beneficial to the applicants and its stakeholders generally.

The Global Settlement contemplates implementation of a corporate reorganization by which the shares of Plasco will be transferred to an acquisition corporation owned by NSPG and CWP and the remaining assets of the applicants will be held by a new corporation, referred to as "New Plasco", which will assume all of the liabilities and obligations of ~~the applicants~~ Plasco. I am satisfied that the Court has authority under section 11 of the CCAA to authorize such transactions notwithstanding that the applicants are not proceeding under s.6(2) of the CCAA insofar as it is not contemplated that the applicants will propose a plan of arrangement or compromise. For this purpose, I consider that the Global Settlement is analagous to such a plan in the context of these

particular proceedings. The reorganization requires an amendment to the articles of Plasco to consolidate its shares and eliminate fractional shares arising on such consolidation. The Court has authority to approve such actions under section 11 of the CCAA which will constitute an order for the purposes of section 191(1) of the *Canada Business Corporations Act*, which governs Plasco.

Based on the foregoing, but subject to the qualification below, the Global Settlement and the reorganization contemplated therein to complement the Global Settlement are hereby approved.

With respect to the MRI Settlement, the MRI claims in respect of the GE engines will be released in return for payment of an amount approximately equal to the value allocated to the GE engines by Maynards, which is also at arm's length to the applicants. The MRI Settlement resolves a significant claim against the applicants and allows the Maynards transaction to proceed. On this basis, the MRI Settlement is fair and reasonable and furthers the purpose of the CCAA. It is also beneficial to applicants and the stakeholders for the same reasons.

Based on the foregoing, ~~and~~ but subject to the qualification below, the MRI Settlement is hereby approved.

I note that the City of Ottawa, which appeared today, has not consented to any of the

Maynards transaction, the Global Settlement or the MRI Settlement, pending its review of these transactions and has reserved its rights to object thereto at a hearing scheduled for July 24, 2015. The approvals herein are also subject to approval of an order or orders giving effect to such approvals after finalization of the transactions and the determination of any outstanding issues which are to be addressed at such hearing.

W. Hon-Siegel J.

TAB 7

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-057094-191

DATE: October 7, 2019

PRESIDING: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

STORNOWAY DIAMOND CORPORATION

-&-

STORNOWAY DIAMONDS (CANADA) INC.

-&-

ASHTON MINING OF CANADA INC.

-&-

FCDC SALES AND MARKETING INC.

Petitioners

-&-

COMPUTERSHARE TRUST COMPANY OF CANADA

-&-

DIAQUEM INC.

-&-

INVESTISSEMENT QUÉBEC

-&-

FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC

-&-

FONDS RÉGIONAL DE SOLIDARITÉ F.T.Q. NORD-DU-QUÉBEC, SOCIÉTÉ EN COMMANDITE

-&-

NATION CRIE DE MISTISSINI

-&-

GRAND CONSEIL DES CRIS (EEYOU ISTCHEE)

-&-

ADMINISTRATION RÉGIONALE CRIE

-&-

CATERPILLAR FINANCIAL SERVICES LIMITED

-&-

CHUBB LIFE INSURANCE COMPANY OF CANADA

-&-

BANK OF NOVA SCOTIA

-&-

XEROX CANADA LTD.

-&-

ATLAS COPCO CANADA INC.

-&-

CWB NATIONAL LEASING INC.

-&-

OSISKO GOLD ROYALTIES LTD

-&-

CDPQ RESOURCES INC.

-&-

TF R&S CANADA LTD.

-&-

ALBION EXPLORATION FUND LLC

-&-

WASHINGTON STATE INVESTMENT BOARD

-&-

TSX INC.

-&-

ATTORNEY GENERAL OF CANADA

-&-

QUEBEC REVENUE AGENCY

-&-

THE DIRECTOR APPOINTED PURSUANT TO THE CANADA BUSINESS CORPORATIONS ACT

-&-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS OF QUEBEC, represented by the **QUEBEC MINISTRY OF JUSTICE**

-&-

11641603 CANADA INC.

-&-

11641638 CANADA INC.

-&-

11641735 CANADA INC.

-&-

11272420 CANADA INC.

-&-

THE MINISTER OF ECONOMY, SCIENCE AND INNOVATION OF QUEBEC

-&-

THE MINISTER OF FINANCE AND ECONOMY OF QUÉBEC

-&-

THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION

DIVISION OF SEPT-ILES

-&-

THE REGISTRAR OF PUBLIC REGISTER OF REAL AND IMMOVABLE MINING RIGHTS KEPT BY THE MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES (QUÉBEC)

Mis-en-cause

-&-

DELOITTE RESTRUCTURING INC.

Monitor

APPROVAL AND VESTING ORDER

[1] **ON READING** the Petitioners' *Motion Seeking (i) Extension of the Stay of Proceedings, (ii) Amendment and Restatement of the Initial Order; and (iii) Leave to Enter Into the Participating Streamers/Diaquem Transaction with Issuance of an Approval and Vesting Order and Ancillary Relief* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Monitor dated October 2, 2019 (the "**Report**");

[2] **SEEING** the service of the Motion;

[3] **SEEING** the submissions of Petitioners' attorneys;

[4] **SEEING** that it is appropriate to issue an order approving: the purchase and sale and other transactions (the "**Purchase and Sale Transactions**") contemplated in the agreement entitled Share Purchase Agreement dated October 6, 2019 (the "**Purchase Agreement**") by and between the Petitioners, as vendor, and *11272420 Canada Inc.* (the "**Purchaser**"), as purchaser, copy of which is attached as **Schedule "A"** to this Order, forming part hereof, including the pre-closing reorganization transactions contemplated in Exhibit A thereto (the "**Pre-Closing Reorganization**" and, collectively with the other transactions contemplated in the Purchase Agreement, the "**Transactions**");

WHEREFORE, THE COURT:

[5] **GRANTS** the Motion.

[6] **ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meanings given to them in the Purchase Agreement and/or in the Initial Order and/or Initial Motion, as extended, amended and restated from time to time.

PURCHASE AGREEMENT:

[7] **AUTHORIZES** and **APPROVES** the execution by the Petitioners of the Purchase Agreement and the completion of the Transactions, with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

PRE-CLOSING REORGANIZATION

[8] **AUTHORIZES** the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be) to implement and complete the Pre-Closing Reorganization contemplated in Exhibit A to the Purchase Agreement, in the sequence provided for therein.

[9] **AUTHORIZES** the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be), in completing the transactions contemplated in the Pre-Closing Reorganization:

a) to execute and deliver any documents and assurances governing or giving effect to the Pre-Closing Reorganization as the Petitioners, in their discretion, may deem to be reasonably necessary or advisable to conclude the Pre-Closing Reorganization, including the execution of such deeds, contracts or documents, as may be contemplated in the Purchase Agreement and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

b) to take such steps as are, in the opinion of the Petitioners, necessary or incidental to the implementation of the Pre-Closing Reorganization.

[10] **ORDERS AND DECLARES** that the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be) are hereby permitted to execute and file articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Pre-Closing Reorganization and that such articles, documents or other instruments shall be

deemed to be duly authorized, valid and effective notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law to effect the Pre-Closing Reorganization.

[11] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the CCAA Parties to proceed with the Pre-Closing Reorganization and that no director, shareholder or regulatory approval shall be required in connection with any of the steps contemplated pursuant to the Pre-Closing Reorganization save for those contemplated in the Purchase Agreement.

[12] **ORDERS** the Director appointed pursuant to Section 260 of the CBCA to accept and receive any articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Pre-Closing Reorganization contemplated in the Purchase Agreement, filed by either the CCAA Parties, as the case may be;

SALE APPROVAL

[13] **AUTHORIZES** the Petitioners (including Mises en cause 11641603 Canada Inc., 11641638 Canada Inc. and 11641735 Canada Inc. as the case may be), the Vendor, the Monitor, as the case may be, and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto.

[14] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Petitioners and the Vendor, as the case may be, to proceed with the Pre-Closing Reorganization, the Purchase and Sale Transactions, the other Transactions and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

[15] **ORDERS** and **DECLARES** that the Vendor, in consummating the transactions contemplated by the Purchase Agreement, which is a "related party transaction" for purposes of Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") and subject to a court order under applicable bankruptcy or insolvency laws, is not required to comply with both the formal valuation and minority approval requirements under Sections 5.4 and 5.6, respectively, of MI 61-101.

[16] **ORDERS** and **DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "B"** hereto (the "**Certificate**"),

all right, title and interest in and to the Purchased Shares, the COA and the MSA shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, Liabilities (direct, indirect, absolute or contingent), obligations, taxes, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"[1]), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances listed on **Schedule "C"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Shares, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Shares, in each case effective as of the applicable time and date of the Certificate.

[17] **ORDER** and **DECLARES** that upon the issuance of the Certificate, any agreement, contract, plan, indenture, deed, certificate, subscription right, conversion rights, pre-emption rights or other document or instrument governing and/or having been created, granted in connection with the Purchased Shares and/or the share capital of SDCI, Ashton and FCDC shall be deemed terminated and cancelled.

[18] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of Sept-Iles and the Registrar of the Public Register of Real and Immovable Mining Rights (known as GESTIM Plus), upon presentation of the Certificate and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and cancel the Encumbrances listed in **Schedule "D"** on the immovable properties identified therein.

[19] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the registration listed in **Schedule "D"**.

[20] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, Purchaser and AmalCo (including any predecessor corporations) shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or

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obligations with respect to any taxes (including penalties and interest thereon) of, or that relate to, the Vendor, including without limiting the generality of the foregoing all taxes that could be assessed against Purchaser and Amalco (including any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada), or any provincial equivalent, in connection with the Vendor.

[21] **ORDERS** that upon issuance of the Certificate, all Persons shall be deemed to have waived any and all defaults of the CCAA Parties then existing or previously committed by the CCAA Parties or caused by the CCAA Parties, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the CCAA Parties arising from the filing by the CCAA Parties under the CCAA or the completion of the Transactions, and any and all notices of default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded.

[22] **ORDERS** that the implementation of the Transactions shall be deemed not to constitute a change in ownership or change in control under any financial instrument, loan or financing agreement, executory contract or unexpired lease or contract, lease or agreement in existence on the Effective Date and to which the CCAA Parties are a party.

[23] **ORDERS and DIRECTS** the Monitor to file with the Court a copy of the Certificate, no later than one business day after the issuance thereof.

[24] **DECLARES** that upon the filing of the Certificate, the Purchase and Sale Transactions shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.

CCAA PETITIONERS

[25] **ORDERS** that upon filing of the Monitor's Certificate:

a) 11641638 Canada Inc. and 11641735 Canada Inc. are companies to which the CCAA applies;

b) 11641638 Canada Inc. and 11641735 Canada Inc. shall be added as Petitioners in these CCAA proceedings and any reference in any Order of this Court in respect of these CCAA proceedings to a "Petitioner", the "Petitioners" or "CCAA Parties" shall refer to 11641638 Canada Inc. and

11641735 Canada Inc., *mutadis mutandis*, and, for greater certainty, each of the Charges (as such term is defined in the Initial Order) shall constitute a charge on the property of 11641638 Canada Inc. and 11641735 Canada Inc.; and

c) SDCI, Ashton, FCDC and 11641603 Canada Inc., as amalgamated shall each be deemed to cease to be Petitioners in these CCAA proceedings, and each such entity shall be deemed to be released from the purview of any Order of this Court granted in respect of these CCAA Proceedings, save and except for the present Order the terms of which (as they related to any such entity) shall continue to apply in all respects.

[26] **ORDERS** that upon the issuance of the Certificate and in accordance with the terms of the Purchase Agreement:

a) all Excluded Assets shall vest absolutely and exclusively in 11641638 Canada Inc. and all Encumbrances shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

b) all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of Amalco, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise (collectively, "**Obligations**") other than the Assumed Liabilities (all such Obligations that are not expressly identified in the Purchase Agreement as being Assumed Liabilities being referred to as the "**Excluded Liabilities**") shall be transferred to, assumed by and vest absolutely and exclusively in, 11641735 Canada Inc. such that, at the time provided for in the Pre-Closing Reorganization and before the Closing Date, the Excluded Liabilities shall be novated and become obligations of 11641735 Canada Inc. and not obligations of AmalCo, and AmalCo shall be forever released and discharged from such Excluded Liabilities, and all Encumbrances securing Excluded Liabilities shall be forever released and discharged, it being understood that nothing in the present Order shall be deemed to cancel any of the Permitted Encumbrances, as applicable to AmalCo (including any predecessor corporations);

c) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise of any demands, claims, actions, counterclaims, suits, judgements, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action against Amalco in respect of the Excluded Liabilities shall be permanently enjoined;

d) the nature of the Obligations retained by Amalco including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Purchase Agreement or the steps and actions taken in accordance with the terms thereof;

e) the nature and priority of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to and assumption by 11641638 Canada Inc. and/or 11641735 Canada Inc.; and

f) any person that, prior to the Closing Date, had a valid right or claim against AmalCo in respect of the Excluded Liabilities (each a "**Claim**") shall no longer have such Claim against AmalCo, but will have an equivalent Claim against 11641638 Canada Inc. and/or 11641735 Canada Inc. in respect of the Excluded Liabilities from and after the Closing Date in its place and stead, and, nothing in this Order limits, lessens or extinguishes the Excluded Liabilities or the Claim of any person as against 11641638 Canada Inc. and/or 11641735 Canada Inc.

RELEASES

[27] **ORDERS** that effective upon the filing of the Certificate, (i) the present and former directors, officers, employees, legal counsel and advisors of the Petitioners (including for purpose of clarity 11641638 Canada Inc., 11641735 Canada Inc. and AmalCo), (ii) the Monitor and its legal counsel, and (iii) the Streamers under the Stream Agreement, Diaquem Inc. and Investissement Québec, including in each case their respective directors, officers, employees, legal counsel and advisors (the persons listed in (i), (ii) and (iii) being collectively the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitations, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole

or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the issuance of the Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions, in respect of the Petitioners or their assets, business or affairs wherever or however conducted or governed, the administration and/or management of the Petitioners, the Stream Agreement, the Diaquem Loan Agreement, the Diaquem Royalty Agreement and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the Directors and Officers of the Petitioners that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

[28] **ORDERS** that, notwithstanding:

a) the pendency of these proceedings;

b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Petitioners, 11641638 Canada Inc., 11641735 Canada Inc. or Amalco and any bankruptcy order issued pursuant to any such applications; and

c) any assignment in bankruptcy made in respect of the Petitioners, 11641638 Canada Inc., 11641735 Canada Inc. or Amalco,

the implementation of the Pre-Closing Reorganization (including the transfer of the Excluded Assets to 11641638 Canada Inc. and the transfer of the Excluded Liabilities to 11641638 Canada Inc. and/or to 11641735 Canada Inc.) and the implementation of the Purchase and Sale Transactions under and pursuant to the Purchase Agreement (i) shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners, 11641638 Canada Inc., 11641735 Canada Inc. or Amalco and shall not be void or voidable by creditors of the Petitioners, 11641638 Canada Inc. or 11641735 Canada Inc., as applicable, (ii) shall not constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, and (iii) shall not constitute nor be deemed to be oppressive or unfairly prejudicial conduct by the Petitioners or the Released Parties pursuant to any applicable federal or provincial legislation.

THE MONITOR

[29] **PRAYS ACT** of the Monitor's Second Report.

[30] **ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is authorized, entitled and empowered to assign or cause to be assigned, at any time after the Closing Date, Stornoway Diamond Corporation, 11641638 Canada Inc. and 11641735 Canada Inc. into bankruptcy and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof.

[31] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

[32] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

[33] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL

[34] **ORDERS** that the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances as against the assets of AmalCo.

[35] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[36] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to Monitor as may be deemed necessary or appropriate for that purpose.

[37] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America

and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[38] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

The Honourable Louis J. Gouin, J.S.C.

Date of hearing: October 7, 2019

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COPIE CERTIFIÉE CONFORME AU
DOCUMENT DÉTENU PAR LA COUR

PERSONNE DÉSIGNÉE PAR LE GREFFIER
EN VERTU DE 67 C.P.C.

TAB 8

Court File No. CV-19-00632079-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 21ST
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF WAYLAND GROUP CORP., MARICANN INC. AND NANOLEAF TECHNOLOGIES INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, (i) approving the Share Purchase Agreement (the "**Sale Agreement**") among Wayland Group Corp. ("**Wayland**"), Maricann Inc. ("**Maricann**"), and Canadelaar B.V. (the "**Purchaser**") dated April 15, 2020 and attached as Exhibit "A" to the affidavit of Matthew McLeod sworn April 15, 2020 (the "**Seventh McLeod Affidavit**") and the transactions contemplated thereby (the "**Transactions**"), (ii) adding 2751609 Ontario Inc. ("**Residual Co**") as an Applicant to these CCAA proceedings, (iii) vesting all of Maricann's right, title and interest in and to the Excluded Assets (as defined in the Sale Agreement) in Residual Co, (iv) transferring and vesting all of the Excluded Contracts and Excluded Liabilities in Residual Co, (v) vesting all of Wayland's right, title and interest in and to the Transferred Assets (as defined in the Sale Agreement) in Maricann, (vi) vesting all of the right, title and interest in and to the Maricann Shares (as defined in the Sale

Agreement) in the Purchaser, (vii) granting the Payables Charge (as defined below), and (viii) granting certain related relief, was heard this day in writing at Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Seventh McLeod Affidavit, the sixth report of PricewaterhouseCoopers Inc., in its capacity as monitor of the Applicants (the "**Monitor**"), dated April 16, 2020, and on hearing the submissions of counsel for the Applicants, the Monitor, the Purchaser, the DIP Lender and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Karin Sachar sworn April 16, 2020:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Seventh McLeod Affidavit and/or the Sale Agreement and/or the Second Amended and Restated Initial Order of this Court in the within proceedings dated December 2, 2019 (as amended and restated on December 16, 2019 and otherwise modified, the "**Initial Order**"), as applicable.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the Sale Agreement and the Transactions are hereby approved and the execution of the Sale Agreement by Wayland and Maricann is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor and the DIP Lender. The Applicants are hereby authorized and directed to perform their obligations under the Sale Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Maricann Shares to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicants to proceed with the Transactions (including, for certainty, the Pre-Closing Reorganization) and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the "**Effective Time**"), substantially in the form attached as Schedule "A" hereto , the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

(a) first, all of Maricann's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co, and all Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

(b) second, (i) all of Wayland's right, title and interest in and to the Transferred Assets shall vest absolutely and exclusively in Maricann free and clear of and from any and all Claims and Encumbrances (each as defined below); and (ii) all Assumed Liabilities which are to be assigned by Wayland to, and assumed by Maricann pursuant to the Sale Agreement shall be and are hereby assigned to, assumed by and shall vest absolutely and exclusively in Maricann; and for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Transferred Assets are hereby expunged and discharged as against the Transferred Assets;

(c) third, all Excluded Contracts and Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of Maricann other than the Assumed Liabilities) shall be transferred to, assumed by and vest absolutely and exclusively in, Residual Co such that the Excluded Contracts and Excluded Liabilities shall become obligations of Residual Co and shall no longer be

obligations of Maricann, and Maricann and all of its assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (including, for certainty, the Transferred Assets and the Retained Assets, the "**Maricann Property**") shall be and are hereby forever released and discharged from such Excluded Contracts and Excluded Liabilities and all related Claims (as defined below), and all Encumbrances (as defined below) affecting or relating to the Maricann Property are hereby expunged and discharged as against the Maricann Property;

(d) fourth, all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined below) and are convertible or exchangeable for any securities of Maricann or which require the issuance, sale or transfer by Maricann, of any shares or other securities of Maricann, or otherwise evidencing a right to acquire the Maricann Shares and/or the share capital of Maricann, or otherwise relating thereto, shall be deemed terminated and cancelled; and

(e) fifth, all of the right, title and interest in and to the Maricann Shares shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order, the KERP & SISP Approval Order of this Court dated January 13, 2020, or any other Order of the Court; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto) and, for

greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Maricann Shares are hereby expunged and discharged as against the Maricann Shares; and

(f) sixth, Maricann shall and shall be deemed to cease to be an Applicant in these CCAA proceedings, and Maricann shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order the provisions of which (as they relate to Maricann) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office #37 for the Land Titles Division of Norfolk (Simcoe) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and/or the *Land Registration Reform Act* (Ontario), the Land Registrar is hereby directed to vacate and expunge from title to the subject real property identified in Schedule "D" hereto (the "**Real Property**") all of the Claims listed in Schedule "B" hereto.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transactions.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from Wayland and the Purchaser regarding the fulfillment of conditions to closing under the Sale Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Maricann Shares (including, for greater certainty, the net proceeds realized from the Cash Payment and any Conditional Payments) (the "**Proceeds**") shall stand in the place and stead of the Maricann Shares, and that from and after the delivery of the Monitor's Certificate and the payment of the Priority Payments pursuant to paragraph 27 hereof, all Claims and Encumbrances shall attach to the remaining Proceeds, if any, following the payment of the Priority Payments with the same priority as they had with respect to the Maricann Shares immediately prior to the sale, as if the Maricann Shares had not been sold and remained in the possession or control of the Person having that possession or control immediately prior to the sale.

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants or the Monitor, as the case may be, is authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in Maricann's records pertaining to past and current employees of Maricann. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Maricann.

11. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and Maricann shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Applicants (provided, as it relates to Maricann, such release shall not apply to Taxes in respect of the business and operations conducted by Maricann after the Effective Time), including without limiting the generality of the foregoing all taxes that could be assessed against the Purchaser or Maricann (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada), or any provincial equivalent, in connection with the Applicants.

12. **THIS COURT ORDERS** that except to the extent expressly contemplated by the Sale Agreement, all Contracts to which Maricann is a party upon delivery of the Monitor's Certificate (including, for certainty, those Contracts constituting Transferred Assets) will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or

remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);

(b) the insolvency of any Applicant or the fact that the Applicants sought or obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Sale Agreement, the Transactions or the provisions of this Order, or any other Order of the Court in these proceedings; or

(d) any transfer or assignment, or any change of control of Maricann arising from the implementation of the Sale Agreement, the Transactions or the provisions of this Order.

13. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 12 hereof shall waive, compromise or discharge any obligations of Maricann in respect of any Assumed Liabilities, and (b) the designation of any Claim as an Assumed Liability is without prejudice to Maricann's right to dispute the existence, validity or quantum of any such Assumed Liability, and (c) nothing in this Order or the Sale Agreement shall affect or waive Maricann's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

14. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Applicant then existing or previously committed by any Applicant, or caused by any Applicant, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Contract, existing between such Person and Maricann (including, for certainty, those Contracts constituting Transferred Assets) arising directly or indirectly from the filing by the Applicants under the CCAA and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 12 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a

Contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse Maricann or Wayland from performing their obligations under the Sale Agreement or be a waiver of defaults by Maricann or Wayland under the Sale Agreement and the related documents.

15. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against Maricann or the Maricann Property relating in any way to or in respect of any Excluded Assets or Excluded Liabilities and any other claims, Obligations and other matters which are waived, released, expunged or discharged pursuant to this Order.

16. **THIS COURT ORDERS** that, from and after the Effective Time:

(a) the nature of the Assumed Liabilities retained by Maricann, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co;

(c) any Person that prior to the Effective Time had a valid right or claim against Maricann under or in respect of any Excluded Contract or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have such right or claim against Maricann but will have an equivalent Excluded Liability Claim against Residual Co in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co; and

(d) the Excluded Liability Claim of any Person against Residual Co following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against Maricann prior to the Effective Time.

17. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

(a) Residual Co shall be a company to which the CCAA applies; and

(b) Residual Co shall be added as an Applicant in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include Residual Co, *mutatis mutandis*, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co. (the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (as defined in the Initial Order and including for greater certainty the Payables Charge (as defined below)), shall constitute a charge on the Residual Co. Property.

CLOSING FUNDING AND CHARGE

18. **THIS COURT ORDERS** that the Closing Funding is hereby approved, and Wayland is hereby authorized and empowered to obtain and borrow the Closing Funding from the Purchaser (or one of its Affiliates) (the "**Closing Funding Lender**") in accordance with the terms of the Sale Agreement, provided that such Closing Funding shall not exceed the aggregate principal amount of $1,000,000 and that the Closing Funding shall be on the terms and subject to the conditions set forth in the Sale Agreement and, without limitation, shall be used solely for the purposes set out in the Sale Agreement.

19. **THIS COURT ORDERS** that the Closing Funding Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Payables Charge**") on the Property of the Applicants (including the entitlement of any Applicant to receive the Conditional Payments), which Payables Charge shall not secure an obligation that exists before this Order is made. The Closing Funding Charge shall have the priority set out in paragraph 22 hereof.

20. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the Purchaser may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Payables Charge; and

(b) upon the failure of the Applicants to comply with their obligations under the Sale Agreement as they relate to the Closing Funding (including the use and repayment thereof), the Purchaser, upon seven (7) days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Sale Agreement and the Payables Charge, including to apply for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants.

21. **THIS COURT ORDERS AND DECLARES** that the Purchaser shall be treated as unaffected in any plan of arrangement or compromise filed by any Applicant under the CCAA, or any proposal filed by any Applicant under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances of Closing Funding made under the Sale Agreement.

22. **THIS COURT ORDERS** that the Payables Charge shall rank in priority to all Encumbrances (as defined in the Initial Order) other than the Administration Charge, the Directors' Priority Charge, the KERP Charge, and the DIP Lender's Charge, and the priority as among the Charges shall be as follows:

First – Administration Charge (to the maximum amount of $1,000,000);

Second – Directors' Priority Charge (to the maximum amount of $200,000);

Third – KERP Charge (to the maximum amount of $500,000);

Fourth – DIP Lender's Charge;

Fifth – Payables Charge (to the maximum amount of $1,000,000); and

Sixth – Directors' Subordinate Charge (to the maximum amount of $250,000).

23. **THIS COURT ORDERS** that the filing, registration or perfection of the Payables Charge shall not be required, and that the Payables Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected

subsequent to the Payables Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances (as defined in the Initial Order) over any of their Property that rank in priority to, or *pari passu* with, the Payables Charge unless the Applicants also obtain the prior written consent of the Closing Funding Lender and the beneficiaries of the Directors' Subordinate Charge.

25. **THIS COURT ORDERS** that the Sale Agreement (as it pertains to the Closing Funding) and the Payables Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Purchaser thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances (as defined in the Initial Order), contained in any Agreement which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Payables Charge nor the execution, delivery, perfection, registration or performance of the Sale Agreement shall create or be deemed to constitute a breach by any Applicant of any Agreement to which it is a party; and

(b) the Purchaser and the Closing Funding Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Wayland and Maricann entering into the Sale Agreement or the creation of the Payables Charge.

26. **THIS COURT ORDERS** that the Payables Charge over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

PRIORITY PAYMENTS

27. **THIS COURT ORDERS AND DIRECTS** that the Proceeds shall be distributed by the Monitor as soon as is practicable following the Effective Time through the following payments in the following order (collectively, the "**Priority Payments**"):

(a) First, an amount equal to $100,000 to the Monitor to establish the Post-Closing Reserve (as defined below);

(b) Second, to the beneficiaries of the Administration Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby up to the maximum amount secured by such charge and set out in Paragraph 22 hereof;

(c) Third, to the beneficiaries of the Directors' Priority Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby (if any) up to the maximum amount secured by such charge and set out in Paragraph 22 hereof;

(d) Fourth, to the beneficiaries of the KERP Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby (if any) up to the maximum amount secured by such charge and set out in Paragraph 22 hereof;

(e) Fifth, to the DIP Lender in satisfaction of the DIP Obligations (as defined in the Initial Order) secured by the DIP Lender's Charge;

(f) Sixth, to the Closing Funding Lender in satisfaction of the Applicants' obligations secured by the Payables Charge; and

(g) Seventh, to the beneficiaries of the Directors' Subordinate Charge, on a *pro rata* basis, in satisfaction of the Applicants' obligations secured thereby (if any) up to the maximum amount secured by such charge.

28. **THIS COURT ORDERS** that any remainder of the Proceeds following the payment in full of the Priority Payments shall be held by the Monitor pending further order of the Court, subject to paragraphs 29 and 30 of this Order.

POST-CLOSING RESERVE

29. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to establish a cash reserve (the "**Post-Closing Reserve**") from the Proceeds, which shall be held in a segregated account and shall be used to pay costs and fees incurred by the Monitor or the Applicants following the Effective Time in connection with completing these CCAA proceedings, including for greater certainty, (i) the fees and disbursements of the Applicants' counsel, the Monitor, counsel to the Monitor, and other professionals engaged by the Applicants or the Monitor incurred following the Effective Time, including in the exercise of the Applicants' and Monitor's powers and duties pursuant to the CCAA, the Initial Order, this Order, and any other Order granted in these proceedings, and (ii) any fees, expenses, or disbursements incurred in relation to any proceeding under the BIA in respect of any of the Applicants (collectively, the "**Post-Closing Costs**").

30. **THIS COURT ORDERS** that the Monitor is hereby authorized to pay any Post-Closing Costs in its own name or in the name of and on behalf of the Applicants, as it deems necessary, appropriate, or desirable, in its discretion.

RELEASES

31. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, (i) the current directors, officers, employees, legal counsel and advisors of the Applicants (including, for certainty, Maricann), and (ii) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitations, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate (a) undertaken or completed pursuant to the terms of this Order, or (b) arising in connection with or relating to the SPA or the completion of the Transaction (collectively, the "**Released Claims**"), which

Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or that arose in or relates to the period prior to the granting of the Initial Order. For greater certainty, nothing in this paragraph 31: (i) affects any claims against the directors and officers of any of the Applicants for breach of trust arising from acts or omissions occurring before the date of the Initial Order; or (ii) releases, fetters or prejudices: (a) the right of any person or entity to commence a claim against Wayland Group Corp. or any directors and officers of Wayland Group Corp. with respect to the class action or the issues giving rise to the class action against Wayland Group Corp., including without limitation for contribution and indemnity, or contractual indemnity (in each case subject to the stay of proceedings); and (b) the availability of any applicable insurance to satisfy such class action claims (including any future cross and third party claims).

32. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicants;

the Sale Agreement, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contract and Excluded Liabilities in and to Residual Co, the transfer and vesting of the Transferred Assets in and to Maricann, and the transfer and vesting of the Maricann Shares in and to the Purchaser), the payment of the Priority Payments, the granting of the Payables Charge, and any payments by or to the Purchaser, the Closing Funding Lender, the Applicants or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and/or Residual Co and shall not be void or voidable by creditors of the Applicants or Residual Co, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or

any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

33. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Maricann Shares and the Maricann Property.

34. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to:

> IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
>
> AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF WAYLAND GROUP CORP., 2751609 ONTARIO INC. AND NANOLEAF TECHNOLOGIES INC.

35. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

36. **THIS COURT DECLARES** that the Applicants shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Applicants. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 2 1 2020

PER / PAR:

TAB 9

CV-19-00632079-00CL April 21, 2020

Re WAYLAND

1. This Motion was heard in writing in accordance with the changes to the operation of the Commercial List in light of the Covid-19 Crisis and the Chief Justice's Notices to the profession.

2. This Motion is not opposed. I am satisfied that it should be granted on the Terms of the attached Approval and Vesting Order.

3. This order is effective today and is not required to be entered.

Hainey J.

TAB 10

This motion by the Applicants for an approval and vesting order proceeded before me by Zoom today. The names of the attendees are listed on the attached counsel slip.

The Applicants seek approval of the transaction whereby Wayne Patrick Consumer Products Ltd (the Purchaser) will acquire the operating business of the Applicants. The structure of the transaction is partly by share sale and partly by asset sale. The reason for the structure is to accommodate the licensing requirements of Health Canada. The order is structured as a reverse vesting order, in which excluded liabilities and assets will be transferred to "Residualco", which will then become one of the Applicants in the CCAA proceeding. Reverse vesting orders have been approved by the courts in other cases: see *Re Stornaway Diamond Corporation et al*, Court File No. 500-11-057094- 191 (https://www.insolvencies.deloitte.ca/en) and *Re Wayland Group Corp*. et al, Court File No. CV-19-00632079-CL (https://pwc.com/ca/en/car/wayland/assets/wayland-094_042120)

The transaction is the culmination of a stalking horse sales process approved by the court. The motion is unopposed. The Monitor recommends and supports the transaction in its Fourth Report. In particular, the Monitor states that the proposed transaction is economically superior to the estimated liquidation value of the Beleave Group's assets and operations, will allow the Purchaser to maintain operations and use of the Cannabis licenses and will provide for continued employment for a majority of the existing employees. In my view, the transaction satisfies both s. 36(3) of the CCAA and the *Soundair* test and should be approved.

The proposed order contains a release of all claims (except pursuant to s. 5.1(2)) of the CCAA) of the Applicants' current directors, officers, employees, legal counsel and advisors and of the Monitor and its legal counsel. I note that the release applies only to the current directors and officers, not the former ones who are the subject of litigation in British Columba. I am satisfied that the releases are reasonably connected to the proposed restructuring and are necessary for the successful restructuring of the Applicants. The release has been specifically disclosed in the motion materials and there has been no objection to same.

There is an additional release as between the Applicants and the "117 Parties" that has been included on consent now that the dispute between them has been resolved.

The proposed order further extends the existing stay to November 30, 2020, which is acceptable.

Finally, counsel for the plaintiffs in the BC action advised that the parties are working on and are close to a resolution in that litigation. I have scheduled a motion for **October 1, 2020 before me – 30 minutes starting at 1 p.m. (confirmed with the CL office**) to address the status of that litigation and make whatever orders are appropriate at that time.

I have signed the AVO and attached it to this email. The order is effective from today's date and is enforceable without the need for entry and filing.

Superior Court of Justice (Toronto)

TAB 11

Court File No.CV-20-00642097-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	)	FRIDAY, THE 18th
	)	
JUSTICE CONWAY	)	DAY OF SEPTEMBER, 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF BELEAVE INC., BELEAVE KANNABIS CORP., SEVEN OAKS INC., 9334416 CANADA INC. O/A MEDI-GREEN AND MY-GROW, BELEAVE KANNABIS ABBOTSFORD INC. AND BELEAVE KANNABIS CHILLIWACK INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

APPROVAL AND VESTING ORDER
(Motion returnable September 18, 2020)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), for an order, among other things: (i) approving the Amended and Restated Purchase Agreement, dated September 8, 2020 (the "**APA**"), between Beleave and Wayne Patrick Consumer Products Ltd. (the "**Purchaser**"), for the purchase and sale of all of the issued and outstanding shares of Beleave Kannabis Corp. ("**BKC Shares**") and 9334416 Canada Inc. (the "**933 Shares**" together with the BKC Shares, the "**Subsidiary Shares**") and those assets of Beleave Inc. ("**Beleave**") identified in the APA (the "**Transferred Assets**"); (ii) adding 2775965 Ontario Inc., a subsidiary of Beleave ("**ResidualCo**"), as an applicant in the within proceedings in order to carry out the transaction contemplated by the APA (the "**Transaction**"); (iii) transferring the Excluded Liabilities, Excluded Assets, and Excluded Contracts (all as defined in the Share Purchase Agreement, dated September 8, 2020 among Beleave, BKC and the Purchaser) to, and vesting

the same in ResidualCo; (iv) vesting all of Beleave Parent's right, title and interest in and to the Subsidiary Shares and the Transferred Assets in the Purchaser; (v) authorizing Grant Thornton Limited, in its capacity as court-appointed monitor of the Applicants (the "**Monitor**") to act as trustee in bankruptcy of the Applicants, including ResidualCo (in such capacities, the "**Trustee**"); and (vi) extending the stay of proceedings in respect of the Applicants to November 30, 2020 (the "**Stay Period**") was heard this day by videoconference due to the COVID-19 pandemic.

ON READING the Applicants' Notice of Motion, the affidavit of Bill Panagiotakopoulos, sworn September 9, 2020, and the Fourth Report of the Monitor dated September 17, 2020 (the "**Fourth Report**") and on hearing the submissions of counsel for the Applicants and counsel for the Monitor and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have meaning ascribed to them in the APA.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the APA, including the BKC SPA and the 933 SPA, and the Transaction be and are hereby approved and that the execution of the APA by Beleave is hereby authorized, ratified and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor. Beleave is hereby authorized and directed to perform its obligations under the APA and to take such additional

steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Subsidiary Shares and the Transferred Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicants to proceed with the Transaction and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the "**Effective Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

(a) all of the right, title and interest in and to the Excluded Assets of BKC shall vest absolutely and exclusively in ResidualCo, and all Claims and Encumbrances (both defined below) shall continue to attach to the Excluded Assets and to the Proceeds (defined below) in accordance with paragraph 8 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) all of Beleave's right, title and interest in and to the Transferred Assets shall vest absolutely and exclusively in the Purchaser free and clear of and from any and all Claims and Encumbrances;

(c) all Excluded Contracts and Excluded Liabilities (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of BKC) shall be transferred to, assumed

by and vest absolutely and exclusively in ResidualCo such that the Excluded Contracts and Excluded Liabilities shall become obligations of ResidualCo and shall no longer be obligations of BKC;

(d) all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined below) and are convertible or exchangeable for any securities of BKC or 933 (the "**Share Companies**") or which require the issuance, sale or transfer by the Share Companies of any shares or other securities of the Share Companies and/or the share capital of the Share Companies, or otherwise relating thereto, shall be deemed terminated and cancelled; and

(e) all of the right, title and interest in and to the Subsidiary Shares shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypotecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other orders in these CCAA proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Subsidiary Shares are hereby expunged and discharged as against the Subsidiary Shares; and

(f) the Share Companies shall be deemed to cease being Applicants in these CCAA proceedings, and the Share Companies shall be deemed to be released from the purview of the Initial Order and all other orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Share Companies) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transaction.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Beleave Group and the Purchaser regarding the fulfilment of conditions to closing under the APA and shall have no liability with respect to delivery of the Monitor's Certificate.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims:

(a) the net proceeds from the sale of the Transferred Assets and the 933 Shares, as allocated by Beleave and the Purchaser in consultation with the Monitor (the "**Asset Proceeds**"), shall stand in the place and stead of the Transferred Assets and 933 Shares and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances relating to the Transferred Assets and 933 Shares shall attach to the Asset Proceeds with the same priority as they had with respect to the Transferred Assets and 933 Shares, respectively, immediately prior to the sale, as if the Transferred Assets and 933 Shares had not been sold and remain in the possession or control of the Person having that possession or control immediately prior to the sale; and

(b) the net proceeds from the sale of the BKC Shares, as allocated by Beleave and the Purchaser in consultation with the Monitor (the "**BKC Proceeds**" together with the

Asset Proceeds, the "**Proceeds**") shall stand in the place and stead of the assets conveyed by BKC through the sale of the BKC Shares and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances against BKC shall attach to the BKC Proceeds with the same priority as they had with respect to BKC immediately prior to the sale, as if the BKC assets conveyed by BKC through the sale of the BKC Shares had not been sold and remain in the possession or control of the Person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Applicants or the Monitor, as the case may be, is authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in the Share Companies' records pertaining to past and current employees of the Share Companies. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Share Companies.

10. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and BKC shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any taxes (including penalties and interest thereon) of, or that relate to, the Applicants (provided as it relates to BKC, such release shall not apply to taxes in respect of the business and operations conducted by BKC after the Effective Time), including, without limiting the generality of the foregoing, all taxes that could be assessed against the Purchaser or BKC (including any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), or any provincial equivalent, in connection with the Applicants.

11. **THIS COURT ORDERS** that except to the extent expressly contemplated by the APA, all contracts to which the Share Companies and Beleave are parties upon delivery of the Monitor's Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);

(b) the insolvency of any Applicant or the fact that the Applicants sought or obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the APA, the Transaction or the provisions of this Order, or any other Order of the Court in these proceedings; or

(d) any transfer or assignment, or any change of control of the Share Companies or Beleave arising from the implementation of the APA, the Transaction or the provisions of this Order.

12. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Applicant then existing or previously committed by any Applicant, or caused by any Applicant, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative

pledge, term, provision, condition or obligation, expressed or implied, in any Contract existing between such Person and BKC arising directly or indirectly from the filing of the Applicants under the CCAA and the implementation of the Transaction, including without limitation any of the matters or events listed in paragraph 11 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse BKC from performing its obligations under the APA or be a waiver of defaults by BKC under the APA and the related documents.

13. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against BKC relating in any way to or in respect of any Excluded Assets, Excluded Liabilities or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

14. **THIS COURT ORDERS** that from and after the Effective Time:

(a) the nature of the Assumed Liabilities retained by 933, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transaction or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;

(c) any Person that prior to the Effective Time had a valid right or claim against BKC under or in respect of any Excluded Contract or Excluded Liability (each an

"**Excluded Liability Claim**") shall no longer have such right or claim against BKC but will have an equivalent Excluded Liability Claim against ResidualCo in respect of the Excluded Contract or Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and

(d) the Excluded Liability Claim of any Person against ResidualCo following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against BKC prior to the Effective Time.

15. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

(a) ResidualCo shall be a company to which the CCAA applies; and

(b) ResidualCo shall be added as an Applicant in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include ResidualCo, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ResidualCo (the "**ResidualCo Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order, dated June 15, 2020), shall constitute a charge on the ResidualCo Property.

RELEASES

16. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, (i) the current directors, officers, employees, legal counsel and advisors of the Applicants (including, for certainty, the Share Companies) and (ii) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts,

liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate (a) undertaken or completed pursuant to the terms of this Order, (b) arising in connection with or relating to the APA or the completion of the Transaction, (c) arising in connection with or relating to the within CCAA proceedings, or (d) related to the management, operations or administration of the Applicants (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

17. **THIS COURT ORDERS** that the relief sought by the Applicants against 1178647 B.C. Ltd. ("**117**") in paragraph 1(e) of the Applicants' notice of motion dated August 13, 2020 filed in the within CCAA proceedings (the "**Notice of Motion**"), and the grounds for such relief described in paragraphs 29-35 thereof, be and are hereby withdrawn by the Applicants on a with prejudice and without costs basis, and that 117 (including its current directors, officers, employees, legal counsel and advisors) (collectively, the "**117 Parties**"), on the one hand, and the Applicants and the Released Parties, on the other hand, shall be deemed to forever and irrevocably release and discharge each other from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured

or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the date of this Order (collectively, the "**Second Released Claims**"), which Second Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the 117 Parties, the Applicants and the Released Parties, respectively, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

18. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicants;

the APA, the implementation of the Transaction (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo, the transfer and vesting of the Transferred Assets and the Subsidiary Shares in and to the Purchaser) the Payments and any payments by or to the Purchaser, the Applicants or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and/or ResidualCo and shall not be void or voidable by creditors of the Applicants or ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

19. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Subsidiary Shares and the Transferred Assets.

20. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF BELEAVE INC., SEVEN OAKS INC., 2775965 ONTARIO INC., BELEAVE KANNABIS ABBOTSFORD INC. AND BELEAVE KANNABIS CHILLIWACK INC.

21. **THIS COURT ORDERS** that Grant Thornton Limited is authorized, but not required, to act as trustee in bankruptcy of Beleave Inc., Seven Oaks Inc., 2775965 Ontario Inc., Beleave Kannabis Abbotsford Inc. and Beleave Kannabis Chilliwack Inc.

STAY PERIOD

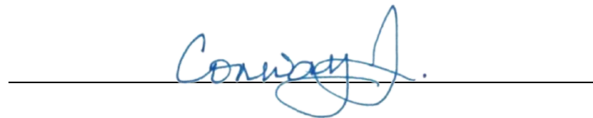
22. **THIS COURT ORDERS** that the Stay Period referred to in the Amended and Restated Initial Order, dated June 15, 2020, be and is hereby extended to November 30, 2020.

OTHER

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

Court File No.: CV-20-00642097-00CL

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **BELEAVE INC., BELEAVE KANNABIS CORP., SEVEN OAKS INC., 9334416 CANADA INC. O/A MEDI-GREEN AND MY-GROW, BELEAVE KANNABIS ABBOTSFORD INC. AND BELEAVE KANNABIS CHILLIWACK INC.**

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER
(MOTION RETURNABLE SEPTEMBER 18, 2020)

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