

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
MR. JUSTICE HAINEY	)	DAY OF MAY, 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
CANTRUST HOLDINGS INC., CANTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

MEDIATION 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**"), was heard this day by way of videoconference due to the COVID-19 crisis.

ON READING the affidavit of Greg Guyatt sworn May 1, 2020 and the exhibits thereto, and the Second Report of the Monitor dated May 4, 2020 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the Affidavit of Service of Trevor Courtis sworn May 4, 2020.

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service and filing of this motion and the Second Report is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) **“CCAA Proceedings”** means the within proceedings in respect of the Applicants under the CCAA;
- (b) **“Claims Procedure Order”** means the Claims Procedure Order issued in these proceedings dated May 8, 2020, as amended, restated or varied from time to time;
- (c) **“Director”** means any former or present director of CannTrust Holdings Inc. or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to a director of CannTrust Holdings Inc. or who currently manages or supervises the management of the business and affairs of CannTrust Holdings Inc. or did so in the past;
- (d) **“Excluded Equity Claims”** has the meaning given to such term in the Claims Procedure Order;
- (e) **“Initial Order”** means the Initial Order of the Honourable Mr. Justice Hainey dated March 31, 2020 in these CCAA Proceedings, as amended, restated or varied from time to time;
- (f) **“Mediation Claim”** means any right, claim or dispute arising in or in relation to the Pending Litigation (other than the Pending Litigation where CannTrust Holdings Inc. is not a defendant), including any Excluded Equity Claim and any right, claim or dispute against or in respect of CannTrust Holdings Inc., the Directors or Officers or the Other Defendants in the Pending Litigation;
- (g) **“Monitor”** means Ernst & Young Inc., in its capacity as the court-appointed monitor of the Applicants;
- (h) **“Officer”** means any former or present officer of CannTrust Holdings Inc. or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to an officer of CannTrust Holdings Inc.; and

- (i) **“Person”** means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity.

3. **THIS COURT ORDERS** that any capitalized term used but not defined herein shall have the meaning given to such term in the Initial Order.

COURT-APPOINTED MEDIATOR

4. **THIS COURT ORDERS** that the Hon. Dennis O'Connor, Q.C. is hereby appointed as an officer of the Court and shall act as a neutral third party (the "**Court-Appointed Mediator**") to mediate a global settlement of the Mediation Claims (the "**Mediation Process**").

5. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) adopt processes and utilize resources which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;
- (b) consult with all Persons with Mediation Claims, the Monitor, the Applicants, the Other Defendants, any insurer of the Applicants or the Directors or Officers and any other Persons the Court-Appointed Mediator considers appropriate; and
- (c) apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

6. **THIS COURT ORDERS** that, subject to an agreement between the Applicants and the Court-Appointed Mediator, all reasonable fees and disbursements of the Court-Appointed Mediator as may have been incurred prior to the date of this Order or which shall be incurred by the Court-Appointed Mediator in relation to carrying out his mandate shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

7. **THIS COURT ORDERS** that the Applicants are hereby authorized to pay to the Court-Appointed Mediator a retainer to be held by the Court-Appointed Mediator as security for payment of the Court-Appointed Mediator's fees and disbursements outstanding from time to time.

8. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

10. **THIS COURT ORDERS** that participation in the Mediation Process will not constitute attornment to the jurisdiction of the Ontario Superior Court of Justice by any foreign defendant to the Pending Litigation.

COMMUNICATION AND CONFIDENTIALITY PROTOCOL

11. **THIS COURT ORDERS** that the following communication and confidentiality protocol between the Court, the Court-Appointed Mediator and participants in the Mediation Process be and is hereby approved:

- (a) the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an on-going basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA Proceedings, including but not limited to the Mediation Claims;
- (b) the Court will not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination;

- (c) the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process;
- (d) all statements, discussions, offers made and documents produced by any of the parties in the course of the Mediation Process shall not be subject to disclosure through discovery or any other process; shall be confidential; shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation Process; and
- (e) any notes, records, statements made, discussions had and recollections of the Court-Appointed Mediator or any of his assistants in conducting the Mediation Process shall be confidential and without prejudice and protected from disclosure for all purposes in accordance with paragraph 115(b)(d) above.

GENERAL

12. **THIS COURT ORDERS** that the Monitor and the Applicants may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

13. **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, or abroad, 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.

14. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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.

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R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00638930-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

MEDIATION ORDER

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