

CITATION: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GREEN GROWTH BRANDS INC., 2020 ONSC 3565
COURT FILE NO.: CV-20-00641220-00CL
DATE: 20200617

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

IN THE MATTER OF THE COMPANIES'	)	
CREDITORS ARRANGEMENT ACT,	)	
R.S.C., 1985, c. C-36, AS AMENDED	)	Ashley Taylor and Sanja Sopic, for the
AND IN THE MATTER OF A PLAN OF	)	Applicants
COMPROMISE OR ARRANGEMENT OF	)	
GREEN GROWTH BRANDS INC., GGB	)	Marc Wasserman and Mary Paterson, for
CANADA INC., GREEN GROWTH	)	the Monitor
BRANDS REALTY LTD. AND XANTHIC	)	
BIOPHARMA LIMITED	)	Wael Rostom, Stephen Brown-Okruhlik,
	)	Guneev Bhinder, for All Js Greenspace LLC
	)	
Applicants	)	Wojtek Jaskiewicz, for the Capital Transfer
	)	Agency, ULC
	)	
	)	Graham Phoenix and Thomas Lambert, for
	)	WMB Resources LLC and Green Ops Group
	)	LLC
	)	
	)	Lou Brzezinski, Stephen Gaudreau, Eric
	)	Golden and Varoujan Arman, for Michael D.
	)	Horvitz Revocable Trust
	)	
	)	Joe Groia and Martin Mendelzon, for Chiron
	)	Ventures Inc.
	)	
	)	
	)	HEARD: May 29 and June 1, 2020

ENDORSEMENT

MCEWEN J.

[1] On May 20, 2020 I granted the Initial Order sought by the Applicants, Green Growth Brands Inc. ("GGB"), GGB Canada Inc., Green Growth Brands Realty Ltd., and Xanthic Biopharma Limited (collectively, "the Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, As Amended ("CCAA"). The Initial Order provided for,

amongst other things, a stay of proceedings to allow GGB, the parent entity, an opportunity to market the sale of its business.

[2] At that time, I also appointed Ernst & Young Inc. as the Monitor (the “Monitor”) and approved a stay of proceedings for the initial 10-day period. I further approved certain court ordered charges and interim financing (the “DIP Financing”) to be provided by All Js Green Space LLC (“All Js”).

[3] The comeback motion was scheduled for May 29, 2020 and ultimately was heard on May 29 and June 1, 2020.

[4] Due to the COVID-19 crisis, the comeback motion proceeded by way of video conference. It was held in accordance with the Notices to the Profession issued by Morawetz C.J. and the Commercial List Advisory.

[5] At the comeback motion, I granted the orders sought, being an Amended and Restated Initial Order, and a Sale and Investment Solicitation Process (“SISP”) Order, the latter of which approved the SISP and the fully binding and conditional Acquisition Agreement dated May 19, 2020 (the “Stalking Horse Agreement”). I further granted a sealing order with respect to a Term Sheet and the Florida LOI that will be referred to in the body of this endorsement, on an unopposed basis, as the criteria set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, were met. I dismissed the cross-motion brought by Mr. Michael D. Horvitz.

[6] I indicated at the comeback motion that I would provide a more detailed endorsement. This is my endorsement.

BACKGROUND

[7] The Applicants are part of a corporate group (“GGB Group”). The GGB Group is in the business of growing, processing and selling cannabis. GGB is the parent entity of the GGB Group.

[8] The GGB Group, until recently, operated two distinct lines of business. The first involves cannabis cultivation, processing, and production, and the distribution of certain tetrahydrocannabinol (commonly referred to as THC) products through wholesale and retail channels in medical and adult-use dispensaries in Florida, Massachusetts and Nevada (the “MSO Business”). The second concerned cannabidiol (commonly referred to as CBD)-infused consumer product production, wholesale and retail operations online and through a mall-based kiosk shop system (the “CBD Business”).

[9] The MSO Business continues to operate through indirect, wholly-owned subsidiaries of GGB. Operations of the CBD Business, however, were indefinitely suspended at the outset of the COVID-19 crisis. Thereafter, an Ohio court appointed a Receiver over the CBD Business to wind-down their operations.

[10] I note from the outset that Mr. Horvitz, an investor in GGB, makes significant allegations against the GGB Group and other significant stakeholders, particularly Jay, Joseph and Jean Schottenstein and Wayne Boich.

[11] In order to put this dispute between Mr. Horvitz, GGB and some of the other stakeholders in context, it is important to understand the relationship between the relevant stakeholders with respect to the secured debt that was in place at the time of the Initial Order, which secured debt included:

- A promissory note issued by GA Opportunities Corp. (the “GAOC Note”) in the amount of CAD \$39,000,000. It was held by an arm’s-length investor, Aphria Inc. Shortly before the May 20, 2020 motion the GAOC Note was acquired by Green Ops Group LLC (“Green Ops”).
- Secured convertible debentures issued in May 2019 in the aggregate principal amount of US \$45,500,000 (the “May Debentures”). The May Debentures were issued pursuant to the terms of a Debenture Indenture (the “May Debenture Indenture”) between GGB and Capital Transfer Agency, ULC (“CTA”).
- Secured convertible debentures issued pursuant to equity commitment letters with All Js and Chiron Ventures Inc. (“Chiron”) (the “Backstop Debentures”). All Js and Chiron committed to subscribe for the Backstop Debentures in the aggregate principal amounts of US \$57,350,000 and US \$10,000,000, respectively, although not all of these funds had been fully drawn. The Backstop Debentures, too, were issued pursuant to the terms of a Debenture Indenture (the “Backstop Debenture Indenture”) between GGB and CTA.
- Two promissory notes issued to All Js in May 2020, each in the amount of US \$400,000.

[12] Mr. Horvitz, as Grantor and Trustee for and on behalf of the Michael D. Horvitz Revocable Trust, owns US \$5 million of the May Debentures.

[13] Mr. Wayne Boich, generally speaking, controls Green Ops, which purchased the GAOC Note. He also controls WMB Resources LLC (“WMB”), which owns US \$5 million in the May Debentures. In addition to the above, Green Ops also acquired the “Spring Oaks Notes” from GGB Florida LLC (“GGB Florida”) in May 2020. I will comment more about this transaction later in this endorsement.

[14] Jay Schottenstein and his sons, Joseph and Jean Schottenstein, generally speaking, control a trust that owns All Js. As noted, All Js owns a majority of the Backstop Debentures. All Js also owns a significant number of shares in GGB and is the Debtor-in-possession (“DIP”) Lender.

[15] Messrs. Schottenstein also control LS Green Investments LLC and Delancey Financial LLC, which own US \$20 million and US \$10 million of the May Debentures, respectively.

[16] As can be seen from the above, Messrs. Schottenstein and Mr. Boich, through companies controlled by them, own a great deal of GGB's debt (and, in fact, the majority of that debt) with All Js also being a significant shareholder in GGB.¹

[17] The Stalking Horse Agreement contemplates the purchase of GGB's assets, as defined, by All Js and CTA, in its capacity as the Debenture Trustee of the May Debentures and the Backstop Debentures (collectively, the "Stalking Horse Bidder"). The purchase is comprised of a credit bid of all of the secured debt held by All Js, the May Debentures, the Backstop Debentures and certain assumed liabilities totaling approximately US \$106 million. It does not involve any cash consideration.

[18] The Schottensteins' and Mr. Boich's controlled companies, All Js and Green Ops, respectively, have entered into a Term Sheet for the capitalization of a company ("AcquireCo") to ultimately purchase the shares and inter-company debt of GGB as set out in the Term Sheet. Accordingly, the Term Sheet, amongst other things, sets out how the May Debentures will be treated.

[19] Mr. Horvitz' complaints essentially surround two events. The first was an Extraordinary Resolution that was passed by the holders of the May Debentures on May 3, 2020 without notice to him, which permitted the incurrence of new senior indebtedness and related security which allowed the All Js Secured Notes to rank in priority to the security held by the holders of the May Debentures. The second event involves another Extraordinary Resolution that was passed on May 18, 2020, again without notice, which approved the provisions of the Term Sheet that further diluted the value of his ownership in the May Debentures by removing any priority the May Debentures had over the Backstop Debentures (amongst other things). Mr. Horvitz also submits that provisions of the Term Sheet ensure that the Stalking Horse Bid is unbeatable.

[20] As a result, Mr. Horvitz raised a number of objections to the proposed SISP and the Stalking Horse Agreement. Mr. Horvitz' position was not supported by any of the other stakeholders. All of the significant stakeholders who attended at the comeback motion supported the relief sought by GGB. The Monitor also supported the relief sought.

[21] I also pause to note that Mr. Horvitz' counsel in his submissions conceded that the provisions of the May Debentures allowed the requisite majority to pass the Extraordinary Resolutions without notice to Mr. Horvitz. Mr. Horvitz' submission, however, is that the majority of the holders of the May Debentures, the corporations controlled by Messrs. Schottenstein, failed

¹ The exact nature of Messrs. Schottensteins' and Mr. Boich's involvement in the above companies was not disclosed. No one, however, objected to the above general description.

to act in good faith towards Mr. Horvitz as did others, notably companies controlled by Mr. Boich, with respect to the creation of AcquireCo and the related Term Sheet.

THE RELIEF SOUGHT BY THE APPLICANTS AND MR. HORVITZ

The Applicants

[22] As noted, the Applicants sought an extension of the stay period to August 15, 2020 as well as approval of the SISP and the Stalking Horse Agreement entered into between GGB and CTA/All Js.

Mr. Horvitz

[23] Mr. Horvitz, at the initial return of the motion on May 29, 2020, sought the following relief:

- an order setting aside my Initial Order of May 20, 2020 granting the Applicants protection under the CCAA for failure to make full and fair disclosure;
- an order adjourning the comeback motion of GGB for 14 days so that he could obtain an order pursuant to s. 11.9 of the CCAA requiring the production of financial records of several persons and corporations including GGB, Jay, Joseph and Jean Schottenstein, Mr. Boich, All Js, WMB, Chiron and others;
- compliance, within three days, with a Request to Inspect he served on May 25, 2020 and with a cross-examination of GGB's interim chief executive officer, Raymond Whitaker III; and
- an order requiring, within seven days, Messrs. Schottenstein and Mr. Boich to attend a r. 39.03 examination.

[24] After hearing submissions, I adjourned the motion to June 1, 2020 and ordered that the examination of Mr. Whitaker (which GGB had agreed to) take place in the interim and that there be fulsome production of relevant documents without ordering any particular documents be produced (All Js agreed to produce the Term Sheet on a confidential basis).

[25] Mr. Whitaker's examination was completed and documents produced to Mr. Horvitz. When the matter returned before me on June 1, 2020, Mr. Horvitz, as per para. 3 of his Supplementary Factum, pursued only the following relief:

- an order dismissing the Applicants' motion approving the SISP, the Stalking Horse Agreement and DIP Financing;
- an order requiring the Applicants to resubmit a revised process that is fair and meets the purpose and policies of the CCAA;

- an order directing the Monitor to investigate the following: Green Ops' acquisition of the GAOC Note; the Term Sheet (as being a preference); Green Ops' purchase of the Spring Oaks Notes (as being a preference); the Spring Oaks Forbearance Agreement (as being a preference); and whether certain of these transactions should be set aside; and
- additional disclosure of documentation and examination of witnesses, as requested.

ANALYSIS

The Abandoned Relief

[26] I wish to deal briefly with the relief originally sought by Mr. Horvitz but that was abandoned upon the return of the motion on June 1, 2020.

[27] At the return of the motion, Mr. Horvitz did not pursue the relief originally sought setting aside the Initial Order on the basis that the Applicants failed to act in good faith. This is a serious accusation, however, that merits comment.

[28] Had Mr. Horvitz continued to pursue this relief, such a request would have been dismissed.

[29] The Applicants, at the initial hearing, provided the court with the necessary information needed to consider whether the Initial Order should be granted. All relevant agreements were attached. Mr. Horvitz' complaints concerning lack of good faith and disclosure deal with his own disputes with Messrs. Schottenstein and Mr. Boich, the companies they control and how he was treated with respect to his ownership of the May Debentures and the provisions of the Term Sheet. They do not involve the Applicants. While knowledge of the interaction between the investors and GGB would have helped add context it would not have affected the granting of the Initial Order.

[30] Mr. Horvitz' complaints concerning his treatment, as I will outline below, constitute inter-creditor disputes and ought to be dealt with outside of the parameters of this CCAA proceeding.

Discovery

[31] As noted, Mr. Whitaker was examined and documentary discovery was made in advance of the June 1, 2020 hearing date. The documentary production that was made, or refused, is set out in the Second Report of the Monitor dated May 31, 2020 (the "Second Report") at paras. 65-78. No further documentation was requested on the return of the motion. In any event, it is my view that adequate production was made to Mr. Horvitz.

[32] With respect to the examinations, Mr. Horvitz did not pursue the examinations of Messrs. Schottenstein or Mr. Boich. I would not have granted the order in any event. They were not properly served with the motion record and reside in the United States of America. They were not represented at the motion. At the May 29, 2020 motion, I questioned Mr. Horvitz' counsel as to whether I had jurisdiction to make the orders sought and whether letters rogatory were appropriate. Mr. Horvitz did not take the necessary steps to attempt to comply with the letters rogatory process. I therefore considered this issue to be at an end.

Mr. Horvitz' Complaints Concerning the May Debentures and the Term Sheet

[33] In my view, as noted, Mr. Horvitz' objections with respect to the way his investment in the May Debentures was treated, and the provisions of the Term Sheet, are inter-creditor issues that fall outside of the context of this CCAA proceeding.

[34] Notwithstanding the fact that counsel conceded at the motion that the other May Debentures holders had the legal right to pass the Extraordinary Resolutions, without notice to Mr. Horvitz, Mr. Horvitz nonetheless alleges that the May Debentures holders who passed the Extraordinary Resolutions failed to act in good faith. He makes the same claim with respect to the parties to the Term Sheet.

[35] This issue was considered by the Court of Appeal for Ontario in *Stelco Inc., Re* (2005), 78 O.R. (3d) 241 (C.A.), at para. 32, wherein the court stated:

First, as the supervising judge noted, the CCAA itself is more compendiously styled "An Act to facilitate compromises and arrangements between companies and their creditors." There is no mention of dealing with issues that would change the nature of the relationships as between the creditors themselves. As Tysoe J. noted in *Pacific Coastal Airlines Ltd. v. Air Canada*, [2001] B.C.J. No. 2580 (QL), 110 A.C.W.S. (3d) 259 (B.C.S.C.), at para. 24 (after referring to the full style of the legislation):

[The purpose of the CCAA proceeding] is not to deal with disputes between a creditor of a company and a third party, even if the company was also involved in the subject matter of the dispute. While issues between the debtor company and non-creditors are sometimes dealt with in CCAA proceedings, **it is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company.** [Emphasis added.]

[36] The objections raised by Mr. Horvitz concerning the May Debentures and the Term Sheet all constitute inter-creditor disputes. The terms of the May Debentures and the capitalization of AcquireCo, set out in the Term Sheet, do not involve the Applicants. Accordingly, these CCAA proceedings are not the proper venue for Mr. Horvitz to seek these remedies.

[37] As I have noted, Mr. Horvitz conceded at this motion that the Extraordinary Resolutions were passed in accordance with the terms of the May Debenture Indenture. Similarly, the terms of the AcquireCo Term Sheet involved matters concerning the May Debentures holders that have been determined by the aforementioned requisite majority. While All Js owns a significant amount of GGB shares, Mr. Horvitz' complaints, with respect to the May Debentures and the Term Sheet, do not lie with GGB but rather with the way he feels he has been treated by the other investors, primarily Messrs. Schottenstein and Mr. Boich.

Mr. Horvitz' Request for the Monitor's Investigation

[38] I am not prepared to order that the Monitor conduct investigations concerning Green Ops' acquisition of the GAOC Note, the Term Sheet (as being a preference) and Green Ops' purchase of the Spring Oaks Notes (as being a preference). This relief was not contained in the Notice of Motion and only arose in Mr. Horvitz' Supplementary Factum. While I would not dismiss the request for this relief on this ground alone, it typifies the shifting nature of the relief that Mr. Horvitz sought during the hearings.

[39] These investigations, sought by Mr. Horvitz, relate to inter-creditor issues between Mr. Horvitz and others. None of the proposed investigations involve the Applicants. The focus of this motion should be on the CCAA-related issues, primarily the SISP and the Stalking Horse Agreement. The issues surrounding the May Debentures and the Term Sheet should only be considered to the extent that they are germane to the CCAA proceeding.

[40] The Monitor does not believe that it is appropriate to carry out these investigations based on the materials that it has reviewed. I accept the Monitor's submission that it would not be appropriate in a CCAA proceeding to have it carry out an investigation of transfers for value between American corporations which are non-debtors. I further agree with the Monitor that the case upon which Mr. Horvitz relies, *Cash Store Financial Services, Re*, 2014 ONSC 4326, 31 B.L.R. (5th) 313, is entirely distinguishable since it dealt with a transfer of value from the debtor to an unsecured creditor.

[41] I also do not believe the Monitor ought to conduct the investigation requested by Mr. Horvitz with respect to the Spring Oaks Forbearance Agreement (as being a preference).

[42] Mr. Horvitz' complaint in this regard essentially involves two issues. The first being that the SISP should include the Florida Assets to maximize value. The second involves his complaint concerning Mr. Boich. Mr. Boich's company, Green Ops, as noted, purchased the Spring Oaks Notes which holds unsecured debt as security for the Florida Assets. Mr. Horvitz claims that this is another example of self-dealing and lack of transparency.

[43] While I agree that the Florida Assets would add value to the CCAA process, it is not practicable to add them to the SISP. Prior to the Initial Order being granted Green Ops could have foreclosed on the debt. GGB looked for another solution and has obtained an LOI from a third-party buyer in excess of the debt held by Green Ops. If the transaction is not completed by mid-June, Green Ops has the right to foreclose. While the situation is not ideal, the mid-June deadline precludes rolling the Florida Assets into the SISP. It seems to me, however, that GGB has followed a reasonable path to deal with the Florida Assets, which is subject to its agreement with Green Ops which had the right to foreclose and granted a Forbearance Agreement to see if the Florida Assets can be sold. The Monitor concurs. In this regard, I am reminded of the observation in *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222, 63 C.B.R. (5th) 115, at para. 5, that "insolvency proceedings typically involve what is feasible, not what is flawless".

[44] I will now turn to the complaints Mr. Horvitz makes concerning the SISP and the Stalking Horse Agreement.

The SISP

[45] Mr. Horvitz makes a number of complaints concerning the SISP and I will deal with each in turn.

[46] First, Mr. Horvitz complains that the SISP does not include the retention of an investment banker to market the assets of GGB. A separate investment banker is not required. It is certainly not unusual for the Court-appointed Monitor to run a SISP. The Monitor has the necessary experience and has acted in this capacity as Monitor in at least one other cannabis case before this court, AgMedica Bioscience Inc. As set out at para. 28 of the Second Report, the Monitor is well-qualified to run the SISP in this case.

[47] Second, Mr. Horvitz complains that the SISP does not include the preparation of a “teaser” or other short description of the proposed acquisition opportunity. As noted by the Monitor in para. 29 of the Second Report, it is, in fact, in the process of forming such a document which will be made available along with other information included in a data room. It is virtually complete at this time.

[48] Third, Mr. Horvitz complains that the Monitor has failed to develop a list of likely strategic and financial buyers. This has, in fact, been done, with 243 potential parties being identified. This includes all of the typical types of businesses one would expect in the cannabis space.

[49] Fourth, Mr. Horvitz complains about the lack of Non-disclosure Agreements, telephone calls, “transparent and market-based compensation arrangements”, preliminary indications of interest and management presentations. In my view, all of these complaints are unfounded and the Second Report, once again, deals with these complaints comprehensively in paras. 29-34.

The Stalking Horse Agreement

[50] Mr. Horvitz raises a number of issues with respect to the Stalking Horse Agreement.

[51] First, he complains of a number of features that are typical in Stalking Horse Agreements. Particularly, he objects to the US \$2 million Break Fee; the US \$150,000 Expense Reimbursement to All Js; the overbid increment of US \$250,000; and a refundable 5 percent deposit that has to be paid by bidders. In my view, none of these provisions in the Stalking Horse Agreement are problematic.

[52] While the Break Fee and Expense Reimbursement are not itemized, they represent approximately 1.9 percent of the purchase price that is set out in the Stalking Horse Agreement. This is well within the range of payments that have been approved by this court on numerous occasions. The fees, in addition to compensating Stalking Horse purchasers for the time, resources and risk taken in developing the agreement, also represent the price of stability. Therefore, some premium over simply providing for expenses may be expected: *Danier Leather Inc. (Re)*, 2016

ONSC 1044, 33 C.B.R. (6th) 221, at paras. 40-42; *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, 90 C.B.R. (5th) 74. This CCAA process, given the nature, size and location of GGB's operations, has been and will continue to be significant.

[53] Similarly, the overbid increment, which is typical in a large auction, is well within the range of reasonableness. Insofar as the 5 percent deposit is concerned, Mr. Horvitz complains that such an obligation is not placed upon the Stalking Horse Bidder. This is not surprising since the Stalking Horse Agreement provides for a credit bid of the secured debt held by All Js and the holders of the May Debentures and the Backstop Debentures, as well as some certain assumed liabilities. It does not involve cash consideration and therefore it is not necessary to seek a deposit.

[54] Second, Mr. Horvitz further complains that a third-party bidder can impose no conditions which are not in the Stalking Horse Agreement and that overall the DIP Financing and Stalking Horse Agreement make it impractical, if not impossible, for any arm's-length party to make a bid that would properly reflect the market value of the cannabis licence that GGB holds through its subsidiaries. Mr. Horvitz further complains that an outside bidder must pay off the GAOC Note in full, whereas the Stalking Horse Bidder can assume the obligation for later payment.

[55] With respect to the complaint concerning the inability to impose conditions, I do not read the SISP in this way. There is nothing in the SISP that prevents an alternative transaction from containing conditions that are not in the Stalking Horse Agreement. The SISP provides for a range of different transaction structures and it is designed to find the highest and/or best offer for a restructuring or refinancing of GGB. The wording of the SISP does not prevent a bidder from attempting to propose different terms or conditions than those found in the Stalking Horse Agreement. The Monitor has opined that the conditions in the SISP dealing with alternative transactions are standard in SISPs to protect the debtor's estate and ensure that the outside buyer has limited exit rights from the deal, all of which is reasonable. I accept this view.

[56] I also do not accept Mr. Horvitz' allegation that the DIP Financing and the Stalking Horse Agreement make it impractical, if not impossible, to reflect the market value of the cannabis licences and in particular the valuable Nevada licences. The Stalking Horse Agreement is structured in such a way that the successful purchaser would obtain the shares of GGB and the relevant licences, including the Nevada licences. This assists in the sale price process since it would help facilitate the transfer of the cannabis licences, which is difficult to do, and help facilitate a sale. Further, the value of the Nevada licences (and indeed all licences) are subject to a fluctuating market. The best way to determine the value is to run the SISP and determine if there is interest in the marketplace. In any event, a credit bid need not be limited to the fair market value of the corresponding encumbered assets; otherwise it would require an evaluation of such encumbered assets which is a difficult, complex and costly exercise which can also result in unwarranted delay: see *Whitebirch Paper Holding Co., Re*, 2010 QCCS 4915, 72 C.B.R. (5th) 49, at para. 34. In order to facilitate this process, the Monitor has included, in its First Report, a table entitled "Illustrative Value of the Stalking Horse Agreement" to assist bidders in understanding the value of the consideration contained in the Stalking Horse Agreement.

[57] Further, in response to Mr. Horvitz' complaint that the SISP treats the Stalking Horse Bidder and Qualified Bidders differently with respect to the GAOC Note, GGB has revised the proposed SISP, which now allows Qualified Bidders to negotiate an agreement with Green Ops, which holds the GAOC Note. Now, both the Stalking Horse Bidder and Qualified Bidders may assume the GAOC Note while at the same time not precluding a Qualified Bidder from proposing to pay off the GAOC Note. Mr. Horvitz complains that Green Ops would be more likely to strike a deal with the Stalking Horse Bidder. This may prove to be the case but, of course, much depends on the offer put forth by the Qualified Bidder. The structure proposed by GGB, however, presents a level playing field.

[58] Similarly, I do not see any difficulty with the proposed DIP Financing. It is not unique to this case and the amount proposed is reasonable. It will help support the SISP process which, in my view, provides the best possible chance for a sale and the potential retention of approximately 170 employees. Further, insofar as the DIP Financing is concerned, Mr. Horvitz also complains that it is being used, in part, to pay for prefiling GGB debt contrary to s. 11.2 of the CCAA. When one looks closely at GGB's operations, however, it is clear that GGB has not paid any of the prefiling expenses in Canada. The DIP Financing has been used to pay some relatively modest prefiling expenses for the operating companies in the United States of America that cannot avail themselves of relief given the nature of the cannabis industry in that country. Further, in any event, it is in everyone's best interest that these expenses be paid since the value of GGB exists in these licences and, obviously, in keeping those licences current for the purposes of the SISP.

[59] Last, Mr. Horvitz makes a number of what I would consider to be lesser, additional complaints including a vague closing date, a requirement that Qualified Bidders hold cannabis licences (since removed from the SISP), "bad faith inclusive arrangements" and other related arguments. I have considered each and every one of these arguments and do not find them to be persuasive.

[60] Clearly, Mr. Horvitz does not like the way he has been treated with respect to his ownership of the May Debentures. He is particularly upset with the provisions of the Term Sheet. At the same time, Mr. Horvitz proposes no alternative to the existing process. It bears noting that the Monitor has been significantly involved in the process and agrees that there is no better, viable alternative. As I have noted, Mr. Horvitz' complaints largely involve inter-creditor disputes and only become relevant if the Stalking Horse Bidder is the successful bidder. Mr. Horvitz, presumably, retains his legal rights and can bring an action against those whom he believes have caused him legal harm.

[61] In the interim, in my view, the SISP and the Stalking Horse Agreement satisfy the criteria set out in s. 36(3) of the CCAA and the factors set out by this court in *Nortel Networks Corporation (Re)*, 55 C.B.R. (5th) 229 (Ont. S.C.), at para. 49. The process is supported by the Monitor and no other creditor, aside from Mr. Horvitz, objects. For all of the reasons above, I believe Mr. Horvitz' complaints are misplaced.

DISPOSITION

[62] For these reasons I granted the Amended and Restated Initial Order and the SISP Order approving the SISP and the Stalking Horse Agreement on June 2, 2020 and dismissed Mr. Horvitz' motion.

A handwritten signature in cursive script, appearing to read "McEwen J.", positioned above a horizontal line.

McEwen J.

Released: June 17, 2020

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GREEN GROWTH BRANDS REALTY LTD. AND
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Applicants

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McEwen J.

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