

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 30TH
	)	
MR. JUSTICE HAINEY	)	DAY OF APRIL, 2021

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
CANSTRUST HOLDINGS INC., CANSTRUST INC., CTI HOLDINGS (OSOYOOS) INC.
AND ELMCLIFFE INVESTMENTS INC.

Applicants

DIP APPROVAL 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, among other things, authorizing and empowering the Applicants to obtain and borrow under a credit facility and granting a charge over the Applicants' property in respect of those borrowings, was heard this day by way of judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Greg Guyatt sworn April 19, 2021 (the "**Guyatt Affidavit**"), the Ninth Report of Ernst & Young Inc. in its capacity as the monitor of the Applicants (the "**Monitor**") dated April 22, 2021 (the "**Ninth Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and any such other counsel that were present as listed on the counsel slip, no other party appearing although duly served as appears from the affidavit of service, filed:

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that all capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Amended and Restated Initial Order of the Honourable Mr. Justice Hailey dated April 9, 2020 (the "**Amended and Restated Initial Order**").

DIP FINANCING

3. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Cortland Credit Lending Corporation, as administrative agent for the lenders (the "**DIP Lender**"), in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of \$22,500,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of April 13, 2021 (the "**Term Sheet**"), filed.

5. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge to the maximum principal amount of \$22,500,000 (the "**DIP Lender's Charge**") on the Property which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 57 and 59 of the Amended and Restated Initial Order (as amended by this Order).

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Term Sheet, the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ten (10) 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 Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

8. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Term Sheet or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

9. **THIS COURT ORDERS** that, with effect from and after the date of this Order, paragraphs 57-62 of Amended and Restated Initial Order shall have no further force and effect and that, from and after the date of this Order, they are replaced with the following paragraphs. For greater certainty, nothing in this Order shall charge or affect the Excluded Property (as such term is defined in the Term Sheet):

57. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the KERP Charge, the DIP Lender's Charge, the Transaction Fee Charge and the Intercompany Charge (the "**Charges**"), as among them with respect to any Property to which they apply, shall be as follows:

First – Administration Charge (to the maximum amount of \$1.4 million);

Second – Directors' Charge (to the maximum amount of \$3.55 million);

Third – KERP Charge (to the maximum amount of \$1.4 million);

Fourth – DIP Lender's Charge (to the maximum principal amount of \$22,500,000);

Fifth – Transaction Fee Charge; and

Sixth – Intercompany Charge.

58. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

59. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except that the DIP Lender's

Charge, the Transaction Fee Charge and the Intercompany Charge will not have priority over the security interest of Bank of Montreal in the guaranteed investment certificate in the principal amount of \$250,000 pledged in its favour by the Applicants.

60. **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 over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the other Charges, or further Order of this Court.

61. **THIS COURT ORDERS** that the Charges, the Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") 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, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the execution, delivery or performance of the Term Sheet or the Definitive Documents; and

- (c) the payments made by the Applicants pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

62. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

COURT ORDERED PROTECTIONS

10. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the Term Sheet, the Definitive Documents, or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the Term Sheet or the Definitive Documents or under any of the documentation delivered hereto or thereto, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

11. **THIS COURT ORDERS AND DECLARES** that any motion for a Variation by this Court of the provisions of this Order in respect of the Term Sheet, the Definitive Documents, or the DIP Lender's Charge may only be brought by a party that has not been served with notice of the within motion and any such motion must be brought on not less than five (5) business days' notice to the Applicants, the Monitor, the DIP Lender and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

DUTIES OF THE MONITOR

12. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel, on a periodic basis to be agreed on with the DIP Lender, of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and
- (b) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to by the DIP Lender.

13. **THIS COURT ORDERS** that that the Monitor shall provide the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by the DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to the DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

SEALING ORDER

14. **THIS COURT ORDERS** that Confidential Exhibit "C" to the Guyatt Affidavit, which contains an unredacted version of the Term Sheet, and the Responding Factum of Litwin Non-Settling Defendants dated April 29, 2021 shall be sealed, kept confidential and shall not form part of the public record unless otherwise ordered by the Court.

STAY EXTENSION

15. **THIS COURT ORDERS** that the Stay Period (as defined in the Amended and Restated Initial Order) be and is hereby extended until and including June 30, 2021.

GENERAL

16. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advise and directions

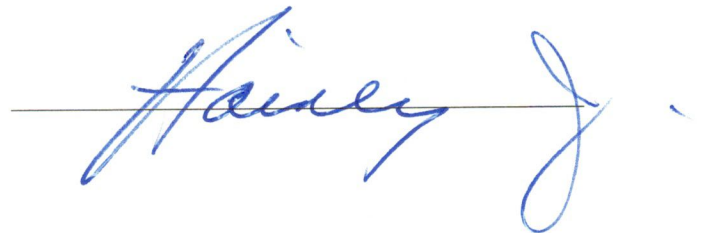
concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

17. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

18. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

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

20. **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.



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 CANNTRUST HOLDINGS INC. ET AL.

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

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

Proceeding Commenced at Toronto

DIP APPROVAL ORDER

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