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

***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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

# NOTICE OF MOTION

**CONSOLIDATED BOTTLE CORPORATION** ("**Consolidated Bottle**") will make a motion to the Honourable Justice Conway of the Ontario Superior Court of Justice (Commercial List) on January 31, 2022 at 11:00 a.m., or as soon after that time as the motion can be heard, by judicial videoconference due to the COVID-19 emergency.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

a) an order and direction that the applicants forthwith pay to Consolidated Bottle the sum of $400,000 (the "**Indebtedness**");

b) pre-and-post judgment interest at the rate stipulated by the *Courts of Justice Act*, R.S.O 1990, c. C-43, calculated commencing December 9, 2021 with respect to $200,000 of the above-mentioned sum, and calculated commencing December 23, 2021 with respect to the whole Indebtedness;

c) an order and declaration that Consolidated Bottle is no longer required to supply goods or services to the applicants, or any of them, and that such order and declaration takes precedence over any previous order of this Honourable Court;

d) in the alternative to a) and b), above, an order that the stay of proceedings imposed by this Honourable Court's initial order dated March 31, 2020 (the "**Initial Order**") and extended by subsequent orders of this Court (the "**Stay**") not be extended further;

e) in the further alternative to a) and b), above, an order lifting the Stay as against Consolidated Bottle, to allow Consolidated Bottle to commence proceedings against the applicant CannTrust Inc. ("**Opco**") in order to recover the Indebtedness;

f) an order setting aside the July 16, 2021 order of this Honourable Court sanctioning the applicants' plan of arrangement, (the "**Sanction Order**") on the basis that the applicants were in material breach of this Court's initial order dated March 31, 2020 (the "**Initial Order**") at the time the plan was implemented;

g) costs of this motion; and

h) such other relief as counsel may request and this Honourable Court may allow.

**THE GROUNDS FOR THE MOTION ARE:**

1. Sections 11 and 18 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, (the "***CCAA***").

2. Consolidated Bottle is a supplier of custom-manufactured glass and plastic bottles, plastic caps, and associated goods to Opco.

3. On March 31, 2020, Opco and related companies obtained relief from this Court pursuant to the *CCAA* under the Initial Order. That Order stated, in part:

> ***CONTINUATION OF SERVICES***
>
> *16.* ***THIS COURT ORDERS*** *that during the Stay Period, all Persons having oral or written agreements with the Applicants … for the supply of goods and/or services, …* ***are hereby restrained*** *until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, …* ***provided in each case*** *that the normal prices or charges for all such goods or services received after the date of this Order* ***are paid by the Applicants*** *…*
>
> *[Emphasis added]*

4. Consolidated Bottle complied with the Initial Order by supplying Opco with goods after the making of the Initial Order. Consolidated Bottle did so under compulsion, but also in the expectation that Opco would also comply with the Initial Order by satisfying the invoices provided by Consolidated Bottle in respect of the goods ordered by Opco.

5. However, Opco did not satisfy those Invoices, and by October 15, 2021, Opco was indebted to Consolidated Bottle in the amount of $869,831.03 further to goods ordered and supplied after the making of the Initial Order.

6. Opco therefore breached that term of the Initial Order requiring it to pay for goods supplied after the making of that Order.

7. Opco acknowledged that it was indebted to Consolidated Bottle in the sum of $869,831.03, and on October 15, 2021 entered into a written agreement with Consolidated Bottle pursuant to which that indebtedness was acknowledged by Opco and Opco promised to satisfy it in four scheduled instalment payments.

8. The first two instalments were paid. Opco defaulted on payment of the third instalment (due December 9, 2021), and the fourth instalment (due December 23, 2021). These payments were each to be in the sum of $200,000.

9. Opco's current indebtedness to Consolidated Bottle therefore consists of $400,000, (again, the "Indebtedness"), plus interest accumulated on $200,000 since December 9, 2021, and on $400,000 since December 23, 2021.

10. Opco was in continuing breach of the aforementioned term of the Initial Order when the plan sanctioned by the Sanction Order (the "**Plan**") was implemented by the applicants on January 5, 2021. A plan cannot be sanctioned or implemented under the CCAA at a time when the applicants are in breach of a previous order of the Court.

Further, during their implementation of the Plan on January 5, 2022, the applicants paid $400,000 belonging to Consolidated Bottle to their pre-Initial Order creditors. The Sanction Order should therefore be set aside.

11. It would be grossly inequitable and contrary to the animating purpose of the *CCAA* if Consolidated Bottle, having been compelled by the Initial Order to supply to a distressed company for the benefit of the other stakeholders in that company, was denied payment for those goods, contrary to a term of the Initial Order.

12. This Court should therefore order the applicants to immediately pay the Indebtedness, plus accumulated interest and costs, to Consolidated Bottle or, in the alternative, should decline to extend the Stay so as to allow Consolidated Bottle to commence proceedings against Opco and bring an immediate motion for summary judgment on Opco's written acknowledgment of the Indebtedness.

13. And such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing:

a) The affidavit of Jonathan Rutman to be affirmed January 27, 2022; and

b) (c) such further and other materials as counsel may advise and this Court may permit.

January 27, 2022

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**TO: THE SERVICE LIST**

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Proceeding Commenced at Toronto

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