COUNSEL SLIP

COURT FILE NO.: CV-20-00638930-00CL

DATE: January 31, 2022

NO. ON LIST ______

TITLE OF PROCEEDING: CANNTRUST HOLDINGS INC et al v. MERRILL LYNCH CANADA INC et al

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- ☐ PLAINTIFF(S)
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- ☐ PETITIONER(S)

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JUDICIAL NOTES:

Conway J. Endorsement

The Applicants bring this motion to extend the CCAA stay to February 28, 2022 and for approval and vesting orders (AVO) on the Grey Wolf and Cannatrek transactions. The AVOs are unopposed. The evidence before me are that these are surplus assets that are not required for the Applicants' operations. I am satisfied that those transactions should be approved and I have signed the two AVOs.

With respect to the stay extension, the Applicants are seeking this one month extension to determine whether they can complete a going concern transaction or transition to an orderly wind-down.

One creditor, Consolidated Bottle Corporation (CBC) opposes the stay extension. It is a post-filing creditor that has a debt of $400,000 outstanding from "Opco". This is an unsecured debt. CBC is not a continuing supplier of Opco. CBC seeks additional relief in its cross-motion including setting aside the plan sanction order, an order that its debt be repaid, and a lift stay order.

The Applicants do not dispute the CBC debt but submit that it should not hold up the stay extension, as it would impair the ability of the Applicants to complete the going concern transaction for the benefit of all stakeholders including the Applicants’ 240 employees. They note that CBC, as an unsecured creditor, would not receive more if the stay is not extended and the Applicants are forced into liquidation. Ms. Meredith, for the Applicants, submitted to the court that they have every intention of paying the CBC debt as part of the CCAA process.

I am prepared to grant the stay extension. The DIP lender supports the extension, as does the Monitor. The Monitor, both at the hearing and in its Seventeenth Report, specifically confirmed its view that the Applicants are acting in good faith and with due diligence. I accept that view. Further, the Cash Flow Forecast projects that if the Grey Wolf transaction is completed and an HST refund received, the Applicants will have sufficient liquidity to meets its obligations through March 6, 2022 (including repayment of the CBC debt). I questioned the Monitor at the hearing because payment of the CBC debt is projected to occur on March 6th, after the end of the stay period (February 28). Mr. Morrison confirmed that it is the Monitor’s intention to make those payments prior to February 28 if the expected revenues come in as projected. I am not persuaded by the objections of CBC and find that the test for the stay extension has been met.

With respect to the remaining relief sought by CBC, I am dismissing the request to set aside the Sanction Order of July 16, 2021, as it has already been implemented and monies paid out to creditors. I am dismissing the request for an order and declaration that CBC not have to supply goods to the Applicants as that is moot. I am adjourning the remainder of the motion (lift stay and order for payment of the CBC debt) to the next appearance before me in a few weeks. At that point, this court will have more evidence about what has transpired over that period of time and will be in a better position to assess whether the relief sought by CBC should be granted.

Orders to go as signed by me and attached to this endorsement (stay extension order and two AVOs). These orders are effective from today's date and are enforceable without the need for entry and filing.

Conway J.