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

AFFIDAVIT OF FRED TAYAR
(Affirmed February 22, 2022)

I, FRED TAYAR, of the City of Toronto, lawyer, **AFFIRM AND SAY AS FOLLOWS**:

1. I am a lawyer at Fred Tayar & Associates Professional Corporation, lawyers for Consolidated Bottle Corporation ("**Consolidated Bottle**"), and as such have knowledge of the matters hereinafter deposed. Where I do not have such knowledge, I have identified the source of my information and verily believe that information to be true.

2. This affidavit is supplementary to the affidavit of Jonathan Rutman affirmed January 27, 2022 (the "**Rutman Affidavit**") and employs terms defined therein.

3. On January 27, 2022, Consolidated Bottle brought a motion to this court seeking, *inter alia,* an order and direction that the applicants forthwith pay to Consolidated Bottle

the sum of $400,000 ("**the Indebtedness**"), or an order lifting the stay of proceedings to allow Consolidated Bottle to commence civil proceedings in respect of the Indebtedness. The circumstances surrounding this request are set out in the Rutman Affidavit.

4. The motion was heard together with a motion by the applicants for an extension of the stay of proceedings imposed by the Initial Order, and extended periodically thereafter. Both motions were heard by The Honourable Justice Conway. I was (virtually) present at the hearing of the motion. During the hearing, Alex Morrison of the Monitor (the "**Monitor**") advised Justice Conway that it (the Monitor) had the expectation and intent that the Indebtedness to Consolidated Bottle would be paid before February 28, 2022. I recall Justice Conway advising the Monitor and its counsel that she expected that that would happen, and that the applicants would not come back to her seeking another extension of the stay without having paid the Indebtedness.

5. In the result, Conway, J. granted the Stay Extension Order, dismissed secondary aspects of Consolidated Bottle's motion, and adjourned Consolidated Bottle's requests for payment of the Indebtedness or an order lifting the stay 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.*" A true copy of Justice Conway's endorsement of January 31, 2022 is attached hereto as **Exhibit "A"**.

6. The Monitor made its statement to Justice Conway concerning the pre-February 28 payment of the Indebtedness on the basis of cashflow it anticipated that the applicants

would receive. Accordingly, after the hearing before Justice Conway had concluded, I wrote to Steven Graff ("**Graff**"), counsel to the monitor. My letter said simply:

> *Further to the attendance this afternoon before the Honourable Justice Conway, would you please ask the monitor to advise us periodically, preferably at the end of each week, whether the cash flow has been met, and if not, what the variances are? Many thanks.*

A true copy of my letter to Steven Graff is attached as **Exhibit "B"**.

7. Graff replied to my letter in an email dated February 2, 2022, which stated in part:

> "*We don't expect the process relating to the balance of the CannTrust business and the receipt of any proceeds or receivables is going to take a long time and EY should have information to report on in the not too distant further [future]. I trust this is satisfactory and addresses your request. We want to be as transparent as possible, but need to do so equitably and in a way that doesn't overburden the estate with costs. Thank for your understanding and we will keep you posted.*"

A true copy of Graff's email of February 2, 2022 is attached as **Exhibit "C"**.

8. Neither this firm nor Consolidated Bottle heard anything from the Monitor thereafter. On February 21, 2022, I learned by happenstance that another motion may be pending in this proceeding. I looked at the Monitor's website and discovered the applicants' Motion Record (Investment Approval Order) returnable February 25, 2022 (the "**Motion Record**").

9. Consolidated Bottle had not been served with the Motion Record or given notice that the motion had been launched.

10. I have reviewed the notice of motion and the affidavit of Greg Guyatt sworn February 18, 2022 (the "**Guyatt Affidavit**"). In his paragraph 50, Guyatt swears that "*payment of past due amounts to Canntrust Opco post-filing suppliers, have not yet been paid*" and that as a result, the applicants were working with the monitor to prepare a payment direction which will provide for the payment of Consolidated Bottle Corporation "*upon Closing of the Transaction … to the extent they are not previously satisfied either from receipt of the HST refund or otherwise*". In paragraph 44 (f) of his affidavit, Guyatt swears that the Investor (previously defined as Marshall Fields International BV) had indicated that the "*Closing is to occur as soon as possible in the circumstances, but not later than February 28, 2022 (although…the transaction may not close by that date).*"

11. The draft Order attached at Tab 3 to the Motion Record does not require that the Indebtedness be paid by any specific date, or at all, and includes, at paragraph 17, the following provision:

> ***Stay Extension***
> *17. THIS COURT ORDERS that the Stay Period (as defined in the Initial Order) be and is hereby extended to and including the earlier of the Closing Effective Time and March 25, 2022, or such later date as this Court may order.*

Affirmed before me at the City of Toronto in the Province of Ontario, this 22nd day of February 2022

A Commissioner, etc.
"Colby Linthwaite"

FRED TAYAR

This is Exhibit "A" referred to in
the Affidavit of Fred Tayar
affirmed before me this 22nd day
of February, 2022

A Commissioner for Taking Affidavits
"Colby Linthwaite"

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

COUNSEL FOR: James D. Gage, Natasha Rambaran, and Heather Meredith

- ☐ PLAINTIFF(S)
- ☒ APPLICANT(S)
- ☐ PETITIONER(S)

EMAIL jgage@mccarthy.ca
EMAIL nrambaran@mccarthy.ca
EMAIL hmeredith@mccarthy.ca

COUNSEL FOR: Colby Linthwaite and Fred Tayar for Consolidated Bottle

- ☐ DEFENDANT(S)
- ☒ RESPONDENT(S)

PHONE ________
EMAIL colby@fredtayar.com
EMAIL fred@fredtayar.com

Steven Graff, Jonathan Yantzi, Alex Morrison, and Karen Fung for the Monitor

EMAIL sgraff@airdberlis.com
EMAIL jyantzi@airdberlis.com
EMAIL alex.f.morrison@parthenon.ey.com
EMAIL karen.i.fung@ca.ey.com

Natasha MacParland for CannTrust Directors and Officers — EMAIL nmacparland@dwpv.com

David Bish for the Underwriters to the CannTrust entities — EMAIL dbish@torys.com

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.

This is Exhibit “B” referred to in
the Affidavit of Fred Tayar
affirmed before me this 22nd day
of February, 2022

A Commissioner for Taking Affidavits
“Colby Linthwaite”

FRED TAYAR & ASSOCIATES

PROFESSIONAL CORPORATION
BARRISTERS & SOLICITORS

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FILE NO. 20-3068
WRITER'S EXTENSION: 200

January 31, 2022

VIA EMAIL

Steven Graff
Aird & Berlis LLP
181 Bay Street | Suite 1800
Toronto, ON M5J 2T9

Dear Mr. Graff:

Re: Consolidated Bottle Corporation ("CBC") and Canntrust Holdings Inc. et al. – CCAA Proceedings

Further to the attendance this afternoon before the Honourable Justice Conway, would you please ask the monitor to advise us periodically, preferably at the end of each week, whether the cash flow has been met, and if not, what the variances are?

Many thanks.

Yours very truly,

FRED TAYAR & ASSOCIATES
Professional Corporation

Per:

Fred Tayar
/mp

cc: H. Meredith

This is Exhibit “C” referred to in
the Affidavit of Fred Tayar
affirmed before me this 22nd day
of February, 2022

A Commissioner for Taking Affidavits
“Colby Linthwaite”

Fred Tayar

From:	Steve Graff <sgraff@airdberlis.com>
Sent:	February 2, 2022 2:26 PM
To:	Marie Pacheco; Fred Tayar
Cc:	hmeredith@mccarthy.ca; Alex Morrison; Karen K Fung; Jonathan Yantzi
Subject:	RE: Consolidated Bottle Corporation and Canntrust Holdings Inc. et. al. (CCAA Proceedings) | Our File No. 20-3068

Thanks for this letter Fred. We appreciate your desire to stay on top of this restructuring process and your need to keep your client current on the possible timing of the receipt of funds into the company. As you know, we act for EY and EY is prepared to continue to prepare and post Reports to the Court at reasonably regular intervals and post them on its website (and ultimately file them with the Court) so that they are equally available to all claimants. Their reports are generally prepared when there is one or more material developments in the proceeding. EY intends to continue to do this. We don't expect the process relating to the balance of the CannTrust business and the receipt of any proceeds or receivables is going to take a long time and EY should have information to report on in the not too distant further. I trust this is satisfactory and addresses your request. We want to be as transparent as possible, but need to do so equitably and in a way that doesn't overburden the estate with costs. Thank for your understanding and we will keep you posted. Thanks.

Steven L. Graff
Aird & Berlis LLP

T 416.865.7726
M 416.894.5090
E sgraff@airdberlis.com

From: Marie Pacheco <marie@fredtayar.com>
Sent: January 31, 2022 3:28 PM
To: Steve Graff <sgraff@airdberlis.com>
Cc: hmeredith@mccarthy.ca; Fred Tayar <fred@fredtayar.com>
Subject: Consolidated Bottle Corporation and Canntrust Holdings Inc. et. al. (CCAA Proceedings) | Our File No. 20-3068

Mr. Graff,
Please see attached correspondence.
Regards.

Marie Pacheco
Law Clerk
marie@fredtayar.com

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

AFFIDAVIT OF FRED TAYAR
(Affirmed February 22, 2022)

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