SUPERIOR COURT OF JUSTICE

DATE: FEBRUARY 25, 2022 9:30AM ->2:00PM

COURT FILE NO: CV-20-638930-00CL

SHORT TITLE: CANNTRUST HOLDINGS INC

C O U N S E L   S H E E T

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Conway J Endorsement

All terms used herein have the meanings ascribed to them in the Applicants' Motion Record dated February 18, 2022, unless otherwise defined.

The Applicants bring this motion for approval of the (i) Going-Concern Transaction and related relief and (ii) an Investor DIP of $5.5 million to enable ongoing operations to continue until closing. The total funds to be paid from the Going-Concern Transaction and Investor DIP will be

$16,735,000. The Transaction involves the subscription for 90% of the equity of CannTrust Equity, the entity that owns CannTrust Opco. Existing shareholders will receive the remaining 10% of the equity.

The Transaction is fully supported by the Monitor and the existing DIP Lender. The dispute with Consolidated Bottle has now been resolved through the addition of paragraph 18 to the draft order. The concerns of the Financial Advisor have been addressed on the terms set out at the end of this endorsement.

A group of investors attended at the hearing today. They say they consist of 10 shareholders holding approximately 1.1 million shares. They wish to remain anonymous. Although they did not file any materials through the regular court process, I permitted their representative to voice their concerns to the court. They asked a number of questions about the Applicants' liquidity situation and the proposed Transaction. In particular, they wanted a fairness opinion to be obtained. Ms. Meredith for the Applicants responded that, as set out in the materials filed on the motion and as discussed below, there are no other viable sources of liquidity, the Applicants are facing an imminent liquidation scenario, and the Transaction is the best offer received after the Recent Strategic Process had run its course. Moreover, the Applicants do not have the funds to pay for a fairness opinion nor is one required. The representative did confirm that the investors do not want to see the Applicants forced into a liquidation scenario.

Another investor, Mr. Koehn, spoke at the hearing and said that he and a number of other investors support the Transaction as the best outcome under the circumstances.

I am approving the Transaction for the following reasons. In so doing, I have reviewed the factors in s. 36(3) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and the principles in *Soundair*, as applicable. The Recent Strategic Process resulted in a going concern transaction that will preserve the business for the various stakeholders (employees, creditors, suppliers, among others). The Recent Strategic Process built on the SISP that had run (unsuccessfully) in 2021. It focussed on those who were interested in a going concern investment in the cannabis industry. The Applicants worked with the Monitor, created a data room, communicated with interested parties, and ultimately selected the highest bidder out of three LOIs. The successful bidder was prepared to provide the DIP financing to see the company through to closing. The Transaction will preserve jobs and cover unsecured and post-filing creditors, among others. It is vastly superior to a liquidation scenario. It contains an upside for existing shareholders in the future. I note that the individual investors from CannTrust management were included in the investment only <u>after</u> the Transaction from the arm's length investor was accepted.

I am also approving the Investor DIP and DIP Charge. It is critical for this financing to be in place to see the Transaction through to closing. The Monitor supports the amount as appropriate and limited to what is reasonably necessary in the circumstances. The existing DIP and Exit Lender also support the Investor DIP and DIP Charge.

I am granting a stay extension to March 25, 2022 to permit the closing to occur. I am satisfied that the Applicants are acting in good faith and with due diligence and that no creditor will be prejudiced by the extension.

Finally, I am granting a sealing order but only with respect to the Confidential Appendix to the Monitor's 18th Report. I am not sealing the Confidential Exhibit to the Guyatt affidavit of February 18, 2022 as it is critical that all of the terms of the Transaction be public and transparent. It is to be uploaded to the court file. I am sealing the Confidential Appendix, however, as it has details of other bids and information that could potentially compromise the Applicants and the stakeholders pending the closing of the Transaction. I am satisfied that the *Sierra Club/Sherman Estate* test has been met for the Confidential Appendix.

The remaining related relief in the order is satisfactory to me.

Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

With respect to the Financial Advisor, counsel have agreed as follows: Capitalized terms used but not defined in this paragraph have the meanings given in the Amended & Restated Initial Order dated April 9, 2020 as amended by the Order of Justice McEwen dated June 10, 2021 (collectively, the "Initial Order"). The Initial Order provides that the Financial Advisor is entitled to the benefit of the Transaction Fee Charge on the Property, as security for the Transaction Fee. In full and final satisfaction of the Transaction Fee and all amounts secured by the Transaction Fee Charge, CannTrust Inc. shall pay $1 million to the Financial Advisor on the closing of the Transaction (as defined in the affidavit of Greg Guyatt sworn February 18, 2022) concurrent with the discharge of the Transaction Fee Charge.

Conway J.