SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00688966-00CL

DATE: December 16, 2022

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TITLE OF PROCEEDING: Re The Flowr Corporation and others

BEFORE MR. JUSTICE CAVANAGH

NAMES OF COUNSEL AND PARTY:

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- [ ] PLAINTIFF(S)

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ENDORSEMENT OF CAVANAGH J.:

[1] On October 20, 2022, the Applicants obtained protection under the *Companies Creditors' Arrangement Act* pursuant to an Initial Order granted that day.

[2] The Applicants bring this motion for various relief including approval of an Amended and Restated Purchase Agreement among The Flowr Canada Holdings ULC (the "Vendor"), The Flowr Group (Okanogan) Inc. (the "Purchased Entity"), and Avant Brands K1 Inc. (formerly 1000343100 Ontario Inc., the "Purchaser") dated as of December 1, 2022 and the going concern sale transaction contemplated thereunder (the "Transaction").

[3] The Transaction is structured as a reverse vesting order whereby the Purchaser is taking all of the issued and outstanding shares of the Purchased Entity free and clear of all claims and encumbrances. The RVO structure is necessary to preserve the going concern value of the Applicants' business which is held largely within the Purchased Entity. The Applicants are in the business of cannabis production and distribution and hold licenses issued by Health Canada and the Canada Revenue Agency that permit the Applicants to cultivate, produce, package, and sell cannabis products, as well as administer cannabis for research and testing purposes. The evidence before the Court is that the licenses, upon which the going concern value of the Applicants' business is reliant, would likely be lost if they were transferred to the Purchaser by way of a traditional vesting order, given the regulatory regime within which the Applicants operate.

[4] The facts and supporting this motion are set out in the affidavit of Darren Karasiuk sworn December 9, 2022 and they are summarized in the Applicant's Factum at paragraphs 8-27.

[5] Under the transaction contemplated by the Sale Agreement, the Purchaser will own 100% of the issued and outstanding shares of the Purchased Entity following, among other steps, a post-closing reorganization which will, among other things: (a) transfer the transferred assets to the Purchased Entity; and (b) transfer all excluded assets and excluded liabilities to the newly incorporated 14588495 Canada Inc. ("ResidualCo").

[6] The jurisdiction to approve the transaction through a reverse vesting order is found in section 11 of the CCAA which gives the Court broad powers to make orders that it sees fit, subject to the restrictions set out in the statute. See *Re Just Energy Group Inc., et al*., 2022 ONSC 6354, at paras. 27-31.

[7] This Court has previously approved the use of RVOs to facilitate similar transactions involving licensed cannabis companies: *Beleave Inc. et al. (Re)* (September 18, 2020, Toronto CV-20-00642097-00CL); *Green Relief Inc. (Re)*, 2020 ONSC 6837; *Re Eve & Co Incorporated et al*. (October 7, 2022 CV-22-00678884-00CL).

[8] The Monitor is of the view that the reverse is vesting structure set out in the requested form of order represents the only viable alternative to implement the transaction for the benefit of the Applicants' stakeholders. The Monitor supports the relief requested.

[9] I am satisfied that the reverse vesting structure is appropriate in the circumstances because the structural preserves the critical licenses necessary for the operation of the purchased business which would not otherwise be transferable in the ordinary course or through a traditional vesting order. The RVO structure will also minimize regulatory hurdles and decrease closing uncertainty. I am satisfied that the delay, risk and uncertainties created by a traditional vesting order would result in either a materially decreased purchase price for a going concern transaction, or the liquidation of the Applicants. There is no competing plan of compromise or arrangement, or other restructuring transaction. The purchase price was generated through a Court-approved SISP implemented by the Monitor, including a competitive auction against another potential strategic acquirer.

[10] Section 36 of the *CCAA* provides that a Debtor "may not sell or otherwise dispose of assets outside of the ordinary course of business and thus authorized to do so by the court". In considering whether to approve a sale, the Court should consider, among other things: (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances; (b) whether the Monitor approved of the process leading to the proposed sale; (c) whether the Monitor filed a report stating that the sale or disposition would be more beneficial to creditors than the sale or disposition a bankruptcy; (d) the extent to which creditors were

consulted; (e) the effects of the proposed sale on creditors and other interested parties; and (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[11] The Monitor recommends that the Court approve the Purchase Agreement for reasons given at paragraph 66 of its Third Report.

[12] I am satisfied that the factors set out in section 36 (3) support approval of the sale transaction. In this respect, I accept the submissions by the Applicants at paragraph 43 of their factum. I accept the Monitor's recommendation for reasons given in the Third Report.

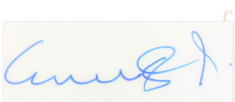
[13] The Applicants also seek relief that is critical to the completion of the Transaction and the orderly and efficient conclusion of the within *CCAA* proceedings, including (a) adding ResidualCo as an Applicant; (b) granting releases in favour of (i) the current and former directors, officers, employees, legal counsel and advisors of the Flowr Group and ResidualCo, (ii) the Monitor its legal counsel, and (iii) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors; (c) granting certain enhanced powers to the Monitor in respect of ResidualCo; and (d) extending the stay period.

[14] I am satisfied that the additional relief requested by the Applicants should be granted. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 46-62 of their factum.

[15] At the hearing, I heard submissions from Francisco Vidal who is a former employee of The Flowr Group (Okanagan) Inc. He was dismissed in 2020. Mr. Vidal filed a complaint arising from his dismissal with the British Columbia Human Rights Commission. Mr. Vidal's claim is a contingent claim. If his claim is successful and he obtains a monetary award, Mr. Vidal will be an unsecured creditor. The liability for this claim will be transferred to ResidualCo and Mr. Vidal's claim will have with the same rights, priority, and entitlement as it would otherwise have. Mr. Vidal will not be prejudice by the requested orders.

[16] I am satisfied that the requested Orders should be made.

[17] Orders to issue in forms of Orders signed by me today.



Digitally signed
by Mr. Justice
Cavanagh