



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

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

DATE: 21 July 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: THE FLOWR CORPORATION, THE FLOWR CANADA
HOLDINGS ULC, THE FLOWR GROUP (OKANAGAN) INC.
AND TERRACE GLOBAL INC. v. THE ATTORNEY GENERAL OF
CANADA on Behalf of His Majesty the King of Canada as
Represented by the Canada Revenue Agency
BEFORE JUSTICE: MADAM JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Rebecca Kennedy Marco Gaspar	Lawyer for the Monitor, Ernst & Young Inc.	rkennedy@tgf.ca mgaspar@tgf.ca

For Other:

Name of Person Appearing	Name of Party	Contact Info
Alex Morrison Daniel Taylor	Representatives of the Monitor, EY	

ENDORSEMENT OF JUSTICE STEELE:

1. Motion heard via Zoom on July 21, 2023.
2. The applicant seeks the Court's approval to extend the stay of proceedings by 6 months to January 31, 2024, approve certain distributions, approve the termination of the debenture indenture and release Computershare (the debenture trustee), and approve the Monitor's 6th report.
3. No one opposed the relief sought. The Monitor indicated that it is in favour of the relief sought.
4. The applicants obtained protection under the CCAA on October 20, 2022. The Court granted an approval and vesting order on December 16, 2023, which approved a reverse vesting structure that facilitated the sale of substantially of the applicants' assets to Avant Brands KI Inc. through the buyer's acquisition of the shares of Flowr Okanagan (the main operating entity of the applicants) (the "Transaction"). The Transaction closed on Feb. 2, 2023, following which the applicants have no further operations. The applicants have one retained employee to assist with accounting and tax matters.

Should the Court approve the proposed distributions?

5. The applicant seeks to make the following distributions:
 - a. a distribution of the Avant Shares held by Flowr Holdings to the Debenture Holders on a *pro rata* basis up to the amount of their indebtedness; and
 - b. from the funds held by the Monitor in trust for the applicants, subject to any reserve established by the Monitor to ensure sufficient funds are available to address any priority claims, a cash distribution to the Debenture Holders on a *pro rata* basis, up to the amount of their indebtedness.
6. This Court has the authority to approve distributions to creditors in the course of a CCAA process: *Nortel Networks Corporation et al, Re*, 2014 ONSC 4777, at paras. 53-55.
7. S. 11 of the CCAA, which provides that a Court may make any order it considers appropriate in the circumstances, gives the Court the authority to approve distributions to creditors.
8. I agree with the applicants' submissions at para. 17 of their factum that it is reasonable and appropriate to approve the distributions. Among other things, the Debenture Holders are the applicants' principal secured creditors, and they have a valid and enforceable security. The Debenture Holders will suffer a shortfall as the price received on the Transaction was not sufficient to repay them in full.
9. The Monitor will establish and maintain a reserve, held in a segregated interest-bearing account, which is intended to cover the applicants' post-filing obligations and the costs to complete the wind-down.
10. I am satisfied that the proposed distribution and reserve structure is appropriate.

Should the Debenture Indenture be Terminated?

11. Under s. 11 of the CCAA, the Court has jurisdiction to make any order it considers appropriate in the circumstances.
12. When the Transaction closed, the applicants' obligations under the Debentures were transferred to ResidualCo.
13. Computershare is the trustee under the Debenture Indenture and has requested that the applicants seek an order terminating the Debenture Indenture in order to release Computershare from its duties and liabilities thereunder after the date of the Order.
14. The Court in *Just Energy* granted similar relief: 14487893 Canada Inc. et al. [formerly Just Energy Group Inc., et al.] Court File No. CV-21-00658423 – 00CL].
15. I agree with the applicants that Computershare's request makes practical and commercial sense. The Debenture Holders will receive their distributions (as noted above) and will suffer a shortfall. There is no longer a role for Computershare. Such relief will save costs for both ResidualCo and Computershare. There is no apparent prejudice in granting this relief, which is supported by the Monitor.

Should the Stay be Extended?

16. The stay is scheduled to expire on July 31, 2023. The applicants request an extension to January 31, 2024. This proposed extension will allow the applicants to address post-closing matters and allow time for the completion of outstanding tax matters, among other things.
17. Under s. 11.02(2) of the CCAA the Court may make an order extending the stay. However, the Court may not make the order unless circumstances exist that make the order appropriate, and the Court is satisfied that the applicant is acting in good faith and with due diligence.
18. The applicants have been acting in good faith and with due diligence in these proceedings. There is no evidence otherwise.
19. The proposed extension is supported by the Monitor and is necessary to address certain tax matters with Canada Revenue Agency. CRA was aware of the proceedings today. The applicant advised the Court that CRA took no position on the relief sought.
20. I am satisfied that it is appropriate to extend the stay for the 6 months requested. The proceedings are near conclusion, but the applicants expect that the dealings with CRA may take some time. There is no reason to impose a short stay and require the parties to return to Court to seek a further extension on these dealings.
21. Order to go in accordance with the attached.

