

**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 THE COMPROMISE OR ARRANGEMENT OF 9869247
CANADA LIMITED (d.b.a. SAFARI FLOWER COMPANY) AND GN VENTURES LTD.

Applicants

FACTUM OF THE APPLICANTS

January 11, 2024

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TO: SERVICE LIST

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTS	3
III. ISSUES PRESENTED.....	13
IV. LAW AND ARGUMENT	13
V. RELIEF REQUESTED.....	21
SCHEDULE “A” LIST OF AUTHORITIES	25
SCHEDULE “B”RELEVANT STATUTES	26

I. INTRODUCTION

1. 9869247 Canada Limited (d.b.a. Safari Flower Company) (“**Safari Flower**”) and GN Ventures Ltd. (“**GN Ventures**”) (collectively, the “**Safari Flower Group**” or the “**Applicants**”) bring this application for an initial order and protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”).
2. The Safari Flower Group is a licenced cultivator and processor of cannabis with its operations in the Fort Erie region of Ontario, where it owns and operates a state-of-the-art, 59,00 square foot indoor facility (the “**Stevensville Facility**”).
3. Safari Flower is licensed by Health Canada, and also holds international certifications, permitting it to supply cannabis to the European, Israeli and Australian medicinal cannabis markets.
4. The Safari Flower Group prides themselves on their female-led management team, and their solid reputation and footprint in both domestic recreational cannabis and international medicinal cannabis sales.
5. Although the Safari Flower Group was cash positive at its year-end in 2021, its financial success has, unfortunately, become difficult to maintain. This is due to, among other things, the domestic price compression of cannabis arising from the oversupply of cannabis flower in the market.
6. To overcome these constraints, the Safari Flower Group pivoted its business operations in an effort to maintain profitability over the last two years. These efforts have included: (i) obtaining international certifications to expand sales of medicinal cannabis in those

markets; (ii) expanding its white label products domestically; and (iii) working with retail stores to create their own craft store brands.

7. However, notwithstanding its best efforts, and as set out in further detail below, the Safari Flower Group's debt load is in excess of \$5 million, the aggregate value of its property is not sufficient to pay of all of its liabilities, and it will be in default of its obligations to its secured lenders in the next few weeks.
8. The Applicants submit that they are insolvent, are companies to which the CCAA applies, and are in urgent need of relief under the CCAA.
9. The Applicants have commenced these CCAA proceedings with the ultimate goal of protecting the interests of their creditors and other stakeholders, with a view to having the business emerge from CCAA protection in a stronger form that preserves its enterprise value and employment for all, or substantially all, of its employees.
10. If CCAA protection is granted to the Applicants, they intend to use the CCAA proceedings and Court protection to seek Court approval to sell the Safari Flower Group's business and property, including Safari Flower's issued and outstanding shares (collectively, the "**Property**") to one of its secured lenders by way of a reverse vesting order.
11. Accordingly, the Applicants seek an initial order ("**Initial Order**") for the following relief, which is reasonably necessary to maintain the status quo and to give the Applicants the breathing space they require to develop a restructuring plan in consultation with their advisors and the proposed Monitor:
 - (a) abridging the time for service of the Notice of Application and dispensing with service on any person other than those served;

- (b) declaring that the Applicants are parties to which the CCAA applies;
- (c) appointing Ernst & Young Inc. (“**EY**”) as Monitor of the Applicants in these proceedings (the “**Proposed Monitor**” and, if appointed, the “**Monitor**”);
- (d) granting an administration charge in the amount of \$150,000 (the “**Administration Charge**”) in favour of counsel for the Applicants, the Monitor and its counsel;
- (e) granting a directors’ charge in favour of the directors and officers of the Applicants in the amount of \$61,000 (“**Directors’ Charge**” and together with the Administration Charge, the “**Priority Charges**”); and
- (f) granting an initial stay of proceedings to January 22, 2024 (the “**Stay Period**”).

II. FACTS

A. Corporate Overview

12. The facts underlying this Application are more fully set out in the affidavit of Dr. Leanne Brigitte Simons (“**Simons**”), sworn January 11, 2024 (the “**Simons Affidavit**”). Dr. Simons is President and Chief Executive Officer of the Applicants, and a member of the board of directors.¹
13. GN Ventures (formerly Tykolis Real Estate Group Ltd.) is the 100% parent of, and is a holding company for, Safari Flower.² GN Ventures was incorporated under the *Business*

¹ Simons Affidavit, at paras. 42 – 44.

² Simons Affidavit, at para. 28.

Corporations Act (Alberta), while Safari Flower was incorporated under the *Canada Business Corporations Act*.³

14. GN Ventures has three board of directors: Dr. Simons, Patrick Grobe, and Bill VanHaeren. Mr. VanHaeren is the president of one of the Safari Flower Group's secured lenders, Gray Jay Estates Inc. ("**Gray Jay**"). Gray Jay is one of the shareholders of GN Ventures.⁴
15. Safari Flower has two board of directors: Dr. Simons and Patrick Grobe, who also serves as the Applicants' Chief Financial Officer.⁵

B. The Business

(i) Operations

16. The Safari Flower Group prides themselves on their female-led management team, and their solid reputation and footprint in both domestic recreational cannabis and international medicinal cannabis sales.⁶
17. The Stevensville Facility is the backbone of the business and a key component to its success. It provides for the greatest possible control of all growing variables, including light, temperature, and humidity. It has 10 rooms, including a mother room, and features an on-site power cogeneration system using natural gas.⁷
18. Due to the sophisticated building design, plant tissue culture excellence, and use of clean fume, the Applicants have had essentially zero crop failures in the past two years.⁸

³ Simons Affidavit, at para. 31.

⁴ Simons Affidavit, at paras. 42 – 44.

⁵ Simons Affidavit, at paras. 42 – 44.

⁶ Simons Affidavit, at para. 37.

⁷ Simons Affidavit, at para. 38.

⁸ Simons Affidavit, at para. 41.

19. Safari Flower holds the following cannabis licenses and certificates: (i) a license from Health Canada for the cultivation and processing under the *Cannabis Act* and related regulations; (ii) a research license by Health Canada; (iii) a cannabis license under the *Excise Act, 2001*, S.C. 2002, c. 22, as amended; (iv) a Control Union Medical Cannabis Standard and Control Union Medical Cannabis Standard Good Agricultural Practices certificates that are recognized by, among others, the Israeli Medical Cannabis Agency, the World Health Organization, the Control Union Medical Cannabis Standard, and the International Standard for Good Agricultural Practices; and (v) a European Union Certificate of Good Manufacturing Practice.⁹

20. In Canada, the Safari Flower Group supplies bulk products to licensed producers and produces white label products designed for retail store brands in Ontario, Saskatchewan, Manitoba, and Alberta.¹⁰

21. Another large component of the Safari Flower Group is international sales to the medicinal markets in Israel, Australia, and Germany. The Safari Flower Group has been able to meet the stricter quality requirements abroad and produce premium cannabis flower products with a precise level of consistency, this greatly facilitates its ability to enter into and thrive in those markets.¹¹

⁹ Simons Affidavit, at paras. 46-53.

¹⁰ Simons Affidavit, at para. 33.

¹¹ Simons Affidavit, at para. 35.

22. The international medicinal market has become a major focus of the Safari Flower Group's business model, as the margins can range anywhere from two to three times higher than the average price in Canada.¹²

(ii) Employees

23. Safari Flower has 29 full-time employees. Twenty-one of the employees are salaried, and the remaining 8 employees are paid on an hourly basis.¹³
24. GN Ventures has no employees.¹⁴

C. Debts and Obligations of the Safari Flower Group

25. The Safari Flower Group has two *pari-passu* secured creditors: Gray Jay Estates Inc. and Next Edge General Partner (Ontario) Inc., in its capacity as general partner of NE SPC II LP ("**Blacksail**" and, together with Gray Jay, the "**Lenders**").¹⁵

(i) Gray Jay

26. To assist with the construction of the Stevensville Facility, Gray Jay and Safari Flower entered into a Secured Grid Promissory Note dated August 16, 2018, as amended on June 1, 2019 (together, the "**Gray Jay Loan**").¹⁶ Safari Flower granted a collateral charge in the amount of \$25,000,000 in favour of Gray Jay, which was registered on title to the Stevensville Facility.¹⁷

¹² Simons Affidavit, at para. 36.

¹³ Simons Affidavit, at para. 55.

¹⁴ Simons Affidavit, at para. 54.

¹⁵ Simons Affidavit, at para. 69.

¹⁶ Simons Affidavit, at para. 70.

¹⁷ Simons Affidavit, at para. 72.

27. To date, the outstanding principal loan amount owed to Gray Jay is \$11,115,523. As of June 1, 2019, interest accrues on the principal amount outstanding under the Gray Jay Loan at the rate of 12% per annum.¹⁸

(ii) Blacksail

28. Blacksail is the only secured creditor registered against GN Ventures under the *Personal Property Security Act* (Ontario) and the *Personal Property Security Act* (Alberta) against GN Ventures.¹⁹ Both Lenders have registered security interests under the *Personal Property Security Act* (Ontario) against Safari Flower.²⁰

29. The Safari Flower Group entered into a commitment letter with Blacksail, for, *in part*, the refinancing of a related party loan amount up to \$25,000,000 on January 23, 2020, which was amended multiple times (the “**Blacksail Loan**”). Safari Flower is the borrower under the Blacksail Loan, which is guaranteed by GN Ventures.²¹

30. The security granted in support of the Blacksail Loan includes, among other things, a collateral first charge registered on title to the Stevensville Facility, subject to a *pari-passu* and priority agreement with Gray Jay (the “**Priority Agreement**”).²²

31. Blacksail has advanced a total of \$12,710,854 to the Safari Flower Group under the Blacksail Loan, not including the amounts advanced under the Accommodation Agreement

¹⁸ Simons Affidavit, at para. 73.

¹⁹ Simons Affidavit, at para. 86.

²⁰ Simons Affidavit, at para. 88.

²¹ Simons Affidavit, at para. 74.

²² Simons Affidavit, at para. 77.

as explained below.²³ Interest accrues on the principal amount at the rate of 12% per annum.²⁴

(iii) The Priority Agreement

32. The Priority Agreement provides, among other things, that each of the Blacksail and Gray Jay securities under the respective Loans “shall rank *pari-passu* with the other, with all the security being for the benefit and security of both Lenders, without any preference or priority to either.”²⁵
33. The Priority Agreement includes certain restrictions, requiring that Blacksail and Gray Jay obtain the prior written consent of the other, before making certain changes to the respective securities, including altering dates or amounts of the repayments of principal, changes in rates of interest, and changes in the amount of credit available under the Blacksail Loan or the Gray Jay Loan.²⁶

(iv) The Forbearance Agreement

34. On January 18, 2023, Blacksail and the Safari Flower Group entered into a forbearance agreement, including extensions of same, whereby Blacksail, among other things, agreed to defer the principal payments under the Blacksail Loan from December 1, 2022 to and including June 30, 2023 (the “**Forbearance Agreement**”).²⁷
35. The Forbearance Agreement was executed by Blacksail and the Applicants, but required Gray Jay’s acknowledgment and acceptance of the terms therein, including a subordination

²³ Simons Affidavit, at para. 79.

²⁴ Simons Affidavit, at para. 79.

²⁵ Simons Affidavit, at para. 82.

²⁶ Simons Affidavit, at para. 85.

²⁷ Simons Affidavit, at para. 89.

of its security interest in certain funds. Gray Jay declined to execute the Forbearance Agreement.²⁸

36. Despite Gray Jay's non-execution of the Forbearance Agreement, Blacksail has honoured its terms and has not required principal payments from the Applicants. Safari Flower continues to pay interest, but no extension of loan capitalized fees have been paid.²⁹
37. The Forbearance Agreement expired on June 30, 2023.³⁰

(v) The Accommodation Agreement

38. In anticipation of the expiry of the Forbearance Agreement, the Safari Flower Group entered into the Accommodation Agreement with the Lenders.³¹
39. The Accommodation Agreement provided Safari Flower with, among other things:
- (a) a forbearance period whereby Gray Jay and Blacksail agreed not to take any steps to enforce their security until the earlier of October 31, 2023, the closing of a transaction for the sale of the Applicants' business, or an event of default;
 - (b) an Interim Financing Loan from Blacksail in the maximum amount of \$2,000,000, with an interest rate of 14% per annum payable on the last Business Day of every month, along with additional fees as set out in the Accommodation Agreement. The Interim Financing Loan was advanced by Blacksail and is secured by the Blacksail Security, and

²⁸ Simons Affidavit, at para. 91.

²⁹ Simons Affidavit, at para.92.

³⁰ Simons Affidavit, at para. 93.

³¹ Simons Affidavit, at para. 94.

Gray Jay has agreed that notwithstanding the Priority Agreement, the Interim Financing Loan will be repaid in priority to all other amounts owing to the Lenders;

(c) a key employee retention plan; and

(d) the ability for Hyde Advisory & Investments Inc. (“**HAI**”) to run a sale process in accordance with the terms and timelines set out therein.³²

40. The term of the Accommodation Agreement has now expired.³³

(vi) Other Creditors

41. The Safari Flower Group owes Trigon Construction, the entity that constructed the Stevensville Facility, the amount of \$3,418,407.18 on an unsecured, non-interest bearing basis. The Safari Flower Group owes Stevensville Lawn Service Inc. the amount of \$544,061.29 on an unsecured, non-interest bearing basis.³⁴

42. The Safari Flower Group received a Canadian Emergency Business Account loan of \$120,000 (“**CEBA Loan**”). The CEBA Loan remains outstanding.³⁵

D. Financial Difficulties

43. The Canadian cannabis industry is an extremely challenging operating environment. Many of the challenges faced by the Safari Flower Group are industry-wide.³⁶

44. As at December 31, 2023, the Safari Flower Group has total liabilities of \$55,207,452.³⁷

³² Simons Affidavit, at paras. 19, 95.

³³ Simons Affidavit, at para. 96.

³⁴ Simons Affidavit, at para. 99.

³⁵ Simons Affidavit, at para. 98.

³⁶ Simons Affidavit, at para. 105.

³⁷ Simons Affidavit, at para. 68.

E. Sale Process

45. With the support of the Lenders through the Accommodation Agreement, Safari Flower engaged Hyde & Advisory Associates (“**HAI**”), a well-regarded industry specialist, to facilitate a Sale Process outside of the CCAA in order to maximize value.³⁸ The Lenders, at all times, reserved the right to submit a credit bid in the Sale Process.³⁹
46. Only one third party submitted a proper bid in accordance with the pre-filing sale process guidelines implemented by HAI. However, the bid was lower than the amount of total secured debt owed to the Lenders, and the Lenders determined that the Bid was insufficient. As a result, the Lenders declined to accept the Bid.⁴⁰
47. The Lenders thereafter negotiated assignment agreements, though not executed by Gray Jay, which contemplated Gray Jay agreeing to purchase the secured debt and security of Blacksail and credit bid for the Safari Flower Group’s business by January 9, 2024, failing which Blacksail would be able to purchase Gray Jay’s secured debt and security on January 12, 2024.⁴¹
48. The Safari Flower Group has been advised that Gray Jay did not purchase the debt of Blacksail on January 9, 2024, and as such, Blacksail intends to purchase Gray Jay’s secured debt and be the Purchaser under a future share purchase agreement, though negotiations between the Lenders are ongoing.⁴²

³⁸ Simons Affidavit, at para. 120.

³⁹ Simons Affidavit, at para. 121.

⁴⁰ Simons Affidavit, at paras. 132-133

⁴¹ Simons Affidavit, at paras. 21, 134, 135.

⁴² Simons Affidavit, at paras. 22, 136.

F. Cash Flow Forecast

49. The Safari Flower Group, with the assistance of the Proposed Monitor, has prepared a projected cash flow forecast (the “**Cash Flow Forecast**”) for the period beginning on January 8, 2024 and ending January 28, 2024 that is premised on, among other things, the assumption that the Applicants will be granted CCAA protection and that the DIP Term Sheet and DIP Lender’s Charge as set out herein will be approved as part of the Amended and Restated Initial Order.⁴³
50. Blacksail has agreed to provide a debtor-in-possession credit facility (the “**DIP Loan**”) until the Transaction is approved by the Court. The DIP Lender and the Applicants, in consultation with the Proposed Monitor, are in the process of negotiating the commitment letter (the “**DIP Term Sheet**”).⁴⁴

G. Need for CCAA Protection

51. The Applicants have determined that the CCAA process is the most beneficial plan of action to obtain Court-approval of the Transaction and maximize value for the Safari Flower Group’s stakeholders.⁴⁵
52. The Safari Flower Group has debt in excess of \$5 million, is insolvent and is facing a liquidity crisis. Absent DIP financing, the Safari Flower Group will be unable to pay operating expenses in the next few weeks. Proposed Monitor.⁴⁶

⁴³ Simons Affidavit, at para. 101.

⁴⁴ Simons Affidavit, at para. 102.

⁴⁵ Simons Affidavit, at para. 137.

⁴⁶ Simons Affidavit, at para. 138.

53. The Applicants are proposing that EY act as Monitor of the Safari Flower Group in these CCAA proceedings.
54. EY has reviewed and assisted in the preparation of the Cash Flow Forecast, and has provided guidance and assistance in the commencement of these CCAA proceedings.⁴⁷

III. ISSUES PRESENTED

55. The issues to be addressed before this Honourable Court are whether:
- (a) the Applicants meet the definition of “company” and “debtor company” under the CCAA;
 - (b) the Stay of Proceedings should be granted;
 - (c) the Administration Charge should be granted;
 - (d) the Directors’ Charge should be granted;
 - (e) EY should be appointed as Monitor.

IV. LAW AND ARGUMENT

56. Canada’s insolvency statutes pursue an array of overarching remedial objectives that reflect Parliament’s intention that those statutes minimize the wide ranging and potentially catastrophic impacts insolvency can have on the stakeholders of insolvent debtors. Within this framework, the CCAA generally prioritizes avoiding the social and economic losses

⁴⁷ Simons Affidavit, at para. 121.

resulting from liquidation of an insolvent corporation by allowing it to restructure its business and financial affairs.⁴⁸

57. The CCAA also has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by a debtor's financial distress and enhancement of the credit system generally.⁴⁹

A. The Applicants are Debtor Companies

58. The CCAA applies in respect of a “debtor company” or “affiliated company” where the total claims against the debtor or affiliate exceeds \$5,000,000.⁵⁰ The term “company” is defined as “any company, corporation or legal person incorporated by or under an Act of Parliament or the legislature of a province...”.⁵¹ “Debtor company” is defined as “any company that: (a) is bankrupt or insolvent...”.⁵²

59. The insolvency of a debtor is determined as of the time the debtor files its CCAA application.⁵³ Insolvency is not defined in the CCAA. Courts have held that a company is insolvent under the CCAA if:⁵⁴

(a) the company meets the definition of “insolvent person” under the BIA, which includes a person “...who is for any reason unable to meet [its] obligations as they generally become due...”;⁵⁵ or

⁴⁸ [9354-9186 Quebec Inc. v Callidus Capital Corp, 2020 SCC 10 at paras. 40-41.](#)

⁴⁹ [9354-9186 Quebec Inc. v Callidus Capital Corp, 2020 SCC 10 at para. 42.](#)

⁵⁰ s 3(1), *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“CCAA”).

⁵¹ s 2(1), CCAA.

⁵² s 2(1), CCAA.

⁵³ [Re Stelco Inc. \(2004\)](#), 48 CBR (4th) 299 at para 4 (Ont Sup Ct J [Commercial List]).

⁵⁴ [Re Stelco Inc. \(2004\)](#), 48 CBR (4th) 299 at paras 21-22, and 26 (Ont Sup Ct J [Commercial List]).

⁵⁵ s 2, *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”).

- (b) the company faces a looming liquidity crisis⁵⁶, as set out in the expanded approach of insolvency in *Stelco*.
60. Protection under the CCAA may be extended not only to a debtor company, but also to entities that are “necessary parties” to ensure that a stay of proceedings is effective. A court should “take into account the relationship between any particular company and the larger group of which it is a member, as well as the need to place that company within the protection of the Initial Order so that the order will work effectively.”⁵⁷
61. Each of the Applicants are incorporated under the legislature of a province in Canada, and are each a “company” within the meaning of the CCAA.⁵⁸
62. In addition to the test under the BIA, it has been consistently held that a corporation is insolvent if it is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”⁵⁹
63. The Applicants’ debts exceed \$5 million. Specifically, the aggregate amount of the Applicants’ liabilities is over \$55 million.⁶⁰ The Applicants’ face a looming liquidity crisis. Not only have the terms of the Forbearance Agreement and Accommodation Agreement have expired, but Blacksail is no longer willing to fund the Safari Flower Group operations without the benefit of a CCAA process.⁶¹

⁵⁶ *Re Stelco Inc. (2004)*, 48 CBR (4th) 299 at para. 40 (Ont Sup Ct J [Commercial List]).

⁵⁷ *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299 at paras 29-30.

⁵⁸ s. 2(1) and s. 3(1), CCAA; Simons Affidavit, at paras. 29, 31.

⁵⁹ *Re Stelco Inc. (2004)*, 48 CBR (4th) 299 at paras 25-26 (Ont Sup Ct J [Commercial List]).

⁶⁰ Simons Affidavit, at para. 68; Exhibit I.

⁶¹ Simons Affidavit, at paras. 93, 96, 103.

64. Accordingly, the Applicants respectfully submit that they are debtor companies to whom the CCAA applies.

B. Stay of Proceedings

65. Pursuant to section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided that the court is satisfied that circumstances exist that make the order appropriate, and the Applicants have acted with due diligence and in good faith.⁶² A stay of proceedings is appropriate where it provides a debtor with breathing room while the debtor seeks to restore solvency and emerge from the CCAA on a going concern basis.⁶³

66. Section 11.001 of the CCAA further provides:⁶⁴

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

67. The purpose of section 11.001 “is to make the insolvency process fairer, more transparent and more accessible by limiting the decisions made at the outset of the proceedings to measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company and to allow for broader participation in the restructuring process.”⁶⁵ Its intent is

⁶² s. 11.02, CCAA; [Re Lydian International Limited](#), 2019 ONSC 7473 at para. 22.

⁶³ [Target Canada Co.](#), 2015 ONSC 303 at para 8.

⁶⁴ s 11.001, CCAA.

⁶⁵ [Re Clover Leaf Holdings Company](#), 2019 ONSC 6966 at para 13.

to ensure that the relief granted upon an initial application is limited to the relief reasonably necessary for the debtor to continue to operate in the ordinary course.⁶⁶

68. The Applicants submit that given their current financial condition, a stay of proceedings at this time is in the best interests of the Safari Flower Group and their stakeholders, and is both necessary and appropriate.
69. The Applicants have limited the relief sought on this application to relief that is reasonably necessary in the circumstances to maintain the *status quo* and to give the Applicants the breathing space they require to negotiate and complete a transaction with one of the Lenders, subject to Court approval.⁶⁷
70. The Applicants also request that the stay extend to their directors and officers so that they may focus on the CCAA proceedings. Section 11.03 of the CCAA provides that an order made under section 11.02 of the CCAA may provide that no person may commence or continue any action against a director of the company or any claim against directors that arose before the commencement of proceedings under the CCAA and that relates to the obligations of the company.⁶⁸

C. Administration Charge

71. The Applicants seek a first-ranking court-ordered charge in the amount of \$150,000 over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants (collectively, the "**Professionals Group**") to

⁶⁶ [Re Lydian International Limited](#), 2019 ONSC 7473 at paras 30, 32.

⁶⁷ Simons Affidavit, at para. 156.

⁶⁸ s 11.03, CCAA.

secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (“**Administration Charge**”).

72. The Court may grant an administration charge pursuant to section 11.52 of the CCAA.⁶⁹ In deciding whether to grant an administration charge, courts have considered a number of factors including:⁷⁰

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

73. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge:

- (a) the business is complex and highly regulated;
- (b) The Professionals Group will play a critical role in assisting the Applicants with the negotiations and completion of a transaction with one of the Lenders and these CCAA proceedings; and

⁶⁹ s 11.52, CCAA.

⁷⁰ [Canwest Publishing Inc. Re](#), 2010 ONSC 222 at para 54; see also, [Re Lydian International Limited](#), 2019 ONSC 7473 at para 46.

(c) each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles.⁷¹

74. The quantum of the proposed Administration Charge is reasonable and necessary for the initial 10-day period, and is in line with the nature and size of the Applicants' business and the involvement required by the Professionals Group for this period.⁷²

D. Directors' Charge

75. The Applicants seek a charge on the Applicants' Property in favour of the Applicants' current officers and directors in priority to all other charges other than the Administration Charge, up to a maximum amount of \$61,000. The quantum of the Directors' Charge was developed with the assistance and support of the Proposed Monitor.⁷³

76. Pursuant to section 11.51 of the CCAA, a Court may grant a Directors' Charge on a super-priority basis.⁷⁴

77. The purpose of a directors' charge was described in *Canwest Global Communications Corp. (Re)*:⁷⁵

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring..... Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.

⁷¹ Simons Affidavit, at paras. 146, 147.

⁷² Simons Affidavit at paras. 147, 148.

⁷³ Simons Affidavit, at para. 150.

⁷⁴ s. 11.51, CCAA.

⁷⁵ [\[2009\] OJ No 4286](#) at para 48 (Ont Sup Ct J [Commercial List]).

78. In *Jaguar Mining Inc. (Re)*, the court set out the following factors to be considered with respect to the approval of a directors' charge:⁷⁶
- (a) whether notice has been given to the secured creditors likely to be affected by the charge;
 - (b) whether the amount is appropriate;
 - (c) whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and
 - (d) whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.
79. To ensure the ongoing stability of the Safari Flower Group's business during the CCAA proceedings, it requires the continued participation of some of their officers and directors. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring. As a practical but critical matter, the current directors hold the individual security clearance that Health Canada requires of a licensed cannabis company to have in order to maintain its Cannabis licence.⁷⁷
80. While the Safari Flower Group's directors and officers have the benefit of a directors and officers insurance policy that provides them with coverage for certain claims and liabilities that may arise, the policy contain exclusions and exceptions to such coverage.⁷⁸

⁷⁶ [2014 ONSC 494](#) at para 45.

⁷⁷ Simons Affidavit, at para. 151.

⁷⁸ Simons Affidavit, at para. 153.

81. The Applicants respectfully submit that the Directors' Charge is reasonable in the circumstances. Accordingly, the Applicants request that this Court exercise its discretion to approve the Directors' Charge.

E. Appointment of Monitor

82. A court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made pursuant to section 11.7 of the CCAA.⁷⁹

83. Section 11.7(2) of the CCAA also sets out certain requirements for and restrictions on who may act as a monitor, including that the monitor be a trustee within the meaning of subsection 2 of the BIA.⁸⁰

84. EY is a trustee within the meaning of subsection 2 of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. EY has also consented to its appointment as the Monitor.⁸¹

85. The Safari Flower Group requests that EY be appointed Monitor of the Applicants during these CCAA proceedings.

V. RELIEF REQUESTED

86. Based on the foregoing, the Applicants respectfully request that this Honourable Court grant the relief provided for in the Initial Order and provide the Applicants creditor protection in accordance with the provisions of the CCAA.

⁷⁹ s 11.7, CCAA.

⁸⁰ s 11.7(2)

⁸¹ Simons Affidavit, at paras. 139 - 143.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of January, 2024.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Re Stelco Inc. (2004)*, 48 CBR (4th) 299 (Ont Sup Ct J [Commercial List])
2. *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299
3. *Re Lydian International Limited*, 2019 ONSC 7473
4. *Target Canada Co.*, 2015 ONSC 303
5. *Re Clover Leaf Holdings Company*, 2019 ONSC 6966
6. *Canwest Publishing Inc, Re*, 2010 ONSC 222
7. *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286 (Ont Sup Ct J [Commercial List])
8. *Jaguar Mining Inc. (Re)*, 2014 ONSC 494

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

Interpretation

Definitions

2 In this Act...

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

...

trustee or ***licensed trustee*** means a person who is licensed or appointed under this Act.

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Definitions

2(1) In this Act...

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

...

debtor company means any company that

- (a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, C. C-36, AS AMENDED**

Court File No.: CV-24-00712687-00CL

**AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 9869247
CANADA LIMITED (D.B.A. SAFARI FLOWER COMPANY) AND GN VENTURES LTD.
Applicants**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

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