# SUPERIOR COURT OF JUSTICE
# COMMERCIAL LIST

## ENDORSEMENT

**COURT FILE NO.:** CV-24-00712687-00CL **DATE:** January 22, 2024

**NO. ON LIST:** 1

**TITLE OF PROCEEDING:** 9869247 CANADA LIMITED dba Safari Flower Company and GN VENTURES LTD.

**BEFORE:** Mr. Justice Osborne

## PARTICIPANT INFORMATION

**For Plaintiff, Applicant, Moving Party:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| Larry Ellis | Applicants | lellis@millerthomson.com |
| Craig A. Mills | | cmills@millerthomson.com |
| Gina Rhodes | | grhodes@millerthomson.com |

**For Defendant, Respondent, Responding Party:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| Harvey Chaiton | NE SPEC II LP (Blacksail) | harvey@chaitons.com |
| Melinda Vine | Gray Jay Estates Inc. | mvine@harrisonpensa.com |

**Other:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| Haddon Murray | Monitor | haddon.murray@gowlingwlg.com |
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**ENDORSEMENT OF JUSTICE OSBORNE:**

1. This is the comeback hearing in respect of the Initial Order I granted in favour of the Applicants on January 12, 2024.

2. Today, the Applicants seek an order:

    a. extending the stay to February 29, 2024;

    b. increasing the Administration Charge to a maximum amount of $350,000;

    c. increasing the Directors' Charge to a maximum amount of $243,000; and

    d. approving a DIP Term Sheet with NE SPC II LP on behalf of a company to be incorporated and act as DIP Lender, pursuant to which the DIP Lender has agreed to advance up to a maximum of $1 million (the "DIP Facility").

3. Defined terms in this Endorsement have the meaning given to them in my Endorsement of January 12, the motion materials, and/or the First report of the Monitor dated January 19, 2024 unless otherwise stated.

4. None of the relief sought by the Applicants today is opposed. It is strongly supported by both of the secured lenders of the Applicants and is recommended by the Monitor.

5. The Applicants rely on the second affidavit of Dr. Simons, sworn January 19, 2024 and the Supplementary affidavit of Dr. Simons sworn January 22, 2024, the latter in respect of the executed DIP Term Sheet.

6. At a high level, the relief sought today is said to be required to finance and facilitate the ongoing operation of the Applicants and their restructuring activities likely leading towards the consummation of a sale transaction with one of the secured lenders of the Applicants. That is expected to be put forward by way of a credit bid pursuant to a reverse vesting order structure. The plan is to have the business of the Applicants remain as a going concern until a proposed sale transaction is completed.

7. I have not repeated here the basis for the Initial Order dated January 12, largely set out in the first affidavit of Dr. Simmons sworn January 11, 2024.

8. I am satisfied that the relief is reasonable, appropriate and required in the circumstances.

9. Section 11.02(2) provides jurisdiction for a stay extension for any period that the court "considers necessary". I am satisfied that circumstances exist that make the stay extension appropriate and further that the Applicants have acted, and continue to act, in good faith and with due diligence. The specific length of stay extension requested will give the Applicants the breathing room required.

10. The Monitor and DIP Lender support the stay extension and the seven week cash flow forecast reflects sufficient liquidity through the proposed stay extension period, assuming the DIP Term Sheet is approved.

11. I am also satisfied that the funding as would be made available pursuant to the DIP Term Sheet is required. The DIP Lender has agreed to provide up to $1 million, conditional on court approval of the DIP Lender's Charge in the corresponding amount.

12. I am satisfied that the factors as set out in section 11.2(4) as well as 11.2 (1) of the CCAA have been satisfied, with the result that the super priority charge is appropriate, as is the DIP Term Sheet. It is

being advanced by one of the secured lenders, on notice to the other secured lender who supports the relief sought. The material filed clearly supports the submission that the funding is required and I am satisfied that the quantum and terms of the DIP Term Sheet are reasonable, as is recommended by the Monitor.

13. I am further satisfied that Administration Charge should be increased to $350,000 and the Directors' Charge increased to $243,000 for the reasons set out in the second affidavit of Dr. Simons and the First Report.

14. The requirements of section 11.5 of the CCAA (Administration Charge) and 11.51 (directors and officers) have been met. The increased Directors' Charge would rank behind the Administrative Charge and the DIP Lenders' Charge.

15. I have reviewed the terms of the draft Amended and Restated Initial Order both as against the Model Order of the Commercial List and as against the specific factual requirements of this particular matter and the relevant provisions of the CCAA. The form of order is appropriate.

16. ARIO to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

17. The Applicants anticipate seeking a sale approval order and for that purpose this matter will return before me on **Monday, February 26, 2024 commencing at 10 AM via Zoom** and continuing for 90 minutes as necessary.

Osborne, J.