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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

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

February 23, 2024

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Larry Ellis LSO#: 49313K
Tel: 416.595.8639
lellis@millerthomson.com

Craig A. Mills LSO#: 40947B
Tel: 416.595.8596
cmills@millerthomson.com

Gina Rhodes LSO#: 78849U
Tel: 416.597.4321
grhodes@millerthomson.com

Lawyers for the Applicants

TO THE SERVICE LIST

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PART I - INTRODUCTION

1. The Applicants obtained relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") by an Initial Order dated January 12, 2024, which was amended and restated on January 22, 2024 (the "**ARIO**").

2. The Applicants file this factum in support of a motion for relief under the CCAA to approve:

(a) an Order (the "**Order**") to, *inter alia*:

(i) extending the stay period (the "**Stay Period**") in favour of the Applicants from February 29, 2024 to and including March 29, 2024 (the "**Extended Stay Period**");

(ii) increasing the authorized borrowings under the Amended DIP Term Sheet between the Applicants and NE SPEC II LP (the "**DIP Lender**") dated

February 23, 2024 (the "**Amended DIP Term Sheet**") from $1,000,000 to a maximum principal amount of $1,300,000;

(iii) approving a key employee retention plan (the "**KERP**") for Dr. Brigitte Simons, Chief Executive Officer ("**CEO**"), and Patrick Grobe as Chief Financial Officer ("**CFO**", and together, "**Management**"), and granting a priority charge in favour of the Management employees entitled to the KERP ranking behind the Directors' Charge in the maximum amount of $200,000 ("**KERP Charge**");

(iv) approving the settlement agreement (the "**Consultant Agreement**") dated February 22, 2024, among the Applicants, the Lenders (as defined below), and Hyde Advisory & Investments Inc. ("**HAI**") and the payments contemplated therein, and granting a priority charge in favour of HAI, ranking behind the DIP Lender's Charge and ahead of the Director's Charge in the maximum amount of $180,000 plus applicable taxes (the "**Consultant Charge**"); and

(v) approving the Monitor's Reports of Ernst & Young Inc., in its capacity as the Monitor of the Applicants (the "**Monitor**") as set out in its First Report dated January 19, 2024 (the "**First Report**") and its Second Report dated February 23, 2024 (the "**Second Report**"); and

(vi) such further and other relief as may be requested by the Applicants and that this Honourable Court considers just.

PART II - SUMMARY OF FACTS

3. The facts underlying this application are more fully set out in the affidavits of Dr. Brigitte Simons, sworn January 11, 2024 (the "**First Simons Affidavit**"), January 22, 2024 (the "**Second Simons Affidavit**") and February 23, 2024 (the "**Third Simons Affidavit**").

4. 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 indoor facility.[1]

5. On January 12, 2024, the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted the Initial Order in favour of the Applicants under the CCAA, which was thereafter amended and restated.[2]

6. Pursuant to the ARIO, the Court, among other things:

(a) determined that the Applicants are parties to which the CCAA applies;

(b) appointed Ernst & Young Inc. as Monitor of the Applicants in these CCAA Proceedings;

(c) granted a stay of proceedings in favour of the Applicants for an initial stay period up to and including February 29, 2024;

(d) authorized the Applicants to obtain and borrow under the DIP Term Sheet from the DIP Lender, provided that borrowings under such credit facility did not

[1] First Simons Affidavit, at para 9.
[2] Third Simons Affidavit, at para 5.

exceed the principal amount of $1,000,000 (plus interest, fees, and expenses); and

(e) granted the following charges against the Property, in the following priority rankings (the "**Priority Charges**"):

(i) First – Administration Charge (to the maximum amount of $350,000);

(ii) Second – DIP Lender's Charge; and

(iii) Third – Directors' Charge (to the maximum amount of $243,000).[3]

The Pre-Filing Sales Process

7. Prior to initiating these CCAA Proceedings, the Applicants engaged HAI to facilitate a pre-filing sale and investment solicitation process (the "**Sale Process**"), outside of the CCAA in order to maximize value.[4]

8. The Safari Flower Group's secured lenders, NE SPC II LP ("**Blacksail**" or the "**DIP Lender**") and Gray Jay Estates Inc. ("**Gray Jay**" and together with Blacksail, the "**Lenders**") also supported the Applicants' engagement of HAI to implement the Sale Process as it was expressly contemplated in the Accommodation Agreement between the Lenders and the Applicants dated June 30, 2023 (the "**Accommodation Agreement**").[5]

[3] Third Simons Affidavit, at para 6.
[4] Third Simons Affidavit, at para 8.
[5] Third Simons Affidavit, at para 9 and Exhibit C to the Third Simons Affidavit.

9. The Lenders and the Applicants agreed that HAI would market the Safari Flower Group's business, including the Stevensville Facility, to a targeted list of prospects and, following the Sale Process, the Applicants would enter CCAA proceedings to approve the sale through a reverse vesting order. The Lenders reserved the right to submit a credit bid in the Sale Process.[6]

10. HAI's team in the Sale Process was comprised of eight professionals with a wide-range of experience. In June 2023, HAI reached out to a targeted list of 52 potential purchasers ("**Organic Reach-Outs**") housed in HAI's Customer Relationship Management database.[7]

11. HAI prepared a teaser letter (the "**Teaser**") to detail the Safari Flower Group's business, but kept the name of the company anonymous until interested parties signed a non-disclosure agreement ("**NDA**"). The Teaser was broadly advertised on social media, including LinkedIn and X, as well as featured in HAI's monthly newsletter and on HAI's website.[8] Any interested potential purchaser that contacted HAI was carefully vetted by HAI to determine if they were a viable purchaser.[9]

12. Once interested purchasers were deemed viable by HAI and signed an NDA, they were given access to an electronic data room (the "**Data Room**") created by Dr. Simons, in consultation with HAI.[10] Interested purchasers were also able to visit the Stevensville Facility for a tour.[11]

13. On or around October 13, 2023, seven (7) interested purchasers signed non-binding letters of intent ("**LOIs**") to purchase Safari Flower's business. HAI discussed the LOIs with

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[6] Third Simons Affidavit, at para 10.
[7] Third Simons Affidavit, at paras 11, 12.
[8] Third Simons Affidavit, at para 13.
[9] Third Simons Affidavit, at para 14.
[10] Third Simons Affidavit, at para 15.
[11] Third Simons Affidavit, at para 15.

management and with the Lenders. All agreed that the offers above $10,000,000 would move onto the final stage of the Sale Process towards submitting a formal bid (the "**Bid**").[12]

14. On November 6, 2023, HAI sent a letter and draft share purchase agreement to the four potential purchasers which had submitted a LOI above $10,000,000 (the "**Finalists**") and set out the guidelines to submit a formal bid.[13]

15. On the Bid Deadline, only one Finalist submitted a proper Bid in accordance with the Guidelines. The Bid from the Finalist was significant and the result of a thorough, extensive, and transparent Sale Process.[14] The Bid from the Finalist was lower than the amount of total secured debt owed to the Lenders, and the Lenders declined to accept the Bid.[15]

16. The Lenders have negotiated assignment agreements, which contemplate Gray Jay purchasing the secured debt and security of Blacksail and credit bid for the Safari Flower Group's business by a certain date, failing which Blacksail would have the opportunity to purchase Gray Jay's secured debt. These negotiations are ongoing.[16]

17. HAI, the Lenders and the Safari Flower Group, in consultation with the Monitor, have negotiated the Consultant Agreement to compensate HAI for its efforts during the Sale Process.[17]

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[12] Third Simons Affidavit, at paras 17, 18.
[13] Third Simons Affidavit, at para 19.
[14] Third Simons Affidavit, at para 21.
[15] Third Simons Affidavit, at para 22
[16] Third Simons Affidavit, at para 23.
[17] Third Simons Affidavit, at para 24.

Extension of the Stay of Proceedings

18. The extension of the Stay of Proceedings to March 29, 2024 is necessary to provide the Applicants continued breathing space while they attempt to maximize value for the benefit of their stakeholders. The additional time will allow for the completion of the above-noted assignment of security, the negotiation of a Share Purchase Agreement with the successful Lender and seek Court approval.[18]

Amended DIP Term Sheet

19. On February 23, 2024, the Applicants and the DIP Lender, in consultation with the Monitor agreed to the Amended DIP Term Sheet.[19]

20. The Amended DIP Term Sheet provides an extension of the maturity date of the DIP Facility from March 15, 2024 to March 29, 2024 and increases in the principal amount of the DIP Facility by $300,000 to account for additional interim financing required from March 15, 2024 to March 29, 2024.[20]

KERP and KERP Charge

21. The Applicants, with the assistance of the Monitor, have developed the KERP to facilitate and encourage the continued participation of members of senior management ("**Management**")

[18] Third Simons Affidavit, at para 28.
[19] Second Report, at para 45; Third Simons affidavit, at para 38.
[20] Second Report, at para 46.

deemed critical in both carrying on day-to-day operations and the closing of the Sale Transaction, if approved by this Honourable Court.

22. Pursuant to its terms, the KERP provides for three payments to Management, two of which are contingent:

(a) $30,000 each as of the date of the Order;

(b) $50,000 each as of the date of the closing of a transaction in respect of all or substantially all of the assets or shares of the Safari Flower Group (the "**Closing**"); and

(c) $50,000 to either or each of Management in the event that the Purchaser does not continue the employment of the applicable member of Management post-closing of the Transaction, payable on Closing of the Transaction.[21]

23. The KERP was designed to incentivize the Key Employees to continue their employment with the Applicants and to maximize value for all stakeholders through the Sale Transaction.

Consultant Agreement and Consultant Charge

24. HAI, the Lenders, and the Safari Flower Group entered into the Consultant Agreement as a resolution of a dispute that had arisen concerning HAI's entitlement to a fee under the Success Fee Arrangement.[22]

[21] Third Simons Affidavit, at para 44.
[22] Third Simons Affidavit, at para 50.

25. The pertinent terms of the Consultant Agreement are as follows:

(a) The Lenders or the Safari Flower Group shall pay HAI the sum of $380,000 (plus HST) (the “**Settlement Amount**”);

(b) The Settlement Amount shall be paid in the following installments:

(iv) $200,000 to be paid within five (5) days of Court approval of the Consultant Agreement; and

(v) $180,000 to be paid upon the earlier of: (i) Court approval of the Share Purchase Agreement and Transaction contemplated therein; or (ii) an outside date of April 15, 2024 (the “**Outside Date**”).

(c) In the event that there is no Court approval of the Share Purchase Agreement and Transaction before the Outside Date, Blacksail shall pay the $180,000 and take an assignment of the Consultant Charge;

(d) HAI will continue to provide information and support to the Applicants and the Monitor in connection with the Sale Process and the approval of a Transaction; and

(e) The parties will execute a mutual full and final release which will become effective upon the payment of the Settlement Amount in full.[23]

[23] Third Simons Affidavit, at para 51.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

26. The substantive issues to be adjudicated by the Court upon this motion are as follows:

(a) Should the Stay Period be extended?

(b) Should the Amended DIP Term Sheet and corresponding increase in the DIP Lender's Charge be approved?

(c) Should the KERP and corresponding KERP Charge be approved?

(d) Should the Consultant Agreement and corresponding Consultant Charge be approved?

(e) Should the Monitor's Report be approved?

The Extended Stay Period Should be Approved

27. The Stay Period currently expires on February 29, 2024. The Applicants seek an order extending the stay of proceedings to March 29, 2024.

28. By way of section 11.02(2) of the CCAA, a court is empowered to extend the stay of proceedings granted to a debtor company. The Court must consider the following in determining whether to extend a stay of proceedings: (i) whether the order sought is appropriate in the circumstances; and (ii) whether the applicant has been acting in good faith and with due diligence.[24]

[24] s 11.02(2)-(3), CCAA.

29. This Honourable Court has routinely approved stay extensions of similar or longer time periods than the proposed stay extension, and the Applicants submit that the test to extend a stay of proceedings under section 11.02(2) and 11.02(3) of the CCAA, as requested, is met.

30. The cash flow forecast ending March 31, 2024, prepared by the Applicants, with the assistance of the Monitor, (the "**Cash Flow Forecast**"), demonstrates that the Applicants have sufficient cash during the Extended Stay Period to the sale approval motion of the Transaction.[25]

31. The following factors support extending the stay of proceedings:

(a) Throughout these proceedings, the Applicants have acted and continue to act in good faith and with due diligence to communicate with employees and stakeholders;[26]

(b) The extension of the Stay Period is necessary and appropriate to provide the Applicants with breathing space while they attempt to maximize value for the benefit of their stakeholders by finalizing a Share Purchase Agreement with the successful Lender and seek Court approval;[27]

(c) The Extended Stay Period is reasonable in light of the Cash Flow Forecast;

(d) The Monitor supports the Extended Stay Period;[28] and

[25] Third Simons Affidavit, at para 29.
[26] Third Simons Affidavit, at para 25.
[27] Third Simons Affidavit, at para 28.
[28] Second Report, at para 51.

(e) No creditor will be materially prejudiced as a result of the extension.[29]

32. For the foregoing reasons, the Applicants seek an Order to extend the Stay Period to and including March 29, 2024.

The Authorized Borrowings under the DIP Facility Should be Increased

33. A court has jurisdiction to authorize interim financing and a related charge under section 11.2 of the CCAA. The debtor must provide notice to secured creditors who are likely to be affected by the charge, and the charge cannot secure pre-filing advances.

34. In determining whether to approve an interim financing charge, courts consider the following non-exhaustive factors under section 11.2(4) of the CCAA:[30]

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

[29] Third Simons Affidavit, at para 32.
[30] s. 11.2(4), CCAA.

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the Monitor's report referred to in paragraph 23(1)(b), if any.

35. The DIP Term Sheet and DIP Lender's Charge have already been approved by this Court in the ARIO in the amount of $1,000,000.[31]

36. The non-exhaustive factors under section 11.2(4) of the CCAA support the approval of the increase of the authorized borrowings under the Amended DIP Term Sheet. In particular:

(a) the Amended DIP Term Sheet provides the Applicants with the necessary funding to continue operating the business and negotiating with the Lenders during the Extended Stay Period, which will maximize value for all of the Applicants' stakeholders;[32]

(b) without the increase to the authorized borrowings under the DIP Facility, the Applicant' business is in serious jeopardy and will run out of cash as shown by the Cash Flow Forecast prior to any Share Purchase Agreement is entered into;

(c) no creditor should be materially prejudiced as a result of the $300,000 increase of the authorized borrowings under the DIP Term Sheet. All secured creditors have been provided notice of the DIP Lender's Charge granted in the ARIO and does not object to the increase;[33] and

[31] Third Simons Affidavit, at para 34.
[32] Third Simons Affidavit, at para 39.
[33] Third Simons Affidavit, at para 40.

(d) the Monitor assisted in the preparation of the Cash Flow Forecast and supports the Amended DIP Term Sheet and increased borrowing under the DIP Facility as it will provide the Applicants with sufficient liquidity to the end of the Extended Stay Period.[34] The Monitor also supports the increase in the DIP Charge to align to the increase in DIP Facility.[35]

37. For the foregoing reasons, the Applicants seek an Order increasing the authorized borrowings under the DIP Facility to $1,300,000.

The KERP and KERP Charge Should be Approved

38. The Applicants seek the Court's approval of the KERP and the granting of the KERP Charge ranking behind the Director's Charge in the amount of $200,000 as security for payments under the KERP.

39. This Court has jurisdiction to approve a KERP and a KERP Charge pursuant to its general powers granted under section 11 of the CCAA.[36]

40. Section 11 of the CCAA provides as follows:

> **General power of court**
> 11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.[37]

[34] Second Report, at para 47.
[35] Second Report, at para 48.
[36] s. 11, CCAA; *Re Cinram International*, 2012 ONSC 3767 at para 91.
[37] s. 11, CCAA.

41. The purpose of a KERP is to retain employees that are important to the management or operations of the debtor company in order to keep their skills within the company at a time when they are likely to look for other employment because of the company's financial distress.[38]

42. KERPs have been approved in numerous insolvency proceedings, particularly where the retention of certain employees was deemed critical to a successful restructuring.[39]

43. The Courts have held that the factors to be considered by the Court in approving a KERP will vary from case to case, but some factors will generally be present, including:

(a) is this employee important to the restructuring process?

(b) does the employee have specialized knowledge that cannot easily be replaced?

(c) was the KERP developed through a consultative process involving the monitor and other professionals? and

(d) does the monitor support the KERP and a charge?[40]

44. The Applicants submit that the KERP and the KERP Charge are appropriate and reasonable in these circumstances, and ought to be granted for the following reasons:

(a) The CEO and CFO are key management employees and are critical to these CCAA Proceedings as they have specialized knowledge and familiarity with the Applicants' business and operations, and significant experience and expertise that

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[38] *Re Grant Forest Products Inc.*, 57 CBR (5th) 128, at para 8.
[39] *Walter Energy Canada Holdings, Inc, Re*, 2016 BCSC 107 at para 57.
[40] *Walter Energy Canada Holdings, Inc, Re*, 2016 BCSC 107 at para 58.

cannot be easily replaced during the CCAA Proceedings. Given the highly regulated nature of the Cannabis industry, leadership and involvement of Management, it would be challenging for the Applicants to easily replace Management or operate the business;[41]

(b) the KERP (including the timing of the retention payments thereunder) was developed by the Applicants with the involvement, oversight, and support of the Monitor.[42] The KERP design is fair and contains safeguards, including Management is required to remain employed until the Closing in order to receive one of their KERP payments.[43] After the initial $30,000 payment is made to each member of Management, the maximum amount that could be paid under the KERP is in the aggregate sum of $200,000.[44]

(c) The KERP is similar to the plan contained in the Accommodation Agreement, which was agreed to previously by the Lenders. The additional payment is the result of negotiations with the Lenders, with the consultation of the Monitor, and is based on Management's continued efforts to operate and manage the Safari Flower Group from the period of November 2023 (the anticipated closing of the Sale Process) through the Extended Stay Period (the intended date upon which the Safari Flower

[41] Second Report, at para 42.
[42] Second Report, at paras 37, 38.
[43] Second Report, at para 38.
[44] Second Report, at para 43.

Group will seek sale approval of the Transaction and move towards closing), subject to prior Court approval;[45]

(d) the Monitor and DIP Lender are supportive of the KERP and the KERP Charge.[46] The Monitor is of a view that the KERP will incentivize the key employees to participate as long as their services are necessary to maximizing the recovery from these CCAA Proceedings.[47]

45. Accordingly, the Applicants submit that the KERP and KERP Charge are reasonable and appropriate in the circumstances and seek an Order approving the KERP and granting the KERP Charge.

The Consultant Agreement Should be Approved

46. The *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36 ("**CCAA**") is a flexible statute, and the court has jurisdiction to approve major transactions, including settlement agreements, during the CCAA proceedings.[48].

47. Section 11 of the CCAA affords courts broad jurisdiction to make orders and "fill in the gaps in legislation so as to give effect to the objects of the CCAA.[49]

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45 Third Simons Affidavit, at para 46.
46 Second Report, at para 41.
47 Second Report of the Monitor, at para. 45.
48 *Nortel Networks Corp., Re*, 2010 ONSC 1708 (Ont. S.C.J. [Commercial List]), paras 66, 70.
49 s. 11, CCAA. *Re Canadian Red Cross Society*, 1998 CanLII 14907 (ON SC) at para 43.

48. When considering whether to approve a settlement in the context of the CCAA the Court must be satisfied that:[50]

(a) the transaction is fair and reasonable;

(b) the transaction would be beneficial to the debtor and its stakeholders generally; and

(c) the settlement is consistent with the purpose and spirit of the CCAA.

49. Settlement agreements that facilitate a successful restructuring and resolve issues between stakeholders without recourse to the court are to be encouraged in CCAA proceedings. As noted by Fitzpatrick J. in *Great Basin*, "settlement agreements between the parties in these types of proceedings [i.e., CCAA proceedings] are very much encouraged where resolutions take place in the boardroom, as opposed to the courtroom. There is every reason to encourage such settlements, with approval and implementation subject to appropriate judicial oversight."[51]

50. Here, the Consultant Agreement should be approved for the following reasons:

(a) HAI, an experienced cannabis business broker and trusted advisor to the global cannabis sector, facilitated a robust Sale Process in order to maximize value for the Safari Flower Group and its stakeholders.[52]

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[50] *Nortel Networks Corporation (Re)*, 2018 ONSC 6257, 2018 CarswellOnt 18952 at para 24; *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078 (Ont. S.C.J. [Commercial List]) at para 49.
[51] [51] *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773 (CanLII), at para 15; *Nortel Networks Corp., Re*, 2010 ONSC 1708 (Ont. S.C.J. [Commercial List]); at para 70; *Fraser Papers Inc (Re)*, 2012 ONSC 4882 at para 54.
[52] Third Simons Affidavit, at para 7.

(b) The terms of the Consultant Agreement are fair and reasonable and were rigorously negotiated by the Applicants and the Lenders, on the one side, and HAI, on the other. Each side involves sophisticated parties dealing at arms' length;[53]

(c) The Sales Process implemented by HAI has advanced the restructuring of the Applicants;[54]

(d) The continued support that HAI will provide the Applicants, the Lenders, and the Monitor in these proceedings is a key element to achieving an Approved Transaction;[55] and

(e) The Monitor supports the Consultant Agreement and Consultant Charge and is of the view that compensation under the Consultant Agreement is reasonable and it is appropriate to compensate HAI.[56]

51. Accordingly, the Applicants submit that the Consultant Agreement and Consultant Charge are reasonable and appropriate in the circumstances and seek an Order approving same.

Approval of the Monitor's Reports and Corresponding Activities

52. The approval of reports of a monitor and corresponding activities as set out therein is a standard, ordinary course request in insolvency proceedings. Indeed, and as was noted *in Target*

[53] Second Report, at para 34.
[54] Second Report, at para 33.
[55] Second Report, at para 33.
[56] Second Report, at para 35.

Canada Co. (Re), this Honourable Court held that there are good policy and practical reasons to grant the approval of a monitor's reports and activities, including:

(a) allowing the monitor to move forward with next steps in the CCAA proceeding;

(b) allowing a monitor to bring its activities before the Court;

(c) allowing an opportunity for stakeholders' concerns to be addressed;

(d) enabling the Court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;

(e) providing protection for a monitor not otherwise provided by the CCAA; and

(f) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by a monitor.[57]

53. The principles set out above in *Target Canada* were recently reaffirmed by Morawetz CJ in *Laurentian University of Sudbury*, as well as in an endorsement by the Court.[58] If a monitor has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, this Honourable Court should approve its past activities and reports.

54. The Applicants continue to work with the Monitor during these CCAA proceedings and understand that the Monitor's activities were carried out in accordance with the orders appointing it, were consistent with its respective mandates, and were done in furtherance of the objective of

[57] *Target Canada Co. (Re)*, 2015 ONSC 7574, at para 12.
[58] *Laurentian University of Sudbury*, 2022 ONSC 5850 at para 17.

developing appropriate strategies for the Applicants. The Applicants submit that an order approving the activities of the Monitor to date should be granted.

PART IV - ORDER REQUESTED

55. On the basis of the reasons discussed above and in the Monitor's Report, the Safari Flower Group respectfully requests the granting of the Order in the form contained at Tab 3 of the Safari Flower Group's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of February, 2024.

Craig Mills and Gina Rhodes
MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Larry Ellis LSO#: 49313K
Tel: 416.595.8639
lellis@millerthomson.com

Craig A. Mills LSO#: 40947B
Tel: 416.595.8596
cmills@millerthomson.com

Gina Rhodes LSO#: 78849U
Tel: 416. 597.4321
grhodes@millerthomson.com

Lawyers for the Applicants

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Re Cinram International*, 2012 ONSC 3767
2. *Re Grant Forest Products Inc.*, 57 CBR (5th) 128
3. *Walter Energy Canada Holdings, Inc, Re*, 2016 BCSC 107
4. *Nortel Networks Corp., Re*, 2010 ONSC 1708 (Ont. S.C.J. [Commercial List])
5. *Re Canadian Red Cross Society*, 1998 CanLII 14907 (ON SC)
6. *Nortel Networks Corporation (Re)*, 2018 ONSC 6257, 2018 CarswellOnt 18952
7. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp*., 2013 ONSC 1078 (Ont. S.C.J. [Commercial List])
8. *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773 (CanLII)
9. *Nortel Networks Corporation (Re)*, 2010 ONSC 1708
10. *Fraser Papers Inc (Re)*, 2012 ONSC 4882 at para 54
11. *Target Canada Co. (Re*), 2015 ONSC 7574
12. *Laurentian University of Sudbury*, 2022 ONSC 5850

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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.

Interim financing

11.2 (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, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor’s report referred to in paragraph 23(1)(b), if any.

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

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

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at
Toronto

FACTUM OF THE APPLICANTS

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON   M5H 3S1

Larry Ellis LSO#: 49313K
Tel: 416.595.8639
lellis@millerthomson.com

Craig A. Mills LSO#: 40947B
Tel: 416.595.8596
cmills@millerthomson.com

Gina Rhodes LSO#: 78849U
Tel: 416. 597.4321
grhodes@millerthomson.com