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

April 15, 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 an Order (the "**Stay Extension and DIP Increase Order**") to, *inter alia*, (i) extend the stay period (the "**Stay Period**") in favour of the Applicants from April 19, 2024 to and including May 3, 2024; and (iii) 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**"), February 23, 2024 (the "**Third Simons Affidavit**"), March 21, 2023 (the

"**Fourth Simons Affidavit**"), April 15, 2024 (the "**Fifth Simons Affidavit**") and the Fourth Report of the Monitor dated April 15, 2024 (the "**Fourth Report**").

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 (the "**ARIO**") in favour of the Applicants under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**").Pursuant to the ARIO, the Court, among other things:[2]

(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] Fourth 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]

6. On February 27, 2024 the Court granted an Order (the "**February 27 Order**"), among other things:

(a) extending the Stay Period from February 29, 2024 to including March 29, 2024;

(b) increasing the authorized borrowings under the Amended DIP Term Sheet and secured by the DIP Lender's Charge to a maximum principal amount of $1,300,000 plus interest, fees, legal costs and any other amounts payable under the Amended DIP Term Sheet;

(c) approving the key employee retention plan ("**KERP**") and granting a priority charge in favour of Management entitled to the KERP, ranking behind the Directors' Charge, in the maximum amount of $200,000;

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[3] Third Simons Affidavit, at para 6.

(d) approving the settlement agreement dated February 22, 2024 among the Applicants, the Lenders and Hyde Advisory and Investments Inc. ("**HAI**") and the payments contemplated therein, and granting a priority charge in favour of HAI, ranking behind the DIP Lenders Charge and ahead of the Directors Charge, in the maximum amount of $180,000 plus applicable taxes; and

(e) approving the Monitor's First and Second Reports.[4]

7. On March 25, 2024, this Court granted an order (the "**March 25 Order**"), extending the Stay Period from March 29, 2024 to including April 19, 2024.

8. As such, Blacksail and the Applicants, in consultation with the Monitor, have been negotiating a share purchase agreement (the "**Share Purchase Agreement**"). The Share Purchase Agreement contemplates Blacksail purchasing the shares of Safari Flower through a reverse vesting order (the "**Transaction**"). The Share Purchase Agreement is still being negotiated, but the material terms have been agreed upon.[5]

9. Since the March 25 Order, the Applicants have been working closely with management of Blacksail to finalize the schedules to the Share Purchase Agreement, including with respect to the employees Blacksail intends to retain after the closing of the Transaction.[6]

10. On or around April 8, 2024, the Applicants were advised by counsel and the Monitor that Gray Jay has requested a further extension from Blacksail so they could continue negotiations

[4] Fourth Simons Affidavit, at para 6.
[5] Fifth Simons Affidavit, at para 10.
[6] Fifth Simons Affidavit, at para 12.

with Blacksail in respect to the assignment of debt and security. The Applicants understand that Blacksail has agreed and the Lenders are negotiating the terms.[7]

11. In the interim, a short extension of the Stay Period to May 3, 2024 is needed for the Lenders to come to an agreement, failing which the Applicants expect to seek Court approval of a Share Purchase Agreement with Blacksail as the ultimate purchaser of the Applicants' business.[8]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

12. The sole issue to be adjudicated by the Court upon this motion is should the Stay Period be extended?

The Proposed Extension of the Stay Period Should be Approved

13. The Stay Period currently expires on April 19, 2024. The Applicants seek an order extending the stay of proceedings to May 3, 2024.

14. 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.[9]

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[7] Fifth Simons Affidavit, at para 13.
[8] Fifth Simons Affidavit, at para 14.
[9] s 11.02(2)-(3), CCAA.

15. 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.

16. The cash flow forecast ending May 3, 2024, prepared by the Applicants, with the assistance of the Monitor, (the "**Cash Flow Forecast**"), demonstrates that the Applicants have sufficient cash during the proposed extended Stay Period to the sale approval motion of the Transaction.[10]

17. The Extended Stay Period is reasonable in light of the Cash Flow Forecast and provides time for: (i) the Lenders to determine who will be the purchaser, (ii) the finalizing of the Share Purchase Agreement, and (iii) providing the requisite notice to the service list to seek Court approval of same.[11]

18. 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;[12]

(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 Blacksail and thereafter seek Court approval;[13]

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[10] Fifth Simons Affidavit, at para 16; Fourth Report, at para 32.
[11] Fifth Simons Affidavit, at para 17.
[12] Fifth Simons Affidavit, at para 19; Fourth Report, at para 31.
[13] Fifth Simons Affidavit, at para 17.

(c) The extended Stay Period is reasonable in light of the Cash Flow Forecast;[14]

(d) The Monitor supports the extended Stay Period;[15] and

(e) No creditor will be materially prejudiced as a result of the extension.[16]

19. For the foregoing reasons, the Applicants seek an Order to extend the Stay Period to and including May 3, 2024.

PART IV - ORDER REQUESTED

20. 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 15th day of April, 2024.

[14] Fourth Report, at paras 32, 34
[15] Fourth Report, at para 34.
[16] Fifth Simons Affidavit, at para 18.

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

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Tel: 416.595.8596
cmills@millerthomson.com

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

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SCHEDULE "A"

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. — other than initial application

11.02(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.

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

Larry Ellis LSO#: 49313K
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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