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

May 3, 2024

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

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

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

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

Lawyers for the Applicants

TO THE SERVICE LIST

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

TABLE OF CONTENTS

Page No.

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

PART I - INTRODUCTION

1. The Applicants, 9869247 Canada Limited (d.b.a. Safari Flower Company) ("**Safari Flower**" or the "**Company**") and GN Ventures Ltd. ("**GN Ventures**", and collectively with Safari Flower, the "**Applicants**" or the "**Safari Flower Group**"), obtained relief from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") 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**").[1]

2. The Applicants seek approval of a Share Purchase Agreement (the "**Share Purchase Agreement**") among GN Ventures, Safari Flower and NE SPC II LP or its assignee (the "**Purchaser**") dated April 29, 2024 and transaction contemplated therein (the "**Transaction**") for the purchase and sale of all of the issued and outstanding shares of the Company (the "**Purchased

[1] Sixth Simons Affidavit, at para 5.

Shares"), pursuant to an Approval and Reverse Vesting Order (the "**Approval and Reverse Vesting Order**" or "**RVO**").

3. By purchasing the Purchased Shares of the Company under the RVO, if granted, the Purchaser will acquire the Company free and clear of all liabilities (except for Permitted Encumbrances), which will be vested into ResidualCo (as defined below).[2]

4. The Transaction contemplates the use of a reverse vesting order to preserve cannabis licences which are essential for the Company to continue operations as a going concern.[3]

5. The primary benefit of the proposed Transaction is the continuity of the Applicants' business operations and the elimination of the *pari passu* arrangement between the Lenders.[4] Completion of the Transaction will preserve Safari Flower's structure of operations, maintain the current licences, allow it to retain most employees, and preserve the customer and supply arrangements without interruption.[5]

6. Additional Relief sought on the Applicants' Motion includes, *inter alia*:

(a) an Approval and Reverse Vesting Order:

(i) approving the Share Purchase Agreement;

(ii) adding 1000877547 Ontario Inc. ("**ResidualCo**") as an Applicant to these CCAA proceedings;

(iii) approving releases ("**Releases**") in favour of the Released Parties; and

---

[2] Sixth Simons Affidavit, at para 26.
[3] Sixth Simons Affidavit, at para 25.
[4] Sixth Simons Affidavit, at para 35; Fifth Report, at para 43.
[5] Sixth Simons Affidavit, at para 35.

(iv) sealing the Confidential Exhibits (the "**Confidential Exhibits**") attached to the affidavit of David Hyde sworn April 29, 2024 (the "**Hyde Affidavit**");

(b) an Order (the "**Ancillary Order**"), *inter alia*:

(i) increasing the authorized borrowings under the Second Amended DIP Term Sheet between the Applicants and NE SPC II LP ("**Blacksail**" or the "**DIP Lender**") (the "**Second Amended DIP Term Sheet**") and the maximum amount of the DIP Lender's Charge (as defined in the ARIO); and

(ii) approving the Monitor's reports, conduct and activities; and

(iii) extending the stay period (the "**Stay Period**") to June 30, 2024.

PART II - SUMMARY OF FACTS

7. The facts supporting this motion are set out in the affidavits of Brigitte Simons sworn April 30, 2024 (the "**Sixth Simons Affidavit**") and May 1, 2024 (the "**Supplementary Sixth Simons Affidavit**"), the affidavit of David Hyde sworn April 29, 2024 (the "**Hyde Affidavit**") or the fifth report of the Monitor dated May 2, 2024 (the "**Fifth Report**").

8. Capitalized terms used herein and not defined shall have the meanings set out in the Sixth Simons Affidavit, the Hyde Affidavit, the Fifth Report, or the Share Purchase Agreement.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

9. The issues to be considered on this Motion are whether the Court should:

(a) approve the Share Purchase Agreement and Transaction by way of a RVO;

(b) approve the Releases in favour of the Released Parties;

(c) expand the Monitor's powers over ResidualCo;

(d) terminate the Directors' Charge, Consultant Charge and the KERP Charge in these CCAA Proceedings (collectively, the "**Charges**");

(e) seal the Confidential Exhibits to the Hyde Affidavit;

(f) approve the Second Amended DIP Term Sheet and DIP Lender's Charge;

(g) approve the Reports, conduct, and activities of the Monitor; and

(h) extend the stay of proceedings to June 30, 2024.

A. The Share Purchase Agreement, Transaction and Reverse Vesting Order Structure Should be Approved

10. The Applicants seek approval of the Share Purchase Agreement and the Transaction, which would effect the issuance of the Purchased Shares by the Company to be subscribed to and purchased by the Purchaser.[6] As a result, the Purchaser would acquire 100% of the Company, which would also include the Stevensville Facility.

11. A reverse vesting order generally involves a series of steps that result: (a) in the purchaser becoming the sole shareholder of the debtor company; (b) the debtor company retaining its assets including contracts, licenses and other attributes and (c) the liabilities not assumed by the purchaser being vested out and transferred, together with any excluded assets, into a newly incorporated entity referred to as "ResidualCo".[7]

12. This structure allows for the purchase price to stand in place of the assets in the "ResidualCo" to satisfy creditor claims in accordance with their pre-existing priority.

---

[6] Exhibit A to the Supplementary Sixth Simons Affidavit.
[7] *Re Just Energy Group Inc., et al.*, 2022 ONSC 6354 ["***Just Energy***"], at para 27.

13. It is settled law that Courts have the jurisdiction to approve a transaction involving a reverse vesting order under section 11 of the CCAA, which allows the Court to "make any order that it considers appropriate in the circumstances."[8]

14. With respect to reverse vesting orders specifically, Justice McEwen recently confirmed in *Just Energy* that "it is settled law that courts have jurisdiction to approve a transaction involving a reverse vesting order."[9]

(i) The Reverse Vesting Order is Appropriate in the Circumstances

15. In considering whether to approve a sale transaction structured as a reverse vesting order, it is appropriate to consider the following, as noted by Justice Penny in *Harte Gold Corp. (Re)*:

(a) the statutory basis for a reverse vesting order and whether a reverse vesting order is appropriate in the circumstances; and

(b) the factors outlined in s. 36(3) of the CCAA, making provision or adjustment, as appropriate, for the unique aspects of a reverse vesting transaction.[10]

16. Justice Penny described the following non-exhaustive factors to provide guidance in terms of when a reverse vesting structure can be appropriate:

(a) why the reverse vesting order is necessary in the case at bar;

(b) whether the reverse vesting structure produces an economic result at least as favourable as any other viable alternative;

---

[8] s. 11, CCAA.
[9] *Just Energy*, *supra* note 7, at para 31.
[10] *Harte Gold Corp. (Re)*, 2022 ONSC 653 (CanLII) ["***Harte Gold***"], at para 23; *see also* *Just Energy*, *supra* note 7, at paras 29-31.

(c) whether any stakeholder would be worse off under the reverse vesting order structure than they would have been under any other viable alternative; and

(d) whether the consideration being paid for the debtor's business reflects the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting order structure.[11]

17. It is well established that reverse vesting orders are generally appropriate in at least three types of circumstances:

(a) where the debtor operates in a highly-regulated environment in which its existing permits, licences or other rights are difficult or impossible to assign to a purchaser;

(b) where the debtor is party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and

(c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting transaction.[12]

18. Courts have approved the use of a reverse vesting structure to facilitate transactions involving cannabis companies.[13]

---

[11] *Harte Gold*, *supra* note 10, at para 38.
[12] *Just Energy*, *supra* note 7, at para 34; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 ["***Blackrock***"], at paras 114-116.
[13] *See* *Phoena Holdings Inc., et al*, Reverse Vesting Order granted March 21, 2024, Court File No.: CV-23-00697285-00CL (ONSC); *Fire & Flower*, Reverse Vesting Order granted August 29, 2023, Court File No.: CV-23-00700581-00CL (ONSC); *Aleafia Health Inc.*, Reverse Vesting Order granted October 30, 2023, Court File No.: CV-23-00703350-00CL (ONSC); *Trees Corporation*, Reverse Vesting Order granted April 5, 2024, Court File No.: CV-23-00711935-00CL (ONSC); *Eve & Co et al*, Reverse Vesting Order granted October 7, 2022, Court File No.: CV-22-00678884-00CL (ONSC).

19. The Applicants submit that the reverse vesting structure as contemplated is appropriate in the circumstances and meet the factors set out in *Harte Gold*.

(a) *The RVO is Necessary*: The proposed RVO is necessary due to the highly regulated nature of Safari Flower's cannabis business, the value of which is dependent on maintaining essential licenses from Health Canada and abroad.[14] The reverse vesting structure is the best (and only) viable way to preserve the licenses, by ensuring that Safari Flower continues operating its business, while allowing the Excluded Assets to be transferred to ResidualCo, and the Excluded Liabilities to be vested off title of the Purchased Shares and the assets retained by the Company, and transferred to ResidualCo.[15] A disruption in operations until a new license is obtained could increase risk and uncertainty, which would likely result in a decreased purchase price.[16]

(b) *There is No More Favourable Economic Alternative*: The Monitor has advised that it is not aware of any stakeholder that is worse off under the reverse vesting structure and there is no other viable alternative that would produce a more favourable result.[17]

(c) *The RVO Balances Stakeholder Interests*: The Lenders are the only parties with an economic interest in the assets of the Company.[18] The RVO has increased the

---

[14] Sixth Simons Affidavit, at para 25; Fifth Report, at paras 50, 51.
[15] Sixth Simons Affidavit, at para 26.
[16] Fifth Report, at para 51.
[17] Fifth Report, at para 52.
[18] Sixth Simons Affidavit, at para 32; Fifth Report, at para 45(b).

economic effect of the Transaction on its stakeholders as it offers significantly more value to the Lenders than the highest offer received in the Sale Process.[19]

(d) *The Consideration is Valid*: The consideration provided is directly attributable to the importance and value of the efficient transfer of the cannabis licenses issued by Health Canada, as well as maximizing overall value for the Applicants' stakeholders.[20] As at March 31, 2024, the combined total debt of the Lenders, including principal and accrued interest is approximately $33.8 million, excluding the DIP Loan.[21] The total value of the Transaction, including the Purchase Price and the Retained Liabilities (i.e. the Blacksail Debt) is significantly greater than the highest offer received from the Sale Process.[22]

(ii) The s. 36 Factors Supports the Transaction Generally

20. Additionally, section 36(3) of the CCAA enumerates a list of factors to be considered by the court when determining whether to approve a sale of assets outside the ordinary course of business. The non-exhaustive factors include whether: (a) the process leading to the proposed sale or disposition was reasonable in the circumstances; (b) the Monitor approved the process leading to the proposed sale or disposition; (c) the Monitor filed with the Court a report stating that, in its opinion, the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy; (d) the extent to which the creditors were consulted; (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and (f) the consideration to be received for the assets is reasonable and fair, taking into account their market value.[23]

---

[19] Sixth Simons Affidavit, at paras 32, 33.
[20] Fifth report, at para 51.
[21] Fifth Report, at para 41.
[22] Fifth Report, at para 41.
[23] ss. 36(1) and 36(3), CCAA.

21. These criteria are held not to be cumulative or exhaustive. Rather, the Court must look at the proposed transaction as a whole and decide if it is appropriate, fair and reasonable.[24] These criteria largely overlap with those enumerated in the decision *Royal Bank of Canada v Soundair Corp.*[25]

22. The Applicants submit that that the Transaction meets the criteria in Section 36(3) and the *Soundair* principles for the following reasons:

(a) the Transaction is reasonable in that it resulted from a comprehensive pre-filing Sale Process, whereby HAI's advertising efforts extended to potential purchasers across the cannabis industry worldwide, including Canada, the United States and Europe.[26] After the six-month Sale Process, the only bid received was rejected by the Lenders and was significantly less than the value contemplated in the Share Purchase Agreement;[27]

(b) the Monitor reviewed the Sale Process and determined that HAI carried out a broad canvassing of the market consistent with the principles of a sale process conducted in CCAA proceedings.[28] Potential purchasers were given a reasonable opportunity to investigate and consider a potential purchase of Safari Flower's assets;[29]

(c) the Lenders, being the only parties with an economic interest in the assets of the Company, support the Transaction;[30]

---

[24] *Bloom Lake, gpl (Arrangement relative à)*, 2015 QCCS 1920, at para 26.
[25] *Royal Bank v Soundair Corp.* (1991), 83 DLR (4th) 76 (Ont CA); *Canwest Global Communications Corp.*, 2010 ONSC 2870, at para 13.
[26] Hyde Affidavit, at para 18.
[27] Hyde Affidavit, at para 36; Fifth Report, at paras 20, 41.
[28] Fifth Report, at para 40.
[29] Fifth Report, at para 40.
[30] Sixth Simons Affidavit, at para 32; Fifth Report, at paras 42, 45(b).

(d) the Transaction represents the best option available to the Company's going-concern exit from these CCAA proceedings and benefits many of the stakeholders, including employees, customers and suppliers;[31]

(e) the consideration for the Purchased Shares is fair and reasonable as it provides the Lenders with the ability to recover their debt in the future, which would have been compromised if a bid was accepted in the Sale Process;[32]

(f) the Transaction is more beneficial than a sale or disposition in a bankruptcy;[33] and

(g) the Monitor recommends that the Court approve the Share Purchase Agreement and Transaction contemplated therein.[34]

23. The Applicants submit that the Transaction contemplated by the Share Purchase Agreement should be approved by this Honourable Court.

B. ResidualCo Should Be Added as an Applicant

24. To consummate the Transaction, ResidualCo must become an Applicant in these CCAA proceedings. Doing so will allow the Purchaser to acquire the Purchased Shares free and clear of all Encumbrances (except for Permitted Encumbrances notably, the security in respect of the Blacksail Debt), while allowing the Claims and Encumbrances of the Applicants' stakeholders to continue against ResidualCo.[35]

25. The CCAA applies to any debtor company so long as the total claims against the debtor company amount to more than $5,000,000. The CCAA defines a debtor company to include a

---

[31] Sixth Simons Affidavit, at para 35; Fifth Report, at para 45(g).
[32] Fifth Report, at paras, 42, 43, 45.
[33] Fifth Report, at para 45.
[34] Fifth Report, at para 46.
[35] Sixth Simons Affidavit, at para 30.

company that is bankrupt or insolvent.[36] In *Stelco Inc., Re*, Justice Farley found that it is fairly common practice for applicants, when referring to "insolvency" within the CCAA, to refer to the definition of "insolvent person" in the BIA. The definition under the BIA includes a person whose liabilities exceed its assets.[37]

26. Immediately after the Excluded Assets and Excluded Liabilities are transferred and vested in ResidualCo, the entity will be balance sheet insolvent with Claims against it in excess of $5,000,000.[38]

27. The Monitor supports adding ResidualCo as an Applicant to facilitate the carrying out of the remaining activities in the CCAA proceedings.[39]

C. The Releases Should Be Approved

28. The RVO contains third-party releases in favour of (1) Simons and Grobe, as directors of the Applicants; (2) all other directors, officers, legal counsel and advisors of the Applicants as at date of the commencement of the CCAA Proceedings; (3) the directors, officers, legal counsel and advisors of ResidualCo that were directors, officers, legal counsel and advisors of ResidualCo at the date of incorporation of ResidualCo; (4) the Monitor and its legal counsel; and (5) the current directors, officers, employees, legal counsel and advisors of HAI (collectively, the "**Released Parties**").

29. The factors relevant to the approval of releases in CCAA proceedings are whether: (a) the parties to be released from claims were necessary and essential to the restructuring of the debtor; (b) the claims to be released were rationally connected to the purpose of the plan and necessary

[36] ss. 2 and 3(1), CCAA.
[37] *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC), at para 40.
[38] Sixth Simons Affidavit, at para 38; Fifth Report, at para 36; Exhibit "H" to the First Simons Affidavit at p. 17;
[39] Fifth Report, at para 60.

for it; (c) the plan could succeed without the releases; (d) the parties being released were contributing to the plan; and (e) the release benefitted the debtors as well as the creditors generally.[40] It is not necessary for each of these factors to apply in order for the proposed release to be granted.[41]

30. The same test applies for granting third party releases in the context of Court-approved restructuring transactions, including reverse vesting orders. In fact, the Court in *Blackrock Metals* recently stated that it is "now commonplace for third-party releases, in favour of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction."[42]

31. The requested Releases are necessary to facilitate the release of the Court-ordered Directors' Charge and wind-down of these CCAA proceedings.[43]

32. The Released Parties have made material contributions to the CCAA Proceedings. Prior to and since the initiation of these CCAA Proceeding, the Released Parties have worked diligently towards, or otherwise facilitated, the sale of the Safari Flower Group's business. Such efforts have resulted in the Share Purchase Agreement.[44] Specifically, HAI, Simons, and Grobe were involved in facilitating and overseeing the Sale Process which pre-dated the commencement of the within CCAA proceedings. HAI, Simons and Grobe conducted the site visits in the Sale Process and created the electronic data room.[45]

---

[40] *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 54.
[41] *Re Green Relief Inc.*, 2020 ONSC 6837 ["***Green Relief***"], at para 28.
[42] *Just Energy*, supra note 7, at para 67; *Harte Gold*, *supra* note 10, at paras 78-86; *Re Clearbeach and Forbes*, 2021 ONSC 5564 at para 27(f); *Green Relief*, *supra* note 41, at paras 23, 27-29. *In the Matter of CannaPiece Group Inc. et. al*, Approval and Vesting Order, dated February 10, 2023, Toronto, Court File No. CV-22-00689631-00CL, at para 17; *Blackrock*, *supra* note 12, at para 128.
[43] Sixth Simons Affidavit, at para 42; Fifth Report, at para 56.
[44] Sixth Simons Affidavit, at para 40; Fifth Report, at paras 57, 58.
[45] Hyde Affidavit, at para 25; Sixth Simons Affidavit, at para 44.

33. The Releases are limited in scope in that HAI, Simons and Grobe are released from claims prior to these proceedings only with respect to the Sale Process.[46] The Releases for the other directors, officers, legal counsel and advisors of the Applicants and the Monitor are limited to the date of the commencement of the CCAA Proceedings or the date of incorporation of ResidualCo.[47]

34. The Releases explicitly do not release or discharge any claim that is not permitted to be released, pursuant to section 5.1(2) of the CCAA.[48]

35. The Releases will benefit the Safari Flower Group's creditors and other stakeholders by protecting the Safari Flower Group and ResidualCo against potential contribution and indemnity claims, minimizing potential claims, and thus maximizing the proceeds of the Transaction.[49]

36. The Releases are being requested with the support of the Lenders and the Monitor are reasonable and not overly broad in the circumstances.[50]

D. The Monitor's Powers Should Be Expanded Over ResidualCo

37. Section 23 of the CCAA sets out a non-exhaustive list of duties and functions of a court-appointed monitor under the CCAA, which may be augmented through the Court's discretion.[51]

38. Courts have granted similar expanded powers to a monitor in CCAA proceedings where an RVO has been granted.[52]

39. The Monitor has the requisite experience to oversee ResidualCo while achieving an expeditious path forward to the conclusion of these CCAA Proceedings.[53] It is appropriate to

---

[46] Sixth Simons Affidavit, at para 43; Fifth Report, at para 57.
[47] Sixth Simons Affidavit, at para 39.
[48] Sixth Simons Affidavit, at para 43; s. 5.1(2), CCAA.
[49] Sixth Simons Affidavit, at para 41.
[50] Sixth Simons Affidavit, at paras 45, 46; Fifth Report, at para 59.
[51] s. 23, CCAA.
[52] *Just Energy*, *supra* note 7, at paras 2, 24 and 101; *Harte Gold*, *supra* note 10, at paras 91-93.
[53] Sixth Simons Affidavit, at para 48; Fifth Report, at para 62.

expand the powers of the Monitor on the closing of the Transaction to facilitate the efficient administration and wind-down of these CCAA proceedings.[54]

E. The Directors' Charge, Consultant Charge and KERP Charge Should Be Terminated on Closing

40. The termination of the Directors' Charge, Consultant's Charge and KERP Charge, effective on the closing of the Transaction, as contemplated by the Approval and Reverse Vesting Order, is appropriate in the circumstances.

41. The Court's jurisdiction to terminate such Charges is found in its broad discretion under section 11 of the CCAA.[55]

42. The Releases being sought, as set out above, will release them from the Released Claims, which excludes claims that cannot be released pursuant to section 5.1(2) of the CCAA, effective on Closing.[56] As a result, subject to the Releases being granted, the Directors' Charge will no longer need to protect the Officers and Directors after the Closing.[57]

43. HAI has been paid the amount agreed-upon in the Consultant Agreement.[58] As such, the Consultant Charge is longer necessary and can be terminated at Closing.

44. Similarly, at the Closing, the Applicants will be paid the amounts under the KERP and pursuant to the February 27 Order. As part of the closing deliverables in section 7.4 of the Share Purchase Agreement, the Purchaser is required to provide proof that the amounts owed under the KERP are paid prior to Closing.[59] As a result, the KERP Charge is no longer necessary.[60]

---

[54] Sixth Simons Affidavit, at para 49; Fifth Report, para 61.
[55] s. 11, CCAA.
[56] Fifth Report, at para 55.
[57] Sixth Simons Affidavit, at para 51; Fifth Report, at para 56.
[58] Sixth Simons Affidavit, at para 52.
[59] Sixth Simons Affidavit, at para 53.
[60] Sixth Simons Affidavit, at para 53.

45. The termination of these Charges will allow the Monitor to make distributions without the need to reserve for the amounts secured by the Charges.[61]

F. The Confidential Exhibits Should Be Sealed

46. Pursuant to section 137(2) of the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record.[62]

47. The test to determine if a sealing order should be granted as set out in Sierra Club, as recast in Sherman Estate: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[63]

48. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an "important public interest" for purposes of this test.[64]

49. The Confidential Exhibits attached to the Hyde Affidavit include letters of intent and the final bid received from potential purchasers during the Sale Process.[65]

50. The Applicants respectfully submit that the foregoing test has been satisfied and the Monitor supports the sealing of the Confidential Exhibits.[66]

---

[61] Sixth Simons Affidavit, at para 54.
[62] *Courts of Justice Act*, R.S.O. 1990, c C.43, s. 137(2). *See also* *Target Canada Corp, Re*, 2015 ONSC 1487, ["***Target***"] at paras 28-30.
[63] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 ["***Sierra Club***"], at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 ["***Sherman Estate***"], at paras 38 and 43.
[64] *Sierra Club*, *supra* note 62, at para 55; *Sherman Estate*, *supra* note 62, at paras 41-43.
[65] Sixth Simons Affidavit, at para 55.
[66] Fifth Report, at para 27.

51. The salutary effects of the sealing order, which provides the Applicants with the ability to maximize value for the Purchased Shares at a future date, should the Transaction not close, far outweigh the deleterious effects of the public not knowing the amounts in the letters of intent and final bid from other potential purchasers until after the Transaction closes.

52. If the Transaction fails to close, it is likely that disclosure of the Purchase Price and details of prior offers to third parties would have a detrimental impact on the sale efforts of HAI and the Applicants and negatively impact the integrity of any future sale efforts for the Stevensville Facility and the Purchased Shares, including by setting a sale price ceiling.[67]

53. The Transaction is anticipated to close before June 30, 2024.[68]

54. The Lenders were involved in the Sale Process and were at all times aware of the letters of intent and final bid.[69] As such, the Confidential Exhibits have been shared with the Lenders and no other creditor will be materially prejudiced as a result of the sealing of same until Closing.

G. The Second Amended DIP Term Sheet Should Be Approved

55. 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.

56. In determining whether to approve an interim financing charge, courts consider the following non-exhaustive factors under section 11.2(4) of the CCAA:[70]

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

---

[67] Sixth Simons Affidavit, at para 56.
[68] Sixth Simons Affidavit, at para 31.
[69] Fifth Report, at para 41; Hyde Affidavit, at paras 32, 36.
[70] s. 11.2(4), CCAA.

(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.

57. The DIP Term Sheet and DIP Lender's Charge have already been approved by this Court in the ARIO and the February 27 Order for $1,000,000 and $1,300,000, respectively.[71]

58. 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 closing the Transaction during the proposed extended Stay Period, which will maximize value for all of the Applicants' stakeholders;[72]

---

[71] Sixth Simons Affidavit, at paras 6, 7.
[72] Fifth Report, at para 75.

(b) without the increase to the authorized borrowings under the DIP Facility, the Applicant' business is will run out of cash as shown by the Updated Cash Flow Forecast prior to the closing of the Transaction;[73]

(c) no creditor should be materially prejudiced as a result of the $1,300,000 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 do not object to the increase; and

(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 the necessary funding required during the proposed extended Stay Period.[74] The Monitor also supports the increase in the DIP Charge to align to the increase in DIP Facility.[75]

59. For the foregoing reasons, the Applicants seek an Order increasing the authorized borrowings under the DIP Facility to $2,600,000.

H. The Monitor's Reports, Conduct and Activities Should Be Approved

60. A Court has inherent jurisdiction to review and approve of the activities of a court-appointed officer. There are good policy and practical reasons for the Court to approve a monitor's activities, including, *inter alia*, (i) allowing a monitor to move forward with next steps in the CCAA proceeding; (ii) allowing a monitor to bring its activities before the Court; (iii) allowing an opportunity for stakeholders' concerns to be addressed; (iv) enabling the Court to satisfy itself that

---

[73] Appendix "C" to the Fifth Report.
[74] Fifth Report, at paras 75, 79.
[75] Fifth Report, at para 76.

a monitor's activities have been conducted in prudent and diligent manners; (v) providing protection for a monitor not otherwise provided by the CCAA; and (vi) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by a monitor.[76]

61. In this case, the Monitor's activities and conduct are described in detail in the Third Report dated March 21, 2024 (the "**Third Report**"), the Fourth Report dated April 15, 2024 (the "**Fourth Report**"), and the Fifth Report.

62. EY carried out its activities in good faith and in furtherance of its duties and powers pursuant to the Initial Order in these CCAA proceedings. The Monitor assisted the Applicants in negotiating and finalizing the Share Purchase Agreement as well as preparing the Updated Cash Flow Forecast (as defined below).[77]

63. The Applicants' submit the Monitor's Reports, activities and conduct should be approved.

I. The Stay Period Should Be Extended

64. A Court is empowered to extend the stay of proceedings granted to a debtor company under section 11.02(2) of the CCAA. The Court must consider whether: (a) the order sought is appropriate in the circumstances; and (b) the applicant has been acting in good faith and with due diligence.[78]

65. The Applicants seek to extend the Stay Period to June 30, 2024, and submit that the test to extend a stay of proceedings is met.

---

[76] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 2, 12, 22; *Laurentian University of Sudbury*, 2022 ONSC 5850 at para 17.
[77] Sixth Simons Affidavit, at paras 16, 64.
[78] s 11.02(2)-(3), CCAA.

66. The updated cash flow forecast for the period April 22, 2024 to June 30, 2024 (the "**Updated Cash Flow Forecast**") demonstrates that, with the proposed increase of the DIP financing, the Applicants have sufficient cash, during the extended Stay Period to the Closing.[79]

67. Throughout these proceedings, the Applicants have acted and continue to act in good faith and with due diligence to communicate with stakeholders and employees.[80]

68. The extended Stay Period is reasonable, necessary and appropriate in light of the Updated Cash Flow Forecast, and provides the Applicants with time needed to close the Transaction.[81]

69. The Applicants believe that no creditor will be materially prejudiced as a result of the extension,[82] and the Monitor supports the extension of the Stay Period.[83]

70. For the foregoing reasons, the Applicants seek an Order to extend the Stay Period to and including June 30, 2024.

PART IV - ORDER REQUESTED

71. For the foregoing reasons, the Safari Flower Group respectfully requests the granting of the Approval and Reverse Vesting Order and Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of May, 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

[79] Fifth Report, at para 79 and Appendix "B" to the Fifth Report.
[80] Sixth Simons Affidavit, at para 67; Fifth Report at para 78.
[81] Sixth Simons Affidavit, at para 65; Fifth Report, at para 78.
[82] Sixth Simons Affidavit, at para 66.
[83] Fifth Report, at para 80.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
2. *Harte Gold Corp. (Re)*, 2022 ONSC 65
3. *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828
4. *Phoena Holdings Inc., et al*, Reverse Vesting Order granted March 21, 2024, Court File No.: CV-23-00697285-00CL (ONSC)
5. *Fire & Flower*, Reverse Vesting Order granted August 29, 2023, Court File No.: CV-23-00700581-00CL (ONSC)
6. *Aleafia Health Inc*, Reverse Vesting Order granted October 30, 2023, Court File No.: CV-23-00703350-00CL (ONSC)
7. *Trees Corporation*, Reverse Vesting Order granted April 5, 2024, Court File No.: CV-23-00711935-00CL (ONSC)
8. *Eve & Co et al*, Reverse Vesting Order granted October 7, 2022, Court File No.: CV-22-00678884-00CL (ONSC)
9. *Bloom Lake, gpl (Arrangement relative à)*, 2015 QCCS 1920
10. *Royal Bank v Soundair Corp.* (1991), 83 DLR (4th) 76 (Ont CA)
11. *Canwest Global Communications Corp.*, 2010 ONSC 2870
12. *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC)
13. *Lydian International Limited (Re)*, 2020 ONSC 4006
14. *Re Green Relief Inc.*, 2020 ONSC 6837
15. *Re Clearbeach and Forbes*, 2021 ONSC 5564
16. *In the Matter of CannaPiece Group Inc. et. al*, Approval and Vesting Order, dated February 10, 2023, Toronto, Court File No. CV-22-00689631-00CL
17. *Target Canada Co. (Re)*, 2015 ONSC 7574
18. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41
19. *Sherman Estate v. Donovan*, 2021 SCC 25
20. *Laurentian University of Sudbury*, 2022 ONSC 2927
21. *Fraser Papers Inc (Re)*, 2012 ONSC 4882
22. *Target Canada Co. (Re)*, 2015 ONSC 7574
23. *Laurentian University of Sudbury*, 2022 ONSC 5850

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended**

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;

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

Definitions

2 (1) In this Act,

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.

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

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.

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.

Restriction on disposition of business assets

36(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

***Courts of Justice Act*, RSO 1990, c C.43, as amended**

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

Sealing Documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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

Applicants

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

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

Lawyers for the Applicants