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

June 25, 2024

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TO THE SERVICE LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 9869247 CANADA LIMITED (d.b.a. SAFARI FLOWER COMPANY) AND GN VENTURES LTD. (collectively, the "**Applicants**")

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(as at June 25, 2024)

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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**" or the "**Vendor**", 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 file this factum in support of a motion for relief under the CCAA to approve an Order (the "**Stay Extension and CCAA Termination Order**") to, *inter alia*,

[1] Seventh Simons Affidavit, at para 5.

(a) approve the Sixth Report of Ernst & Young Inc. ("**EY**"), in its capacity as monitor of the Applicants (the "**Monitor**") and the fees of the Monitor and the Monitor's legal counsel as described in the Sixth Report;

(b) terminate the CCAA proceedings effective upon the Monitor serving a certificate substantially in the form of Schedule A to the CCAA Termination Order (the "**Termination Certificate**") on the Service List in these CCAA proceedings (the "**CCAA Termination Time**");

(c) effective at the CCAA Termination Time:

  (i) terminate, release and discharge the Administration Charge and the DIP Lender's Charge

  (ii) discharge EY as Monitor of the Applicants;

  (iii) release EY and its legal counsel from the Released Claims (as defined below); and

(d) extend the stay of proceedings (the "**Stay Period**") from June 30, 2024 to the earlier of: (i) July 26, 2024; or (ii) the CCAA Termination Time.

3. The Purchaser and the Applicants, with the assistance of the Monitor, are diligently working towards closing the Transaction, which is anticipated to close on or around July 17, 2024.[2]

[2] Seventh Simons Affidavit, at paras 16, 26.

4. Upon the closing of the Transaction, the Monitor will have few remaining activities and upon completion, will serve the Termination Certificate on the service list to effect the termination of these CCAA proceedings.[3]

5. As part of the wind down of these CCAA proceedings, the Applicants submit that they, and the Monitor, have both complied with their obligations and carried out their responsibilities under the CCAA and the Orders granted by this Honourable Court.[4]

6. The termination of the CCAA Proceedings upon the service of the Termination Certificate on the Service List, and discharge of the Monitor and the Charges (as defined in the Initial Order) is appropriate and reasonable in the circumstances.[5]

PART II - SUMMARY OF FACTS

7. The facts supporting this motion are set out in the affidavit of Brigitte Simons sworn June 24, 2024 (the "**Seventh Simons Affidavit**") or the sixth report of the Monitor dated June 24, 2024 (the "**Sixth Report**").

8. Capitalized terms used herein and not defined shall have the meanings set out in the Seventh Simons Affidavit or the Sixth Report.

9. Since the Approval and Reverse Vesting Order and related relief was granted by this Court on May 7, 2024, Blacksail was determined to be the ultimate purchaser under the Share Purchase Agreement pursuant to the terms of the assignment agreement entered into between the Safari

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[3] Seventh Simons Affidavit, at para 28.
[4] Seventh Simons Affidavit, at para 29.
[5] Sixth Report, at paras 43.

Flower Group's secured lenders, Blacksail and Gray Jay Estates Inc. ("**Gray Jay**" and together with Blacksail, the "**Lenders**").[6]

10. Blacksail has incorporated 1000914263 Ontario Limited as its nominee Purchaser.[7]

11. The Applicants and the Purchaser have been diligently working to complete the Transaction, including by completing the schedules to the Share Purchase Agreement, which are largely complete.[8]

12. The Purchaser requires additional time to prepare for and structure the closing, including obtaining Health Canada approval.[9]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

13. The issues to be determined on this Motion are whether:

(a) The reports and conduct of the Monitor, and the fees of the Monitor and its legal counsel should be approved;

(b) The CCAA proceedings should be terminated;

(c) The Charges should be terminated;

(d) The Monitor should be discharged and released; and

(e) The stay of proceedings should be extended.

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[6] Seventh Simons Affidavit, at para 14.
[7] Seventh Simons Affidavit, at para 15.
[8] Seventh Simons Affidavit, at para 16.
[9] Seventh Simons Affidavit, at para 17.

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

A. The Monitor's Sixth Report, Conduct and Fees Should be Approved

14. As part of the Stay Extension and CCAA Termination Order, the Applicants are seeking the approval of the Monitor's activities as detailed in the Sixth Report, filed in these CCAA proceedings.

15. The Applicants further seek approval of (a) the fees and disbursements of the Monitor and counsel to the Monitor that have been incurred; and (b) the fees and disbursements of the Monitor and counsel to the Monitor that will be incurred in performance of the duties of the Monitor up to the termination of the CCAA proceedings.

16. This Court has previously approved the Monitor's prior reports, and the conduct and activities therein.[10]

17. In *Target Canada Co. (Re)*, the Court wrote that a request to approve a monitor's report "is not unusual" and that "there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process."[11]

18. In this case, the Monitor's activities and conduct as described in its reports should be approved. The Monitor carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO and all other Orders of the Court issued in the CCAA

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[10] *See* Exhibits "C" (at para 11) and "G" (at para 6) to the Seventh Simons Affidavit.
[11] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 2 and 22; *Laurentian University of Sudbury*, 2022 ONSC 5850 at para 17.

proceedings.[12] 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).[13]

19. Pursuant to paragraphs 27 and 28 of the ARIO, the Monitor and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges as part of the costs of the CCAA proceedings and shall pass their accounts from time to time.[14]

20. In approving the fees and disbursements of the Monitor and its counsel, the Court must consider whether those fees were "fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process."[15]

21. As the Court of Appeal has stated: "The focus of the fair and reasonable assessment should be on what was accomplished, and not on how much time it took".[16] The Court of Appeal has also provided guidance as to how to evaluate the quantum of requested fees, including assessing various factors including but not limited to (i) the time spent, (ii) the Monitor's knowledge, experience and skill, (iii) the responsibilities assumed; (iv) the results achieved, and (v) the cost of comparable services when performed in a prudent and economical manner.[17]

22. The Monitor and its counsel have maintained detailed records of their professional time and costs since the commencement of these CCAA proceedings as detailed in the Fee Affidavits.[18]

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[12] Sixth Report, at paras 18, 41.
[13] Seventh Simons Affidavit, at paras 16, 64.
[14] Seventh Simons Affidavit, at para 21 and Exhibit "A" to the Seventh Simons Affidavit.
[15] *Nortel Networks Corp. et al. (Re)*, 2017 ONSC 673 at para 13 (citing *Winalta Inc. (Re)*, 2011 ABQB 399 at para. 30).
[16] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at para 45.
[17] *Confectionately Yours Inc.*, 2002 CanLII 4505, at paras 42 – 54.
[18] Seventh Simons Affidavit, at para 20; Sixth Report, at paras 37, 38 and Appendix "D" and "E".

23. The Applicants submit that the fees and disbursements of the Monitor and its counsel, including future fees and disbursements, are reasonable and appropriate in the circumstances.[19]

24. The Monitor's and its counsel's professional rates are comparable to the rates charged by other professional firms in the Toronto market for the provision of similar services regarding commercial restructuring matters.[20]

25. In light of the foregoing, the Applicants support the approval of the fees and disbursements of the Monitor and its counsel, and such fees and disbursements should be approved.

B. The CCAA Should Be Terminated at the CCAA Termination Time

26. The Applicants submit that this Court should grant the proposed Stay Extension and CCAA Termination Order, which provides for the termination of the CCAA proceedings and the discharge of the Monitor upon the service of the Termination Certificate on the Service List attached as Schedule "A" to the Stay Extension and CCAA Termination Order.

27. This Court has the jurisdiction to terminate the CCAA Proceedings pursuant its broad jurisdiction under section 11 of the CCAA, which provides:

> 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.[21]

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[19] Seventh Simons Affidavit, at para 22; Sixth Report, at para 40.
[20] Sixth Report, at paras 37 and 38 and Appendix D (Affidavit of Karen Fung) and Appendix E (Affidavit of |Haddon Murray).
[21] s. 11, CCAA.

28. The Supreme Court of Canada has held that the best outcome [of CCAA proceedings] "is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the CCAA process terminates without reorganization being needed."[22]

29. The Applicants are seeking to terminate the CCAA proceedings upon the closing of the Transaction and once the remaining activities of the Monitor are complete.[23] Upon the closing, GN Ventures and ResidualCo will no longer have business operations or employees, and the Monitor will carry out the remaining activities.[24] GN Ventures has always been a holding company and the 100% parent of the Company.[25] Upon closing, GN Ventures will only be the parent of ResidualCo.

30. At such time, and at the CCAA Termination Time, the Applicants are seeking to terminate these CCAA proceedings as the objectives of these CCAA proceedings will have been accomplished and they will no longer require the benefit of the stay of proceedings and creditor protection.[26]

31. This Court has previously granted similar orders when there are no material steps left in the CCAA proceedings, and allowed for termination of a CCAA proceeding upon the filing of the Termination Certificate at a future date.[27]

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[22] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, at para 14.
[23] Sixth Report, at para 33.
[24] Seventh Simons Affidavit, at para 27.
[25] Sixth Report, at para 17.
[26] Seventh Simons Affidavit, at para 30.
[27] *Re Peraso Technologies Inc.* (28 October 2020), Toronto CV-20-00642010-00CL (Ont. Sup. Ct. [Comm. List] Order (Termination of CCAA Proceedings)) [*Peraso*]; *Re Chalice Brands Ltd.* (28 September 2023), Toronto CV-23-00699872-00CL (Ont. Sup. Ct. [Comm. List] CCAA Termination Order).

32. The Applicants and the Monitor have complied with their obligations and carried out their responsibilities under the CCAA and the Orders granted by the Court.[28]

33. The Monitor supports the termination of these CCAA Proceedings on the terms set forth in the Stay Extension and CCAA Termination Order.[29]

C. The Administration Charge and the DIP Lender's Charge in the ARIO Should be Terminated

34. The Court's jurisdiction to terminate such Charges is found in its broad discretion under section 11 of the CCAA.[30]

35. All amounts owing, which are secured by the Administration Charge will be paid prior to the CCAA Termination Time as the Transaction contemplates any amounts under the Administration Charge being paid upon closing.[31]

36. In addition, the DIP Lender's Charge will be terminated in respect of all Applicants, including ResidualCo, and the Property on closing of the Transaction.[32] The Purchaser is assuming the amounts owing under the DIP Term Sheet and secured by the DIP Lender's Charge as part of the Transaction.[33]

37. The Monitor supports the Applicants' request to terminate the Administration Charge upon the service of the Termination Certificate and to terminate the DIP Lender's Charge upon the filing of the Monitor's Certificate in connection with the Approval and Reverse Vesting Order.[34]

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[28] Seventh Simons Affidavit, at para 29.
[29] Sixth Report, at para 35.
[30] s. 11, CCAA.
[31] Share Purchase Agreement approved by this Court on May 6, 2024; Sixth Report, at para 33.
[32] Sixth Report, at para 33.
[33] Share Purchase Agreement approved by this Court on May 6, 2024.
[34] Sixth Report, at para 35.

38. Accordingly, he termination of the Administration Charge and the DIP Lender's Charge, as contemplated by the Stay Extension and CCAA Termination Order, is appropriate in the circumstances.

D. The Monitor Should Be Discharged and Released at the CCAA Termination Time

39. The Applicants seek to discharge Ernst & Young Inc. from its role as Monitor with respect to the Applicants upon the serving of the Termination Certificate on the Service List. The Applicants also seek a release in favour of the Monitor and its legal counsel, Gowlings WLG (Canada) LLP.

40. The Court's jurisdiction for making such an order is grounded in section 11 of the CCAA, and is common as part of termination orders similar to the proposed Order herein.[35]

41. As well, the Approval and Reverse Vesting Order has granted releases in favour of, among others, the Monitor and their legal counsel.[36]

42. It is now commonplace for third-party releases, in favor of parties to a restructuring, which includes their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.[37]

43. The Court must ask: (a) whether the parties to be released were necessary to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and

[35] s. 11, CCAA; *see also Peraso*.
[36] Seventh Simons Affidavit, at para 10(c).
[37] *Blackrock Metals Inc.*, 2022 QCCS 2828, at para 128 [*Blackrock*] (citing *Re Green Relief Inc.*, 2020 ONSC 6837, at paras 23-25 [*Green Relief*]); *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 54.

(e) whether the releases benefit the debtors as well as the creditors generally.[38] It is not necessary for each of these factors to apply in order for the proposed release to be granted.[39]

44. The Monitor and its counsel have made material contributions to this restructuring and have been essential to the restructuring.[40] Since the initiation of this CCAA proceeding, the Monitor and its counsel have worked diligently towards, and assisted the Applicants with a going concern restructuring of the Applicants. As stated by the Honourable Justice Koehnen in *Green Relief*, a CCAA proceeding "quite obviously cannot proceed without a Monitor, Monitor's counsel or company counsel."[41]

45. Looking forward, the Monitor and its counsel will facilitate the successful implementation of the Transaction and the wind down of these CCAA proceedings.

E. The Stay Should Be Extended Up to the CCAA Termination Time

46. The Stay Period currently expires on June 30, 2024 and the Applicants seek to extend the Stay Period to the earlier of: (i) July 26, 2024; or (ii) the CCAA Termination Time (the "**Extended Stay Period**").

47. 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.[42]

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[38] *Blackrock*, at para 130; *See also* *Green Relief*, at para 27.
[39] *Green Relief*, at para 28.
[40] Seventh Simons Affidavit, at para 10. *Green Relief*, at paras 54, 60.
[41] *Green Relief*, at para 50.
[42] s 11.02(2)-(3), CCAA.

48. The Applicants submit that the test to extend a stay of proceedings is met.

49. The updated cash flow forecast for the period June 17, 2024 to July 28, 2024, (the "**Updated Cash Flow Forecast**") demonstrates that the Applicants have sufficient cash, during the Extended Stay Period to the closing of the Transaction or the CCAA Termination Time.[43]

50. Throughout these proceedings, the Applicants have acted and continue to act in good faith and with due diligence to communicate with stakeholders and employees.[44]

51. 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.[45]

52. The Applicants believe that no creditor will be materially prejudiced as a result of the extension,[46] and the Monitor supports the extension of the Stay Period.[47]

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

PART IV - ORDER REQUESTED

54. For the foregoing reasons, the Safari Flower Group respectfully requests the granting of the Stay Extension and CCAA Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of June, 2024.

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[43] Seventh Simons Affidavit, at para 32; Sixth Report, at paras 27, 31 and Appendix "B".
[44] Seventh Simons Affidavit, at para 36; Sixth Report, at para 30.
[45] Seventh Simons Affidavit, at para 33; Sixth Report, at para 30.
[46] Seventh Simons Affidavit, at para 35.
[47] Sixth Report, at para 30.

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Target Canada Co. (Re)*, 2015 ONSC 7574.
2. *Laurentian University of Sudbury*, 2022 ONSC 5850.
3. *Nortel Networks Corp. et al. (Re)*, 2017 ONSC 673.
4. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.
5. *Confectionately Yours Inc.*, 2002 CanLII 4505.
6. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.
7. *Re Peraso Technologies Inc.* (28 October 2020), Toronto CV-20-00642010-00CL (Ont. Sup. Ct. [Comm. List] Order (Termination of CCAA Proceedings)).
8. *Re Chalice Brands Ltd.* (28 September 2023), Toronto CV-23-00699872-00CL (Ont. Sup. Ct. [Comm. List] CCAA Termination Order).
9. *Blackrock Metals Inc.*, 2022 QCCS 2828.
10. *Re Green Relief Inc.*, 2020 ONSC 6837.
11. *Lydian International Limited (Re)*, 2020 ONSC 4006.

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. — 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.

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Proceeding Commenced at Toronto

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