Court File No. CV-24-00722700-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

HILLMOUNT CAPITAL INC. and
HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.

Applicants

- and -

AGMEDICA BIOSCIENCE INC., WELLWORTH HEALTH CORP., 5047346 ONTARIO INC., 8050678 CANADA INC., and TAVIVAT NATURALS INC.

Respondents

FACTUM OF THE APPLICANTS

June 26, 2024

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

D.J. Miller (LSO# 34393P)
Email: djmiller@tgf.ca

Derek Harland (LSO# 79504N)
Email: dharland@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicants

TABLE OF CONTENTS

PART I - OVERVIEW **1**
PART II - SUMMARY OF FACTS **2**
The Debtors **2**
Loan Documents and Indebtedness to Hillmount **3**
The Real Property **4**
Defaults Under Mortgage **7**
Lack of Transparency by the Debtors **8**
Loss of Confidence in Management **9**
CCAA Proceeding **11**
Necessity for a CRO **12**
PART III - ISSUES **12**
PART IV - LAW & ARGUMENT **13**
ISSUE 1: RECEIVER IS MORE APPROPRIATE THAN CCAA PROCEEDING *13*
(a) Receiver is Just and Convenient 13
(i) No Confidence in Management *13*
(ii) The Debtors' Business Must be Stabilized *14*
(iii) No Other Creditor Opposes the Receivership *15*
(b) No Plan or Germ of a Plan 16
(c) The Comparison of Outcomes Heavily Favours Appointing a Receiver 17
ISSUE 2: THE CRO SHOULD BE APPOINTED *19*
ISSUE 3: THE CANNABIS EXCISE LICENSE RELIEF SHOULD BE GRANTED *20*
PART V - CONCLUSION **23**
SCHEDULE "A" LIST OF AUTHORITIES **24**
SCHEDULE "B" RELEVANT STATUTES **25**

PART I - OVERVIEW

1. This Court is faced with competing CCAA and receivership applications. On June 20, 2024, the Respondents, as well as certain affiliate companies (collectively, the "**CCAA Applicants**"), obtained an initial order pursuant to the CCAA (the "**Initial Order**"). The Initial Order was clear that it was being granted without prejudice to the rights of any party to argue at the comeback hearing that the CCAA proceeding should be terminated and a receiver should be appointed.

2. On the comeback hearing, the CCAA Applicants face the onus on a *de novo* basis to demonstrate to this Court that CCAA relief should be granted. The CCAA Applicants have failed to satisfy this onus.

3. Hillmount Capital Inc. and Hillmount Capital Mortgage Holdings Inc. (collectively, "**Hillmount**") is a secured creditor of the Respondents, including under a first-ranking mortgage on title to real property owned by one of the Respondents. The Respondents have committed numerous defaults under the mortgage and all amounts owing to Hillmount have been accelerated and are now due and payable.

4. Hillmount, along with other secured creditors, have lost confidence in the management of the CCAA Applicants to effectively manage their business and affairs. Among other things, the current management has failed to demonstrate its ability to raise capital or organize its affairs.

5. The restructuring proposed by the CCAA Applicants, including the Respondents, is doomed to fail. It does not have the support of key secured creditors and would only have the effect of further deteriorating the security position of Hillmount.

6. In these circumstances, the CCAA Applicants' request for further relief under the CCAA should be denied. Rather, it is just and convenient to appoint a receiver in respect of the Respondents, particularly where there is no confidence in management and no "germ" of a restructuring plan. Hillmount requests that Pricewaterhouse Coopers Inc. ("**PwC**") be appointed as receiver.

7. It is also just and convenient to appoint David Blair as the Chief Restructuring Advisor (the "**CRO**") of the Respondents. Mr. Blair holds the necessary security clearances and approvals to deal with the cannabis operation of the Respondents as it relates to the Excluded Assets, Excluded Undertakings and Excluded Business.

PART II - SUMMARY OF FACTS

8. The facts giving rise to this cross-application are set out in greater detail in the affidavit of Itzhak (Yitz) Levinson affirmed June 25, 2024 (the "**Levinson Affidavit**") and are summarized below. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Levinson Affidavit.

The Debtors

9. AgMedica Bioscience Inc. ("**AgMedica**") is a corporation based in Chatham-Kent, Ontario. Its primary business activities are the production, distribution and sale of cannabis products. AgMedica holds a cannabis license (the "**AgMedica Cannabis License**") from

Health Canada in respect of its indoor production and distribution facility (the "**Chatham Facility**").[1]

10. AgMedica wholly owns and controls: (i) 5047346 Ontario Inc. ("**5047 Ontario**"), who owns the real property that the Chatham Facility is located on, (ii) TavivaT Naturals Inc. ("**Tavivat**"), and (iii) 8050678 Canada Inc. ("**805 Canada**"). In addition, AgMedica also controls Wellworth Health Corporation ("**Wellworth**" and, together with AgMedica, 5047 Ontario, Tavivat and 805 Canada, the "**Debtors**" or "**Respondents**").[2]

11. The Debtors are insolvent and unable to meet their obligations as they generally come due.[3]

Loan Documents and Indebtedness to Hillmount

12. Pursuant to a secured loan agreement dated September 30, 2020 (the "**Loan Agreement**"), Hillmount made available to, among other parties, the Debtors (collectively, the "**Borrowers**") a loan in the original principal amount of $3,000,000 (the "**Loan**").[4]

13. As security for the present and future indebtedness and obligations of the Borrowers to Hillmount pursuant to the secured Loan Agreement, the Debtors agreed to grant to Hillmount, among other things, the following security:

    (a) a first-ranking mortgage on the real property municipally known as 510 and 566 Riverview Drive, Chatham-Kent, Ontario (the "**Real Property**") signed October 8, 2020 and registered in the Kent Land Titles Office for the Kent Land Registry

---

[1] Levinson Affidavit at para 11, Tab 2 of the Application Record of the Applicants dated June 25, 2024 (the "**Application Record**").
[2] Levinson Affidavit at paras 12-13, Tab 2 of the Application Record.
[3] Levinson Affidavit at para 16, Tab 2 of the Application Record.
[4] Levinson Affidavit at para 17 and Exhibit "B", Tab 2 of the Application Record.

Office (No. 24) on October 8, 2020 as Instrument No. CK178671 (the "**Mortgage**"); and

(b) a first-ranking security interest on all personal property and assets, including pursuant to a general security agreement dated October 5, 2020 (the "**GSA**").[5]

14. Pursuant to the Mortgage and the GSA, Hillmount is entitled to appoint, or seek the appointment of a receiver over the Property upon the Mortgage and the GSA becoming enforceable or upon the Loan becoming payable.[6]

15. The maturity date of the Mortgage was initially November 1, 2021 and has been subsequently extended to November 1, 2022 and currently to November 1, 2024. Pursuant to the Second Mortgage Renewal, the principal amount of the Loan was increased by $226,779.10, representing a protective advance for the payment of outstanding 2022 property tax arrears that had not been made by the Debtors.[7]

16. As at June 19, 2024, the Indebtedness under the Loan was $3,398.117.51, together with interest and costs (including, without limitation, legal fees and disbursements and all other costs incurred by Hillmount in connection with any Enforcement Action) that may be incurred or accrue to the date of payment in full.[8]

The Real Property

17. The Debtor 5047 Ontario is the registered owner of the Real Property.[9]

---

[5] Levinson Affidavit at para 18 and Exhibits "C" and "D", Tab 2 of the Application Record.
[6] Levinson Affidavit at para 19, Tab 2 of the Application Record.
[7] Levinson Affidavit at paras 22-23 and Exhibits "E" and "F", Tab 2 of the Application Record.
[8] Levinson Affidavit at para 25, Tab 2 of the Application Record.
[9] Levinson Affidavit at para 26 and Exhibit "H", Tab 2 of the Application Record.

18. The Chatham Facility is located on the Real Property and consists of an approximately 215,000 square foot industrial building, approximately half of which is occupied by AgMedica. The remaining industrial space is leased by 5047 Ontario to third-party tenants, however, there remains significant vacant space.[10]

19. AgMedica has used the Chatham Facility as a cannabis growing facility pursuant to various Canadian and international cannabis licenses and certificates.[11]

20. In addition to the Mortgage registered on title, there is a second mortgage registered on title to the Real Property. On November 1, 2020, AgMedica entered into a mortgage commitment with 2596690 Ontario Inc. ("**AgriRoots**") in the principal amount of $7 million, which was subsequently increased to the principal amount of $12.1 million (the "**AgriRoots Mortgage**"). AgriRoots' charge over the Real Property now secures up to the principal amount of $16 million, which ranks behind the Mortgage in favour of Hillmount.[12]

21. On October 8, 2020, Hillmount, AgriRoots and the Debtors entered into a subordination agreement (the "**Subordination Agreement**") whereby, among other things, AgriRoots agreed to subordinate and postpone the AgriRoots Mortgage and all security held by AgriRoots to the Mortgage and all security held by Hillmount.[13]

22. The Subordination Agreement also addresses the agreement of the parties with respect to rights of realization and enforcement for so long as amounts owing to Hillmount remain

---

[10] Levinson Affidavit at para 28, Tab 2 of the Application Record.
[11] Levinson Affidavit at para 29, Tab 2 of the Application Record.
[12] Levinson Affidavit at para 30, Tab 2 of the Application Record.
[13] Levinson Affidavit at para 31 and Exhibit "J", Tab 2 of the Application Record.

unpaid. In particular, the Subordination Agreement negotiated by Hillmount (as Prior Lender) and AgriRoots (as Subordinate Lender) included terms to ensure that in any insolvency proceeding affecting the Debtors or in any Enforcement Action (as defined in the Subordination Agreement), AgriRoots would not "take, cause or permit or support any other person to take on its behalf any steps or actions whatsoever" whereby the rights of Hillmount (including as to any Enforcement Action it may initiate) are delayed, defeated, impaired or diminished in any way.[14]

23. AgriRoots further agreed that it would not challenge, object to, compete with or impede in any manner any Enforcement Action commenced or taken by Hillmount against or in respect of all or any part of the Collateral (as defined in the Subordination Agreement). "Enforcement Action", as defined under the Subordination Agreement, specifically includes an application by Hillmount seeking to have a receiver appointed by the Court.[15]

24. The Subordination Agreement further provides that during any insolvency proceeding affecting the Debtors or the Collateral, AgriRoots:

(a) irrevocably constitutes and appoints Hillmount as the true and lawful attorney of AgriRoots to take steps in the insolvency proceedings in the name of AgriRoots in respect of the subordinate indebtedness; and

(b) shall not seek any other relief in respect of the Debtors without the prior written consent of Hillmount.[16]

---

[14] Levinson Affidavit at para 32, Tab 2 of the Application Record.
[15] Levinson Affidavit at para 33, Tab 2 of the Application Record.
[16] Levinson Affidavit at para 34, Tab 2 of the Application Record.

Defaults Under Mortgage

25. The Debtors have committed numerous defaults under the Loan Agreement and the Mortgage. In addition to the Debtor's insolvency, these defaults include, but are not limited to (the "**Defaults**"):

    (a) failing to make payments to Hillmount as required under the Loan Agreement and the Mortgage, with arrears in the amount of $44,390.13 as of June 11, 2024;

    (b) failing to pay property taxes as required under the Loan Agreement and the Mortgage, resulting in property tax arrears of $355,100.40 in respect of the Real Property; and

    (c) failing to remit all statutory payments including source deductions, as and when due, as required under the Loan Agreement and the Mortgage, thereby creating an encumbrance on the Debtors' property.[17]

26. As a result of the Defaults, Hillmount delivered demand letters on June 11, 2024, June 18, 2024 and June 19, 2024 (collectively, the "**Demand Letters**") and Notices of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* ("**BIA**") on June 18, 2024 in respect of the Mortgage and on June 19, 2024 in respect of the GSA (collectively, the "**NIES**").[18]

---

[17] Levinson Affidavit at para 36, Tab 2 of the Application Record.
[18] Levinson Affidavit at paras 38-42 and Exhibits "K", "L", "M", "N" and "O", Tab 2 of the Application Record.

Lack of Transparency by the Debtors

27. In addition to the Defaults, the Debtors have demonstrated a lack of transparency with Hillmount, and a failure to honour their obligations under the terms of the Mortgage and Loan Agreement. This has contributed to the loss of confidence in management.[19]

28. These concerns include, but are not limited to:

(i) Environmental Concerns: the Debtors have received environmental site assessment reports that have identified potentially contaminating activities on the Real Property and the Chatham Facility and the need for further work. Management of the Debtors has failed to address these issues.[20]

(ii) Misrepresentations Regarding Property Tax Arrears: The Debtors have repeatedly misrepresented to Hillmount the ability to pay property tax arrears that have accumulated on the Real Property. This includes promises by the Debtors: (a) in 2023 to pay all property tax arrears by the end of 2023, and (b) in 2024 that they had a payment plan agreed to with the Municipality of Chatham-Kent.[21]

(iii) Information Requests have been Ignored: Hillmount's requests for information from the Debtors regarding various liabilities, including whether any HST or other source deductions are owing, have been ignored.[22]

---

[19] Levinson Affidavit at para 43, Tab 2 of the Application Record.
[20] Levinson Affidavit at paras 44-49, Tab 2 of the Application Record.
[21] Levinson Affidavit at para 50, Tab 2 of the Application Record.
[22] Levinson Affidavit at para 51, Tab 2 of the Application Record.

Loss of Confidence in Management

29. In addition to the Debtors' lack of transparency and misrepresentations, Hillmount has no faith in the ability of management to effectively operate the business of the Debtors and manage their obligations. This includes the cease-trade order that was issued by the Ontario Securities Commission on August 8, 2023 (the "**Cease-Trade Order**"), which remains in place.[23]

30. The Cease-Trade Order resulted from the CCAA Applicants' failure to complete financial statements and has had the effect of preventing the CCAA Applicants from being able to raise capital either through debt or equity financing.[24]

31. Further, the Debtors' corporate group has a history of insolvency proceedings, including an earlier CCAA application brought by AgMedica in 2019 and a receivership in respect of certain of Atlas Global Brand Inc.'s Alberta subsidiaries (the "**Atlas Alberta Subsidiaries**") in 2023.[25]

32. The CCAA Applicants have not offered any evidence to support the ability of management to manage the financial affairs of the companies or provide any credible basis for a plan for a restructuring.[26]

33. During the three and nine months ended December 31, 2023, the CCAA Applicants had net losses of $5,018,910 and $2,373,722, respectively. As at December 31, 2023, the

---

[23] Levinson Affidavit at para 52, Tab 2 of the Application Record.
[24] Levinson Affidavit at para 53, Tab 2 of the Application Record; Affidavit of Jason Cervi sworn June 19, 2024 (the "**Cervi Affidavit**") at para 117.
[25] Levinson Affidavit at para 54, Tab 2 of the Application Record.
[26] Levinson Affidavit at para 56, Tab 2 of the Application Record.

CCAA Applicants had a cumulative deficit of $18,881,703 and their current liabilities exceeded current assets by $26,079,900.[27]

34. Further, the CCAA Applicants' own draft cash flow projections provided to Hillmount do not demonstrate a sustainable business model, as their six month projection reflects net cash receipts and disbursements of ($2,735,678) by the end of December, 2024, which does not take into account the repayment of any DIP principal amount, payment of DIP fees or interest, mortgage payments to Hillmount (or any other mortgagee), post-filing property taxes, and many other expenses that will necessarily be incurred.[28]

35. The CCAA Applicants rely on numerous uncertain and speculative facts to suggest a viable business moving forward, including:

(i) Relationship with Snoop Dogg: The CCAA Applicants suggest an existing relationship with Snoop Dogg provides optimism for increased revenue, however, these celebrity collaborations are common in the cannabis market and the relationship has already been in place for one year without any proven positive results.[29]

(ii) Excise Tax Reform: The CCAA Applicants cite high excise taxes as a material detriment to their ability to maintain a stable liquidity profile. However, there is no indication of legislative reform in the near future and,

---

[27] Levinson Affidavit at para 56, Tab 2 of the Application Record.
[28] Levinson Affidavit at para 57 and Exhibit "P", Tab 2 of the Application Record.
[29] Levinson Affidavit at para 59, Tab 2 of the Application Record; Cervi Affidavit at para 146.

even if that occurred, it would be industry-wide and not place the Debtors in a uniquely favourable position relative to their competitors.[30]

CCAA Proceeding

36. On June 20, 2024, the CCAA Applicants obtained the Initial Order. The CCAA Application materials were received by Hillmount late the prior day, on June 19, 2024.[31]

37. At the hearing in respect of the Initial Order, several secured creditors appeared in opposition to the granting of the Initial Order and the priority charges that were sought by the CCAA Applicants.[32]

38. The Initial Order provides that the terms of the order are expressly without prejudice to the rights of all parties to seek relief at the comeback hearing, including as it relates to any termination of the CCAA proceeding and the appointment of a receiver over the CCAA Applicants.[33]

39. After reviewing the materials provided to date in the CCAA Application in respect of the proposed restructuring of the CCAA Applicants and given Hillmount's lack of confidence in the Debtors' management, Hillmount does not support the continuation of the CCAA proceedings and seeks the appointment of a receiver over the Debtors.[34]

---

[30] Levinson Affidavit at para 60, Tab 2 of the Application Record; Cervi Affidavit at paras 122-139.
[31] Levinson Affidavit at para 61, Tab 2 of the Application Record.
[32] Levinson Affidavit at para 62, Tab 2 of the Application Record.
[33] Levinson Affidavit at para 63, Tab 2 of the Application Record.
[34] Levinson Affidavit at para 64, Tab 2 of the Application Record.

40. PwC has consented to act as the receiver of the Property (which does not include the Excluded Assets, Excluded Undertakings and Excluded Business relating to the cannabis license and business operations).[35]

Necessity for a CRO

41. The AgMedica Cannabis License expires in April 2025.[36] A holder of a license to produce cannabis must have one individual as the "responsible person" who is responsible for the activities conducted under the license. PwC does not hold this security clearance for purposes of the cannabis legislation.[37]

42. Accordingly, Hillmount seeks the appointment of David Blair as CRO. Mr. Blair holds the necessary approvals to preserve the applicable cannabis license and would be able to act as the "responsible person" under the relevant cannabis regulations and exercise decision-making authority relating to the Debtors' Excluded Assets, Excluded Undertakings and Excluded Business during the receivership.[38]

43. Mr. Blair consents to his appointment as CRO of the Debtors in respect of the Excluded Assets, Excluded Undertakings and Excluded Business.[39]

PART III - ISSUES

44. There are three issues to be determined:

---

[35] Levinson Affidavit at para 68 and Exhibit "Q", Tab 2 of the Application Record.
[36] Cervi Affidavit at para 24 and Exhibit "G".
[37] Levinson Affidavit at para 77, Tab 2 of the Application Record.
[38] Levinson Affidavit at para 77, Tab 2 of the Application Record.
[39] Levinson Affidavit at para 80, Tab 2 of the Application Record.

(a) Is the appointment of a receiver over the Debtors more appropriate than continuing the CCAA proceedings?

(b) Should the CRO be appointed?

(c) Should the relief in respect of AgMedica's cannabis excise license be granted?

PART IV - LAW & ARGUMENT

ISSUE 1: RECEIVER IS MORE APPROPRIATE THAN CCAA PROCEEDING

(a) Receiver is Just and Convenient

45. Pursuant to s. 101 of the *Courts of Justice Act*, a receiver may be appointed where it appears to the court to be just and convenient to do so. Courts have held that it is just and convenient to appoint a receiver where: (a) there is a loss of confidence in the debtors' management; (b) there is a need to stabilize the debtors' business; and (c) the positions and interests of other creditors militate in favour of appointing a receiver.[40] All such factors are present here.

(i) No Confidence in Management

46. Hillmount has no confidence in the CCAA Applicants' management. Management has misrepresented to Hillmount various statements relating to the Real Property and directly impacting Hillmount's security position. Further, the CCAA Applicants have not shown any ability to be financially stable historically and the CCAA Applicants' own financial projections provided to Hillmount do not demonstrate a sustainable business model. Even in the face of requests for the appointment of a receiver on the hearing of the Initial Order,

---

[40] *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953 [*The Clover*].

the CCAA Applicants have filed nothing since that time, seeking to address the concerns of creditors.

47. There is no reason to believe that management has the ability to turn around the CCAA Applicants' affairs in a manner that will benefit their stakeholders.

48. The materials filed by the CCAA Applicants in support of the CCAA Application clearly indicate that their restructuring "plan" is predicated on hopeful and unrealistic assumptions for future material changes, such as the Snoop Dogg collaboration proving fruitful, excise tax reform coming into effect (with an assumption that it would benefit the CCAA Applicants and not also, and equally, their competitors), and the situation in Israel improving.[41] None of these hopes have any certainty and are not the basis of a successful restructuring plan to present to creditors.

49. Other secured creditors have also indicated that they have lost confidence in management of the CCAA Applicants, including Stoke Canada Finance Corp., who has brought a separate receivership application in respect of Greenseal Cannabis Company Ltd.[42]

(ii) The Debtors' Business Must be Stabilized

50. In order to realize on the Real Property and the assets of the Debtors for the benefit of their stakeholders, the Debtors' business must be overseen by parties who have the necessary experience and confidence of stakeholders. The Debtors have failed to keep current critical payments such as property taxes and source deductions. These failures negatively impact

---

[41] Cervi Affidavit at paras 119-152.
[42] Levinson Affidavit at para 67, Tab 2 of the Application Record.

the security position of Hillmount and other secured creditors by encumbering the Property with priority claims.

51. Further, the engagement of the CRO will assist in the liquidation process of the Excluded Assets, Excluded Undertakings and Excluded Business to maximize proceeds available for distribution to the Debtors' creditors.

52. The circumstances of the Debtors' insolvency militate in favour of a receivership to provide the necessary stability during the realization process.

53. Hillmount, as first secured creditor, is prepared to support a court-appointed Receiver's necessary borrowings through Receiver's Certificates, but is not otherwise prepared to support further funding to the Debtors, or any priming charges that may be sought.[43]

(iii) No Other Creditor Opposes the Receivership

54. No other creditor has opposed Hillmount's receivership application. Hillmount is the Debtors' first-ranking creditor and is the first mortgagee on title to the Real Property.

55. Pursuant to the Subordination Agreement, Hillmount's application for the appointment of the Receiver and its opposition to the continuation of the CCAA proceeding is in respect of aggregate secured indebtedness totaling approximately $15.5 million and represents the sole voice legally entitled to take a position on behalf of the first and second priority secured creditors of the Debtors.[44]

---

[43] Levinson Affidavit at para 69, Tab 2 of the Application Record.
[44] Levinson Affidavit at para 35, Tab 2 of the Application Record.

(b) No Plan or Germ of a Plan

56. To qualify for CCAA protection, the CCAA Applicants must satisfy this Court that it has, among other things and at a bare minimum, a "germ of a plan" presenting a "reasonable possibility of restructuring."[45]

57. The CCAA Applicants do not have anything remotely resembling a restructuring plan. Among other things, the CCAA Applicants:

(a) have no proposed DIP lender;

(b) have no prospect of raising debt;

(c) have no prospect of raising equity;

(d) have not implemented any cost reduction measures, nor have any stated plan to do so; and

(e) rest all hopes for a future turnaround on speculative, unproven and uncertain external factors in a sector that is over-saturated with product with no evidence of that situation changing in the near term.

58. The absence of even a 'germ of a plan' militates against granting relief under the CCAA.[46]

59. Further, the CCAA Applicants' own draft cash flow projections provided to Hillmount prior to the commencement of the CCAA proceeding project negative net cash receipts and disbursements by the end of this year without any suggestion of maintaining mortgage

---

[45] *Royal Bank of Canada v CanWest Aerospace Inc*., 2023 BCSC 514 at para 15; *Callidus v Carcap*, 2012 ONSC 163 [*Callidus*] at para 58.
[46] *Callidus*, *ibid* at para 60.

payments to Hillmount or any other mortgagee or paying post-filing property taxes, much less the ability to repay any DIP principal, interest or fees.[47] The CCAA Applicants are, in effect, seeking to have this Court force Hillmount and other secured creditors to allow their security positions to deteriorate as the CCAA Applicants have priming charges attach to the Property and to incur substantial professional fees in a CCAA proceeding that is doomed to fail.

(c) The Comparison of Outcomes Heavily Favours Appointing a Receiver

60. In choosing between a receivership or a CCAA process, the Court must balance the interests of various stakeholder to determine which process is more appropriate.[48] It is trite law that, "in considering whether to appoint a receiver, a court should have regard to all the circumstances of the case but in particular to the nature of the property and the rights and interests of the affected parties in relation thereto".[49]

61. Overall, in the circumstances of this case, it is just and convenient in the circumstances to appoint PwC as receiver, given the conduct of the Debtors' management, the fact that the Debtors continue to experience operating losses and have not demonstrated any viable prospects for materially improving the financial affairs of the Debtors, and the interests of Hillmount, who has been prejudiced by the actions of the Debtors and will be further prejudiced if the CCAA proceeding is continued.

62. Other factors that weigh in favour of granting the receivership application include:

---

[47] Levinson Affidavit at para 57 and Exhibit "P", Tab 2 of the Application Record.
[48] *The Clover*, *supra* at para 60.
[49] *Romspen Investment Corporation v. 6711162 Canada Inc.*, 2014 ONSC 2781 at para 59.

(a) Payment to Secured Creditors: The Debtors have no restructuring plan whatsoever, let alone a plan that contemplates the ability to repay Hillmount.

(b) Speed of the process: The Debtors have no restructuring plan, they propose to continue to incur professional fees and priming charges without any discernible net benefit. A receivership will proceed more quickly and efficiently than a CCAA proceeding.

(c) Protection of all stakeholders: This factor favours a receivership. The Debtors have failed to demonstrate a viable business model and have no scintilla of a restructuring plan. Permitting priming charges to encumber the Property and allowing the Debtors to not pay their creditors post-filing protects none of their stakeholders.

(d) Cost: This factor favours a receivership. "CCAA proceedings are inherently expensive. They require regular court attendances, probably with greater frequency than a receivership does."[50]

(e) Value Maximization: The maximizing value objective of insolvency proceedings is served by maximizing the value of the Property and minimizing the costs of the estate. The CCAA Applicants propose to incur substantial costs in respect of the CCAA proceeding without any corresponding indication of value maximization. The secured creditors of the Debtors will be able to realize value more efficiently in a receivership.

---

[50] *The Clover*, *supra* at para 93.

63. PwC is a "licensed trustee" as such term is defined in the BIA and has extensive experience in Canadian insolvency proceedings, including cannabis companies. PwC consents to serve as receiver.[51]

ISSUE 2: THE CRO SHOULD BE APPOINTED

64. PwC, in its capacity as intended Receiver, and Mr. Blair have entered into an engagement agreement whereby PwC, solely in its capacity as the intended Receiver of the Debtors, has engaged Mr. Blair to act as the CRO of the Debtors in respect of the Excluded Assets, Excluded Undertakings and Excluded Business pursuant to the terms thereof, expressly subject to the receivership Order being granted by the Court.[52]

65. Hillmount seeks an order approving the engagement of the CRO pursuant to the terms set out in the CRO engagement agreement.

66. This Court has jurisdiction under section 243(1)(c) of the BIA to authorize a receiver to take any action that the court considers advisable.[53]

67. The engagement of the CRO by the proposed Receiver is necessary in this case. As the Chatham Facility involves the production of cannabis, a responsible person will be needed to oversee all aspects of the cannabis operations, the liquidation process and maintain the AgMedica Cannabis License. Mr. Blair has the requisite experience and credentials to serve that role effectively as CRO.

---

[51] Levinson Affidavit at para 68 and Exhibit "Q", Tab 2 of the Application Record.
[52] Levinson Affidavit at para 79 and Exhibit "S", Tab 2 of the Application Record.
[53] BIA, s 243(1)(c).

68. Mr. Blair holds the necessary approvals to preserve the applicable cannabis license and would be able to act as the "responsible person" under the relevant cannabis regulations and exercise decision-making authority relating to the Debtors' Excluded Assets, Excluded Undertakings and Excluded Business during the receivership.

69. The engagement of the CRO will assist in the liquidation process of the Excluded Assets, Excluded Undertakings and Excluded Business to maximize proceeds available for distribution to the Debtors' creditors.

70. PwC, the proposed Receiver, supports the appointment of Mr. Blair as CRO and Mr. Blair consents to act as CRO of the Debtors in respect of the Excluded Assets, Excluded Undertakings and Excluded Business.

ISSUE 3: THE CANNABIS EXCISE LICENSE RELIEF SHOULD BE GRANTED

71. The *Regulations Respecting Excise Licences and Registrations*, SOR/2003-11 under the *Excise Act, 2001*, S.C. 2002, c 22, provide that a company is not eligible for an excise licence if they are the subject of a receivership in respect of their debts.[54]

72. Accordingly, if the Receiver is appointed, absent further relief, the Debtors would not be able to sell cannabis as they require a cannabis excise license to do so. This would necessitate destroying the inventory, as occurred when Ernst & Young Inc. was appointed as Receiver of the Atlas Alberta Subsidiaries in 2023.

---

[54] *Regulations Respecting Excise Licences and Registrations*, SOR/2003-11 under the *Excise Act, 2001*, S.C. 2002, c 22, s 2.

73. As a result, Hillmount requests the following relief in the draft Receivership Order (the "**Status Quo Relief**"):

(a) the status quo in respect of AgMedica's cannabis excise license (the "**Excise License**") shall be preserved and maintained to April 4, 2024 or further order of the Court (the "**License Period**") and, to the extent the Excise License may expire during the License Period, the term of the License shall be deemed to be extended by a period equal to the License Period;

(b) the Canada Revenue Agency ("**CRA**") shall be stayed from taking any actions against AgMedica with respect to the cannabis stamps and cannabis inventory; and

(c) AgMedica shall be permitted to continue selling its cannabis inventory in the ordinary course and AgMedica shall pay any excise taxes that may be payable, which shall be paid in the ordinary course.

74. The Status Quo Relief is necessary and similar relief has been granted by the Courts in *Indiva Ltd., Re* (a CCAA proceeding), *Tantalus Labs Ltd. Re* (a BIA proposal proceeding), and *OGEN Ltd., Re*. (a receivership proceeding).[55]

75. In *Tantalus*, the CRA took the position that, as a result of the company filing a proposal under the BIA, it did not have "sufficient financial resources to conduct [its] business in a responsible manner", which is another criteria for license eligibility. The CRA intended to

---

[55] Amended and Restated Initial Order dated June 21, 2024 in the CCAA Proceeding of Indiva Ltd., Re et al. and Endorsement of Justice Osborne dated June 21, 2024 at paras 30-38; *Tantalus Labs Ltd., Re*, 2023 BCSC 1450 [*Tantalus*]; and Order dated November 17, 2023 in the receivership of *OGEN Ltd., Re*.

destroy all of the company's cannabis inventory and cannabis stamps, notwithstanding the stay of proceedings.[56]

76. In response, the debtor brought an application seeking a declaration that the excise license was extended, granting Tantalus the ability to sell its cannabis inventory with the approval of the Proposal Trustee, and estopping CRA from destroying the cannabis stamps and cannabis inventory.

77. The Court chose to exercise its discretion under section 183 of the BIA to grant the relief requested.[57] In exercising its discretion, the Court considered, among others, the following factors:

(a) CRA's actions were inexplicable as they were a substantial unsecured creditor of Tantalus and they, like every other creditor, would benefit from a disposition of the cannabis inventory;

(b) Tantalus would be able to pay any excise taxes arising as a result of any sales of cannabis inventory during the insolvency proceeding;

(c) allowing sales of the cannabis inventory would preserve some value for the benefit of all stakeholders, including the CRA; and

(d) the CRA would not be prejudiced by the interim relief granted.[58]

78. The Status Quo Relief is also appropriate in these circumstances. The draft Receivership Order authorizes AgMedica to sell cannabis inventory and mandates the payment of excise

---

[56] *Tantalus*, *ibid* at paras 14-17.
[57] BIA, s 183; *Tantalus*, *ibid* at para 27.
[58] *Tantalus*, *ibid* at paras 33-38.

taxes in the ordinary course. If the Status Quo Relief is granted, the CRO would be able to preserve value for the benefit of the Debtors' stakeholders by proceeding with an orderly liquidation of the cannabis inventory as operations are wound-down.

79. Accordingly, the Receiver submits that it is appropriate to grant the Status Quo Relief as set out in the draft Receivership Order.

PART V - CONCLUSION

80. For all of the foregoing reasons, Hillmount respectfully requests that this Court grant its receivership application and dismiss the relief requested by the CCAA Applicants.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of June, 2024.

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

D.J. Miller (LSO# 34393P)
Email: djmiller@tgf.ca

Derek Harland (LSO# 79504N)
Email: dharland@tgf.ca

Tel: (416) 304-1616

Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953

2. *Royal Bank of Canada v CanWest Aerospace Inc.*, 2023 BCSC 514

3. *Callidus v Carcap*, 2012 ONSC 163

4. *Romspen Investment Corporation v. 6711162 Canada Inc.*, 2014 ONSC 2781

5. *Tantalus Labs Ltd., Re*, 2023 BCSC 1450

6. *CCAA Proceeding of Indiva Ltd., Re, et al* – Amended and Restated Initial Order dated June 21, 2024 and Endorsement of Justice Osborne dated June 21, 2024

7. *In the Matter of the Receivership of OGEN Ltd., Re* – Order dated November 17, 2023

SCHEDULE "B"
RELEVANT STATUTES

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

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

***Bankruptcy and Insolvency Act,* R.S.C., 1985, C. B-3**

[…]

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

(b) [Repealed, 2001, c. 4, s. 33]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;

(e) in the Province of Prince Edward Island, the Supreme Court of the Province;

(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;

(g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and

(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

[…]

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

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

[…]

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.

***Regulations Respecting Excise Licences and Registrations*, SOR/2003-11 under the *Excise Act*, 2001, S.C. 2002, c 22**

[…]

Issuance of Licence

2 (1) In order to be issued a licence, a person must submit to the Minister a completed application, in the form authorized by the Minister, accompanied by a list of the premises in respect of which the application is being made.

(2) Subject to subsections (3) and (4), an applicant is eligible for a licence, other than a licence issued under section 22 of the Act, if

(a) they are not the subject of a receivership in respect of their debts;

(b) they have not, in the five years immediately before the date of the application,

(i) failed to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products, cannabis products or vaping products or any regulations made under it, or

(ii) acted to defraud Her Majesty;

(c) in the case of an applicant who is an individual, they

(i) are at least eighteen years of age, and

(ii) have sufficient financial resources to conduct their business in a responsible manner;

(d) in the case of an applicant that is a partnership or unincorporated body,

(i) where the partnership or unincorporated body is composed only of individuals, each of the individuals meets the requirement of subparagraph (c)(i) and the partnership or unincorporated body meets the requirement of subparagraph (c)(ii),

(ii) where the partnership or unincorporated body is composed only of corporations, each of the corporations meets the requirement of subparagraph (c)(ii), and

(iii) where the partnership or unincorporated body is composed of both individuals and corporations, each of the individuals meets the requirement of subparagraph (c)(i) and the partnership or unincorporated body and each of the corporations meet the requirement of subparagraph (c)(ii); and

(e) in the case of an applicant that is a corporation, the corporation meets the requirement of subparagraph (c)(ii).

(3) Subject to subsection (4), an applicant for a licence issued under section 19 of the Act authorizing them to possess in their excise warehouse non-duty-paid packaged alcohol must, in addition to meeting the requirements of subsection (2), where the province in which the warehouse is located has enacted legislation respecting the warehousing of packaged alcohol, be authorized by that province or its liquor authority to warehouse the alcohol at that warehouse.

(4) The additional requirement referred to in subsection (3) does not apply to an applicant who is an alcohol licensee that is producing or packaging alcohol in the province where the warehouse is located.

(5) [Repealed, SOR/2005-355, s. 1]

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

HILLMOUNT CAPITAL INC., et al. - and - **AGMEDICA BIOSCIENCE INC., et al.**

Applicants Respondents

Court File No. CV-24-00722700-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

FACTUM OF THE APPLICANTS

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)
Tel: (416) 304-0559
Email: djmiller@tgf.ca

Derek Harland (LSO #79504N**)**
Tel: (416) 304-1127
Email: dharland@tgf.ca

Lawyers for the Applicants