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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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**")

NOTICE OF MOTION
(Returnable August 19, 2024)

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**") (collectively the "**Safari Flower Group**" or "**Applicants**") will make a motion before the Honourable Mr. Justice Black on Monday, August 19, 2024 at 12:00 p.m., or as soon after that time as the motion can be heard, via Zoom videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- [ ] In writing under subrule 37.12.1(1) because it is
- [ ] In writing as an opposed motion under subrule 37.12.1(4);
- [ ] In person;
- [ ] By telephone conference;
- [X] By video conference.

at the following location:

Zoom link to be uploaded on Caselines.

THE MOTION IS FOR:

1. An Order (the "**Stay Extension Order**") substantially in the form attached as **Tab "3"** to the Applicants' Motion Record, *inter alia*:

   (a) abridging the time for service of the Notice of Motion and dispensing with further service;

   (b) extending the stay of proceedings (the "**Stay Period**") in favour of the Applicants (i) extending the stay of proceedings *nunc pro tunc* from August 9, 2024 up to and including the earlier of (1) the delivery of the Monitor's certificate (the "**Monitor's Certificate**") substantially in the form attached as Schedule "A" to the Approval and Reverse Vesting Order dated May 7, 2024 (the "**Approval and Reverse Vesting Order**"); and (2) September 27, 2024; and

   (c) approving the Eighth Report of Ernst & Young Inc. ("**EY**"), in its capacity as monitor of the Applicants (the "**Monitor**"), to be filed, (the "**Eighth Report**"), and the activities set out therein;

2. Such further and other relief as counsel may advise, and as this Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

3. Capitalized terms not otherwise defined herein have the meanings prescribed to them in the Amended and Restated Initial Order dated January 22, 2024 (the "**ARIO**"), in the affidavit of Dr. Leanne Brigitte Simons sworn August 15, 2024 (the "**Ninth Simons Affidavit**").

CCAA PROCEEDINGS

4. On January 12, 2024, Justice Osborne granted the Initial Order (the "**Initial Order**") in favour of the Applicants under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"). Pursuant to the Initial Order, among other things:

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

(b) a stay of proceedings was granted in favour of the Applicants for an initial Stay Period up to January 22, 2024;

(c) EY was appointed as Monitor of the Applicants in these CCAA Proceedings; and

(d) the following charges against the Property were granted, in the following priority rankings:

(i) First – Administration Charge (to the maximum amount of $150,000);

(ii) Second – Directors' Charge (to the maximum amount of $61,000).

5. On January 22, 2024, the Initial Order was amended and restated in the form of the ARIO, which included, among other things:

(a) extending the Stay Period from January 22, 2024 to and including February 29, 2024;

(b) increasing the quantum of the Administration Charge (to a maximum of $350,000), and the Director's Charge (to a maximum of $243,000);

(c) granting a DIP Lender's Charge up to maximum amount of $1,000,000 plus interest, fees, legal costs and any other amounts payable under the DIP Term Sheet between the Applicants and Blacksail (as defined below);

(d) granting the following priority rankings for the court-ordered charges over the Property:

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

(ii) Second – DIP Lender's Charge (to the maximum principal amount of $1,000,000 plus interest, fees, legal costs and any other amounts payable under the DIP Term Sheet); and

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

6. On February 27, 2024, this Court granted an order (the "**February 27 Order**"), *inter alia*:

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

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

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

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

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

7. On March 25, 2024 and April 16, 2024 this Court granted orders extending the Stay Period from March 29, 2024 to April 19, 2024 and then from April 19, 2024 to May 7, 2024, respectively, in order to facilitate negotiations of the Share Purchase Agreement.

8. On May 7, 2024, this Court granted an order (the "**Approval and Reverse Vesting Order**"), *inter alia*:

(a) approving the Share Purchase Agreement ("**Share Purchase Agreement**") among GN Ventures, Safari Flower and NE SPC II LP or its nominee or assignee (the "**Purchaser**", "**Blacksail**" or the "**DIP Lender**") dated April 29, 2024, for the purchase and sale of all of the issued and outstanding shares of the Company (the "**Purchased Shares**");

(b) upon closing of the transaction (the "**Transaction**") contemplated by the Share Purchase Agreement, adding 1000877547 Ontario Inc. ("**ResidualCo**") as an Applicant to these CCAA proceedings;

(c) approving releases ("**Releases**") in favour of (1) Dr. Leanne Brigitte Simons and Mr. Patrick Grobe as directors of the Applicants in connection with the Sale Process (as defined below) and as at the date of the commencement of the CCAA proceedings; (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 as at date of incorporation of ResidualCo; (4) EY, in its capacity as Monitor in these CCAA proceedings (the "**Monitor**") and its legal counsel; and (5) the current directors, officers, employees, legal counsel and advisors of Hyde Advisory & Investments Inc. ("**HAI**") in connection with the Sale Process (as defined below) and as at the date of the commencement of the CCAA proceedings;

(d) expanding the powers of the Monitor over ResidualCo; and

(e) terminating the Directors' Charge, Consultant's Charge and KERP Charge effective on the closing of the Transaction.

9. In addition, on May 7, 2024, this Court granted an Order (the "**May 7 Ancillary Order**"), *inter alia*:

(a) increasing the authorized borrowings under the Second Amended DIP Term Sheet between the Applicants and the DIP Lender and the maximum amount of the DIP Lender's Charge from the principal amount of $1,300,000 to $2,600,000 (plus interest, fees and expenses);

(b) extending the Stay Period from May 7, 2024 to and including June 30, 2024.

10. Since the Approval and Reverse Vesting Order and May 7 Ancillary Order, and pursuant to the assignment agreement dated April 25, 2024 (the "**Lenders' Assignment Agreement**") between the Safari Flower Group's secured lenders, Blacksail and Gray Jay Estates Inc. ("**Gray Jay**" and together with Blacksail, the "**Lenders**"), Blacksail was determined to be the ultimate purchaser under the Share Purchase Agreement.

11. Blacksail has incorporated 1000914263 Ontario Limited and has decided to assign the Share Purchase Agreement to that newly incorporated entity.

12. On June 26, 2024, this Court granted an order (the "**June Stay Extension and CCAA Termination Order**"), extending the Stay Period from June 30, 2024 to the earlier of (i) July 26, 2024 or (ii) the CCAA Termination Time (as defined therein), in order to facilitate the closing of the Transaction as well as approving the termination of the CCAA proceedings upon the filing of the termination certificate.

13. On July 26, 2024, this Court granted an order (the "**July Stay Extension Order**"), extending the Stay Period from July 26, 2024 to and including August 9, 2024, in order to facilitate the closing of the Transaction.

UPDATE ON CCAA PROCEEDINGS

Lender's Assignment Agreement and Expiry of the Stay Period

14. Since the July Stay Extension Order, the Applicants and the Purchaser have been diligently working towards closing the Transaction. Substantially all of the closing documents have been prepared and agreed upon by the parties.

15. The Share Purchase Agreement contemplates the Purchaser retaining all of the indebtedness and obligations of the Company owing to Blacksail, which includes Blacksail's purchase of the indebtedness owing by the Safari Flower Group to Gray Jay (the "**GJ Debt**") under the Lenders' Assignment Agreement. The completion of Blacksail's purchase of the GJ Debt under the Lenders' Assignment Agreement is a condition precedent to the closing of the Transaction.

16. However, prior to the expected closing date, the Applicants were advised that a dispute had arisen between the Lenders in respect to the amount payable to Gray Jay under the Lenders' Assignment Agreement. The Applicants understood that the Lenders were engaged in negotiations and were advised that the Lenders would not take any enforcement steps on the expiry of the Stay Period as it was anticipated that the dispute could be resolved. The Lenders are the senior creditors in these proceedings and are, collectively, the largest stakeholders.

17. Despite negotiations, the Applicants understand that the Lenders are currently at an impasse, which is preventing the closing of the Transaction.

18. On August 12, 2024, when it became apparent the Transaction was not going to close, the Applicants immediately contacted the Court. The Applicants require an extension of the Stay Period *nunc pro tunc*.

Health Canada Approval

19. The Applicants have continued to lead communications with Health Canada. Since the July Stay Extension Order, the Purchaser's directors have obtained the requisite security clearances from Health Canada. As such, all conditions under the Share Purchase Agreement with respect to Health Canada have been satisfied.

20. The only outstanding issue is the resolution of the amount to be paid to Gray Jay pursuant to the Lenders' Assignment Agreement. The Applicants understand that Blacksail intends to bring a concurrent motion to this Honourable Court to seek an order in relation to the Lenders' dispute.

RELIEF SOUGHT

Extension of the Stay Period

21. The Stay Period expired on August 9, 2024 and the Applicants seek to extend the Stay Period *nunc pro tunc* from August 9, 2024 to and including the earlier of: (i) the delivery of the Monitor's Certificate; and (ii) September 27, 2024 (the "**Extended Stay Period**").

22. The Applicants, with the assistance of the Monitor, prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**") for the period August 19, 2024 to September 29,

2024. The Updated Cash Flow Forecast will demonstrate that the Applicants have sufficient cash during the Extended Stay Period, without the need for additional DIP financing.

23. The Extended Stay Period is reasonable in light of the Updated Cash Flow Forecast, and provides the Applicants with time to close the Transaction should the Lenders either reach an agreement or obtain an order from the Court to close the Transaction.

24. The Applicants have acted and continue to act in good faith and with due diligence.

25. No creditors will suffer material prejudice as a result of the granting of the Extended Stay Period.

26. The Monitor and the Lenders support the relief sought by the Applicants in this Motion.

Approval of the Monitor's Eighth Report, Conduct, Activities and Fees

27. The Monitor's activities, conduct and decisions are set out in the Eighth Report, to be filed.

GENERAL

28. Sections 11 and 11.02 of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;

29. Rules 1.05, 2.03, 3.02, 16, 37, and 59.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

30. Sections 97, 100, 106 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

31. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

32. The Ninth Simons Affidavit, and the exhibits annexed thereto;

33. The Eighth Report of the Monitor, to be filed; and

34. Such further and other evidence as counsel may advise and as this Honourable Court may admit.

August 15, 2024

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Proceeding commenced at Toronto

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(RETURNABLE AUGUST 19, 2024)

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