Court File No. CV-24-00722386-00CL

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 ATLAS GLOBAL BRANDS INC., GREENSEAL CANNABIS COMPANY, LTD., GREENSEAL NURSERY, LTD., AGMEDICA BIOSCIENCE INC., WELLWORTH HEALTH CORP., 5047346 ONTARIO INC., 8050678 CANADA INC. AND TAVIVAT NATURALS INC.

Applicants

OUTLINE OF ORAL ARGUMENT

October 4, 2024

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PART I - OUTLINE OF ORAL ARGUMENT

1. Stoke's motion is unprecedented. Stoke seeks to appoint a chief restructuring officer ("**CRO**") (a) after the Applicants' SISP has resulted in a binding letter of intent (the "**GreenSeal Binding LOI**") that substantially improves Stoke's position, (b) in the absence of any evidence of prejudice, (c) over the objection of GreenSeal, and (d) after the Court adjourned applications by Stoke and YNCU for the appointment of a receiver over the GreenSeal business to give GreenSeal one shot at participating in the Applicants' SISP.

2. Appointing a CRO at this stage of the proceeding would serve no clear purpose in advancing the remainder of the GreenSeal restructuring or in protecting Stoke's interests. Instead, it would add a layer of complexity and expense to the process of concluding a restructuring transaction for GreenSeal, a process that is already being actively overseen by the Monitor. Indeed, the Monitor states in its Third Report that: "The Monitor's involvement in the SISP was much more robust than usual given the absence of a sales advisor" (paragraph 47, Caselines E184).

3. The Applicants have substantially advanced the objectives of the SISP, having selected a successful bid for the AgMedica side of the business and having obtained a binding letter of intent from Purchaser X (the "**GreenSeal Binding LOI**") for a going-concern restructuring of GreenSeal that is proposed to close on October 18, 2024, if the definitive documents are completed and Court approval is obtained. If the transaction cannot be concluded and soon, then the "one shot" Justice Penny granted GreenSeal is spent, and the next step is likely the appointment of a receiver over the GreenSeal business, as contemplated by Justice Penny on July 9, 2024.

SISP is Complete and the GreenSeal Binding LOI Materially Improves Stoke's Position

4. On the date of the Initial Order, Stoke was owed principal of $1,827,511.29, in respect of which Stoke owned $1,354,539.44 of receivables and had security behind YNCU for the remaining $515,168.26.

5. According to Stoke, after the anticipated CRA settlement, Stoke will be owed $732,652.52 (Stoke record B-3-70, para. 13). The GreenSeal Binding LOI substantially improves Stoke's position because it requires a payment of $400,000 to Stoke. In combination with Stoke's settlement with the CRA, the GreenSeal Binding LOI would see Stoke be repaid approximately 95% of its outstanding principal, including amounts secured behind YNCU.

No Evidence of Prejudice

6. The appointment of a Chief Restructuring Officer after the SISP has been completed and resulted in a GreenSeal Binding LOI that represent a material improvement in Stoke's position, would be peculiar and serve no purpose. Stoke seeks to justify the appointment by saying that "at this point the focus of GreenSeal's CCAA proceeding has shifted from the pursuit of a going-concern restructuring to the avoidance of prejudice to the secured creditors" (Stoke factum, para 20). There is no such shift. The GreenSeal Binding LOI is a going-concern restructuring and there is no admissible evidence of prejudice to the secured creditors.

7. The only evidence provided by Stoke about prejudice is the inadmissible opinion evidence of Stoke's CEO, who says: "I continue to be concerned that GreenSeal's accounts receivable are deteriorating and that cash is being used in operations that may benefit the Atlas entities, but not GreenSeal or its secured creditors" (para. 46, Goldstein affidavit). This opinion is contradicted by the evidence in Stoke's record and these proceedings:

(a) On Thursday, September 26, 2024, the Monitor's counsel reassured Stoke that there were sufficient accounts receivable to support the Stoke Receivables Charge in the TARIO, saying: "The Monitor notes that the most recent reporting package provided to Stoke and discussed with them earlier today...forecasts that GS A/R plus cash on hand will exceed the Adjusted Stoke Receivables Charge by $362,967 as of the end of this week, and by $351,168 by the end of next week." [B-3-153];

(b) Since early July, GreenSeal and the other Atlas Applicants have had separate cash flow forecasts. The "Atlas entities" are not benefiting from GreenSeal cash.

Appointment of CRO over GreenSeal's Objection

8. Stoke cites no authority that would support appointing a CRO over the objection of the debtor-in-possession at all, let alone after the Initial Order was granted, the SISP approved, and the SISP essentially completed. The only case cited by Stoke is *Pride Holdings Group Inc.*, 2024 ONSC 1830 at para. 44, which states:

> Prior to the filing of this application [for an Initial Order], the Pride Group, at the request of certain of its lenders, engaged [the CRO] to provide the services…to act as CRO. The Applicants seek an order approving the engagement of the CRO pursuant to the terms set out in the CRO Engagement Letter they entered into with RCB. The Applicants state that they require the CRO's expertise in order to successfully develop and implement a successful restructuring.

9. In contrast to the *Pride* case, this is not an application for an Initial Order. Further, GreenSeal does not require the assistance or expertise of Mr. Steinberg "to successfully develop and implement a successful restructuring", nor does Stoke suggest that Mr. Steinberg will do anything other than "advance any offer or transaction arising from the [SISP] conducted by GreenSeal" [draft CRO Order]. Finally, unlike in *Pride*, the proposed CRO's function will be to operate and manage the business of GreenSeal, as paragraph 4(a) of the draft CRO Order makes clear. In *Pride*, the CRO focused on the restructuring; in this case, the CRO will be a *de facto* receiver. There is no comparison.

Justice Penny Adjourned Stoke and YNCU's Receivership Applications

10. On July 9, 2024, Justice Penny was asked to decide whether to appoint a Receiver over GreenSeal as requested by YNCU and Stoke, or to permit GreenSeal to participate in the Applicants' SISP to fully canvass the market. Justice Penny adjourned the receivership

applications *sine die*, but left Stoke and YNCU with the ability to "renew their receivership applications if the CCAA proposal starts to go materially off the rails." (TARIO endorsement at para. 45, Caselines A3789).

11. In seeking the appointment of a CRO to "replace GreenSeal's management," (Stoke Notice of Motion at para. 25), Stoke is effectively attempting to install a receiver under the guise of appointing a CRO but without renewing their application to appoint a receiver. This approach appears inconsistent with and undermines the direction provided by Justice Penny on July 9, 2024. There is no evidence that the CCAA process is "off the rails". While the GreenSeal Binding LOI has been concluded outside the SISP deadline, it represents a positive, going-concern outcome for all stakeholders, including Stoke, that is proposed to close on October 18, 2024.

12. To the extent that Stoke continues to lack confidence in management, it must adduce admissible evidence supporting that position grounded in events since July 9, 2024. Justice Penny considered the evidence that pre-dated July 9, 2024, and recognized that "claims of loss of confidence are, on their own, insufficient to lend weight" to the factor of the debtor-creditor relationship in deciding whether to appoint a receiver.[1] Stoke has adduced no evidence of any event since July 9, 2024, that would support a claim for loss of confidence in management.

No Reason to Increase Cost Simply to Maintain Status Quo

13. It appears that the CRO's fee is (1) $10,000 per week, plus (2) $5,000 per additional person per week (the latter up to a maximum of $35,000 per week) plus (3) any disbursements. Based on the powers proposed for the CRO in the draft order, the CRO will operate the business and attempt to close the GreenSeal Binding LOI, precisely what GreenSeal's management is already doing.

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[1] TARIO Endorsement at para. 12. See also Factum of the Applicants (Motion for Amended and Restated Initial Order) dated June 27, 2024 at para. 46, citing *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 at para. 32.

Appointing a CRO and granting them a priority charge to maintain the status quo seems inefficient and adds costs, like those that weighed against receivership (TARIO Endorsement at paras. 16-18, 27, Caselines A3786, A3787).

14. In addition, the GreenSeal Binding LOI requires GreenSeal to "continue to operate in the ordinary course and in a manner consistent with past practice until Closing" and "not tak[e] any steps outside of the ordinary course of business to deplete…its cash balances, accounts receivable" and other assets. Appointing a CRO appears inconsistent with this condition and may jeopardize the GreenSeal Binding LOI.

15. Stoke's motion to appoint a CRO should be dismissed so that GreenSeal can pursue the going-concern opportunity promised by the GreenSeal Binding LOI.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of October, 2024.

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APPLICATION OF ATLAS GLOBAL BRANDS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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