SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-24-00722386-00CL **DATE:** 29-OCT-2024

NO. ON LIST: 3

TITLE OF PROCEEDING: ATLAS GLOBAL BRANDS INC et al v. The Attorney General of Canada et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE STEELE:

[1] The applicants seek two orders:

a. An approval and reverse vesting order in respect of the GreenSeal business; and

b. The Monitor's Enhanced Powers & CCAA Termination Order.

[2] The Monitor supports the relief sought by the applicants.

[3] No person opposes the relief sought by the applicants.

Background

[4] The Atlas Group of companies produces, distributes, and sells cannabis internationally and in Canada.

[5] GreenSeal is a licensed producer of cannabis, operating in Stratford.

[6] On June 20, 2024, the applicants were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to an initial order, which has been amended on three occasions.

[7] On July 26, 2024, the SISP Approval Order was granted, authorizing a sales and investment solicitation process for the sale of the applicants' property and business. This order preserved the option of marketing AgMedica and GreenSeal separately or together.

[8] Following the approval of the SISP, the Applicants and Monitor extensively canvassed the market, including (i) sending a teaser letter to over 100 potential bidders, (ii) receiving executed NDAs from 15 potential bidders and providing them virtual data room access; and (iii) conducting tours with five parties at the facilities in Chatham and Stratford.

[9] On October 4, 2024, the Court approved the sale of AgMedica (the "AgMedica ARVO").

Analysis

Should the Court approve the GreenSeal Transaction?

[10] The applicants seek Court approval of the proposed sale of GreenSeal and RVO.

[11] Under the proposed transaction, the purchaser will acquire all the shares of GreenSeal (after the unwanted liabilities are vested out and transferred to ResidualCo). Accordingly, the GreenSeal business would continue as a going concern. As a result, approximately 57 employees may preserve their employment, depending on the purchaser's go forward business structure. Many of GreenSeal's suppliers will be able to maintain their business relationships. The first and second secured creditor would be mostly paid out in full. However, the third ranking creditor, the CRA, would have its registered lien removed from the property and its claim in respect of unpaid excise taxes transferred to ResidualCo. The CRA does not oppose the proposed transaction.

[12] The proposed GreenSeal transaction includes an RVO. While an RVO is considered an exceptional order, the Court has jurisdiction to make such an order pursuant to section 11 of the CCAA: *Harte Gold Corp (Re)*, 2022 ONSC 653, at paras. 36-37. CCAA Courts have recognized that an RVO may be an appropriate means to achieve a going-concern outcome: *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 160, leave to appeal ref'd 2020 BCCA 364.

[13] In determining whether it is appropriate in the circumstances to grant an RVO, the Court will consider the factors in section 36 of the CCAA, which include:

a. Whether the process leading to the proposed disposition was reasonable in the circumstances;

b. Whether the monitor approved the process leading to the proposed disposition;

c. Whether the monitor filed with the court a report stating that in their opinion the disposition would be more beneficial to the creditors than a disposition under a bankruptcy;

d. The extent to which the creditors were consulted;

e. The effects of the proposed 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.

Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 6354, at paras. 31-32.

[14] In the context of an RVO, the Court will consider the following additional questions:

a. Why the RVO is necessary;

b. Whether the RVO structure produces an economic result at least as favourable as any other viable alternative;

c. Whether any stakeholder is worse off under the RVO structure than they would have been under any other viable alternative; and

d. Whether the consideration reflects the importance and value of the licenses and permits being preserved under the RVO structure.

Harte Gold at para. 38.

[15] Turning first to the section 36 CCAA criteria, I am satisfied that these criteria have been met:

a. The process leading to the proposed disposition was reasonable in the circumstances. The SISP was approved by the Court and was carried out in accordance with the SISP Approval Order. When the AgMedica ARVO was granted, the Court determined that the process was reasonable.

b. The Monitor approved and was involved with the process.

c. The Monitor filed with the Court a report stating that in their opinion the disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy for the reasons set out at para. 31 of the Monitor's Fourth Report.

d. The creditors were consulted. Both Stoke and YNCU consent to the proposed transaction. CRA does not object.

e. As noted above, the debt to Stoke and YNCU will be mostly satisfied under the proposed transaction. Although CRA's claims will not be satisfied, CRA would be no better off under a bankruptcy, and consequently has not objected to the proposed transaction. The proposed transaction results in a going concern business, preserving jobs and continued relationships with vendors.

f. The consideration is reasonable and fair taking into account the market value of the business. There was a robust SISP resulting in the proposed transaction/consideration. This is the best deal that was proposed following the robust SISP process. The applicants note that the appraisal for the business, significantly higher than the consideration, was completed in April 2023 and is dated given subsequent market activity. There have been 8 cannabis CCAA proceedings since that time, flooding the market.

[16] I now turn to the additional RVO questions.

[17] First, I am satisfied that the RVO is necessary. As noted by the applicants, Courts have approved RVOs where the debtor operated in a highly-regulated environment in which its existing permits, licenses, or other critical rights were difficult or impossible to assign to a purchaser: *Just Energy*, at para. 34. For cannabis companies in CCAA proceedings, RVOs have been used to transfer critical Health Canada and CRA licenses: *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934 at paras. 12, 20. The evidence in this case is that a key component of GreenSeal's value is the GreenSeal Cannabis Licence from Health Canada in respect of the Stratford Facility and the GreenSeal Excise Licence from CRA, which would be time consuming and costly, if not impossible, to transfer to a buyer under an asset sale. Further, the Monitor is of the view that the RVO structure is needed to maximize value.

[18] Second, the RVO structure produces an economic result that is better than the alternative, which is bankruptcy. Following a robust SISP, this was the only deal on the table. As noted above, the business continues as a going concern, preserving employee jobs, among other things. Stoke and YNCU will be mostly repaid.

[19] Third, no stakeholder is worse off under the RVO structure than they would have been under any other viable alternative. There are no other viable alternatives. The Monitor is of the view that the GreenSeal transaction would be more beneficial for creditors than a sale or disposition under a bankruptcy. As noted, CRA would be no better off under a bankruptcy.

[20] Finally, the consideration reflects the importance and value of the licences and permits being preserved under the RVO structure. The proposed transaction is the only viable alternative for a going concern sale of this business. The RVO structure preserves the licences, which is a key component of the deal.

[21] I am satisfied that the GreenSeal transaction and reverse vesting order should be approved.

Is it appropriate to vacate the excise tax lien?

[22] A condition precedent to closing the GreenSeal transaction is vacating the excise tax lien. In determining whether it is appropriate to do so, the Court considers the following factors:

a. The nature and strength of the interest that is proposed to be extinguished;

b. Whether the interest holder has consented to the vesting out of their interest; and

c. If the first two steps are ambiguous or inconclusive, a consideration of the equities to determine if a vesting order is appropriate in the circumstances:

Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508 at paras. 103, 109-110.

[23] As noted at para. 45 of the applicants' factum, the first two factors are inconclusive. First, the excise lien is "more akin to a fixed monetary interest that is attached to real or personal property subject to the sale (such as a mortgage or a lien for municipal taxes)" than to a fee simple interest that attracts a reasonable expectation that it cannot be involuntarily extinguished by payment in the ordinary course: *Third Eye*, at para. 105. Further, although the CRA did not agree to subordinate the excise tax lien to YNCU's mortgage, CRA had notice of the higher-ranking charge when it registered the lien. Accordingly, it is necessary to consider the equities to determine if a vesting order is appropriate in the circumstances. There is not enough equity in the property to discharge the Stoke and YNCU debt and the lower-ranking excise tax lien. Accordingly, the choice is between a going-concern sale where the excise tax lien is not satisfied or a bankruptcy where the excise tax lien is not satisfied. In such circumstances, the equities favour a going concern sale.

Are the Proposed Releases appropriate?

[24] The applicants seek post filing releases for the persons involved in the restructuring, limited to matters involving the CCAA proceedings and the GreenSeal Transaction, as set out at para. 51 of the applicants' factum.

[25] The applicants also seek releases in favour of Corey Hamilton and the current directors and officers of GreenSeal from claims in respect of the Purchased Entities, including claims for unpaid excise taxes, relating to the pre-filing period.

[26] In considering whether to grant a third-party release, 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

e. Whether the releases benefit the debtors as well as the creditors generally.

Arrangement relative à Blackrock Metals Inc., 2022 QCCS 2828, at para. 130.

[27] Each of the above factors does not have to be satisfied for the proposed release to be granted: *Re Green Relief Inc.*, 2020 ONSC 6837 at para. 28.

[28] The GreenSeal AVRO provides for releases that are substantially similar to those granted by the Court in the AgMedia RVO.

[29] None of the releases waive or bar any claim or liability arising out of any gross negligence or wilful misconduct on the part of the released directors and officers; that is not permitted to be released under section 5.1(2) of the CCAA; or that is an Insured Claim.

[30] For the reasons set out at paras. 54-56 of the applicants' factum, I am satisfied that it is appropriate to grant the releases sought.

Should the requested sealing order be granted?

[31] The applicants seek a sealing order in respect of the fifth confidential Cervi affidavit. This is to ensure that the unredacted version of the LOI, the unredacted subscription agreement and the appraisal of GreenSeal from April 2023 remain confidential until the transaction closes.

[32] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.

[33] It is common to temporarily seal commercially sensitive material when a transaction is pending under a court process.

[34] The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the "open court" principle. The Fifth Confidential Cervi Affidavit contains commercially sensitive information that could taint the SISP if disclosed. No stakeholder will be materially prejudiced by the sealing order, which applies to only a limited amount of information.

[35] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53, requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

[36] The applicants are directed to provide the sealed confidential document to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential document can be physically sealed.

Should the Court grant the Enhanced Monitor's Powers & CCAA Termination Order?

[37] Once the GreenSeal transaction closes, the remaining applicants must be wound down in an orderly manner. The Monitor seeks enhanced powers, including the exercise of any powers of the board of directors of Atlas Global Brands Inc., 8050678 Canada Inc., Tavivat Naturals Inc., Wellworth Health Corp and 2650751 Alberta Ltd. (the "Remaining Applicants") and the ability to cause these companies to perform such functions as the Monitor considers necessary to their winding-down and liquidation.

[38] Courts have expanded a monitor's powers where the debtor company has no remaining management or in order to conclude the CCAA proceedings by effecting an orderly wind-down of remaining operations of a debtor company: *DCL Corporation*, 2023 ONSC 4475 at para. 7, *Harte Gold*, at paras. 91-93.

[39] I am satisfied that it is appropriate in the circumstances to grant the Expansion of Monitor's Powers Order. This will give the Monitor the necessary authority to deal with the winding-down of the Remaining Applicants in an orderly and efficient manner.

[40] Once the winding-down of the Remaining Applicants is completed, the applicants seek an order that, upon the filing of the Monitor's Termination Certificate, the CCAA proceedings be terminated, EY be discharged as Monitor, the Charges be discharged, and the Monitor be authorized to file an assignment in bankruptcy in respect of the Remaining Applicants. As noted in para. 63 of the applicants' factum, it is well established that the Court may grant an order terminating proceedings under the CCAA on terms similar to those sought in the Enhanced Monitor's Powers & CCAA Termination Order.

[41] The proposed order also authorizes the Monitor to procedurally consolidate the bankruptcies for efficiency and cost-saving purposes.

[42] I am satisfied that the Enhanced Monitor's Powers & CCAA Termination Order is appropriate in the circumstances.

Should the Stay Order be extended?

[43] The applicants request an extension of the stay period to the CCAA Termination Time. The extension is sought to such that there will be sufficient time to permit the Monitor and the applicants to close the transactions and attend to administrative matters.

[44] Under section 11.02(2) of the CCAA the Court has the power to extend the stay period provided that circumstances exist that make the extension appropriate; and the court is satisfied that the applicant has acted and continues to act in good faith and with due diligence.

[45] I am satisfied that the stay extension should be approved. The current stay period expires on October 31, 2024. The applicants and the Monitor require additional time to close the transactions and deal with the Remaining Applicants, among other things. The applicants have acted and continue to act in good faith and with due diligence.

Approval of Activities and Fees

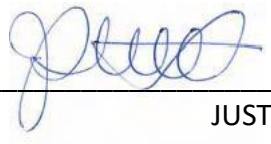
[46] The applicants seek Court approval of the activities of the Monitor as set out in the Fourth Report.

[47] The principles set out by the Court regarding the approval of the activities of a receiver or monitor, and their reports, are well established: *Target Canada Co. Re,* 2015 ONSC 7574 at paras. 2 and 12; *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para. 66.

[48] The activities undertaken by the Monitor as set out in the report are consistent with its mandate pursuant to the CCAA and the amended initial order.

[49] I am also satisfied that the fees and disbursements of the Monitor and its counsel are fair, reasonable and justified in the circumstances. I note that fee affidavits have been filed.

[50] Orders attached.



JUSTICE STEELE

Date: 29 October 2024