



No. S-244212
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c.57, AS AMENDED

AND

IN THE MATTER OF GOOD NATURED PRODUCTS INC., & THOSE ENTITIES LISTED
IN SCHEDULE "A"

PETITIONERS

NOTICE OF APPLICATION

Names of applicants: good natured Products Inc., & those entities listed in **Schedule "A"**
(collectively, the "**Petitioners**" or the "**Company**")

To: Service List, attached as **Schedule "B"**

TAKE NOTICE that an application will be made by the applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC on July 11, 2024, at 10:00 a.m. for the orders set out in Part 1 below.

The applicants estimate that the application will take 1 hour.

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The Petitioners seek an order substantially in the form attached as **Schedule "C"** (the "**DIP Approval Order**"), among other things:
 - (a) extending the Stay Period (as defined below) until and including October 25, 2024;
 - and

- (b) authorizing the Petitioners to enter into and borrow under the DIP Loan (as defined below) for the extended Stay Period, and granting a charge on the Property in respect of the DIP Loan for the benefit of Wells Fargo Capital Finance Corporation Canada (the “**DIP Lender**” or “**Wells Fargo**”).
- 2. The Petitioners seek an order substantially in the form attached as **Schedule “D”** (the “**SISP Approval Order**”), among other things:
 - (a) approving a sale and investment solicitation process (the “**SISP**”) and authorizing the Applicants to implement the SISP pursuant to its terms; and
 - (b) authorizing and directing the Applicants and Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as the monitor in these proceedings (in such capacity, the “**Monitor**”) to perform their respective obligations and do all things reasonably necessary to perform their obligations under the SISP.
- 3. The Petitioners seek a sealing order substantially in the form attached as Schedule “E” (the “**Sealing Order**”), sealing the Third Affidavit of Paul Antoniadis (“**Antoniadis Affidavit #3**”), to be filed.
- 4. The Applicants seek such other orders, directions, and declarations as counsel for the Applicants may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

- 5. Capitalized terms used but not otherwise defined in this notice of application shall have the meanings given to them in the First Affidavit of Paul Antoniadis made on June 27, 2024, the Order of this Honourable Court granted June 28, 2024 pursuant to the CCAA (the “**Initial Order**”), and the Order of this Honourable Court granted July 8, 2024 pursuant to the CCAA (the “**ARIO**”), as applicable.
- 6. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise stated.

A. Background

- 7. Pursuant to the Initial Order, this Court (among other things):

- (a) granted a stay of proceedings in respect of the Petitioners and the Property until July 8, 2024 (the “**Stay Period**”);
 - (b) granted the Administration Charge in the amount of \$100,000;
 - (c) granted the Directors’ Charge in the amount of \$400,000; and
 - (d) appointed A&M as Monitor within these CCAA proceedings.
8. Pursuant to the ARIO, this Court (among other things):
- (a) extended the Stay Period in respect of the Petitioners and the Property until July 11, 2024; and
 - (b) increased the amount granted by the Administration Charge to \$250,000.

B. Extension of the Stay Period

9. The Applicants seek a further extension of the Stay Period to and including October 25, 2024 (the “**Stay Extension**”).
10. The Stay Extension will allow the Applicants to continue to operate the GDNP Business as a going concern and implement the SISP, with the assistance and under the oversight of the Monitor, with a view to completing an investment or sale as contemplated by the SISP (a “**Transaction**”) for the benefit of the Company's stakeholders.
11. The Petitioners, in consultation with the Monitor, prepared a cash flow forecast for the weeks ending July 12, 2024 to November 1, 2024 (the “**Cash Flow Forecast**”). The Cash Flow Forecast confirms that, if the DIP Loan is approved, the Petitioners will have sufficient liquidity to continue going concern operations and implement the SISP during the extended Stay Period.
12. Following the granting of the Initial Order, the Petitioners have been working in good faith and with due diligence to:
- (a) stabilize the Company's business and operations;
 - (b) advise its stakeholders of these CCAA proceedings;

- (c) respond to creditor and stakeholder inquiries;
- (d) negotiate and finalize DIP financing, including extensive negotiations with Wells Fargo and its financial advisors; and
- (e) develop the proposed SISP in collaboration with the Monitor, including soliciting interest and negotiating with three prospective sales agents.

13. The proposed Stay Extension is supported by the Monitor and the DIP Lender.

C. Approving the DIP Loan and DIP Charge

- 14. Interim financing is needed to provide stability and fund operations and restructuring efforts, including these CCAA proceedings and implementation of the SISP and any Transaction arising from the SISP. To that end, in addition to the DIP term sheet secured prior to the Initial Order hearing, the Petitioners (in consultation with the Monitor) solicited further expressions of interest in providing DIP financing from Wells Fargo, one of the Company's secured lenders.
- 15. After considering its DIP financing options, the Petitioners and the Monitor entered into extensive DIP financing negotiations with Wells Fargo and its financial advisors. The Petitioners, as borrower, obtained a Ninth Amendment to Credit Agreement and Forbearance term sheet (the "**DIP Term Sheet**") with Wells Fargo, pursuant to which Wells Fargo has agreed to fund a super-priority loan (the "**DIP Loan**").
- 16. The DIP Loan is an amendment and forbearance to the Wells Fargo Facility, effectively providing the Petitioners with increased loan availability for the duration of the extended Stay Period. Based on the Cash Flow Forecast, the DIP Loan is expected to provide the Company with sufficient liquidity to continue its business operations during these CCAA proceedings while completing a Transaction for the benefit of the Company and its stakeholders.
- 17. The DIP Term Sheet contemplates the granting of a super-priority Court-ordered charge over the Property (the "**DIP Lender's Charge**") to secure the obligations of the Petitioners outstanding from time to time in connection with the DIP Loan.

18. The DIP Lender's Charge will secure all obligations owed by the Petitioners to Wells Fargo under the Wells Fargo Facility, as amended by the DIP Term Sheet, provided that the DIP Lender's Charge shall only secure the aggregate of the borrowings and obligations under the Wells Fargo Facility made on or after the execution of the DIP Term Sheet, and shall not secure any obligation that exists before the DIP Approval Order is granted.
19. Given the current financial circumstances of the Petitioners, Wells Fargo has indicated that it is not prepared to advance additional funds without the security of the DIP Lender's Charge, including ranking the DIP Lender's Charge second in priority against the Property (behind the Administration Charge), provided that the DIP Lender's charge is subordinate to the security of TD Bank and HSBC (now the Royal Bank of Canada ("**RBC**")) in respect of the Petitioners' Canadian real estate, as provided in the Third Amended and Restated Intercreditor Agreement amongst the Petitioners, Wells Fargo, TD Bank, HSBC (now RBC), and Export Development Canada, dated February 22, 2024.
20. In consultation with the Monitor, the Petitioners believe that the economic terms of the DIP Term Sheet are reasonable. The structure and terms of the DIP Term Sheet provide sufficient flexibility to the Petitioners to allow them to continue operations, and negotiate and close a Transaction following the conclusion of the SISP.

D. SISP

21. The Company worked throughout July 2023 to present, to identify a strategic transaction that would have avoided the need for CCAA proceedings. With the assistance of William Blair, a US investment bank and financial services provider, the Company undertook a comprehensive marketing process (the "**Pre-Filing Sale Process**"). The Pre-Filing Sale Process generated credible interest, but did not result in an actionable bid for any portion of the Petitioners before the Petitioners' liquidity issues necessitated these CCAA proceedings.
22. As a result, in order to pursue a going concern transaction for the benefit of the Petitioners' stakeholders during these CCAA proceedings, the Petitioners seek approval of the SISP, which has been developed in consultation with the Monitor and the DIP Lender.
23. The Petitioners, in consultation with the Monitor, solicited interest from three prospective sales agents to run the SISP. After considering its options and negotiation terms with the

various sales agents, the Company, in consultation with the Monitor, selected Capital West Partners as the proposed SISP sales agent.

24. The proposed SISP authorizes the Petitioners (with the assistance and under the oversight of the Monitor) to solicit binding bids from interested parties for executable transactions involving the business and/or assets of, or the equity interests in, the Company. The proposed SISP will commence no later than the granting of the SISP Approval Order.
25. A summary of the significant dates and processes within the proposed SISP is as follows:

| SISP Process | Deadline |
|---|---|
| SISP Approval Order granted | July 11, 2024 |
| SISP kick-off (teaser, dataroom, CIM etc) | July 18, 2024 |
| LOI deadline | August 22, 2024 |
| Phase 2 start | August 26, 2024 |
| Definitive bids deadline and pick successful bidder | September 12, 2024 |
| Purchase and Sale Agreement finalization | September 19, 2024 |
| Court approval | September 26, 2024 |
| Closing | October 11, 2024 (Outside date - October 25, 2024) |

Part 3: LEGAL BASIS

A. Stay Extension

26. On an extension other than an initial application, Section 11.02(2) and (3) of the CCAA gives this Court discretion to grant a stay of proceedings for any period that it considers necessary,

provided it is satisfied that such an extension is appropriate and that the debtor company has acted and continues to act in good faith and with due diligence. During the initial Stay Period, the Petitioners have acted and continue to act in good faith and with due diligence by engaging in extensive stakeholder outreach, and are working to advance these CCAA proceedings including through the negotiation and closing of DIP financing and the proposed SISP.

North American Tungsten Corp., Re, 2015 BCSC 1376 at para 25

27. The requested Stay Extension is appropriate and necessary to, among other things, enable the Petitioners to, if approved, implement the SISP and complete a Transaction. The Petitioners are seeking an extension of the Stay Period until November 1, 2024, to coincide with the outside date for completion of a Transaction under the SISP.

B. DIP Approval and Charge

28. As demonstrated by the Cash Flow Forecast, the Petitioners urgently requires additional financing to continue its operations. Additional financing is also required to facilitate restructuring efforts, including the contemplated SISP, which is being pursued to achieve the highest or otherwise best transaction in respect of the Petitioners and its Property in order to maximize value for all stakeholders.
29. The DIP Lender has agreed to provide the Petitioners with the DIP Loan pursuant to the terms of the DIP Term Sheet, which effectively provides the Petitioners with increased loan availability under the Wells Fargo Facility during the extended Stay Period.
30. Section 11.2 of the CCAA provides the Court with the express jurisdiction to approve the DIP Term Sheet and the DIP Lender's Charge.
31. Section 11.2(4) lists the factors Courts must consider, among other things, in deciding whether to approve interim financing and an associated charge:
- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;

- (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in Section 23(1)(b) of the CCAA, if any.
32. Pursuant to Section 11.2(5) of the CCAA, in order for the Court to approve any advances under the DIP Term Sheet during the extended Stay Period and to grant the DIP Lender's Charge, the Court must be satisfied that the terms of the DIP Loan are limited to what is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during that period.
33. The Petitioners submit that the application of these factors to the facts in this case support approval of the DIP Term Sheet and DIP Loan:
- (a) the DIP Loan is required to provide the Petitioners with the necessary liquidity to fund its business and restructuring efforts during these CCAA proceedings, including conduct of the proposed SISP and the consummation of a Transaction, and to preserve the value of the GDNP Business. Without the DIP Loan, the Petitioners will not be able to fund their business and restructuring efforts;
 - (b) the amount of the DIP Loan to be made available to the Petitioners pursuant to the ARIO is limited to what is necessary to maintain operations during the extended Stay Period;
 - (c) the Petitioners have been unable to obtain incremental financing outside of the CCAA proceedings, and the DIP Lender has required the security of a court-ordered priority charge under the CCAA before advancing the DIP Loan; and

- (d) the Monitor is of the view that the DIP Term Sheet and DIP Lender's Charge are appropriate and limited to what is reasonably necessary, during these CCAA proceedings.

C. SISP

- 34. It is well recognized that CCAA courts have jurisdiction to approve a sale process in relation to a debtor company's business and assets "to establish the boundaries of the playing field and act as a referee in the process", prior to the development (or even in the absence) of a plan or compromise or arrangement.

Stelco Inc., Re, 2005 CanLII 8671 (ON CA) at para 44

Walter Energy Canada Holdings Inc. (Re), 2016 BCSC 107 at para 20

Bron Media Corp. (Re), 2023 BCSC 1563 at para 41

Nortel Networks Corp., Re, 2009 CanLII 39492 (ON SC) at para 48

- 35. In approving a sales process in CCAA proceedings, courts have considered, among other things, the following factors:
 - (a) Is a sale warranted at this time? A sale or investment resulting in the continuation of the GDNP Business as a going concern represents the best available outcome for stakeholders. There is no other realistic option available to the Company to continue to operate as a going concern given its liquidity challenges.
 - (b) Will the sale be of benefit to the whole "economic community"? The SISP will benefit the economic community as a whole as it is designed to solicit the highest and best bid and to continue the GDNP Business as a going concern to the benefit of the Company's stakeholders, including suppliers and employees.
 - (c) Do any of the debtor's creditors have a *bona fide* reason to object to a sale? The SISP is designed to solicit the highest and best bid for the benefit of, among others, the Applicants' stakeholders.

- (d) Is there a better viable alternative? The SISP is the only viable avenue to continue the GDNP Business as a going concern. It must be undertaken expeditiously to prevent any further uncertainty from potentially eroding the value of the GDNP Business.

Nortel Networks Corp., Re, 2009 CanLII 39492 (ON SC) at para 49

36. In addition, this Court is entitled to consider whether the proposed SISP is likely to satisfy the requirements of Section 36 of the CCAA, even though a sale is not yet proposed, including:

- (a) That the process is fair and that the best price will be obtained. The SISP is fair, transparent and objective. In particular, it is designed to facilitate a process to market the GDNP Business to obtain the best possible price and achieve a going concern solution for the benefit of all stakeholders, without unduly prolonging the process.
- (b) Whether the Monitor supports the SISP. The Monitor has expressed support for the SISP and the terms of the proposed SISP Approval Order.
- (c) The extent to which creditors were consulted. Wells Fargo (the Petitioners' primary secured creditor and the DIP Lender) was consulted during the development of the SISP.

D. Sealing Order

37. This Court has discretion to grant a sealing order where:

- (a) court openness poses a serious risk to a "public interest", which is not restricted solely to the interests of the parties, but applies at the level of a general principle;
- (b) such an order is necessary to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (c) as a matter of proportionality, the positive effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the negative

effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible Court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para 53

Sherman Estate v. Donovan, 2021 SCC 25 at paras 38, 41 – 43

38. If exposure of information would cause a breach of a confidentiality agreement, then the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para 55

39. Antoniadis Affidavit #3 contains an engagement letter between GDNP PubCo and Capital West Partners, the proposed SISP sales agent (the “**Engagement Letter**”). The Engagement Letter includes an agreement that its terms shall remain confidential.
40. Placing the terms of the Engagement Letter on the public record would cause a breach of a confidentiality agreement, and therefore is a serious risk to an important public interest. As a matter of proportionality, the benefits of sealing the Antoniadis Affidavit #3 outweigh the negative effects, including because the terms of the Engagement Letter are not in the public interest, and the requested order is minimally obtrusive, sealing only what is necessary to protect the confidentiality agreement.

Part 4: MATERIAL TO BE RELIED ON

1. First Affidavit of Paul Antoniadis made on June 27, 2024.
2. First Report of the Monitor filed July 8, 2024.
3. Second Affidavit of Paul Antoniadis made on July 10, 2024.
4. Third Affidavit of Paul Antoniadis made on July 10, 2024, to be filed.
5. Second Report of the Monitor, to be filed.
6. Such further and other material as counsel may advise and this Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: July 10, 2024



Signature of ☐ Applicant(s)
☒ Lawyer for applicant(s)

Christen Gertan Fori
Mary Buttery, K.C.

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this notice of application

[] with the following variations and additional terms:

.....
.....
.....

Date:[dd/mm/yyyy].....

.....
Signature of [] Judge [] Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE A

Canadian Petitioners

1. good natured Products Inc.
2. good natured Real Estate Holdings (Ontario) Inc.
3. 1306187 B.C. Ltd.
4. good natured Products (CAD) Inc.
5. good natured Products Packaging Canada GP Inc.
6. good natured Products Packaging Brampton GP Inc.
7. good natured Products Industrial Canada GP Inc.
8. good natured Products Packaging Canada LP
9. good natured Products Packaging Brampton LP
10. good natured Products Industrial Canada LP

US Petitioners

11. good natured Products (US) Inc.
12. good natured Products (Illinois), LLC
13. good natured Products Real Estate U.S., LLC
14. good natured Products Packaging US LLC
15. good natured Products Direct LLC
16. good natured Products (Texas) LLC

SCHEDULE B

No. S-244212
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AND

IN THE MATTER OF GOOD NATURED PRODUCTS INC., & THOSE ENTITIES LISTED
IN SCHEDULE "A"

PETITIONERS

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Monitor

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SCHEDULE C

SCHEDULE D

SCHEDULE E