



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00726584-00CL

DATE: NOVEMBER 28, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: 2675970 ONTARIO INC. et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

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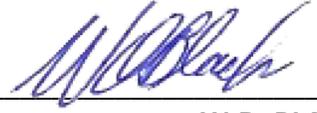
ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] The applicants seek an approval and reverse vesting order to approve a share subscription agreement (the “Subscription Agreement”), between 2675970 Ontario (“267”) and TS Investments Corp. (“TS” or the “Purchaser”), and to approve the transactions (collectively the “Transactions”), contemplated in the Subscription Agreement.
- [2] In that the proposed Transactions use a reverse vesting structure, the applicants also seek a declaration that 1001065113 Ontario Inc. (“ResidualCo”) is to be an applicant in these CCAA proceedings.
- [3] The applicants also seek approval of various related steps required to give effect to the proposed Transactions, including releases of certain claims arising in connection with or relating to these CCAA proceedings.
- [4] On August 28, 2024, the applicants obtained an initial order (“Initial Order”), under the CCAA. The Initial Order was amended and restated on September 18, 2024 (the “ARIO”). Under the ARIO this court granted various forms of relief, including appointing Alvarez & Marsal Canada Inc. as monitor of the applicants (in such capacity, the “Monitor”).
- [5] On September 18, 2024, this court granted an order approving a sale and investment solicitation process (the “SISP”) to be conducted by the Monitor with the assistance of the applicants. The SISP included the approval of a stalking horse bid (“Stalking Horse Bid”) and the Subscription Agreement.
- [6] The SISP was carried out and, despite employing an appropriately robust process, no qualified bids were received other than the Stalking Horse Bid. Accordingly, the Monitor declared the Stalking Horse Bid to be the successful bid under the SISP (the “Successful Bid”).
- [7] The order sought by the applicants was unopposed, with the exception of certain franchisees (collectively the “Tripsetter Franchisees”), who advised:
- “The Franchisees do not oppose the transaction contemplated by the RVO. However, the Franchisees do oppose the proposed release, as drafted, of pre-filing claims against current directors and officers contemplated by paragraph 35 of the RVO.”
- [8] The applicants and the Tripsetter Franchisees were able to work out language to be included in this endorsement to address the Tripsetter Franchisees’ concerns. That language, which I accept, is as follows:

“The Court is granting the release sought at paragraph 35 of the Reverse Vesting Order on the basis that the release of any claims under the Arthur Wishart Act in favour of the Released D&Os only releases such claims where the Released D&Os were acting in their capacity as a director or officer of the Applicants. For greater certainty, the release shall release the directors and officers of the Applicants from such claims as directors and officers of the Applicants but shall not preclude any adjudicator of a claim under that Act in the future from making a determination on a full record whether such release applies to release claims against any Released D&O that are advanced on a theory of personal liability distinct from their capacity as a director or officer of the Applicants. This Court does not today make any determination as to whether the release applies to bar these latter claims made by the Franchisee Parties as that determination is more appropriately left to the adjudicator of those claims with the benefit of fulsome pleadings and evidentiary records.”

- [9] Inasmuch as the Transactions employ a reverse vesting structure, and given that the use of such structure, as has been repeatedly emphasized by this court, is to be seen as extraordinary relief, to be used sparingly and only in certain circumstances, it is important to consider the stated rationale for the particular Transactions for which approval is sought.
- [10] First, as noted, I am satisfied that the SISP was reasonable and robust, and thoroughly canvassed the market for a sale and/or investment of the Applicants and their assets. I am also satisfied that the Subscription Agreement represents the best available outcome that permits the Applicants to continue as a going-concern for the benefit of their 328 employees, landlords, franchisees and suppliers.
- [11] Of particular significance, given that the applicants operate in the highly regulated cannabis industry, I am satisfied that the reverse vesting structure is necessary to preserve the licenses required to operate in that setting.
- [12] I also find that stakeholders are no worse off under the proposed reverse vesting structure than they would be under a traditional vesting structure, and that there is no viable alternative that would produce a more favourable economic result.
- [13] I note the Monitor’s support for the Transactions, and that of the applicants’ senior secure lender, Bank of Montreal.
- [14] Overall, in determining to exercise my discretion to approve the Transactions under s. 11 of the CCAA, I find that the non-exhaustive factors enumerated under s. 36(3) of the CCAA, the factors articulated by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.*, and the considerations discussed by Penny J. in the *Harte Gold Corp. (Re)* decision are satisfied in the circumstances of this application.
- [15] I also find that the proposed releases contemplated in and following the Transactions are appropriately limited, both in terms of the parties to which they apply and in scope, and that they are appropriately and rationally connected to relevant aspects of the Transactions.

[16] In all of the circumstances I am prepared to approve the proposed order sought by the applicants, and have released a signed copy of that order.



W.D. BLACK J.

DATE: NOVEMBER 28, 2024