



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000039-0000

DATE: April 28, 2026

NO. ON LIST:2

TITLE OF PROCEEDING: Ayurcann Holdings Corp.; Ayurcann Inc. v.

BEFORE: Justice Kimmel

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL:

- [1] The Applicants seek an order (the "Approval and Reverse Vesting Order"), which, among other ancillary relief:
- (a) approves the agreement of purchase and sale dated March 31, 2026 (the "Purchase Agreement") between the Applicants and Emblem Cannabis Corporation ("Emblem" and together with its assignee, if any, under the Purchase Agreement, the "Purchaser"), and authorizing the Applicants and the Monitor to take such steps and actions necessary to complete the transactions contemplated in the Purchase Agreement (the "Transactions"); and
 - (b) approves, as a back-up bid (the "Back-Up Bid"), the Stalking Horse Purchase Agreement and the transactions contemplated therein (the "Back-Up Transactions"), and authorizing and directing the Applicants to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Back-Up Transactions, only to the extent that the Purchase Agreement and the Transactions do not close on or before May 15, 2026 (the "Outside Date").
- [2] The requested relief is supported by the third report of the Monitor dated April 24, 2026 (the "Third Report") and the affidavit of Igal Sudman, Chief Executive Officer of Ayurcann, sworn April 21, 2026 (the "Fourth Sudman Affidavit"). It is also supported by the DIP Lender (Stalking Horse Purchaser). No stakeholder appeared to oppose, or indicated in advance any concerns about, or opposition to, the requested relief.
- [3] The Purchase Agreement and the Stalking Horse Purchase Agreement may sometimes be referred to as the "Purchase Agreements". Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Applicants' factum filed in support of this motion.

The Proposed Transactions, Back-Up Transactions and Reverse Vesting Order

- [4] The Transactions contemplated under the Purchase Agreement are the product of a court-approved Sale Process that authorized the Applicants to solicit interest in a potential transaction in respect of the Company's business and assets (the "Sale Process") and approved a stalking horse purchase agreement (the "Stalking Horse Purchase Agreement") between the Applicants and the DIP Lender, Auxly Cannabis Group Inc. ("Auxly" and in such capacity, the "Stalking Horse Bidder") as the "Stalking Horse Bid", and as the "Back-Up Bid" in the event that the Sale Process produced a superior transaction, which it did in this case.
- [5] As described in the Monitor's Third Report, the Transactions provide for the acquisition of the Applicants' business on a going concern basis through a reverse vesting transaction, pursuant to which, following the cancellation of all outstanding shares and securities of Ayurcann, the Purchaser will acquire 100% of the newly issued common shares of Ayurcann. Under the reverse vesting structure, the Excluded Assets, Excluded Liabilities and Excluded Contracts will be transferred and vested in Residual Co. prior to the Purchaser acquiring the Purchased Shares. All claims and Encumbrances against Ayurcann, the Purchased Shares, the Retained Assets and the Retained Contracts will be discharged and released and vested in Residual Co., pursuant to the proposed Approval and Reverse Vesting Order.
- [6] The proposed Approval and Reverse Vesting Order contains specific provisions authorizing, requesting and directing the regulatory authorities (including Health Canada) to recognize the change of control and ownership. These provisions have been granted in other restructuring transactions involving cannabis companies, without any known concerns or objections having been raised by the regulators who have been asked to act upon these orders in prior circumstances. Examples of orders that contain similar language are found in the Applicants' Factum at footnote #36: see *Fire & Flower*, Approval and Reverse Vesting Order

of Osborne J., at para. 10 and *Mera Cannabis Corp.*, Approval and Reverse Vesting Order of Cavanagh J., at para. 12.

- [7] The Company's current directors have been and continue to work with the regulators and the Purchaser to facilitate the necessary regulatory recognition of the new management under the Purchaser. The Purchaser is itself a registrant already.
- [8] The Stalking Horse Purchase Agreement is materially similar to the Purchase Agreement, containing substantially identical schedules, transaction structure, and closing conditions. The key difference between the Purchase Agreements is the Stalking Horse Bid's (lower) purchase price of \$4,640,000 (excluding any amounts allocated to the Bid Protections). Whereas it is estimated that the Purchase Agreement will produce sufficient funds, after payment of the Bid Protections and repayment of the DIP Loan, to enable distributions to unsecured creditors.
- [9] Furthermore, the Purchase Agreement will result in, among other things:
- (a) continued employment of approximately forty (40) employees and additional contractors; and
 - (b) the preservation of Ayurcann's proprietary brands, material customer and supplier relationships, and regulatory cannabis licences and governmental contracts.
- [10] Both Purchase Agreements contemplate proposed transactions to be implemented through a reverse vesting structure, which the Monitor believes is necessary and appropriate in the circumstances, for the reasons detailed in section 6.3 of the Third Report. The Monitor views the reverse vesting structure to be the only viable alternative available by which the value of the Applicants' business can be maximized.
- [11] A reverse vesting order is an extraordinary equitable remedy. These types of orders are not granted as a matter of course and are scrutinized by the court, whether or not they are opposed. This scrutiny involves consideration of whether the RVO is necessary, whether the consideration is a fair reflection of the value of the assets being preserved under the reverse vesting structure, whether the reverse vesting structure produces an economic result at least as favourable as any other viable alternative, and whether there is any stakeholder worse off under a reverse vesting scenario than they would have been under any other viable alternative: see *Harte Gold Corp (Re)*, 2022 ONSC 653, at para. 38. Here, the applicants and the Monitor consider the only alternative to a reverse vesting structure to be a liquidation.
- [12] Reverse vesting orders have been found to be appropriate and approved in cases where the debtor's business involves corporate attributes and assets that would be difficult or impossible to convey through a traditional vesting order without delaying or impacting the business operations. Among these are examples of cases involving cannabis companies with government issued licences that can be difficult if not impossible to transfer in a timely manner.
- [13] The factors identified by the Monitor in its reasons for recommending the reverse vesting structure in this case satisfy both the requirements for the court's approval of reverse vesting orders set out in *Harte Gold* as well as the non-exhaustive factors enumerated under s. 36(3) of the CCAA and articulated by the Court of Appeal in *Royal Bank v. Soundair Corp.* [1991] O.J. No. 1137 (ON CA), at para 16 for approval of a sale transaction in the context of a restructuring proceeding. The specifics of how these requirements have been satisfied are detailed in paragraph 29 of the Applicants' factum for this motion.
- [14] In the Monitor's view, approval of the Back-Up Transactions is also in the best interests of the Applicants and their stakeholders. Approval of the Back-Up Bid will provide certainty that a going-concern transaction will be consummated, avoids further delay, and eliminates the additional professional costs and judicial resources that would be required for a second motion if the Purchase Agreement does not close. It

preserves value for stakeholders by avoiding further costs. The Back-Up Bid concept was also explicitly contemplated in the Court-approved Sale Process. The court has approved Back-Up Transactions in other cases, at the same time as approving a superior transaction: see *Fire & Flower Approval and Reverse Vesting Order*, at para. 23.

[15] Given the reverse vesting structure, the Monitor needs, and is willing to accept, enhanced powers in respect of ResidualCo, to enable the performance of ResidualCo's obligations under the Purchase Agreement and implement any ongoing matters the ResidualCo must attend to post-closing. The broad discretion under ss. 11 a 23(1) (k) of the CCAA can, and should in this case, be exercised to grant these enhanced powers and corresponding usual protections for the Monitor.

Proposed Distributions and Stay Extension

[16] The DIP Indebtedness and the Bid Protections are both secured by super-priority charges, which will attach to the Sale Proceeds as part of the Transactions. The Updated Cash Flow Forecast indicate that the Applicants will have sufficient liquidity following the closing of the Transactions to satisfy all anticipated obligations secured by the other Charges granted during the CCAA Proceedings (including amounts secured under the Administration Charge). The Monitor supports the proposed distributions on the basis that no stakeholder will be materially prejudiced by them.

[17] The court's broad discretion under s. 11 of the CCAA favours the approval of these proposed distributions even if not being made pursuant to a plan of arrangement: see *Re Nortel Networks Corporation et al*, 2014 ONSC 4777, at paras 54-58 and *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461, at para. 71.

[18] The Stay under the Second ARIO expires on April 30, 2026. Pursuant to the Approval and Reverse Vesting Order, the Applicants are seeking an extension of the Stay until and including June 30, 2026. The Updated Cash Flow Forecast also indicates that the Applicants will have sufficient cash flow to meet their obligations arising in the normal course through to the expiry of the proposed extension of the Stay on June 30, 2026, whether the Transactions are completed under the Purchase Agreement or the Stalking Horse Purchase Agreement. In any other scenario the Applicants would likely be back for further directions from the court.

[19] The Monitor supports the Applicants' request to extend the Stay for the reasons detailed in section 6.29 of the Third Report. I am satisfied that the extension of the Stay should be granted under s. 11.02(2) of the CCAA. The Applicants have acted and are acting in good faith and with due diligence. The Monitor and the DIP Lender both support the Stay extension and the Monitor does not believe that any stakeholder will be materially prejudiced by it.

The Releases

[20] The Approval and Reverse Vesting Order provides for certain releases (the "Releases") in favour of: (i) the Applicants and their current directors and officers (the "Directors and Officers"), employees, consultants, legal counsel and advisors; (ii) the current directors, officers and legal counsel of Residual Co.; (iii) the Monitor and its legal counsel; (iv) the Purchaser and its legal counsel; and (v) the DIP Lender and its legal counsel (collectively, the "Released Parties").

[21] The releases are only for claims in respect of matters up to the date of closing, not afterwards, with a carve out for insured claims to the extent of available insurance. The do not release fraud or wilful misconduct nor any matters that are not permitted to be released under ss. 5.01(2) or 19(2) of the CCAA.

[22] Releases are not granted as a matter of course, or just because they Purchaser has insisted upon them as a condition of their agreement. They need to be justified in each case. The factors relevant to the approval of releases in CCAA proceedings involving reverse vesting orders have been articulated by this Court as follows: (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor; (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it; (c) whether the plan could succeed without the releases; (d) whether the parties being released were contributing to the plan; and (e) whether the release benefitted the debtors as well as the creditors generally. It is not necessary for each of these factors to apply for the proposed releases to be granted: see *Lydian International Limited (Re)*, 2020 ONSC 4006, para. 54, referred to in *Harte Gold*, at para. 80; *Green Relief, Re*, 2020 ONSC 6837, at para. 28.

[23] The court is familiar with the important role played by the Monitor in the restructuring of the Applicants. The Monitor is of the view that the other Released Parties were essential to the restructuring of the Applicants, as further detailed at paragraphs 65 and 66 to the Fourth Sudman Affidavit. For the reasons detailed in sections 6.16-6.24 of the Third Report, the Monitor is supportive of the proposed Releases and believes they are fair and reasonable in the circumstances.

[24] The Monitor confirms that the Released Parties have materially contributed to these CCAA proceedings through their expertise, knowledge, and continued participation in connection with the SISF and the proposed Transactions. Given their limited scope, the Monitor does not believe that the Releases will prejudice creditors generally. Various other factors relevant to the court's exercise of its discretion in approving releases are also present, as detailed in paragraphs 39-45 of the Applicants' factum.

[25] The release of certain claims and liabilities for Taxes provided for in paragraph 12 of the draft order has been approved and vetted by the Department of Justice on behalf of Canada Revenue Agency ("CRA"), with specific edits (and carve outs) requested by them having been incorporated in the final form of order presented to the court. CRA also requested the inclusion of paragraph 39 of the order, dealing with the preservation of CRA rights of set-off pre-and post-CCAA filing, respectively.

Requested Sealing Order

[26] Schedule "I" to the Purchase Agreement is a summary of the Retained Employees (the "Retained Employee List"). The Applicants are requesting a sealing order for the Retained Employee List, which contains information that is both commercially sensitive and personal to the Retained Employees. This is important to keep confidential given the (small) size of the company and the need to keep the company operating until the Transactions close and the Purchaser takes over. Disclosing information about which employees are expected to be retained and which are not could be disruptive to that objective and to the intended going concern Transactions.

[27] The sealing order is limited in scope to confidential information about the Retained Employees under the Transactions, so as to minimally intrude upon the public interest in the openness of our courts. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality.

[28] 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 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Preservation of the confidentiality of information in the context of a sale process is recognized as meeting the requirements of the test for sealing court documents in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 85 when limited

to only that material that contains the confidential and sensitive information and only for as long as may be necessary.

[29] The court understands the commercial sensitivity of the identity of the Retained Employees (and by default, those who will not be retained) pending the closing of the ultimate transaction to be implemented under the Purchase Agreements, but asked that the proposed sealing order be time limited to a set date after the outside date. This has now been included in paragraph 37 of the revised Approval and Reverse Vesting Order which provides that the sealing order shall remain in effect until the earlier of: (i) 30 days following the Closing Time, or (ii) further Order of the Court.

[30] Counsel for the Applicants are directed to ensure that the sealed Schedule I is provided 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 schedule can be physically sealed. Counsel is further directed to apply, at the appropriate time, for an unsealing order.

Order

[31] For all of the foregoing reasons, and the more detailed justifications set out in the Monitor's Third Report and the Applicants' factum, I have approved the Transactions under the Purchase Agreement and the Back-Up Transactions under the Stalking Horse Purchase Agreement, and grant the other related and ancillary relief sought by the Approval and Reverse Vesting Order, the revised form of which I have signed today.



Jessica Kimmel

Date: Apr 28, 2026