



SUPERIOR COURT OF JUSTICE

COMMERCIAL ENDORSEMENT

COURT FILE NO.: CV-13-00010241-00CL

DATE: February 9th 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: TEHAMA INC.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
FREAKE, MARK	TEHAMA INC.	mark.freake@dentons.com
KENNEDY, ROBERT	TEHAMA INC.	Robert.kennedy@dentons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
REYNOLDS, PHIL	The Monitor	philreynolds@deloitte.ca
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

1. The court granted and initial order and amended and restated initial order in respect of Tehama Inc. (the "Company") on January 20 and 30, 2023, respectively.
2. Capitalized terms in this endorsement not otherwise defined shall have the meanings ascribed to them in the applicant's factum and the Second Report of the Monitor dated February 8, 2023.
3. The Company now moves for an order (the "SISP Approval Order"):
 - a. approving a sale and investment solicitation process ("SISP");
 - b. authorizing and empowering the Company to enter into the stalking horse purchase agreement dated February 7, 2023 (the "Stalking Horse APA") between the Company and 14667913 Canada Inc. ("Newco" or the "Stalking Horse Bidder"), *nunc pro tunc*, with such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; and
 - c. confirming that the Stalking Horse APA represents the "Stalking Horse Bid" as defined in, and for the purposes of, the SISP.
4. The Deloitte Restructuring Inc., the court appointed monitor (the "Monitor") supports the requested relief. Various justifications are set out in its Second Report for this support, as noted below:
 - a. The Monitor was actively involved in the development of the SISP, in consultation with the Applicant. The SISP sets out the terms and procedures to market the assets and undertakings of Tehama, within its current liquidity constraints. The SISP has been designed to:
 - i. obtain the highest and best offer for the Applicant's business operations (the "Business"), including all Property;
 - ii. ensure certainty for the continuation of the Business, which is in the best interest of the Applicant's stakeholders; and
 - iii. allow for a commercially reasonable marketing of the Business of the Applicants given its significant liquidity constraints.
 - b. In order to ensure (ii) above and to establish an appropriate and competitive floor for bids to be considered under the SISP, on February 7, 2023 the Applicant entered into the Stalking Horse APA with the Stalking Horse Bidder. The Monitor has been advised that the Stalking Horse APA was executed with the approval of the Independent Director. The contemplated transaction is not being approved at this time. That will be the subject of a further approval motion if the SISP does not result in a superior transaction for which court approval is later sought.
 - c. Mr. Michael Aiello, an individual unaffiliated with Tehama or the Stalking Horse Bidder, was recently appointed to the board of directors of Tehama to be the independent voice representing Tehama and its board of directors in connection with the SISP. Mr. Aiello is the Chief Technology Officer of Secureworks Corp, a publicly-traded cybersecurity business headquartered in Atlanta, Georgia in the United States. Mr. Aiello is considered knowledgeable in the sector in which Tehama operates and experienced in corporate transactions. The Monitor is confident that he will independently carry out the role of Tehama's independent director in connection with the SISP. Mr. Aiello has familiarized himself with the proposed SISP and the Stalking Horse APA, and has indicated to the Monitor that he is supportive of both.
 - d. The SISP contemplates a potentially multi-phase process to be conducted by the Monitor, in consultation with the Independent Director, over a period of up to nine-weeks, which can be extended under certain circumstances.

- e. The SISP will be conducted by the Monitor, in consultation or with the assistance of the Independent Director. The Monitor will control communications with bidders, the qualifying of prospective bidders and the determination of Qualified Bids and potential Overbids as defined in the Auction process.
5. The timeline under the SISP is relatively short, to complete a transaction by an outside date of March 31, 2023. This timing is a function of the Company's forecasted cash flow and what it can reasonably be expected to support. The Monitor has reviewed approximately 10 Court-approved SISPs relating to CCAA proceedings which involve debtors of varying sizes and sectors and is of the view that the multi-phase approach (including a Participation Deadline of approximately three (3) weeks and a binding bid deadline of approximately five (5) weeks, as well as the provision of an auction is reasonable.
6. The Monitor is ready to proceed and has outlined its plan for advertising, and soliciting, reviewing and assessing bids. The Monitor will notify other creditors with which it has been dealing of the SISP process and invite them to ask to be added to the service list. This will provide some comfort to the court when the parties next come back seeking approval of a transaction, that creditors have had the opportunity to be notified and are aware that this process is underway.
7. The Stalking Horse Bidder is an entity controlled by current and former Tehama shareholders and provides the vast majority of its consideration via a credit bid of the secured debt that it owns of Tehama (which was acquired from CIBC).
8. The Stalking Horse APA has terms and conditions that are reasonable and customary relative to precedents that the Monitor has reviewed of SISPs conducted within a CCAA process, including that it has no significant unusual conditions to closing. The Monitor has been tasked with the oversight of the SISP, together with the Independent Director, because of the relationship between the Stalking Horse Bidder and some of the current shareholders and directors of the Company. The court was assured that it is clear under both the SISP and the Stalking Horse Agreement that there will be no break fee or fee reimbursement associated with the Stalking Horse or any other bids that are considered under the SISP.
9. The CCAA confers jurisdiction on courts to approve a sale process, including a "stalking horse" sale process, in respect of the business or assets of an applicant prior to or in the absence of a plan of compromise and arrangement. CCAA. s. 11; *Nortel Networks Corporation (Re)*, 2009 CanLIT 39492 (ONSC) at paras 47-48 ; *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC) at para 13; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 , at paras 40-41; *In the Matter of a Plan of Compromise or Arrangement of Green Growth Brands*, 2020 ONSC 3565 at para 61.
10. I am satisfied, having regard to the requirements and circumstances of this case outlined in paragraphs 24-30 of the applicant's factum that it is appropriate to grant the requested approval of the SISP and the Stalking Horse APA (for the limited purposes indicated in the approval order).
11. Order to go in the form signed by me today with immediate effect and without the necessity of formal issuance and entry.



KIMMEL J.