

CITATION: Freshstone Brands Inc., 2026 ONSC 5605
COURT FILE NO.: CL-26-00000265-0000
DATE: 20251005

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: **IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF FRESHSTONE BRANDS INC**

BEFORE: W.D. Black J.

COUNSEL: *Danny Duy Vu and Anna Arapovic*, for Freshstone Brands Inc.
Derek Harland and Shurabi Srikaruna, for Campbell Company of Canada
George Benchetrit, for Frank Burdzy (Buyer)
Tiffany Sun, for the Monitor
Dylan Gibbs, for CBFG 2021
Asad Moten, for the Attorney General of Canada

HEARD: October 2, 2026

ENDORSEMENT

Overview

- [1] Expedition and efficiency are important aspects of what this court offers and generally delivers.
- [2] That does not mean, however, that we can or should dispense with the rules of evidence in service of rapidity or commercial imperatives.
- [3] When part of what is sought, as in this case, is a reverse vesting structure, the need for admissible and persuasive evidence is particularly acute. Notwithstanding its increased use in recent years, a reverse vesting order remains an exceptional and extraordinary remedy, only to be permitted when clear and cogent evidence justifies that structure.

The Order Sought by the Applicant

- [4] The applicant Freshstone (in this endorsement I will continue to use terms as defined in the parties' materials and in previous endorsements in this matter) was before me today seeking, among other relief, an Approval and Reverse Vesting Order (ARVO) approving the Transactions contemplated in the Amended Subscription Agreement (relative to the Stalking Horse bid, which proved to be the successful bid arising from the SISP). The proposed ARVO contains fairly typical features of reverse vesting structures that have increasingly frequently been granted by this and other courts.

“Heads Up” to Counsel About the Evidence Required

- [5] The proposed or potential use of a reverse vesting structure in this context first came to my attention during the “comeback hearing” on June 18, 2026, following from the Initial Order that I granted on June 11, 2026.
- [6] In my endorsement of June 18, I specifically highlighted my concerns that particular evidence would have to be provided to justify and support the use of a reverse vesting structure in this case. I said (in paragraph 14 of that endorsement):

“I did raise with Freshstone’s counsel that I note the intention, should the Stalking Horse Bid prove to be the successful bid following the SISP, that the transaction with the Stalking Horse Bidder would be in the form of a reverse vesting structure. I advised Applicant’s counsel that if it is not immediately evident to me that the circumstances in this case are in keeping with the circumstances that would typically lend themselves to an RVO. I acknowledged in saying so that I am not yet aware of all relevant details that would go into such a consideration, and that I had noticed in the Monitor’s First Report a reference to tax attributes and licensing considerations (which are among the touchstones relied on to justify a reverse vesting structure). I am not pre-judging the issue – and indeed do not have sufficient evidence at this stage to render any conclusions. My purpose in raising the issue was to give counsel a heads up that the recourse to a reverse vesting structure should not be taken for granted, and that proper and sufficient evidence will have to be provided in that regard.”

The Evidence Provided in Support of the Reverse Vesting Structure

- [7] Despite that specific admonition, I found the evidence put before me today to be wanting.
- [8] **(A) The Purported Non-Assignability of Licenses, Certificates and Registrations**

With respect of the assignment of licences, certificates and registrations, a frequent basis for the asserted need for a reverse vesting structure and one of the key purported bases presented to justify the use of that structure here, the evidence put before me was by way of an affidavit of Leigh Wilson sworn September 11, 2026 (her second affidavit in these proceedings). After enumerating various licenses, certificates and registrations held and maintained by Freshstone, Ms. Wilson says:

“29. Freshstone’s understanding is that these licenses, certificates and registrations cannot be assigned or otherwise transferred to a third-party, and if the Transactions were to be implemented as an asset deal to be approved by the Court by way of a traditional approval and vesting order, the Investor would have to re-apply and re-submit the relevant applications in order to obtain the above licenses, certificates and registrations, without which the Investor would not be able to operate.”

- [9] The source of Freshstone’s “understanding” is not identified in this paragraph or elsewhere in the evidence.
- [10] Accordingly, the evidence in support of the need for a reverse vesting structure to accommodate licenses, certificates and registrations is in the nature of hearsay from an unidentified source.
- [11] Even were such evidence admissible, which in my view it is not, it provides no detail in any event to explain the alleged non-assignability of the licenses, certificates and registrations at issue.
- [12] This is neither proper nor sufficient, and effectively invites the court to “take the word of” an unidentified party. The deficiency of the evidence is particularly perplexing and troubling given my specific direction – several weeks ago in my June 18 endorsement - that probative evidence would be required.

[13] **(B) The Purported Non-Assignability of Tax Attributes**

Similarly, and turning now to the evidence relative to tax attributes, Ms. Wilson addresses that issue in her affidavit, after identifying certain tax attributes in the nature of non-capital loss carryforwards, as follows:

“The Investor has advised Freshstone that, based on its discussions with its advisors, such Tax Attributes could potentially be lost should the Transaction be structured as an asset deal to be implemented through a traditional approval and vesting order, given that these Tax Attributes cannot be legally assigned to a third party.”

- [14] I note that the “Investor” is the defined term in the materials for Mr. Frank Burdzy, who is behind the Stalking Horse Bid. While that does not preclude the court receiving relevant evidence from him, it is evident that he has a particular interest in the outcome sought, such that care should be taken in evaluating that evidence.
- [15] More concerning, the advice that Mr. Burdzy is said to have provided to Freshstone is asserted to be based on his “discussions with [his] advisors.”
- [16] Again, the identity of the “advisors” and the nature of the discussions on which reliance is apparently placed is not disclosed.

The Evidence is Inadequate to Support the Reverse Vesting Structure Sought

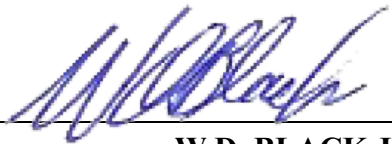
- [17] I advised counsel that this evidence is not sufficient.
- [18] This court is not a “rubber stamp,” and, notwithstanding the level of cooperation and efficiency on which we insist on and with which counsel regularly appearing on this list generally comply, the rules of evidence still apply to the proceedings before us and cannot be overlooked in a rush to a particular commercial outcome.

Next Steps

- [19] In the circumstances, despite the inadequacy of the evidence, I did not dismiss the application, but advised counsel that I would be prepared to allow time for counsel to assemble proper evidence, at which point the Applicant may return and seek further consideration of the proposed ARVO based on the additional evidence to be forthcoming.
- [20] If it turns out that there is in fact admissible evidence as to the non-assignability of licenses, certificates and/or registrations, and/or as to the non-assignability of tax attributes, it may yet be the case that a reverse vesting structure is appropriate here.
- [21] Counsel are to contact the Commercial List, if and when proper additional evidence is in hand, to schedule a further attendance.

Separate Relief Sought by Monitor

- [22] In addition to the relief sought by the Applicant, there was a separate motion brought by the Monitor, seeking a Fee Approval Order:
- (a) Approving the fees and disbursements of the Monitor and its counsel Osler; and
 - (b) Approving the Monitor’s Reports, and the activities and conduct of the Monitor described therein.
- [23] Having reviewed the evidence in support of these requests, I am satisfied that the Reports, the Monitor’s activities described therein, and the fees and disbursements of the Monitor and Osler, are all reasonable and appropriate in the circumstances, and I grant the Fee Approval Order in the form provided by the Monitor



W.D. BLACK J.

DATE: OCTOBER 5, 2026