



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ENDORSEMENT

COURT FILE NO.: CV-24-00712366-00CL DATE: MARCH 7 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: HUMBLE & FUME INC. et al

BEFORE: JUSTICE P. CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

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ENDORSEMENT OF JUSTICE P. CAVANAGH:

1. The Applicants distribute cannabis accessories in Canada and the United States. The Applicants applied for and obtained urgent relief under the CCAA on January 5, 2024 because they had insufficient capital to sustain operations on a go-forward basis.
2. The Applicants bring this motion for three orders: two approval and vesting orders (in respect of the transaction which is being completed in two stages and structured as a reverse vesting order) and a termination order.
3. As part of this motion, the Applicants seek approval of the stalking horse purchase agreement entered into between Humble Parent, as vendor, and 1000760498 Ontario Inc. as purchaser (the "Purchaser") dated as of January 23, 2024, as amended and restated on March 5, 2024 (the "Purchase Agreement"). The Transaction is defined in the Purchase Agreement.
4. The background facts to this motion are summarized in the Applicants' factum at paragraphs 8-21. The facts underlying the motion are more fully set out in the affidavits of Jacob Ripshtein.
5. On January 24, 2024, I granted a SISP Approval Order that, among other things, (i) approved Humble Parent's execution of the Stalking Horse Bid between Humble Parent as vendor and the Purchaser as purchaser for the purpose of acting as a stalking horse bid, and (ii) approved a sale and investment solicitation process ("SISP"). The Applicants worked with the Monitor and their advisors to implement the SISP in accordance with its terms and the SISP is now complete.
6. The results of the SISP are described in the Applicants' factum at paragraphs 10-21. The Monitor sent a solicitation letter and a template non-disclosure agreement to a list of 90 interested parties. The data room went live on February 1, 2024. A total of 11 potential bidders signed an NDA and were provided access to the data room. Following the bid deadline, the Monitor received bids from two bidders in addition to the already existing Stalking Horse Bid. The Monitor, in consultation with the Applicants, considered the additional two bids submitted and determined that these bids were not Qualified Bids because they did not include a cash purchase price in an amount equal to or greater than the Stalking Horse Bid, plus \$125,000, as required by the SISP. The Monitor declared that the Stalking Horse Bid was the successful bid.
7. Following this determination, the Applicants, the Purchaser, and the Monitor, elected to amend and restate the Stalking Horse Bid to create a two-stage closing. This two-stage closing will allow the Purchaser to first acquire BOBHQ (the Applicant B.O.B. Headquarters Inc.), with such transaction closing in advance of the Ontario Securities Commission's anticipated grant of a partial revocation of the cease-trade order in effect against Humble Parent (the Applicant Humble & Fume Inc.). Other than moving to a two-stage closing, the basic terms of the purchase agreement are the same. The Monitor supports amending and restating the Stalking Horse Agreement into two closings and agrees that the transaction is fundamentally unchanged.
8. Section 36 of the CCAA provides that a debtor "may not sell or otherwise dispose of assets outside of the ordinary course of business unless authorized to do so by the court." In considering whether to approve a sale, a court should consider, among other things:

- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - b. whether the Monitor approved of the process leading up to the proposed sale;
 - c. whether the Monitor filed a report stating that the sale or disposition would be more beneficial to creditors than a sale or disposition a bankruptcy;
 - d. the extent to which creditors were consulted;
 - e. the effects of the proposed sale on creditors and other interested parties; and
 - f. whether the consideration to be received is reasonable and fair, taking into account their market value.
9. In *Harte Gold Corp. (Re)*, 2022 ONSC 653, Penny J. held that the section 36 (3) criteria largely correspond to the common law factors applied to the consideration of an asset sale in insolvency, articulated in *Royal Bank of Canada v. Soundair Corp.*, [1991] O.J. No. 1137.
10. The process leading up to the Transaction was conducted by the Monitor and the Applicants in accordance with the court-approved process. The process was professionally run, commercially reasonable and robust. The Monitor conducted comprehensive marketing efforts and broadly canvassed a wide network of potential purchasers. The Monitor is supportive of the Transaction.
11. I am satisfied that the Purchase Agreement satisfies the test set out in s. 36 (3) of the CCAA and *Soundair* and should be approved. In this respect, I accept the Applicants' submissions at para. 29 of their factum.
12. In *Harte Gold (Re)*, Penny J. held that in determining whether to approve a reverse vesting order ("RVO"), it is appropriate to consider:
- a. the statutory basis for an RVO and whether an RVO is appropriate in the circumstances; and
 - b. the factors outlined in s. 36(3) of the CCAA, with adjustment for the unique aspects of a reverse vesting transaction.
13. I am satisfied that the Transaction structured as an RVO should be approved for the following reasons:
- a. The RVO is necessary.
 - i. The Applicants' tax losses can only be preserved within a reverse-vesting transaction and cannot be preserved within an asset transaction. These tax losses are in excess of \$39 million.
 - ii. Humble Parent's status as a reporting issuer can only be maintained in a reverse-vesting transaction and cannot be preserved within an asset transaction. The process to become a reporting issuer takes significant time and expense, and so maintaining reporting issuer status provides real value to the Purchaser.
 - iii. The Applicants must remain owners of their minority interest in HC Solutions Holdings, Inc. to avoid triggering change of control provisions. This minority interest is a valuable downstream foreign investment.
 - iv. The Applicants are counterparties to domestic and foreign supply and distribution contracts that can only be conveyed with the consent of the non-assigning counterparty.

A reverse-vesting transaction is necessary to avoid the expense and risk involved in seeking consent for assignment or seeking an assignment order.

- b. The RVO produces an economic result at least as favourable as any other viable alternative. The proposed Transactions will preserve the going-concern value, employee jobs and associated economic activity, including important supply and distribution relationships. There is no viable alternative to the proposed Transactions. The only alternative to an RVO is a bankruptcy, which would not likely yield a better outcome than the proposed Transactions.
- c. No stakeholder is worse off under the RVO structure than under a viable alternative. There is no viable alternative to the proposed Transactions, other than bankruptcy. The Stalking Horse Bid was the only offer received in the SISP for a going concern sale of the Applicants' business. No stakeholders are in a worse position than they would otherwise be.
- d. The consideration provided by the acquirer reflects the importance and value of the assets being preserved. The purchase price was generated through a Court-approved SISP implemented by the Monitor. The purchase price represents the highest consideration that a potential acquirer was willing to pay.

14. Section 5.1 of the CCAA provides authority to approve limited releases in favour of directors. This section does not limit the overall jurisdiction of the court under section 11 of the CCAA to make any order that it considers appropriate in the circumstances.

15. The applicants seek an order for third party releases in favour of released parties being directors, officers and employees as of January 5, 2024, legal counsel and advisors, and secured lenders.

16. Third parties may be released in a proceeding if the releases are reasonably connected to the proposed restructuring, and the releases facilitate the successful completion of the plan. The factors to be considered when a court determines whether to approve releases under section 11 of the CCAA where there is no plan of compromise or arrangement include:

- a. whether the claims to be released are rationally connected to the restructuring;
- b. whether the restructuring can succeed without the releases;
- c. whether the parties to be released contributed to the restructuring;
- d. whether the releases benefit the debtor as well as its creditors generally;
- e. whether the debtor's creditors have knowledge of the nature and effect of the releases; and
- f. whether the releases are fair, reasonable and not overly-broad.

17. I am satisfied that these factors support the requested releases for these reasons:

- a. The released parties have made material contributions to the restructuring and, among other things, they have:
 - i. maintained key customer and joint venture relationships during the CCAA process to ensure that such parties remain aligned with and committed to the Applicants' continuity of business and emergence from restructuring;

- ii. negotiated the Purchase Agreement (including the Stalking Horse Bid features) within the SISP for the purpose of ensuring that the sales process proceeded in as stable, efficient and productive manner as was possible; and
 - iii. provided important direction leading up to and including the filing and administration of the CCAA proceedings. As a result of this guidance, the Applicants will emerge from the CCAA proceedings as a going concern.
 - b. The Releases are a condition precedent to the closing of the Transactions.
 - c. The Monitor supports the granting of the Releases on the basis, among other things, that the releases are proportionate given the beneficial contributions of the released parties to the CCAA proceeding; and
 - d. The Releases are reasonable and not overly broad. The terms of the Releases the proposed follow the limitations imposed by the CCAA and would not extend to any claims against the released parties based on allegations of misrepresentations made by them to creditors, or of wrongful and oppressive conduct.
18. I am satisfied that the confidential appendices to the Monitor's Second Report contain confidential information that should be sealed until the transaction closes. The requested sealing order is narrow, proportional, and time limited. The Monitor is supportive of this relief. The test in *Sherman Estate v. Donovan*, 2021 SCC 25, at paragraph 38, is satisfied.
19. The employment of the employees of Humble Parent was terminated on March 6, 2024. Some of these employees may be retained by the other Applicants or related companies. The Applicants seek a declaration pursuant to section 5(5) of the *Wage Earner Protection Program Act* that such former employees meet the criteria prescribed by regulation. I am satisfied that the requested declaration should be made.
20. I am satisfied that approval of the Monitor's activities as detailed in the First Report in the Second Report should be granted. I am satisfied that approval of the fees and disbursements of the Monitor and counsel to the Monitor that have been incurred, and that will be incurred in performance of the duties of the Monitor up to the termination of the CCAA proceedings should be given.
21. Orders to issue in forms of Orders signed by me today.