



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00735482-00CL

DATE: 21-MAY-2025

NO. ON LIST: 5

**TITLE OF PROCEEDING: THE VANCOR GROUP INC. v. 2744364 ONTARIO LIMITED
et al.**

BEFORE: Mr Justice CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

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ENDORSEMENT OF Mr JUSTICE CAVANAGH:

- [1] Deloitte Restructuring Inc ., in its capacity as Court-appointed monitor (the "Monitor") of 2744364 Ontario Inc. (o/a True North Cannabis Co.) ("TNCC"), 2668905 Ontario Inc. (o/a Bamboo Blaze) ("Bamboo Blaze") and 2767888 Ontario Inc. ("888" and together with TNCC and Bamboo Blaze, the "Debtors"), brings this motion for the approval of a transaction to sell the business of the Debtors as a going concern Transaction (as defined below) and related relief, including an extension of the stay of proceedings. The Transaction is to proceed by way of reverse vesting order, subject to the approval of the Court.
- [2] The Court authorized the Monitor to conduct a sale and investment solicitation process ("SISP"), which the Monitor has now done, and the Transaction is the result of that process. The successful Purchaser (as defined below) is the Applicant creditor in these proceedings. The Purchaser was the stalking horse bidder in the SISP. The Stalking Horse Agreement (as defined below) is essentially identical to the form of Stalking Horse Agreement which was approved as part of the SISP.
- [3] The Transaction contemplates the assumption of all known and accepted claims against the Debtors, the payment of those claims in full within 12 months by way of promissory notes, and the assumption of all secured debts. The Transaction contemplates releases as permitted under the CCAA and required by the Stalking Horse Agreement. The Transaction is recommended by the Monitor.

- [4] As set out in the Notice of Motion, the Monitor seeks an order for an Approval and Reverse Vesting Order ("ARVO"), which contains the following relief (among other things):
- a. the stalking horse subscription agreement dated as of March 3, 2025 ("Stalking Horse Agreement") entered into between the Debtors, as vendor, and The Vancor Group Inc. ("Purchaser"), as purchaser, and the Transaction (as defined in the Stalking Horse Agreement);
 - b. adding 1001235542 Ontario Inc. ("ResidualCo.") as a Respondent/Debtor to these CCAA proceedings ("CCAA Proceedings");
 - c. transferring and vesting all of the right, title and interest of the Debtors in and to the Excluded Assets and Excluded Liabilities (each as defined in the Stalking Horse Agreement) to and in ResidualCo.;
 - d. authorizing and directing the Debtors to file the Articles of Reorganization (as defined in the Stalking Horse Agreement); granting certain releases in favour of certain parties involved in these CCAA Proceedings, effective upon the closing of the Transaction;
 - e. granting certain releases in favour of certain parties involved in these CCAA Proceedings, effective upon the closing of the Transaction;
 - f. extending the stay of proceedings ("Stay Period") to an including September 5, 2025;
 - g. discharging Shawn Dym in his capacity as the Chief Restructuring Officer (the "CRO") upon the closing of the Transaction; and
 - h. sealing Confidential Appendix "1" to the Monitor's Fourth Report, dated May 15, 2025.
- [5] The facts underlying this motion are more fully set out in the Fourth Report. All defined terms not otherwise defined herein shall have the meaning ascribed to them in the Stalking Horse Agreement.²

A. Should the Stalking Horse Agreement Be Approved?

- [6] This Court has the jurisdiction to approve a reverse vesting transaction pursuant to: (a) s. 11 of the CCAA, which gives the Court broad powers to make any order that it considers appropriate in the circumstances; and (b) s. 36(3) of the CCAA, which sets out the factors that the Court is to consider when a debtor disposes of assets outside the ordinary course of

business. The factors under subsection 36(3) of the CCAA overlap with the factors set out by the Court of Appeal for Ontario in *Royal Bank v. Soundair Corp* and in *Re Nortel Networks Inc.* where the Court set out relevant factors regarding the approval of a sale of a debtor's assets absent a plan of arrangement.

[7] A reverse vesting order is an equitable remedy. Justice Penny, in *Harte Gold Corp. (Re)*, articulated the factors to be considered by a court in respect of a proposed reverse vesting transaction, which include:

- a. Why is the reverse vesting order necessary in this case?
- b. Does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative?
- c. Is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative?
- d. Does the consideration being paid for the debtor's business reflect the importance and value of assets being preserved under the reverse vesting structure?

(i) Are the CCAA and Soundair Factors Satisfied

[8] I am satisfied that the Stalking Horse Bid and the Transaction contemplated thereunder satisfy the criteria under ss. 36(3) of the CCAA and the *Soundair* test for the following reasons:

- a. The process leading to the Transaction was fair and transparent. The Monitor administered the SISP in accordance with its terms, in consultation with the Debtors and the CRO. Fifty-seven parties were contacted by the Monitor as part of the SISP and the market was thoroughly canvassed. The Monitor executed 11 NDAs with prospective bidders and extended the bid deadline from April 17, 2025 to April 22, 2025, to allow for certain diligence requests made by participants in the SISP, which the Monitor and the CRO believed might credibly make a bid. The Monitor made reasonable and appropriate efforts to obtain the best price possible, and the SISP was followed as approved by the Court (other than the extension of the bid deadline noted above).
- b. Despite meaningful solicitation efforts during the SISP, the Monitor only received one bid by the bid deadline, being the Received Bid. The consideration in the Received Bid was less than the Purchase Price under the Stalking Horse Agreement. The Received Bid was for only a select group of the Debtors' retail locations, did not contemplate acquiring the real estate assets of 888, and was materially less than the Secured Indebtedness. The Monitor approached the Purchaser to inquire, without disclosing specifics, whether it would be interested in

combining its bid with a bid for specific assets, but the Purchaser advised that it was not interested in pursuing such a transaction.

- c. The best bid resulting from the SISP was the Stalking Horse Agreement. The Transaction will result in the preservation of employment for approximately 285 employees and for customer and supplier relationships to continue. The Transaction benefits the economic community of stakeholders as a whole by permitting the Debtors' business to continue as a going concern.
- d. I am satisfied that the Purchase Price contemplated in the Stalking Horse Agreement is fair and reasonable in the circumstances. The consideration under the Received Bid was less than the consideration contained in the Stalking Horse Agreement and lower than the Secured Indebtedness. In addition to paying the DIP Indebtedness, the Stalking Horse Agreement contemplates payment by the Purchaser of the Secured Indebtedness, the Unsecured Indebtedness and the Closing Payment. The Unsecured Indebtedness shall be paid by way of Proven Unsecured Promissory Notes, which will result in recovery to the unsecured creditors with Proven Claims that would not otherwise be available to them under the Received Bid.
- e. The Transaction provides for an outcome more beneficial to creditors than a liquidation or bankruptcy. In a liquidation scenario, given the high amount of Secured Indebtedness and the asset value, the unsecured creditors overall would likely receive less than the consideration provided under the Stalking Horse Agreement.

(ii) Should the Reverse Vesting Structure Should Be Approved

[9] I am satisfied that the reverse vesting structure contemplated in the Stalking Horse Agreement and the ARVO is appropriate in the circumstances and should be approved because:

- a. The reverse vesting structure is required by the Purchaser and it is required to maintain and preserve the Debtors' non- transferrable government-issued licenses, namely a Cannabis Retail Operator License and 48 Cannabis Retail Store Authorizations ("Licenses"). If the Transaction was structured as a traditional asset sale, the procedure for transferring the Licenses to a third-party purchaser would involve additional risk, delays and costs. The proposed ARVO will allow the Debtors to continue with the Licenses and their credit facilities with their eight secured creditors without the need to negotiate assumption agreements or change of control waivers from each creditor.
- b. The consideration is reasonable and fair and adequately reflects the value of the assets being preserved. The Stalking Horse Agreement represents the best available offer for the Debtors' business and assets. The assumption of the Secured

Indebtedness under the Stalking Horse Agreement is itself greater consideration than the only other Bid submitted in the SISP. In addition, the Monitor is of the view that the Proven Unsecured Promissory Notes will provide the unsecured Creditors with Proven Claims greater overall consideration than they would receive in a liquidation or other potential scenarios. The Purchase Price in the Stalking Horse Agreement reflects the importance of the Licenses, key agreements being preserved by the reverse vesting structure, and other business attributes being preserved.

- c. There is no stakeholder worse off under the reverse vesting structure and there is no more favourable economic alternative. The Monitor believes that no stakeholders are prejudiced by the reverse vesting structure, which provides an economic result for creditors that is at least as favourable as any other viable alternative, including a liquidation. The economic outcome of the Transaction is superior to (a) a liquidation and (b) the only other alternative under the SISP, being the Received Bid, given the recovery through the Proven Unsecured Promissory Notes. The Monitor has performed an estimated realizable value analysis of the Debtors' assets and has concluded that, given the Secured Indebtedness, unsecured creditors would receive less in a liquidation scenario. The proposed Transaction would also retain jobs for approximately 285 employees and allow the Debtors to continue to operate in the normal course.

B. Should Releases Be Approved

[10] 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. See *Lydian International Limited (Re)*, 2020 ONSC 4006, at para. 54. 42 It is not necessary for each of these factors to apply in order for the proposed releases to be granted. See *Green Relief, Re*, 2020 ONSC 6837, at para. 28.

[11] The releases in the ARVO (the "Releases") include releases in favour of the CRO, Corry Van Iersel (in his capacity as director and officer of the Debtors), Heithem Dahrouj (Vice President of Finance for the Debtors), legal counsel to the Debtors and the CRO, Vancor in its capacity as Purchaser and DIP Lender, counsel for the Purchaser and the DIP Lender, and the Monitor and its legal counsel and their respective current directors, officers, partners, employees, consultants and advisors (the "Released Parties").

[12] I accept the Monitor's report that the Released Parties were necessary and essential to the restructuring, and made significant contributions to the CCAA Proceedings, including:

- a. the CRO assisted in identifying buyers during the SISP and assisted the Monitor in dealing with cannabis specific issues during the CCAA Proceedings;
- b. Heithem Dahrouj provided support to the Monitor in developing cash flow forecasts, dealing with the Ontario Cannabis Store, providing information to the Monitor in the SISP and addressing diligence requests;
- c. Corry Van Iersel recused himself from management of the Debtors, but was available to the Monitor and CRO, provided information and assistance that enhanced the SISP, and led the negotiation of a forbearance agreement with Firm Capital Mortgage Fund Inc. ("Firm Capital");
- d. Vancor provided material value and stability during the SISP by submitting the Stalking Horse Bid;
- e. Vancor also acted as DIP Lender under the DIP Term Sheet, which provided the liquidity necessary for the Debtors to finance the CCAA Proceedings;
- f. Legal counsel for the Debtors and the CRO, being Borden Ladner Gervais LLP, and legal counsel for Vancor, being Miller Thomson LLP, provided strategic guidance and advice to their respective clients in the CCAA Proceedings; and
- g. The Monitor, with the assistance of its counsel, administered the SISP in accordance with its terms and worked with the Debtors throughout the CCAA Proceedings.

[13] Overall, the Monitor is of the view that the participation of the Released Parties enhanced stakeholder recoveries via the negotiation and expected consummation of the Stalking Horse Agreement. I accept the Monitor's report that the continued involvement of the Released Parties is necessary for the successful implementation of the Transaction.

[14] I am satisfied that the Releases are being sought in the context of the Transaction and are an essential component of the Stalking Horse Agreement. They will provide certainty to the Released Parties, and will allow for the Released Parties to focus on the closing of the Transaction to the benefit of all stakeholders.

C. Should the Stay Period Be Extended?

[15] The current Stay Period expires on June 6, 2025. The Monitor seeks a stay extension to September 5, 2025. There is no objection to the extension of the Stay Period. The stay will no longer apply to the Debtors, who will exit these proceedings upon completion of the Transaction but will apply to ResidualCo. The Monitor is continuing to administer and resolve outstanding claims under the Claims Procedure which claims will transfer to ResidualCo.

pending resolution and either ultimate disallowance or assumption by the Purchaser as a Proven Unsecured Claim.

[16] Residualco will have no operations but it will be funded by way of the Closing Payment, which will be in an amount considered appropriate by the Monitor and paid by the Purchaser on Closing in an amount determined by the Monitor to be sufficient to fund the remaining tasks to be completed post-closing in these proceedings, including the completion of the determination and, if necessary, the litigation of, disputed claims.

[17] Under section 11.02 of the CCAA, the Court may grant an extension of the stay period where (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.

[18] The Monitor believes the stay extension is appropriate given the following factors: a. The extension of the Stay Period is necessary to allow for the Transaction to close, and for the Monitor to adjudicate the remaining claims in the Claims Procedure; b. The Debtors have acted and continue to act in good faith and with due diligence; c. The Debtors are performing in accordance with the cash flow forecast included in the Monitor's Third Report, and in accordance with the terms of the Forbearance Agreement between 888 and Firm Capital, dated May 1, 2025; and d. No creditor will be prejudiced by the stay extension.

[19] I am satisfied that the requested stay extension should be granted.

D. Sealing Order

[20] The Monitor seeks an order sealing Confidential Appendix "1" to the Fourth Report, which is a summary of the Received Bid, pending the closing of the Transaction or further order of the Court.

[21] This Court has jurisdiction to make the sealing orders sought.

[22] The Supreme Court of Canada in *Sherman Estate v. Donovan* established three core prerequisites in order for a Court to grant a sealing order: (a) Court openness poses a serious risk to an important public interest; (b) The other sought is necessary to prevent this serious risk to be the identified interest because reasonable alternative measures will not prevent this risk; and (c) As a matter of proportionality, the benefits of the order outweigh its negative effects.

[23] The Monitor is of the view that the prerequisites in *Sherman Estate* have been satisfied. I accept the Monitor's report that Confidential Appendix "1" contains commercially sensitive information, which, if made public, may jeopardize any subsequent sale process to the detriment of the creditors who have an interest in ensuring the highest realizable value possible is received. The requested sealing relief is the least restrictive means available as the Monitor only proposes to temporarily seal this information until the closing of the Transaction.

Accordingly, the sealing request is proportional in the circumstances, and the salutary effects of sealing order outweigh any negative effects.

Disposition

[24] Orders to issue in form of Orders signed by me today.

Released: May 23, 2025