



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: FEBUARY 03 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: THE VANCOR GROUP INC. v. 2744364 ONTARIO LIMITED et al
BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE PENNY:

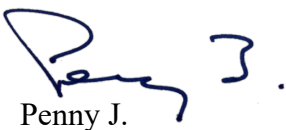
- [1] The applicant moves for approval of an amended and restated initial order, first made on January 24, 2025.
- [2] The basic relief sought is: a) extending the Stay Period up to and including May 2, 2025; b) approving an increase to the Administration Charge, to the maximum amount of \$600,000 (from \$350,000); c) approving the Debtors' borrowing under the DIP Term Sheet up to a maximum principal amount \$2,000,000 (from \$900,000); and d) approving a corresponding increase to the DIP Lender's Charge to the maximum principal amount of \$2,000,000 (plus interest, fees, and expenses).
- [3] This relief is not opposed and is all supported by the Monitor.
- [4] There is one additional proposal for which the approval of the court was sought which I was not prepared to grant. This is the proposal to service the interest on the Vancor unsecured shareholder loan during the currency of the CCAA proceedings. This issue is being adjourned for further briefing and may be addressed at a future date, to be scheduled. I will address this issue further below.
- [5] I am satisfied that the stay extension to May 2, 2025 should be granted for the following reasons:
- (a) the evidence supports the conclusion that, since the granting of the Initial Order, the Debtors have acted and continue to act in good faith and with due diligence to advance a restructuring;
 - (b) the Cash Flow Forecast shows sufficient liquidity during the proposed extended stay period to fund obligations and the costs of the CCAA proceedings;
 - (c) an extension of the Stay Period through May 2, 2025 will accommodate the anticipated timeline of a prospective SISF and otherwise allow the parties an opportunity to pursue a successful process;
 - (d) the Monitor supports the requested extension of the stay of proceedings; and
 - (e) it appears that no creditor will suffer material prejudice as a result of the extension of the stay.
- [6] I am also satisfied that the increased borrowing under the DIP Term Sheet, and a related increase to the DIP Lender's Charge should be granted under s. 11.2(1) and 11.2(4) of the CCAA. Among other things, the Secured Creditors were given notice of Vancor's application for the Initial Order and motion for the proposed ARIO. The DIP Lender's Charge does not prime any Secured Creditor. The Cash Flow Forecast indicates that the Debtors require the DIP Facility to continue to operate as a going concern. The ability to borrow funds under the DIP Facility is critical to the Debtors' restructuring. The proposed borrowings provide required liquidity and permit operating receipts to be used to fund post-filing debt service to the Debtors' major secured creditors. The Pre-Filing Report shows that the terms of the DIP Term Sheet are within the bounds of reasonable interim financing terms. The Debtors will be managed throughout the CCAA process by the CRO, with the oversight of the Monitor – each of whom will review and supervise spending under the DIP Facility. As noted, the Monitor is supportive of the increased borrowing under the DIP Term Sheet and the corresponding charge.
- [7] Finally, I am satisfied that it is appropriate to increase the Administration Charge. The businesses of the Debtors are distinct, but factually intertwined. This is a highly regulated industry, subject to many

statutory and regulatory restrictions and requirements. The interpersonal dynamics of the Debtors' shareholder group is fractious. In all these circumstances, a successful restructuring will require the strong support of experienced professionals. Each of the proposed beneficiaries of the Administration Charge is performing unique functions without apparent duplication of roles. The quantum of the proposed increase to the Administration Charge was determined in consultation with the Monitor and is based on the estimated fees of the professionals from the date of the Comeback Hearing through to the end of the proposed extended Stay Period. All secured creditors have been given notice of this CCAA proceeding and the Administration Charge. The Monitor and the DIP Lender are supportive of the increase in the Administration Charge.

- [8] The proposed payment of interest on Vancor's unsecured shareholder loans was justified on the basis of various factors outlined in the Monitor's report and the applicant's affidavit. These factors did not, however, address the "interest stops" rule, which is based on the principle of *pari passu*. *Pari passu* is the principle that "the assets of the insolvent debtor are to be distributed amongst classes of creditors rateably and equally, as those assets are found at the date of insolvency". This is said to be one of the "governing principles of insolvency law": *Nortel Networks Corporation (Re)*, 2015 ONCA 681, para. 23.
- [9] It is well settled that the "interest stops" rule applies in CCAA proceedings: *Nortel*, paras. 30 to 51. The Court of Appeal in *Nortel* concluded:

After the imposition of a stay in CCAA proceedings, allowing one group of unsecured creditors to accumulate post-filing interest, even for a relatively short period of time, would constitute unfair treatment *vis-à-vis* other unsecured creditors whose right to convert their claim into an interest-bearing judgment is stayed.

- [10] The proposal to pay interest on Vancor's unsecured shareholder loan appears, on its face to violate the "interest stops" principle. This is because it does not treat Vancor's unsecured loan rateably with debts owed to other unsecured creditors. I advised parties that I was not prepared to grant the requested order approving payment of post-filing interest on an unsecured debt claim in the face of the law laid down in *Nortel* which appears to prohibit a preferential treatment of this kind. I do not find the argument, that the DIP Loan will only be used to fund the administration costs, whereas the Debtors' operations will be funded from ordinary course revenues from business operations, persuasive. First, it does not address the "interest stops" principle at all. Second, it remains the case that the revenues from operations will be over \$200,000/month less if interest on the shareholder's unsecured loan is paid post-filing. Put another way, with an additional \$200,000 plus revenue per month available in the forecast, it seems the DIP Loan required to fund costs and operations could be correspondingly reduced.
- [11] The applicant requested, and I granted, an opportunity to further consider the matter and perhaps to return to court with the issue further briefed to address my concerns.
- [12] Apart from this issue, the relief sought is granted. A revised order will be submitted for signature and release. Counsel may, after they regroup on the "interest stops" issue, provide me with possible dates to return to court, if so desired, to address this issue.
- [13] Order to issue in the form signed by me this day.



Penny J.

