ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-25-00735482-00CL** **DATE:** **3 March 2025**

NO. ON LIST: **3**

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

BEFORE JUSTICE: **PENNY, M.**

PARTICIPANT INFORMATION

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<u>ENDORSEMENT OF JUSTICE PENNY:</u>

[1] The applicant Vancor, seeks the following relief:

a) an order ("SISP Order") approving a sale and investment solicitation process to be administered by the Monitor. The proposed SISP Order seeks the approval of a stalking horse subscription agreement between the Debtors and Vancor, as "Stalking Horse Bidder", which establishes a Stalking Horse Bid in the SISP; and

b) a Claims Procedure Order approving a claims procedure, to be administered by the Monitor, in respect of claims as against the Debtors and their directors and officers.

SISP

[2] I am satisfied that the SISP should be approved. I come to this conclusion on the basis of the following factors:

a) A sale transaction is warranted at this time. The Debtors are insolvent and unable to continue operations without a sale of the business or outside investment.

b) A sale transaction will benefit the whole economic community. The SISP is designed to test the market by soliciting the best bids, thereby maximizing value for the Debtors' stakeholders.

c) There is no other, better, or viable alternative. The SISP is the best and only value maximizing option now available to the Debtors. It will solicit the transaction or investment necessary for the Debtors to continue as a going concern, and will also provide interim stability to the Debtors' business by signalling to customers, employees, and other stakeholders that the business will continue as a going concern after these CCAA proceedings. The Debtors and the Monitor have determined that the best path forward is to implement the SISP for the benefit of all stakeholders.

d) The Monitor will administer the SISP in consultation with the Debtors. The Monitor will have discretion in connection with material decisions, including abridging or extending timelines and dispensing with bid requirements.

e) The SISP provides interested parties with sufficient time to evaluate the opportunity and to submit a bid before the deadline. The bid deadline contemplated by the proposed SISP, being 45 days, is fair and reasonable and is similar to other sale processes approved by this Court. The proposed SISP provides sufficient time for interested parties to complete due diligence, while also taking into consideration that the Debtors have limited financial resources to fund a longer process, and wish to close a transaction without delay in order to maintain the confidence of their Secured Creditors.

f) If the Monitor designates a Qualified Bid, in addition to the Stalking Horse Bid, an auction is mandatory, thereby maximizing the potential for stakeholder recovery.

g) The closing of any transaction resulting from the SISP is conditional on court approval.

h) No objection to the SISP has been received since Vancor's notice of motion was served on February 24, 2025.

i) The Monitor supports the proposed SISP and has concluded, among other things, that it "strikes the appropriate balance between the liquidity profile of the Debtors and the time necessary to undertake the SISP".

Stalking Horse Bid

[3] I am also satisfied that the Stalking Horse Agreement component of the SISP is appropriate and should be approved. Stalking horse agreements have become a common feature in CCAA proceedings. The benefits of having a stalking horse bid are well recognized by the CCAA courts and include:

a) facilitating sales by establishing a baseline price and deal structure for superior bids from interested parties such that the "use of a sales process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sales process";

b) establishing a deal structure by providing a template for competing bidders to use for the submission of competing offers; and

c) providing certainty that a going-concern solution for the business has already been identified.

[4] Here, the Stalking Horse Agreement assures the preservation and continuity of the core business of the Debtors as a going concern. This secures the continued employment for many of the Debtors' approximately 285 employees.

[5] The terms of the Stalking Horse Agreement were negotiated between the Monitor, the CRO, the Debtors' counsel, and the Stalking Horse Bidder (which is the Applicant). The consideration provided under the Stalking Horse Agreement (essentially a credit bid covering all outstanding secured and proven (in the Claims Process below) unsecured claims) reflects the product of good faith negotiations.

[6] The Stalking Horse Agreement contains a $400,000 Break Fee. Break fees, in addition to compensating stalking horse purchasers for the time, resources and risk taken in developing the agreement, also represent, in a case like this, the price of stability. In the Debtors' case, customer confidence, stability, and certainty are key to the protection of the Debtors' retail business. The Break Fee in the Stalking Horse Agreement is approximately 0.8% to 1% of the estimated value range of the Stalking Horse Bid. The quantum of this Break Fee compares favourably with the range of fees accepted by courts as reasonable. In *CCM Master*, for example, this court held that reasonable ranges are between 1.8% and 5% of the value of the bid.

[7] Finally, the Monitor supports the approval of the Stalking Horse Agreement (including the Break Fee) for the purpose of functioning as the Stalking Horse Bid under the SISP.

Claims Process

[8] Claims procedures assist CCAA reorganizations by resolving the universe of claims against the debtor(s) for the purposes of, among other things, determining potential distributions to creditors. A claims process provides certainty for the debtor and its stakeholders in making informed choices about restructuring options. These orders should be both flexible and expeditious.

[9] The proposed Claims Procedure meets the purpose of claims processes generally, which is "to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner".

[10] In this case, the vast majority of the Debtors' unsecured creditors are owed less than $10,000. In such circumstances, a "negative" or default notice process in respect of those claims is appropriate because it will reduce administrative and professional fees related to small, and likely uncontroversial, unsecured claims.

[11] The Claims Procedure provides that all outstanding litigation involving the Debtors, including but not limited to certain defined Litigation, will be addressed in the Claims Procedure. Contingent claims, including litigation claims, are "regularly compromised" within CCAA proceedings.

[12] The proposed Claims Procedure has been tailored to the specific context of this CCAA Proceeding. The proposed Claims Procedure appears to be a fair, efficient, and reasonable process for the streamlined determination of all Claims against the Debtors and their directors and officers. It is supported by the Monitor and not opposed by any stakeholder, in particular not by any party to the Litigation Claims.

[13] Orders to issue in the form signed by me this day.

Penny J.

Penny J.