SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00735482-00CL **DATE: January 24, 2025**

NO. ON LIST: 3

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

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Larry Ellis David Ward Patrick Corney	The Vancor Group Inc.	lellis@millerthomson.com dward@millerthomson.com pcorney@.millerthomson.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Joel Turgeon	Nashaat Garas, Manal Garas Pharmacy Professional Corporation and Garas Family Holdings Inc	jturgeon@perlaw.ca
David Ullman	Proposed Monitor	dullmann@blaney.com

Anisha Samat	Proposed Monitor	asamat@blaney.com
Alex MacFarlane	Respondents (Debtors)	AMacFarlane@blg.com
D. J. Miller	Firm Capital	djmiller@tgf.ca

REASONS OF JUSTICE PENNY (Released January 27, 2025):

[1] On January 24, 2025 I granted an application for an initial order under the CCAA with reasons to follow. These are the reasons.

Overview

[2] True North, Bamboo and 888 are the debtor companies. Together, they comprise in integrated cannabis retail operation with 285 employees. True North owns and operates 48 cannabis retail stores across Ontario. Bamboo is a supplier of personal protective equipment and cannabis accessories. 888 is a real estate holding company that owns 41 properties of the 48 properties from which True North operates.

[3] The applicant, Vancor, is the largest creditor of the debtors. Vancor is also a significant shareholder in the business. Vancor is owed $23 million on an unsecured basis. That debt is in default and is due and owing. The debtors are in no position to repay this debt.

[4] There are eight secured creditors. First Capital has 26 outstanding mortgages, all of which come due on May 1, 2025. About $7.5 million is owing to First Capital. The debtors are in no position to repay this debt either. The First Capital obligations are cross-collateralized and further supported by a general assignment of rents, a general security agreement and personal guarantees from, among others, Vancor and the other major shareholder of the debtors. The other mortgagees are collectively owed about $5 million, about $2.5 million of which concerns mortgages held by entities owned or controlled by the Garas family on five 888 properties. These mortgages are in default. The Garas family is a minority shareholder of 888 and is engaged in shareholder litigation with the other shareholders.

[5] The two main principals of the debtors' business, Mr. Van Iersel (who owns Vancor) and Mr. Schaller, had a falling out about a year ago. Litigation was initiated seeking, among other things, "oppression" remedies. Mr. Schaller has, since the April 2024 order of Gibson J. made in the oppression litigation, been prohibited from having anything to do with the operations of the debtors. Since then, that litigation has been dormant. Mr. Schaller left the country in September 2024 and is living in Thailand.

[6] The evidence is that that the debtors are balance sheet insolvent and face an immediate liquidity crisis, as they are unable to meet short term liquidity obligations (such as payroll at month end) and are unable to repay, refinance or otherwise address the First Capital loan and the Vancor loan.

Issues

[7] The principal issues to be determined are whether:

(a) Vancor, as the largest creditor, has standing to bring this application;

(b) the Debtors are debtor companies to which the CCAA applies;

(c) Deloitte should be appointed as Monitor in these CCAA proceedings;

(d) the Stay Period should be granted;

(e) the Administration Charge should be granted;

(f) the DIP Term Sheet and DIP Lender's Charge should be approved;

(g) the Debtors should be permitted to pay certain pre-filing obligations with the consent of the Monitor;

(h) the CRO should be appointed and the CRO Engagement should be approved; and

(i) the CRO Engagement should be redacted in respect of the CRO's proposed compensation.

Analysis

(a) Creditor-Led Application

[8] It is well settled that a creditor may initiate an application for an initial order under the CCAA. The application has been prompted by the imminent maturity of significant secured debt, and default under material unsecured loans which cannot be addressed by the debtors because of management deadlock. Furthermore, the debtors are experiencing a liquidity crisis and, as illustrated in the Cash Flow Forecast prepared by the proposed Monitor, require immediate interim financing.

(b) Does the CCAA Apply?

[9] Each of the debtors meets the definition of debtor company and exceeds the minimum debt threshold required for protection under the CCAA. The debtors are each incorporated under the laws of Ontario and do business in Ontario. The debtors' liabilities exceed $45,000,000 in aggregate. The debtors are balance sheet insolvent, with each debtor having negative shareholders' equity. The debtors are facing a looming liquidity crisis because, absent a filing under the CCAA, they will not be able to refinance material secured debt coming due on May 1, 2025; nor will they be able to meet their obligations in the ordinary course. Accordingly, the debtors are "debtor companies" within the meaning of the CCAA.

(c) Should Deloitte Be Appointed Monitor?

[10] Deloitte is a trustee within the meaning of subs. 2(1) of the BIA and is not barred by any of the restrictions outlined in s. 11.7(2) of the CCAA. Deloitte has consented to act as Monitor of the debtors in these proceedings. In preparing for this filing, Deloitte has overseen the preparation of a 15-week Cash Flow Forecast and provided a Pre-filing Report. Accordingly, Deloitte has gained critical knowledge about the debtors, their business operations, financial challenges and strategic initiatives and has already provided valuable assistance to the court. It is appropriate to appoint Deloitte as Monitor.

[11] Having been appointed, it should be recorded that the Monitor has considered, and supports, all of the relief sought on this application for an initial order.

(d) Should the Stay Be Granted?

[12] Under s.11.02 of the CCAA, the court may grant a stay of proceedings in an initial application for a period of no more than ten days, provided the court is satisfied that circumstances exist which make the order appropriate.

[13] A stay of proceedings is appropriate in the circumstances of this case. Given the debtors' current financial position and liquidity crisis, a stay of proceedings will maintain the *status quo* and give the debtors the breathing space required by the proposed CRO and Monitor to stabilize operations, for the benefit of all the stakeholders. It would be detrimental to the debtors' business and ongoing operations if proceedings were commenced or continued, or rights and remedies were executed against them. Without a stay, the debtors are unable to continue operations in the ordinary course of business. The Cash Flow Forecast indicates that the debtors will have sufficient funds to continue to operate during until the comeback date.

(e) Should the Administration Charge Be Approved?

[14] This issue is the only issue which attracted any opposition at the initial order hearing. Under the proposed Administration Charge, First Capital has negotiated a proviso that the Administration Charge will not rank in priority, specifically, to the First Capital mortgages. The Garas family, which holds several mortgages on other properties, objects to this proviso on the basis that, if First Capital's mortgages are not primed by the Administration Charge, its mortgages should not be primed either.

[15] There is no doubt, and there is no exception taken to the fact, that under s. 11.52(1) of the CCAA, the Court has discretion to grant an administration charge. Section 11.52(2) permits the court to order that the Administration Charge "rank in priority over the claim of *any* secured creditor of the company" (emphasis added). In *Canada North Group*, the Supreme Court of Canada stated:

> Super-priority charges in favour of the monitor, financiers and other professionals are required to derive the most value for the stakeholders. They are beneficial to all creditors, including those whose claims are protected by a deemed trust. The fact that they require super priority is just a part of "[t]he harsh reality . . . that lending is governed by the commercial imperatives of the lenders" (*Indalex*, at para. 59). It does not make commercial sense to act when there is a high level of risk involved. For a monitor and financiers to put themselves at risk to restructure and develop assets, only to later discover that a deemed trust supersedes all claims, smacks of unfairness.

[16] Further, there is no opposition to the "sizing" of the proposed Administration Charge ($350,000) for the period up to the come back hearing.

[17] The Garas family accepts the need for a super-priority charge to ensure the professionals are adequately paid. It submits, however, that there is no principled basis for permitting one mortgage lender to be exempted from the traditional super-priority of the Administration Charge while not another. They submit that allowing First Capital to maintain its presumptive priority as first mortgagee in the face of a super-priority charge like the Administration Charge must be justified by sufficient evidence and legal principle and that here, there has been no such justification advanced. The presumptive rule should be, they say, either all mortgagees are primed by the Administration Charge or none. Permitting an exemption for First Capital alone is inequitable and should not be allowed.

[18] The priority of the Administration Charge is, as the Supreme Court has recognized, a benefit to the professionals who are necessary for any restructuring plan to work; they may be unwilling to act if there is is a high level of risk involved that they will not be paid. This benefit to the professionals, importantly, also results in collateral benefits to all stakeholders because having the advice and guidance of competent, hard-working professionals is more likely to result in better outcomes for all concerned.

[19] Here, First Capital is an arms' length, institutional lender holding 55% of the secured debt. First Capital's mortgages involve the majority (over 60%) of the properties owned by and utilized in the debtor's retail operations. $7.5 million of First Capital's debt matures on May 1, 2025. This debt is cross-collateralized and further supported by a general assignment of rents, a general security agreement and personal guarantees from the major shareholders of the debtors. In light of these factors, First Capital is a potentially formidable opponent in any efforts to restructure. It was reasonable for the applicant and the debtors to seek First Capital's support for the CCAA filing.

[20] While it may be unusual for a secured lender not to be primed by an administration charge, there is, in my view, no legal barrier to such a result. It is a case of negotiation. Here, the relevant professionals are willing to take the risk of exempting First Capital's debt from the super-priority charge in exchange for having First Capital onside with efforts to restructure/sell/refinance the business and preserve it as a going concern. They are not, however, willing to take the risk of a *carte blanche* exemption for all mortgagees. The applicant's plan is for all mortgage loans to be fully serviced during the restructuring process. There is no relevant prejudice to the other mortgagees in not exempting their loans from the Administration Charge as well.[1]

[21] The Administration Charge, as proposed, is approved.

(f) DIP Term Sheet and DIP Lender's Charge

[22] Section 11.2(5) of the CCAA provides that a court shall not grant an order for interim financing at the same time as granting an initial order under s. 11.2(1) of the CCAA unless it is satisfied that the terms of the loan are limited to those terms that are reasonably necessary for the Debtors' continued operations in the ordinary course of business during the initial stay of proceedings. What is considered "reasonably necessary" depends on the facts of each case. Significant interim financing may be approved at the same time as an initial order if such funds are required to "keep the lights on" during the initial Stay Period.

[23] The proposed quantum of the DIP Financing sought under the proposed Initial Order is limited to the amount which Vancor and the debtors, in consultation with the Monitor, have determined is necessary for the continued operations of the Debtors' business during the initial ten (10) day Stay of Proceedings.

[24] The Debtors are insolvent and in a liquidity crisis. The Cash Flow Forecast indicates that, absent approval of the interim financing proposed to be made under the DIP Facility, the debtors will not be able to meet their obligations as they become due, including payroll. The debtors' businesses are in jeopardy of running out of liquidity as identified in the Cash Flow Forecast.

[25] The DIP Term Sheet and DIP Lender's Charge are approved.

[1] The application for the initial order was brought on short notice. If there are other concerns or arguments to be made on this issue with the benefit of more breathing room, they may be addressed at the come back hearing.

(g) Pre-Filing Obligations

[26] The court has the jurisdiction to approve payment of pre-filing obligations in certain circumstances. In this case, the Ontario Cannabis Store is, by law, TNCC's sole supplier of cannabis inventory. As such, TNCC's relationship with the OCS is critical to its business. Any interruption in supply from the OCS would have a material adverse impact on TNCC's business. Accordingly, it is appropriate to grant permission for the debtors to make pre-filing payments to the OSC, in accordance with the Cash Flow Forecast, to maintain their operations and to avoid hindering their restructuring efforts. No payments of pre-filing amounts may be made without the consent of the Monitor.

(h) and (i) Appointment of a CRO

[27] The debtors are uniquely handicapped by the existing deadlock in management of the business. Mr. Schaller is prohibited from participating in active management by court order. Mr. Van Iersel is not disinterested by virtue of his status as the largest creditor of the debtors. The Monitor, due to the strictly regulated nature of the cannabis industry, is in no position to take on active management of the debtors' enterprise. In these circumstances, a CRO is warranted.

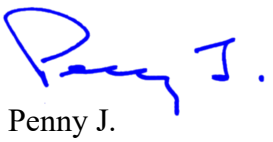
[28] The proposed CRO, Mr. Shawn Dym, has extensive restructuring advisory experience and over ten years experience in the cannabis industry. Mr. Dym holds an MBA from Harvard Business School and has previously acted as a CRO in the context of another cannabis CCAA proceeding, appointed as such by Justice Kimmel. He has consented to act in this role. Mr. Dym is uniquely positioned to guide the debtors through the restructuring process; he can provide the debtors with the stable and independent management necessary to preserve the debtors' going concern value during the CCAA proceedings.

[29] The applicant proposes to redact the CRO's fee from the public record. There is precedent for doing so: *The Vancor Group Inc. v 1000370759 Ontario Inc.*, CV-24-00725021-00CL, Endorsement of Kimmel J. dated August 6, 2024, at para 23. In this case, two factors strike me as relevant to the test under *Sierra Club* and *Sherman Estate*. First, unlike the other professionals who are professional corporations or partnerships, Mr. Dym, as an individual, has a reasonable expectation of confidentiality regarding his level of compensation. In addition, his role in active management of the debtors as CRO is akin to the key employees under a KERP, where confidentiality is frequently approved under the relevant test.

[30] The appointment of CRO, with compensation redacted from the public record, is granted.

Next Steps

[31] The come back hearing shall take place before me at 10:00 AM on Monday, February 3, 2025 for one hour (Zoom).



Penny J.