



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.:

DATE: July 25th, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: *In the Matter of the Compromise or Arrangement of Aleafia Health Inc., et al*
BEFORE: JUSTICE CONWAY

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:

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Sean Zweig	Bennett Jones LLP on behalf of the Ad Hoc Committee of the Convertible Debentureholders	zweigs@bennettjones.com

ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the factum of the Applicants dated July 25, 2023.

[1] Aleafia Health Inc. (“**Aleafia Parent**”) and its Subsidiaries (collectively, the “**Aleafia Group**”) seek an initial order under the CCAA. The evidence on the application is set out in the affidavit of Patricia Symmes-Rzakos, Chief Executive Officer of Aleafia Parent, sworn July 24, 2023 and the Pre-Filing Report of the Proposed Monitor dated July 24, 2023. All factual references in this Endorsement come from those materials.

[2] This Application was brought on an urgent basis given the liquidity crisis faced by the Applicants. Short notice was provided to the secured creditors. Although counsel for most of those creditors attended the hearing today, it was acknowledged by the Applicants that if the Initial Order is granted, the comeback hearing will be a *de novo* hearing and the onus will be on the Applicants to satisfy the court that (apart from the specific charges granted in the Initial Order), the relief in an amended and restated order should be granted.

BACKGROUND

[3] The Aleafia Group is a federally licensed Canadian cannabis company providing cannabis products to five of Canada’s largest provinces (Ontario, Alberta, British Columbia, Saskatchewan and Manitoba) and destined for select international medical cannabis markets. The Aleafia Group also operates a virtual cannabis clinic named “Canabo Medical Clinic”, staffed by various physicians and nurse practitioners, which also provides health and wellness services across Canada; medical cannabis is largely produced through Aleafia Group’s Subsidiary Emblem Cannabis. A separate physical clinic also operates in St. John’s, Newfoundland.

[4] The Aleafia Group sells its products primarily through three core sales channels: adult-use, medical, and international. To produce these products, the Aleafia Group historically operated from three licensed cannabis production facilities in the province of Ontario, one of which is Canada’s largest outdoor cannabis cultivation facility. A fourth distribution centre located in Ontario, which is licensed as a processor by Health Canada, enables same-day delivery service and direct-to-retailer cannabis distribution services. The Aleafia Group also operates, through one of its Subsidiaries, a physical medical clinic located in St. John’s, Newfoundland. Certain of these locations are also subject to exit plans.

[5] The Aleafia Group also employs 147 full-time employees across its various locations.

[6] As at March 31, 2023, the Aleafia Group had total approximate current and non-current assets of \$59,925,000 and total approximate current and non-current liabilities of \$68,838,000. The Applicants expect to have almost eliminated their cash on hand at the close of business yesterday and are facing an urgent liquidity crisis. There are also significant excise duty, property tax and HST obligations of the Aleafia Group.

[7] The Aleafia Group has three senior secured creditors: Red White & Bloom Brands Inc. to whom over \$15 million is currently owed; 1260356 Ontario Limited to whom approximately \$5.5 million is currently owed and Computershare Trust Company of Canada with respect to convertible debentures issued by Aleafia Parent and to whom approximately \$43 million is currently owed. Mr. Zweig attended today for the Ad Hoc Committee of those debentureholders. He said that he did not oppose the relief sought today for the initial 10 day period but put the court on notice that he anticipates raising issues at the comeback hearing, particularly with respect to the DIP Loan.

[8] In terms of unsecured obligations, the Aleafia Group has approximately \$4.7 million in outstanding notes payable, intercompany payables of approximately \$85.7 million, accounts payable of \$4.18 million and over \$520 million in contingent liabilities including ongoing litigation.

[9] The Aleafia Group has struggled with cash flow over the last year. It cannot meet its obligations as they become due. This liquidity crisis, and the need for DIP financing, has led to this urgent hearing.

APPLICATION FOR AN INITIAL ORDER

The CCAA Applies

[10] The CCAA applies to a “debtor company” if the total claims against it or its affiliates exceed \$5 million. The Applicants meet this test. With respect to the insolvency requirement, and as noted, the Aleafia Group has incurred net losses for the past three fiscal years. Aleafia Parent has incurred approximate net losses of \$34,604,000 for the 12 months ended on March 31, 2023, \$150,764,000 for the 12 months ended on March 31, 2022 and \$257,022,000 for the 12 months ended on March 31, 2021.

[11] In addition, as of March 31, 2023, the Applicants had a cumulative deficit of \$527.8 million with a net working capital deficit of \$5.4 million. Further, and as reflected in the Applicants’ draft consolidated balance sheet as of June 30, 2023, the total liabilities of \$74,432,000 exceed the total assets. I am satisfied that the Applicants have no liquidity and no ability to pay their obligations as they become due and are therefore insolvent.

The Stay of Proceedings is Appropriate

[12] This court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such a stay is appropriate; and (ii) the Applicant has acted in good faith and with due diligence (s. 11.02(1), (3)). When exercising judicial discretion under the CCAA, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company.¹

[13] Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course of continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.² This 10-day period “allows for a stabilization of operations and a negotiating window”.³

[14] I am satisfied that the Stay of Proceedings sought by the Applicants is reasonably necessary to maintain the *status quo* and to provide the breathing space that the Applicants require to continue their operations for the next 10 days, all for the benefit of their stakeholders.

The DIP Loan and the Charges

[15] The Applicants require immediate DIP financing in light of their liquidity crisis. The amount of financing required over the next 10 days has been worked out with the assistance of the Proposed Monitor. I required the Applicants to amend the Initial Order to clarify that only \$2.27 million of the DIP facility will be advanced during the 10 day period. That amount includes a proportionate share of the commitment fee payable to the DIP Lender for the financing provided during the 10-day period. The DIP Charge secures only the DIP financing provided during the initial period. The secured creditors did not oppose the priming of their security for the \$2.27 million but indicated that there may be opposition to increasing that amount at the comeback hearing.

[16] The Applicant seeks an Administration Charge of \$500,000 and a Directors’ Charge of \$835,000. The amount of those charges has been determined with guidance from the Proposed Monitor and is limited to what is necessary for the initial period. The charges and their priority are unopposed. Both charges are acceptable to me.

Payment of Pre-Filing Obligations

¹ *Century Services Inc v Canada (AG)*, 2010 SCC 60 at para 21.

² *Lydian International Limited (Re)*, 2019 ONSC 7473 at para 22.

³ *Lydian* at para 30.

[17] The purpose of the CCAA is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets.⁴ To meet this purpose, this court has allowed debtor companies to pay pre-filing obligations where appropriate, particularly where failure to do so could frustrate the debtor company's ongoing operations.⁵

[18] The Applicants seek authorization to make payments with the oversight and consent of the Proposed Monitor, in an amount of up to \$300,000 (I required them to reduce it from \$500,000 to the minimum needed over the 10-day period). The Proposed Monitor's counsel said that it will consult with the DIP Lender and Mr. Zweig, as appropriate, on any such payments.

[19] I grant the authorization to make the pre-filing payments on those terms.

Additional Relief

[20] The Proposed Monitor is acceptable to me and is appointed as Monitor.

[21] The use of the existing Cash Management System is supported by the Monitor and is acceptable to me.

Initial Order Granted; Comeback Hearing

[22] At the conclusion of the hearing, I said that subject to the amendments being made as above (and some other minor changes) I would sign the Initial Order. Counsel have sent me a revised order and I have now signed it. Order to go as signed by me and sent to counsel. This order is effective from today's date and is enforceable without the need for entry and filing. I am satisfied that the relief granted in the order for the 10-day period is limited to relief that is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period", as required by s. 11.001 of the CCAA.

[23] **The comeback hearing is scheduled before Justice Penny on August 4, 2023 at 12:30 p.m.** The Applicants have advised that they have more work to do in developing a SISF and will not be seeking approval of a SISF as part of the relief on the comeback hearing. They will seek that approval at a subsequent hearing.

[24] I direct that all materials for this hearing be uploaded to CaseLines forthwith.

A handwritten signature in blue ink, appearing to read "Conway".

⁴ *Century Services* at paras. 15, 59.

⁵ See *Cinram International Inc, Re*, 2012 ONSC 3767 at para. 37.