



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703350-00CL

DATE: March 1, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: ALEAFIA HEALTH INC. et al

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Shawn Irving	Lawyers for KSV Restructuring Inc., Monitor	sirving@osler.com
Martino Calvaruso		mcalvaruso@osler.com
Miranda Spence	Lawyers for Aleafia Health Inc. et al	mspence@airdberlis.com
Samantha Hans		shans@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Paul Guy	Lawyers for the Ad Hoc Committee of the Convertible Debentureholders	paul@kalloghlianmyers.com
Garth Myers		garth@kalloghlianmyers.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Chris Burr	Lawyer for the Directors and Officers	chris.burr@blakes.com
Katherine Yurkovich	Lawyer for Red White & Bloom Brands Inc.	kate.yurkovich@gowlingwlg.com
Noah Goldstein	KSV Restructuring Inc., Monitor	ngoldstein@ksvadvisory.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Monitor dated February 28, 2024.** All factual references in this Endorsement come from the Monitor's Sixth Report filed on this motion.
- [2] The Monitor brings this motion for various orders relating to the termination of these CCAA proceedings. The motion is unopposed. All of the relief sought is recommended by the Monitor, as outlined in the Sixth Report.
- [3] It is appropriate for these CCAA proceedings to now be terminated. The business of the Initial Applicants was marketed pursuant to the court-approved SISP. The successful bidders, RWB and the Purchaser, acquired the business as a going concern pursuant to a Reverse Vesting Order (RVO) granted by this court on October 30, 2023. The transactions closed on January 12, 2024 and the Purchased Entities were removed as Applicants in these proceedings.
- [4] There are seven companies, including Residual Co., that are the Remaining Applicants in these CCAA proceedings. They have no remaining material assets and conduct no business activities. The requested termination order (the Order) will bring these proceedings to an orderly close.
- [5] The provisions of the Order with respect to the termination of these proceedings, the discharge of the Charges, the discharge of the Monitor, and the filing of the Monitor's Termination Certificate are in line with previous orders of this court and are acceptable and approved.
- [6] The Order authorizes the Remaining Applicants to make an assignment in bankruptcy and for the Monitor to act as Trustee. The Order authorizes a procedural (not a substantive) consolidation of the bankruptcy proceedings, which will reduce the costs of the bankruptcy process and facilitate the orderly administration of the estates. Those provisions are acceptable and approved.
- [7] I reviewed the Releases carefully with counsel at the hearing. There are three sets of releasees: (i) the Released Parties (essentially, the Monitor and counsel to the Monitor and the Applicants); (ii) the RWB Released Parties (RWB and the Purchaser); and (iii) the Released D&Os (this includes only individuals who were directors and officers as of the date of the Initial Order).

[8] I HAVE CONSIDERED THE FACTORS SET OUT IN *Re Lyttan International Limited*, 2020 ONSC 4000 at para. 54, namely: (a) whether the parties to be released were necessary and essential to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and (e) whether the releases benefit the debtors as well as the creditors generally. It is not necessary for each of these factors to apply in order for a release to be granted: *Re Green Relief Inc.*, 2020 ONSC 6837 at para. 28.

[9] In this case, the three categories of released parties each facilitated and contributed to the CCAA proceedings. This culminated in a sale of the business as a going concern, preserving the interests of numerous stakeholders.

[10] The releases were the product of extensive negotiations and are appropriately limited in scope. Significantly, the releases do not extend to any pre-filing claims. They carve out gross negligence and willful misconduct. They carve out claims that are not permitted to be released under s. 5.1(2) of the CCAA. They do not apply to claims or liabilities that are insured claims (and the Order preserves the right to assert any such claims, up to the amount of the insurance policy). In the case of the RWB Released Parties, the release only applies to post-filing claims in relation to the DIP Facility and Senior Loan Agreement.

[11] I noted at the hearing that there is some degree of overlap between the releases in this Order and those in the RVO. The latter were given in the context of that transaction; the former are to be given in the context of the CCAA termination and go beyond those in the RVO. Since I am satisfied that the releases in this Order are appropriately limited in scope, I am not concerned about any overlap with the earlier releases.

[12] I also noted that the releases extend prospectively, for claims up to the CCAA Termination Time. This is not a practical concern for the Released D&Os (who have already resigned) or the RWB Released Parties (whose release applies only to the DIP and Senior Loan Agreement). The Monitor's counsel has undertaken to provide the service list with notice seven days before filing the Monitor's Termination Certificate to inquire if there are any claims against the Released Parties that may have arisen between today and the proposed filing date, and to bring those forthwith to the court's attention.

[13] The Order approves the Assignment Agreement in which the Debentureholders will take an assignment of the Assignor's claim against the Auditor, Manning Elliott LLP. The Debentureholders, who are owed over \$43 million, will pay \$5 million for the assignment, to be applied against the debt owed to them. I approve the assignment pursuant to s. 36 of the CCAA. The Monitor states that there was limited interest expressed in the assets of the Initial Applicants through the SISF. The Monitor is unaware of any party other than the Debentureholders who has expressed interest in this asset. No one has opposed this transaction and the Monitor recommends it. I approve the Assignment Agreement.

[14] THE STAY IS EXTENDED FROM MARCH 6, 2024 TO THE CCAA TERMINATION TIME. THE REMAINING Applicants are acting in good faith and with due diligence. The extension will permit the orderly wind-down of these proceedings. No creditor is expected to suffer material prejudice. The remaining Administrative Expense Amount is projected to provide sufficient liquidity to fund the expenses in these CCAA proceedings to the CCAA Termination Time.

[15] The Monitor's Reports (Fourth, Fifth and Sixth) and the activities therein are approved. The fees and expenses of the Monitor and its counsel are also approved. The Order contains a provision for the protection of books and records through Epiq for a period of two years following the CCA Termination Time, which is approved.

[16] CCAA Termination Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

Handwritten signature in blue ink, appearing to read "Conway J." with a flourish at the end.