



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: Friday, October 27, 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: RE 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:

| Name of Person Appearing | Name of Party | Contact Info |
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| Mike Shakra | Ad Hoc Committee of the Convertible Debentureholders | ShakraM@bennettjones.com |
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For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
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| Marc Wasserman | Monitor | mwasserman@osler.com |
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| Chris Burr | Directors and Officers of the Applicants | chris.burr@blakes.com |
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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 Applicants dated October 25, 2023.**
- [2] The Applicants seek three orders today, (i) an Approval and Reverse Vesting Order for the Sale Transactions pursuant to the Amended and Restated Stalking Horse Agreement (the “**RVO**”); (ii) the Grimsby Approval and Vesting Order (“**Grimsby AVO**”); and (iii) the Ancillary Order.
- [3] All three orders are unopposed, except for the issue of the releases in the RVO discussed below. As set out in its Third Report, the Monitor recommends and supports the relief sought by the Applicants on this motion.
- [4] I will first deal with the Grimsby Property. It was marketed separately from the other Property pursuant to the SISP. I am satisfied that the process leading to the proposed transaction was reasonable and meets the factors contained in section 36(3) of the CCAA and the *Soundair* principles. The transaction provides for the greatest possible recovery for stakeholders, is supported by the Monitor, and is unopposed by any interested party. I have signed the Grimsby AVO. The distribution to the DIP Lender set out in that order is acceptable to me. 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.
- [5] Next is the RVO. This structure is being used to provide for the efficient transfer of the licenses issued by Health Canada and CRA to the Purchaser and is appropriate given the highly regulated nature of this business. The transactions were the product of a court-approved process and generate the best recovery for stakeholders. The result is a going concern transaction for the business. The *Harte Gold* factors are met in this case, as are the s. 36(3) factors. In particular, no stakeholder will be any worse off by this structure than they would have been under any alternative (and there was none here). The consideration reflects the importance of the licenses as the business, which is dependent on these licenses, is being purchased as a going concern. Apart from the issue of the releases, I am prepared to approve the transactions and sign the RVO.
- [6] The Ad Hoc Committee of the Convertible Debentureholders (the “**Ad Hoc Committee**”), represented by Mr. Shakra, seeks an adjournment to consider the releases contained in the RVO. Mr. Shakra pointed out that the Applicants’ materials were short served by two days (delivered late last Friday night) and that his client had not had an opportunity to consider its position with respect to the releases.
- [7] I reviewed the terms of the releases at the hearing today. Ms. Spence pointed out that the only pre-filing claims released are those with respect to the Purchased Entities’ cannabis excise licenses. This language has been negotiated with CRA, who is not opposed to the releases in their current form. No other pre-filing claims are intended to be released. I noted at the hearing that the language of the releases could be clarified to state that explicitly.

- [8] The releases do apply to post-filing claims. However, the Applicants submit that this is appropriate given that these CCAA proceedings have been closely supervised by the court and conducted under the close supervision of the Monitor.
- [9] I make no decision about the releases today. I agree that the Ad Hoc Committee should have an opportunity to consider its position with respect to any pre-or post-filing claims that would be released under the RVO. The Ad Hoc Committee should not be compromised in considering this issue as a result of short service. I have therefore adjourned the hearing to **Wednesday, November 1, 2023 at noon for one hour before me (confirmed with the Commercial List office)**. I direct that the Ad Hoc Committee deliver any responding materials setting out its substantive position with respect to the releases by Monday, October 30, 2023 at 5 p.m. Reply materials, if any, shall be delivered by Tuesday, October 31, 2023 at 5 p.m.
- [10] If counsel can work out a revised form of RVO that addresses these concerns, they can send it to me directly by email, with a copy of the Ancillary Order. If the revisions are acceptable to me, I will sign and deliver those two orders without the need of an additional attendance.

Conway J.