



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: 23-00706033-00CL

DATE: Dec 14 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: BIOSTEEL SPORTS NUTRITION INC. et al v. * removed
***NATIONAL HOCKEY LEAGUE PLAYERS' ASSOCIATION et al
BEFORE: JUSTICE STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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Rachel Biblo		

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Monitor for KSV Restructuring Inc	zweigs@bennettjones.com
Jesse Mighton	Monitor for KSV	mightonj@bennettjones.com
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Ross Graham	Monitor	rgraham@ksvadvisory.com
Harvey Chaiton	Special Committee	harvey@chaiton.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Applicants seek an order (i) authorizing BioSteel Canada to make distributions to Canopy Growth Corporation and its affiliate (“Canopy”), (ii) authorizing BioSteel Manufacturing and BioSteel US to make distributions to the Administrative Agent for the Senior Secured Lenders of Canopy and its affiliate (the “Administrative Agent”), (iii) authorizing the Monitor’s powers to be enhanced; and (iv) extending the stay period to April 30, 2024.
- [2] No one opposes the relief sought on the motion.
- [3] The Monitor supports the relief sought.

Background

- [4] BioSteel was granted protection under the *Companies’ Creditors Arrangement Act* on September 14, 2023 pursuant to an initial order of this Court.
- [5] At the comeback hearing, the Court granted the ARIO which, among other things, extended the stay period until November 17, 2023. The Court also granted the SISP approval order, which approved the SISP, among other things.
- [6] The Applicants have sold most of their assets and the transactions were approved by this Court on November 16, 2023. At that appearance, the Court granted an ancillary order, which added the US BioSteel Entities as applicants in this proceeding.
- [7] On November 30, 2023, the US Bankruptcy Court entered an order, among other things, recognizing the Canadian proceeding for BioSteel Manufacturing and BioSteel US as a foreign main proceeding and approving the transactions.
- [8] On November 30, 2023 the transactions closed.

Analysis

Should the Court approve the proposed distributions?

- [9] Now that the transactions have closed, the Applicants seek court approval to make distributions to Canopy and the Administrative Agent.

- [10] Section 11 of the CCAA gives the court broad powers to make any order that it considers appropriate in the circumstances.
- [11] The court can approve distributions to creditors while the CCAA proceedings are ongoing: *Nortel Networks Corp., Re*, 2014 ONSC 4777, at paras. 54 and 55, *AbitibiBowater Inc.*, 2009 QCCS 6461, at para. 71. The Court has exercised its discretion to grant distribution orders similar to the one requested in other cases, including *Greenspace Brands Inc., Re* (June 15, 2023) ONSC (Commercial List), Court File No. CV-23-00697516-00CL, *Harte Gold Corp., Re*, (February 15, 2022) ONSC (Commercial List), Court File No. CV-21-00673304-00CL.
- [12] Regarding BioSteel Canada, substantially all of the company's assets have been sold. There is approximately CAD\$10 million in proceeds from the sale. Under the loan agreement with the Canopy Lenders, BioSteel Canada owes approximately \$366 million plus interest. The obligations under the loan agreement are secured under a GSA. Canopy is registered first against the collateral under the PPSA. The Monitor's counsel has confirmed that the GSA, as security for the loan agreement and related documents, creates a validly perfected security interest.
- [13] Regarding the US BioSteel entities, substantially all of the assets of BioSteel Manufacturing have been sold. There is approximately US\$15 million in proceeds from the sale. In addition, BioSteel Manufacturing holds approximately \$300,000 in cash. BioSteel US has cash of approximately US\$3.3 million. Under the credit agreement, an aggregate of approximately US\$430 million is outstanding. The US BioSteel entities entered into a guarantee agreement under which they agreed to guarantee to the Administrative Agent the payment and performance of all obligations under the credit agreement. In connection with the credit agreement and the guarantee, the US BioSteel entities also entered into security agreements. In the US, the only registrations found when lien searches were conducted were in favour of the Administrative Agent. In addition, the Monitor's US legal counsel has provided an opinion that the security relating to the Obligations creates a validly perfected security interest in favour of the Administrative Agent.
- [14] Notice of the motion has been given to the service list, including relevant taxing authorities. No party has objected.
- [15] I am satisfied that it is appropriate in the circumstances to make the distribution order.

Should the Court authorize the expansion of the Monitor's powers?

- [16] The Applicant seeks to expand the Monitor's powers, because it is anticipated that all directors will resign or have their terms expire without further extension.
- [17] Under sections 11 and 23(1)(k) of the CCAA, the Court has the authority to expand the powers of the Monitor. Section 23(1)(k) provides that the monitor shall "carry out any other functions in relation to the company that the court may direct."
- [18] The Monitor confirmed that it is prepared to take on the additional functions, which are expected to include (i) overseeing any remaining business and activities of the Applicants, including a wind-down of the entities; (ii) liquidating any remaining assets of the Applicants; and (iii) attending to post-closing matters in respect of the transactions.

[19] As noted at para. 25 of the Applicants' factum, the expansion of a Monitor's powers has been granted in previous CCAA cases, including *Harte Gold* and *Just Energy Group Inc. et al (Re)*, (November 3, 2022) ONSC (Commercial List), Court File NO. CV-21-658423-00CL.

[20] As noted above, it is anticipated that the Applicants' directors will resign. It is proposed that the Monitor would be empowered to exercise those functions that would otherwise be exercised by a board of directors or officer of the Applicants. This is necessary to bring these proceedings to a close.

[21] I am satisfied that it is appropriate in the circumstances to expand the Monitor's powers.

Should the Court grant the Stay Extension?

[22] The Applicants seek an extension of the stay period from January 31, 2024 to April 30, 2024.

[23] The Court has authority to grant an extension of the stay under s. 11.02 of the CCAA provided that the extension is appropriate, and the Applicant is acting in good faith and with due diligence.

[24] The Applicants state that the stay extension is needed to allow them to make the proposed distributions and to wind down the remaining business.

[25] The Monitor supports the stay extension. The Applicants have acted and continue to act in good faith and with due diligence. There is no evidence to the contrary.

[26] I am satisfied that it is appropriate to grant the stay extension.

[27] Order attached.

A handwritten signature in blue ink, appearing to be "J. [unclear]", located in the bottom right corner of the page.