



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00699872-00CL

DATE: SEPTEMBER 28 2023

REGISTRAR: C.FERNANDEZ

NO. ON LIST: 5

TITLE OF PROCEEDING: IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CHALICE BRANDS LTD.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Jeremy Bornstein	Monitor	jbornstein@cassels.com
Noah Goldstein	KSV, Monitor	ngoldstein@ksvadvisory.com
Daniel Shouldice	APCO LLC	daniel.shouldice@mcmillan.ca

ENDORSEMENT OF JUSTICE KIMMEL :

1. The Applicant, Chalice Brands Ltd. ("Chalice" or the "Applicant") is the ultimate parent of the Chalice Group, that together form a vertically integrated cannabis company operating primarily in the regulated adult-use market of Oregon. The Applicant was granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") by an initial order made May 23, 2023 that was amended and restated on June 1, 2023.

2. The stay of proceedings in the Initial Order was granted in favour of the direct and indirect subsidiaries of the Applicant (the "Non-Filing Affiliates"). KSV Restructuring Inc, was appointed as monitor within these CCAA proceedings (the "Monitor"). On the same day, certain of the Non-Filing Affiliates (the "Oregon Receivership Entities") were placed into receivership in the State of Oregon by order of the Circuit Court of the State of Oregon (the "Oregon Court" and the "Oregon Receivership"). Kenneth S. Eiler was appointed by the Oregon Court as receiver (the "Oregon Receiver").
3. The stay of proceedings has been extended and currently expires on October 31, 2023.
4. The Applicant entered CCAA to implement an expedited sale and investment solicitation process ("SISP") for all or substantially all of the business and property of the Chalice Group, with the aim of achieving a going concern solution. The CCAA Court and the Oregon Court approved the SISP on June 1 and 2, 2023, respectively (together, the "SISP Approval Orders"). The SISP was to be implemented by the Applicant with the oversight of the Monitor, and contemplated extensive consultation with, and consent and approval rights to, the Oregon Receiver.
5. The Applicant brings two motions seeking the following primary relief (and related ancillary relief):
 - a. For an approval and vesting order (the "Approval and Vesting Order") in respect of a transaction (the "Transaction") contemplated by an Asset Purchase Agreement ("APA") dated August 11, 2023 between APCO LLC (the "Purchaser") and Chalice, Greenpoint Nevada, Greenpoint Oregon, Greenpoint Equipment, CFA Retail, SMS Ventures, and CF Bliss (together, the "Vendor") wherein the Purchaser will acquire substantially all of the assets of the Chalice Group; and
 - b. For an order (the "Termination and Discharge Order") providing a mechanism for the termination of this CCAA Proceeding and the discharge of KSV Restructuring Inc. ("KSV"), in its capacity as the court-appointed monitor in this CCAA Proceeding (in such capacity, the "Monitor"), effective as of the CCAA Termination Time (as defined below) (the "Termination Procedure").
6. The Chalice Group has implemented and completed the SISP, which gave rise to the Transaction, preserving some of the business of the Chalice Group as a going concern, preserving jobs, and achieving limited recoveries for certain stakeholders. However, the extent of any proceeds of the Transaction that will be available to the Applicant will not be known until after the Transaction has closed and the associated fees and taxes can be finally calculated.
7. While the Chalice Group initially anticipated receiving certain monies from refundable tax credits, it is now uncertain whether these monies will be paid. It is therefore important that the CCAA Proceeding be conducted as efficiently and cost-effectively as possible. Granting the Termination and Discharge Order will allow the Applicant to efficiently exit from this CCAA Proceeding without the delay, cost, administrative burden, and imposition on Court resources required by a separate termination motion.
8. Since the liquidity of the Applicant is tight, it has elected to bring these motions at the same time to avoid the cost of multiple court attendances, if possible.
9. No stakeholder has communicated any objection, nor did any person appear at the hearing to express any objection or oppose the motion.

The Approval and Vesting Order and Ancillary Relief

AVO

10. The Transaction is conditional on approval by both the CCAA Court and the Oregon Court. Given that substantially all of the assets to be acquired under the APS are located in Oregon, it was decided that the sale approval motion should proceed first in Oregon and then in Ontario. A sale approval motion (the "Oregon Sale Motion") was scheduled for August 28, 2023, with additional days reserved on August 31 and in early September to hear evidence. Four creditors of the Chalice Group (together, the "Disputed Secured Creditors") asserted liens on certain of the Purchased Assets. The validity of some of these liens

was to be determined by the Oregon Court at a motion (the "Lien Motion", and with the Oregon Sale Motion, the "Oregon Motions") to be heard alongside the Oregon Sale Motion.

11. As a result of continuing objections raised by one remaining lien claimant in Oregon, the Transaction was not approved on August 28, 2023. Accordingly, the motion that had been scheduled for August 31 2023 for the approval of the Transaction by the CCAA Court was postponed.
12. After settling with the last objecting lien claimant, on the afternoon of August 31, 2023, the Oregon Receiver returned to the Oregon Court to seek approval of the Transaction on an unopposed basis. The Oregon Court granted the Oregon Sale Motion and approved the Transaction. The Approval and Vesting Order sought from the CCAA Court only relates to the CCAA Applicant's right, title and interest in the Purchased Assets that are part of the Transaction.
13. The Applicant's factum filed for the original return of the Approval and Vesting Order motion outlines the evidentiary and legal justifications for the court to make this order. The Transaction is the result of the court approved SISP, the implementation of which sale process is detailed in the Fifth Affidavit of the CRO. The Oregon Court granted the Oregon Sale Motion and approved the Transaction. These considerations strongly support the CCAA Court granting the requested Approval and Vesting Order.
14. In summary, the Transaction is the result of a comprehensive Court-approved SISP, and the Applicant and the Monitor believe that it reflects the best expected recovery for the Applicant's stakeholders. The Transaction also provides a going-concern solution for part of the business of the Chalice Group and preserves many of the Chalice Group's valuable cannabis licenses. The Transaction involves an experienced Purchaser and permits the continuation of part of the Chalice Group's business for the benefit of contract counterparties and other stakeholders. The Transaction is supported by the Monitor, the Chief Restructuring Officer ("CRO") of the Applicant, and the Oregon Receiver.
15. To the extent that the Purchaser may be considered to be "related to" the Applicant, the APA is nevertheless authorized by the CCAA. Section 36(4) of the CCAA prescribes two factors that must be satisfied for this Court to authorize a sale to a person "related to the company", which are satisfied here:
 - a. First, that good faith efforts were made to sell the assets to any persons who are participated in the SISP. The APA is the result of a competitive bidding process that canvassed interest from multiple strategic and financial parties unrelated to the Applicant, 20 parties signed NDAs to obtain access to the data room, ultimately giving rise to 4 bids, of which the bid from the Purchaser provided the best consideration. The APA itself is also the product of negotiations between the Applicant and several bidders, which were overseen by the Monitor and the Oregon Receiver.
 - b. Second, that the Purchase Price is superior to the consideration that would be received under any other offer received in the SISP. The Monitor has concluded that the Purchase Price under the APA represents the best offer for the assets of the Chalice Group and is superior to what would be achieved through a liquidation.
16. Moreover, the Oregon Receiver has concluded that the Purchaser demonstrated honesty in fact and fair dealing in negotiating its bid and the proposed sale pursuant to the APA is the best means to maximize the value of the Purchased Assets.
17. The Monitor's factum provides a detailed review and analysis of the court's jurisdiction to grant the requested orders and the factors to be considered under s. 36 of the CCAA, which largely overlap with the factors enumerated in *Royal Bank v. Soundair Corp.* (1991), 83 DLR (4th) 76 (OCA), at para 16, as supplemented by the additional factors to be considered when authorizing a sale under the CCAA in the absence of a plan of arrangement. See *Nortel Networks Corporation (Re)* [2009] O.J No 3169, 55 CBR (51) 229, at para 49 and *Green Growth Brands Inc.*, 2020 ONSC 3565 at para. 61.
18. I am satisfied that the criteria specified in these authorities have been met.

Temporary Sealing Order

19. The Applicant seeks a sealing order with respect to confidential appendix 1 to the Third Report of the Monitor dated August 28, 2023 that contains a summary of the four final round bids that were received in the SISP. It is in the public interest that this appendix be sealed until the Transaction closes.
20. The requested partial sealing order is limited in its scope (only one specifically identified confidential appendix) and in time (until the contemplated transaction closes). It is necessary to protect commercially sensitive information that could negatively impact the debtor and stakeholders if this Transaction is not completed and further efforts to sell the subject assets have to be undertaken.
21. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the subject assets, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved sale transaction. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
22. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with the approval and vesting orders.
23. The Applicant is directed to ensure that the sealed confidential appendix is provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order so that the confidential exhibits can be physically sealed. The Applicant is further directed to attend at the court to ensure that the confidential appendix is unsealed after the Closing has taken place when the sealing is no longer effective as contemplated by paragraph 12 of the Approval and Vesting Order.

The Termination and Discharge Order and Ancillary Relief

Termination and Discharge

24. In light of this outcome of the successful completion of the SISP, the Applicant, in consultation with the Monitor, has developed a mechanism for the Applicant to swiftly and efficiently exit this CCAA Proceeding and for the Monitor to be discharged.
25. More specifically, the proposed Termination and Discharge Order provides that, upon filing by the Monitor of a certificate upon the service list in this CCAA Proceeding certifying that all matters to be attended to in connection with this CCAA Proceeding have been completed to the satisfaction of the Monitor (the "Termination Certificate"):
 - a. the CCAA Proceeding will be terminated;
 - b. the Administration Charge (as defined in the ARIIO) will be terminated, released and discharged; and
 - c. KSV will be discharged as the Monitor (the "CCAA Termination Time").
26. The proposed Termination and Discharge Order further provides that upon service of the Termination Certificate, the Monitor and its counsel, Canadian and US counsel to the Applicant, and the Oregon Receiver and its counsel (together, the "Released Parties") shall be released from any and all liability that they have or may have now or in the future in connection with this CCAA Proceeding or with respect to their respective conduct in connection therewith, including carrying out the terms of the proposed Termination and Discharge Order, or any matters that are ancillary or incidental to the CCAA

Proceeding following its termination, save and except for any claim or liability arising from gross negligence or willful misconduct.

27. A mechanism has been built into the order to allow the stakeholders to object to the service of the Termination Certificate after receiving notice of the Monitor's intention to do so and a copy of the Monitor's final report. The Termination Certificate cannot be served until any objections have been resolved or further order of the court if objections remain unresolved.
28. The CCAA does not mandate a specific procedure for terminating CCAA proceedings. This Court has the authority to approve this Termination Procedure and grant the Termination and Discharge Order pursuant to its broad discretion under section 11 of the CCAA. Termination and Discharge Orders are routinely granted in CCAA proceedings.
29. The Termination and Discharge Order is sought at this time to maximize efficiency and avoid the need for additional future Court appearances. It is anticipated that after this CCAA Proceeding is terminated, the Applicant may file an assignment into bankruptcy. In such case, the Applicant seeks authorization from this Court for KSV to act as Trustee should it agree to do so.
30. Making an order now terminating this CCAA Proceeding upon filing of the Termination Certificate and authorizing the Applicant to make an assignment into bankruptcy prior to the termination of this CCAA Proceeding will hopefully avoid the need to file additional motions before the CCAA Court. In addition to saving professional fees, this will eliminate the need to take up court time in respect of additional non-contentious motions in the CCAA Proceeding and provide a mechanism to make distributions to the Applicant's creditors should funds become available.
31. The Termination mechanism appropriately balances the Applicant's need to exit this CCAA Proceeding efficiently with the need to provide parties with adequate time and information to consider the relief that becomes effective upon the filing of the Termination Certificate.

Approval of Monitor's Activities and Fees

32. The proposed Termination and Discharge Order approves the activities as detailed in the reports of the Monitor filed in the CCAA Proceeding, as well as the fees and disbursements of the Monitor and its counsel referred to in the Fourth Report and supported by fee affidavits, including the Estimated Remaining Fees to the Termination Date. The Estimated Remaining Fees reflect the fees and disbursements of the Monitor and its counsel that have been and are anticipated to be incurred in connection with the completion of the Monitor's remaining duties in this CCAA Proceeding. They are outside of the cash flow forecast because they have been paid or are being held on retainer by the Monitor and its counsel. The cashflow forecast does make allowance for the payment of the CRO's success fee under his contract.
33. I am satisfied that the approval of the Monitor's Reports and the activities described therein is appropriate. The approval language is appropriately qualified in the order to limit reliance upon it to the Monitor. The fees of the Monitor and its counsel appear to be reasonable and have been appropriately supported by fee affidavits that set out the time and specific work that has been devoted to this case in which the Monitor has been a central player. The Estimated Remaining Fees are also appropriately supported. All of the fees are reasonable and appropriate and are approved. The CRO's fees are consistent with his approved engagement.

Releases

34. The Termination and Discharge Order provides for releases of the Monitor and its counsel, Canadian and US counsel to the Applicant, and the Oregon Receiver and its counsel (the "Released Parties") upon the filing of the Termination Certificate. It is anticipated that similar protections will be sought for all of the same professionals from the Oregon Court.
35. In determining whether to approve third-party releases in CCAA proceedings, the Court must ask: (a) whether the parties to be released were necessary 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. Third party releases may be granted outside of a plan of arrangement. It is not necessary for each of these factors to apply in order for the proposed releases to be granted. See *Arrangement relatif à Black Rock Metals Inc.*, 2022 QCCS 2828, at para 130, citing the test established in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp*, 2008 ONCA 587; see also *Green Relief (Re)*, 2020 ONSC 6837, at para 28.

36. The releases in favour of the Released Parties satisfy the test for third-party releases under the CCAA and should be granted because:
- a. the Released Parties have made significant and often critical contributions to the development and implementation of the CCAA Proceeding and the Oregon Receivership Proceeding, the coordination of which was contemplated in both the Initial Order and the SISP Approval Order;
 - b. the Released Parties have contributed to the successful sale of substantially all of the Chalice Group's assets for the benefit of its stakeholders;
 - c. the release of the Released Parties will limit or eliminate claims for contribution and indemnity that the Released Parties may have against the Applicant and thereby facilitate rather than hinder value maximization in this CCAA proceeding;
 - d. the proposed releases contain exclusions consistent with previous similar releases granted by this Court and do not release any claim or liability arising from gross negligence or willful misconduct; and
 - e. the releases are necessary to bring finality to this CCAA Proceeding for the benefit of all stakeholders.
37. The factors relevant to the approval of releases in CCAA proceedings are present and the releases and related provisions contained in the Approval and Vesting Order are aligned with what is customarily provided for, including in CCAA orders outside of a plan of arrangement and in the context of a court approved restructuring. See also, *Green Relief* at para 27; *Blackrock* at para 128; *Harte Gold* at para 79. The release language contains the required carve-outs under s. 5.1(2) of the CCAA and for fraud, gross negligence, or willful misconduct of the Released Parties.

Stay Extension

38. This Court is authorized to extend a CCAA stay of proceedings pursuant to section 11.02(2) of the CCAA, subject to the two considerations outlined in section 11.02(3) which are satisfied here:
- a. The stay extension is appropriate. Extending the Stay Period to January 31, 2023 is appropriate in the circumstances. This will allow the Applicant time to close the Transaction and to wind down the remaining estate and to complete any ancillary or incidental tasks or discharge any duties necessary prior to the Monitor serving the Termination Certificate. The proposed extended Stay Period is in the best interests of the Applicant and its stakeholders generally. The Monitor supports the proposed request to extend the Stay Period.
 - b. The Applicant has acted in good faith and with due diligence. The Applicant has acted, and continues to act, in good faith and with due diligence in this CCAA proceeding since the granting of the Initial Order, including with respect to the implementation of the SISP and entering into of the APA.
39. The Applicant, with the assistance of the Monitor, has confirmed that the Applicant will have sufficient liquidity to fund the wind-down of the CCAA proceeding during the proposed extension of the Stay Period. The Applicant, together with the Monitor and the Oregon Receiver, anticipates completing the anticipated tasks necessary to complete the administration of the CCAA proceeding prior to the Extended Stay Period.

40. The stay extension provided for has been requested in good faith and there has been no identified prejudice to any party. I am satisfied that it is appropriate in this case for it to be tied to the filing of the Monitor's Certificate after the anticipated closing of the Proposed Transaction.

Final Disposition

Orders (Approval and Vesting Order, Approval and CCAA Termination and Discharge Order) to go in the forms signed by me today.

A handwritten signature in black ink, appearing to read "Kimmel J.", written in a cursive style.

KIMMEL J.

September 28, 2023