



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00743383-00CL

DATE: August 28, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF HAKIM OPTICAL LABORATORY LIMITED et al

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jesse Mighton Jamie Ernst	Counsel for the Applicant	mightonj@bennettjones.com ernstj@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Maurice Fleming	Counsel for 1001112855 Ontario Inc. and Chiaro Ottico Ltd.	mfleming@ln.law
George Benchetrit	Counsel for the Monitor	george@chaitons.com
Jordan Wong	KSV Restructuring Inc., the Monitor	jwong@ksvadvisory.com

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AMENDED ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] Hakim Optical Laboratory Limited, Lawrence Ophthalmic Lab Inc. and Hakim Optical Worldwide Lenses Inc. (collectively, the "**Applicants**") seek an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C 36, as amended (the "**CCAA**"):
- a. approving a sale and investment solicitation process (the "**SISP**") in which a Stalking Horse APA will serve as the "Stalking Horse Bid", and authorizing the Applicants and KSV Restructuring Inc. ("**KSV**"), in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), to implement the SISP pursuant to its terms;
 - b. authorizing and approving the Applicants' execution of the stalking horse asset purchase agreement (the "**Stalking Horse APA**"), among the Applicants, as vendors, and Evelyn Aimis Holdings Inc. ("**Evelyn Aimis**"), and Chiaro Ottico Ltd. (the "**Stalking Horse Bidder**"), as purchaser, dated August 21, 2025, solely for the purpose of acting as the 'stalking horse bid' in connection with the SISP;
 - c. approving the Bid Protections contemplated by the Stalking Horse APA, and granting a Court-ordered charge as security for the Bid Protections (the "**Bid Protections Charge**"), such charge to rank in priority to all security interests, but subordinate to the Administration Charge and the DIP Lender's Charge;
 - d. sealing an unredacted copy of the Stalking Horse APA filed as a confidential exhibit to the Affidavit of Douglas Robertson sworn August 21, 2025 (the "**Confidential Exhibit**") until further order of the Court;
 - e. granting an extension of the Stay of Proceedings to and including November 7, 2025 (the "**Stay Extension**"); and
 - f. approving the Third Report of the Monitor dated August 25, 2025 (the "**Third Report**"), and the activities of the Monitor described therein, and the fees of the Monitor and its legal counsel referred to in the Third Report.
- [2] Defined terms used but not otherwise defined herein have the meaning provided to them in the factum of the Applicants filed on for use on this motion.
- [3] There is no opposition to the relief sought by the Applicants today.

Background

- [4] On May 15, 2025, the Applicants obtained certain relief under the CCAA pursuant to the Initial Order. Most recently, the Stay of Proceedings created by the Initial Order was extended until August 29, 2025.
- [5] Prior to filing for creditor protection, the Applicants undertook an informal marketing process over a period of several years which broadly canvassed many of the participants in the retail optical industry in Canada and abroad seeking to identify parties interested in acquiring or investing in the Applicants' business.
- [6] As well, prior to the filing the Applicants refinanced their senior secured debt facility provided by RBC, which resulted in 1001112855 Ontario Inc. ("**855 Ontario**") taking an assignment of RBC's interests in the Applicant's senior secured credit facility and security on January 21, 2025. Also on this date, 855 Ontario extended interim bridge financing to the Applicants to sustain their remaining operations (the "**BF**

Credit Facility”). As well, the Initial Order approved the Applicants’ ability to borrow under the DIP Facility, up to a principal amount of \$2.8 million from 855 Ontario, as DIP Lender, to finance the Company’s working capital requirements and other general corporate purposes, post-filing expenses and costs incurred during these CCAA proceedings.

- [7] The SISP and the Stalking Horse APA are the result of extensive negotiations with 855 Ontario. The proposed SISP allows the Applicants and the Monitor to solicit interest in, and opportunities for, the sale of all or part of the Applicants’ right, title, and interest in and to all of their assets, or the sale of all of the shares of the Applicants by way of a share transaction, through one or more transactions, subject to the Court granting an approval and vesting order.
- [8] The SISP requires that a Qualified Bidders deliver its final bid by no later than 5:00 p.m. (Toronto Time) on October 3, 2025 (the “**Qualified Bid Deadline**”). Among other things, the SISP requires that a Qualified Bid it provides for payment in full, in cash on closing, of at least: (i) the Purchase Price under the Stalking Horse APA (being \$22 million subject to certain adjustments); (ii) the Expense Reimbursement and Break Fee (being in aggregated \$1.2 million); plus (iii) a minimum bid increment of \$100,000.
- [9] If no Qualified Bids are submitted by the Qualified Bid Deadline other than the Stalking Horse Bid, the Stalking Horse Bid will be deemed to be the Successful Bid. If one or more Qualified Bids (other than the Stalking Horse Bid) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor will proceed with an Auction to determine the successful bid(s).
- [10] The Stalking Horse APA is structured as an asset purchase agreement. The Stalking Horse APA contemplates that the Stalking Horse Bidder will acquire the real property leases for all, or substantially all, of the seventy (70) active store locations (the “**Purchased Locations**”) and certain other related assets (including the Company’s inventory, accounts receivable and intellectual property) on an “as is, where is” basis. The Stalking Horse APA, is expected to ensure the preservation of the Business as a going concern and the continued employment of most if not all of the Applicants’ employees.
- [11] The Stalling Horse APA is structured as a credit bid of the outstanding obligations owing to 855 Ontario under the DIP Facility and such portion of the obligations owing to 855 Ontario under the BF Credit Facility as is required to satisfy the Purchase Price.
- [12] If the Stalking Horse Bid is not selected as the Successful Bid in the SISP, the Stalking Horse APA provides that the Stalking Horse Bidder will be entitled to the payment of certain bid protections, being (i) a Break Fee in the amount of \$600,000, and (ii) the Expense Reimbursement for all actual documented out-of- pocket reasonable costs and expenses incurred in connection with negotiating, preparing and executing the Stalking Horse APA, up to the maximum amount of \$600,000 . The Bid Protections are proposed to be secured by the Bid Protections Charge over the Property in favour of the Stalking Horse Bidder.

Issues

- [13] The issues to be decided are whether:
 - a. the proposed SISP, including the use of the Staking Horse APA and the Bid Protections, should be approved;

- b. the Confidential Exhibit should be subject to a limited sealing order;
- c. the Stay of Proceedings should be extended to November 7, 2025; and
- d. the Third Report and the Monitors activities and fees described therein should be approved.

Analysis

- [14] This Court has held that when considering a sales solicitation process, including the use of a stalking horse bid, the Court should assess the following factors: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the debtor; and (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets being offered for sale: see *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 [**CCM Master**] at para 6.
- [15] In assessing whether a stalking horse bid should be approved in the context of a court supervised sale process, Courts also consider the following non-exhaustive list of factors: (a) whether the sale process is warranted at this time; (b) whether the sale process will be of benefit to the debtors' stakeholders; (c) whether any creditors have a bona fide reason to object to a sale of the business; and (d) whether a better viable alternative is available: see *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ONSC) [**Nortel**] at para 49.
- [16] Where a stalking horse bid is brought forward for approval, additional considerations apply. In *DCL Corporation (Re)*, 2023 ONSC 3686 [**DCL Corporation**] at para 24, this Court considered the criteria previously identified by the Supreme Court of British Columbia in *Re Freshlocal Solutions Inc.*, 2022 BCSC 1616 at paras. 24-32, and found the following questions relevant to the assessment of a proposed stalking horse bid: (a) how did the stalking horse agreement arise; (b) what are the stability benefits; (c) does the timing support approval; (d) who supports or objects to the stalking horse agreement; (e) what is the true cost of the stalking horse agreement; and (f) whether there is an alternative.
- [17] In the present case, the Stalking Horse APA contains a number of conditions to closing. The Applicants and the Monitor submit that, in part, these arise, despite the lengthy period of negotiations, because of the state of the Applicants records. Additional information is being produced and provided to the Stalking Horse Bidder. The Monitor confirmed that the intention is to provide all Qualified Bidders access to the relevant information. The parties confirmed that work is ongoing to satisfy the conditions and transparency with respect to that process is to be expected.
- [18] In the circumstances, I am satisfied that the proposed SISP, including the use of the Stalking Horse APA should be approved. The proposed SISP was developed, in consultation with the Monitor, with a view to providing a flexible, efficient and fair process for canvassing the market for potential purchasers, and maximizing the value of the Applicants' assets, and the recovery to the Applicants' creditors, all within the timeframe permitted under the DIP Agreement. The Monitor has advised that the SISP timeline is appropriate in the circumstances, having regard to, among other things, the liquidity available to the Applicants through the DIP Facility. If the SISP is not approved, the Applicants may not be able to access further financing under the DIP Facility, and no alternative sources of financing are immediately available to the Applicants.
- [19] As well, the Stalking Horse APA is the product of extensive negotiations among the Stalking Horse Bidder, the Applicants and the Monitor over the past six months. These negotiations have been disclosed

since the outset of these CCAA proceedings and no party has come forward expressing a desire to submit a competing stalking horse bid, nor has any opposition been raised to the use of a stalking horse bid as part of the sale process. The Stalking Horse APA provides a degree of certainty that these restructuring proceedings will result in a going-concern outcome, and therefore provides a large measure of stability to the Business.

- [20] Although the Bid Protections in the maximum aggregate amount of \$1.2 million (approximately 5.5% of the Purchase Price amount), are on the high end of the amounts approved recently by Canadian Courts, the Monitor is of the view that the Bid Protections are reasonable in the context of the work involved in negotiating the Stalking Horse APA and the importance of providing the Applicants with the stability associated with a stalking horse bid to maximize value for stakeholders. In the circumstances, I am satisfied that the Bid Protections and the corresponding charge should be approved as it lies within a range of reasonable alternatives and the Monitor is satisfied that the break fee is reasonable in the circumstances.
- [21] The Applicants are requesting a limited sealing Order in respect of the Confidential Exhibit. The proposed redacted information in this case is personal and commercially sensitive including: (i) the identity of certain specified key employees; and (ii) the negotiated commercial and economic terms of certain real property leases. I am satisfied that the limited sealing order being sought meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in maintaining contractual obligations of confidentiality in the circumstances: see *DCL Corporation* at para 45. I direct counsel for the monitor to file a hard copy of the confidential appendices with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.
- [22] The Applicants also request the Stay of Proceedings be extended until November 7, 2025. This Court is authorized to extend a CCAA stay pursuant to s. 11.02 of the CCAA, provided that the (a) circumstances exist that make the order appropriate; and (b) the CCAA Parties have acted, and are acting, in good faith and with due diligence. The current Stay of Proceedings will expire on August 29, 2025. The proposed extension will allow the Applicants and the Monitor to conduct the SISP and, provide the Applicants with the requisite time to seek approval of the Success Bid arising therefrom. The Revised Cash Flow Forecast demonstrates that the Applicants will, subject to typical assumptions, be able to fund the SISP and support their ordinary course business operations and the costs of these CCAA proceedings through the end of the Stay Extension period. As well, the Monitor and the DIP Lender are supportive of the proposed extension, and the Monitor is of the view that it is reasonable and appropriate in the circumstances. Accordingly, the requested extension of the Stay of Proceedings is appropriate in the circumstances.
- [23] The request to approve the Third Report is not unusual and there are good policy and practical reasons for doing so: see *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras. 13-14, citing *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras. 2, 12, 22. No opposition to the approval of the Third Report has been raised and the approval of the Third Report is appropriate in the circumstances as the Monitor has acted reasonably and in good faith. The draft order provided contains the typical language that only the Monitor is entitled to rely on the approval.
- [24] The Applicants also seek approval of the fees and disbursements of the Monitor and its legal counsel, as set out in the Third Report. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Applicants' assets and liabilities, as well as the

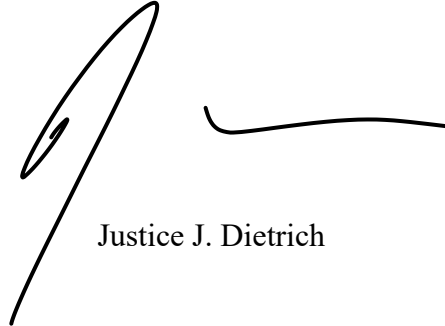
complexity of the Applicants' Business and the Proceeding. In considering these guiding principles, the fees of the Monitor and its counsel are appropriate and are approved.

Disposition

[25] Order to go in the form signed by me this day.

August 28, 2025

Amended as of: August 29, 2025 to
to reflect a change in paragraph 21,
replacing the word 'receiver' with
'monitor'

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line.

Justice J. Dietrich