



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00682101-00CL DATE: 3 April 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT INVOLVING MJARDIN GROUP, INC.,  
GROWFORCE HOLDINGS INC., 8586985 CANADA  
CORPORATION AND HIGHGRADE MMJ CORPORATION  
UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**PRICEWATERHOUSECOOPERS INC. v. MJARDIN GROUP,  
INC., et al**

BEFORE: **JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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**For Defendant, Respondent, Responding Party, Defence:**

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**ENDORSEMENT OF JUSTICE KIMMEL:**

**The Relief Sought and the Proposed Transactions**

1. KSV Restructuring Inc. ("KSV"), in its capacity as court-appointed monitor of the Respondents (the "Monitor"), MJardin Group, Inc. ("MGI"), Growforce Holdings Inc. ("Growforce Holdings"), 8586985 Canada Corporation ("858 Canada") and Highgrade MMJ Corporation ("Highgrade", and together with MGI, Growforce Holdings and 858 Canada, the "Debtors"), brings this motion for certain sale approvals and the termination of these CCAA proceedings. In particular, the Monitor seeks the following orders:
  - a. An approval and vesting order and related relief ("Approval and Vesting Order") with respect to the transaction agreement dated March 28, 2023 (the "Residual Transaction Agreement") between (i) MGI and Growforce Holdings, as vendors (together, the "Vendors"), and (ii) Bridging Finance Inc. ("BFI"), as agent for certain affiliated investment funds, as purchaser, and the transactions contemplated thereby involving certain equity interests held by the Debtors and other residual assets, including litigation claims (the "Proposed Residual Transaction");
  - b. A reverse vesting order and related relief ("Approval and Reverse Vesting Order") approving the transaction agreement dated March 28, 2023 (the "Reverse Vesting Transaction Agreement") among (i) Growforce Holdings, 858 Canada and Highgrade (the "MJar 2.0 Companies"), (ii) 14881729 Canada Inc. (the "Reverse Vesting Transaction Purchaser"), as purchaser, and (iii) BFI, as agent for certain affiliated investment funds, and the transactions contemplated thereby (the "Proposed Reverse Vesting Transaction" and, together with the Proposed Residual Transaction, the "Proposed Transactions"), and authorizing the MJar 2.0 Companies to execute the Reverse Vesting Transaction Agreement and complete the Proposed Reverse Vesting Transaction involving the Debtors' core cannabis Cultivation Operations; and
  - c. If the proposed Approval and Vesting Order and the proposed Approval and Reverse Vesting Order are both granted, an Order (the "CCAA Termination Order"):
    - i. extending the Stay Period (as defined in the Amended and Restated Initial Order of this Court effective June 2, 2022 (the "ARIO")) to the CCAA Termination Time;
    - ii. approving the Monitor's Seventh Report dated March 29, 2023, and the activities of the Monitor and the fees and disbursements of the Monitor and its counsel described in such report and the supporting fee affidavits;
    - iii. authorizing the issuance of the Monitor's Transaction Certificates and the completion of any other matters necessary to complete these CCAA proceedings as determined by the Monitor;

- iv. terminating the CCAA proceedings and discharging the Monitor;
  - v. authorizing MGI and ResidualCo to make an assignment into bankruptcy on or after the CCAA Termination Time, and authorizing the Monitor and the CRO to execute and file any assignment in bankruptcy and related documents.
2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Monitor's Seventh Report.
3. The purchaser in each transaction is the Debtors' senior secured creditor, BFI (or an affiliate thereof), and the consideration under the Transactions consists primarily of a credit bid and release of a portion of the significant secured indebtedness owed to BFI (which now exceeds \$200 million, including pre-CCAA debt of in excess of \$150 million). This is a creditor, rather than debtor, driven CCAA.
4. The reverse vesting structure of the MJar 2.0 Transaction enables the Health Canada Licenses critical to the continuation of the Cultivation Operations to remain with 858 and Highgrade, thereby preserving the Health Canada Licenses, while also facilitating the vesting out of excluded assets and liabilities to ResidualCo.
5. The Proposed Transactions are being presented for approval following completion of the SISP that was approved by an order of this court dated November 4, 2022. The SISP generated limited interest and did not produce any bids. The Monitor and the Debtors, in consultation with PricewaterhouseCoopers Inc., in its capacity as Court- appointed receiver and manager (the "Bridging Receiver"), terminated the SISP and proceeded to explore a potential credit bid to acquire most of the Debtors' assets. This was put on hold briefly to explore an unsolicited expression of interest ("EOI") that was received by the Monitor after the SISP was terminated, but ultimately it was determined that the EOI would not lead to a viable transaction that would be better for the other stakeholders or acceptable to BFI.
6. The Monitor and the Bridging Receiver recommend the Proposed Transactions, which are presented as the best option overall for the stakeholders, and the only option aside from a bankruptcy. The DIP Facilities are almost fully drawn and the DIP Lender is not prepared to continue to fund the Debtors' business and operations, absent the Proposed Transactions being approved and implemented in the near term. Accordingly, the Transactions represent the best (and only) viable alternative to a wind-down and liquidation of the Debtors' business and assets.
7. The Proposed Transactions hold out the prospect of some benefit for the senior secured lender BFI, and some continuing employees, customers and suppliers of the core cannabis Cultivation Operations that will continue. When considered against the alternative of a bankruptcy, the Proposed Transactions are neutral for most other stakeholders, except a small group of terminated employees.
8. The Monitor notes that if these Debtors were bankrupted, certain former employees would likely be entitled to payments under the *Wage Earner Protection Program Act*, SC 2005, c. 47, s. 1 ("WEPPA"), up to a maximum of approximately \$8,278 per former employee. As each of the aforementioned Debtors will be reverse vested and will emerge from the CCAA proceedings, they will not be bankrupted and WEPPA will not be triggered. The Monitor believes that this negative impact of the RVO structure for former employees must be balanced against the competing positive benefits outlined above, including preserving the employment of the Debtors' continuing employees.
9. The motion record for this motion was served on the service list. Counsel for the Monitor and the Bridging Receiver are confident that all affected stakeholders have been made aware of the motion

and the relief sought. In addition to service upon identified stakeholders, the fact of this motion and relief being sought were publicized by way of press release.

10. Stakeholders whose claims will be impacted by the Proposed Transactions and the approval orders sought, such as: Canada Revenue Agency ("CRA") for pre-filing HST and excise taxes, the landlord of the facility in which the Cultivation Operations will continue, a subordinated mortgagee of a property that has been sold, former employees, minority shareholders of certain continuing companies whose shares will be cancelled, counter-parties to continuing contracts that are being assumed who had pre-filing claims (that are not being assumed), and the insurance companies who hold director and officer liability insurance policies that may be subject to future claims in respect of pre-filing activities that are not being released, have all been specifically put on notice of this motion.
11. No stakeholder has communicated any objection, nor did any person appear at the hearing to express any objection or oppose the motion. This is said to be reflective of the economic realities of this case, in which BFI is the only true economic stakeholder.

#### Approval of the Proposed Transactions, the Approval and Vesting Order and Approval and Reverse Vesting Order

12. The steps that the Proposed Transactions will entail are described in detail in the Monitor's Seventh Report and are to be implemented through the authorizations and approvals contemplated by the Approval and Vesting Order and Approval and Reverse Vesting Order. Counsel took the court through the provisions of each of these orders and has explained and justified the rationale and authority for each of them in both written and oral submissions.
13. The court was assured that the proposed orders do not contain any precedent setting relief in the CCAA and/or reverse vesting context. They are intended to implement the required mechanics of the transactions and provide the necessary protections for the parties that have supported the process that the Debtors have come, starting with a receivership, that was transitioned into a CCAA restructuring when it was determined that there was some aspect of the Debtors' business that might be salvaged, the SISP and corresponding market check, and eventually culminating in the credit bid and Proposed Transactions for which the court's approval is now sought.
14. 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.
15. I am satisfied that the criteria specified in these authorities have been met.
16. There is also precedent for the court exercise its jurisdiction to authorize the implementation of a reverse vesting transaction, such as the MJar 2.0 Transaction, particularly in circumstances such as this case involving continuing operations that depend upon Health Canada Licences. See, for example: *Re Green Relief Inc.*, 2020 ONSC 6837; *Hydrex Farms Ltd.*, Reverse Vesting Order granted November 23, 2021, Court File No. CV-21-00659187-00CL (ONSC); *Wayland Group Corp.* Reverse Vesting Order granted April 21, 2020, Court File No. CV-19-00632079-00CL (ONSC); *Beleave Inc.*, Reverse Vesting Order granted September 18, 2020, Court File No. CV-20-00642097-00CL (ONSC), citing: *Re Stornaway*

*Diamond Corporation et al*, Court File No. 500-11-057094-191

(<https://www.insolvencies.deloitte.ca/en>) and *Re Wayland Group Corp, et al*, Court File No. CV-19-00632079-CL ([https://pwc.com/ca/en/car/wayland/assets/wayland-094\\_042120](https://pwc.com/ca/en/car/wayland/assets/wayland-094_042120)).

17. A reverse vesting transaction, such as is proposed in this case, that would allow the purchaser to maintain operations and use of the cannabis licenses and provide for continued employment for a significant proportion of employees was held in *Beleave* (at para. 3) to satisfy both s. 36(3) of the CCAA and the *Soundair* test. The preservation of jobs and customer and supplier relationships in this case outweighs the acknowledged negative effects for the former employees who will not receive WEPPA benefits.
18. The MJar 2.0 Transaction also meets the added criteria for a reverse vesting transaction that were delineated by this court in *Harte Gold Corp (Re)*, 2022 ONSC 653 at paras 36-38, for the reasons outlined in detail in the Monitor's factum.
19. The authority for the corporate implementation steps provided is grounded in ss. 173 and 191 of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44. 1. In the circumstances of this case where shareholders have no real economic interest, a shareholder vote is not required. See 37 CBCA, s. 191(7); *Harte Gold* at paras 63 and 64; CCAA, s. 36(1).
20. The factors relevant to the approval of releases in CCAA proceedings as set out in *Lydian International Limited (Re)* 2020 ONSC 4006 at para 54, are present and the releases and related provisions contained in the Approval and Reverse 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.

#### Approval of the CCAA Termination Order

21. The Court may grant an Order terminating proceedings under the CCAA and discharging the Monitor appointed in the proceedings on terms similar to those sought in the proposed CCAA Termination Order.
22. I am satisfied that the approval of the Monitor's Seventh Report 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 fee accruals are also appropriately supported.
23. The authority granted to the Monitor to make the contemplated bankruptcy filings is a necessary added power in the circumstances, where the remaining directors and officers will resign upon the closing of the Proposed Transactions (currently targeted for mid-April, 2023) and the bankruptcy filing is contemplated to occur after that.
24. 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 closing of the Proposed Transactions, rather than set to end on a specified date, so as to provide the flexibility to the Monitor to address any loose ends after closing

without having to spend time and money to come back to court for a further extension of the stay; this is based on the undertaking provided on behalf of the Monitor (and practical reality) that if for some reasons the Proposed Transactions do not close, the parties will be back before the court seeking other relief, in the context of which the stay extension will be further considered.

Final Disposition

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

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.