

CITATION: PricewaterhouseCoopers Inc. v. MJardin Group, Inc., 2022 ONSC 3603
COURT FILE NO.: CV-22-00682101
DATE: 2022-06-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING MJARDIN GROUP, INC., GROWFORCE HOLDINGS INC., 8586985 CANADA CORPORATION AND HIGHGRADE MMJ CORPORATION

BETWEE

PRICEWATERHOUSECOOPERS INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF BRIDGING FINANCE INC. AND CERTAIN RELATED ENTITIES AND INVESTMENT FUNDS

APPLICANT

- and -

MJARDIN GROUP, INC., GROWFORCE HOLDINGS INC., 8586985 CANADA CORPORATION AND HIGHGRADE MMJ CORPORATION

RESPONDENTS

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Rebecca Kennedy and Adam Driedger*, for the Applicant

Chris Armstrong and Andrew Harmes, for KSV Restructuring Inc., Proposed Court-appointed Monitor

Sean Zweig, for Howards Capital Corp., the Proposed CRO

HEARD and

DETERMINED: June 9, 2022

REASONS: June 22, 2022

ENDORSEMENT

[1] PricewaterhouseCoopers Inc., Court-appointed Receiver and Manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the "Bridging Receiver") brought this motion for:

1. An order (the “Amended and Restated Initial Order”) that, among other things:
 - a. extends the stay of proceedings to September 9, 2022;
 - b. appoints Howards Capital Corp. (“HCC”) as chief restructuring officer of the Respondents (in such capacity, the “CRO”) in accordance with the terms of the CRO Engagement Letter;
 - c. approves the Respondents’ ability to borrow up to the principal amount of \$2 million under a debtor-in-possession credit facility (the “DIP Facility”) to finance their operations and restructuring costs during the CCAA proceedings in accordance with the terms of the DIP Term Sheet;
 - d. increases the amount of the Administration Charge to \$300,000 and provides that the CRO shall have the benefit of the Administration Charge up to a maximum of \$160,000;
 - e. increases the amount of the DIP Lender’s Charge to the principal amount of \$2 million;
 - f. increases the amount of the Directors’ Charge to \$785,000;
 - g. grants the CRO Additional Consideration Charge; and
 - h. seals the Confidential Appendices to the KSV Report.

[2] The requested relief was not opposed.

[3] The background information with respect to this CCAA proceeding is set out in my Endorsement of June 3, 2022 which is indexed as 2020 ONSC 3338 (the “June 3 Endorsement”).

[4] The evidence to support the requested relief is set out in the First Report of KSV Restructuring Inc., Monitor of the Respondents (the “Report”).

[5] The Report provides an update on the Respondents’ activities, the Monitor’s activities and contains a cash flow forecast which reflects that the Respondents will have sufficient liquidity to operate their business until September 9, 2022 provided the authorized borrowings under the DIP Term Sheet and the DIP Lender’s Charge are increased from \$250,000 to \$2 million.

[6] I am satisfied that the evidence in the Report establishes that the respondents have been acting and continue to act in good faith and with due diligence such that the request to extend the stay of proceedings to September 9, 2022 is reasonable and appropriate in the circumstances.

[7] The Report sets out in Section 5.0 details with respect to the CRO Engagement, as well as the fees and expenses to be paid to the CRO.

[8] It is proposed that the CRO will be paid a monthly fee of \$30,000, plus reimbursement of Expenses and Consultant Expenses. The total monthly cost of the CRO and the Consultants (excluding Expenses) is estimated to be approximately \$150,000. In the event of a Third-Party Sale, HCC shall be entitled to a payment from MJardin Group, Inc. (“MJar”) based on the amount of the Net Proceeds of the Third-Party Sale (the “Additional Consideration”) calculated pursuant to the terms of the CRO Engagement Letter. The Additional Consideration payable by MJar shall equal (i) 5% of the Net Proceeds of the Third-Party Sale if the Net Proceeds are equal to or below a certain prescribed threshold (the “Hurdle Rate”), or (ii) if the Net Proceeds of the Third-Party Sale exceed the Hurdle Rate, 5% of the Net Proceeds received up to the Hurdle Rate plus 15% of the Net Proceeds received in excess thereof.

[9] The Monitor recommends that the court approve the CRO Engagement Letter.

[10] I am satisfied that the appointment of HCC as CRO in accordance with the terms of the CRO engagement letter is reasonable and is appropriate.

[11] The legal basis to approve the DIP Facility, the Administration Charge and the DIP Lender’s Charge was set out in the factum on the initial application. I accepted the legal submissions as noted in the June 3 Endorsement and approved the DIP Facility, the Administration Charge and the DIP Lender’s Charge.

[12] Having reviewed the Report, I am satisfied that it is appropriate to approve the Respondents’ ability to borrow up to the principal amount of \$2 million under the DIP Facility to finance their operations and restructuring costs during the CCAA proceedings; to increase the Administration Charge to \$300,000 and provide that the CRO shall have the benefit of the Administration Charge up to a maximum of \$160,000; to increase the amount of the DIP Lender’s Charge to the principal amount of \$2 million; to increase the amount of the Directors’ Charge to \$785,000; and to grant the CRO Additional Consideration Charge.

[13] The Bridging Receiver requests that certain information be sealed, specifically, the individual per month compensation of each expected Consultant and the Hurdle Rate, as well as the Business Assessment Report. The Monitor supports the request to seal this information.

[14] It is reported that the Consultants will perform certain management functions of the Respondents, that the Individual Consultant Compensation is based on an anticipated “full-time” contribution from each Consultant and is akin to a monthly salary.

[15] The expected Consultants are not aware of each other’s proposed Individual Consultant Compensation and there are concerns that if the individual consultant compensation is publicly disclosed, it could impact the ability of HCC to engage the Consultants

[16] The basis for the request to seal this information is set out in Section 5.1 of the Report.

[17] The applicable legal test for granting a sealing order, as set out by the Supreme Court in *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38, is that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (a) court openness poses a serious risk to an important public interest;

- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[18] The Bridging Receiver submits that the request to seal the Individual Consultant Compensation is analogous to a request for a sealing order in respect of individual KERP payments to employees in a restructuring and that courts have recognized that it would be detrimental to the operations of a company to disclose the identities of the beneficiaries of a KERP and the quantum of any individual payments. In addition, the beneficiaries of a KERP have a reasonable expectation that their personal and financial information will be kept confidential.

[19] In *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras. 24-26, the Bridging Receiver sought an order sealing the KERP compensation attributable to each eligible employee of Bridging Finance Inc., while disclosing the aggregate amount of all KERP payments (and thus the aggregate impact of the KERP on the Bridging Estate). In that case, I granted the sealing order, as I was satisfied that the three prerequisites from *Sherman Estate* were satisfied.

[20] In the circumstances of this case, I accept that compensation for each Consultant is akin to a monthly salary and the request to seal the individual compensation amounts is not unlike requests to seal individual KERP payments. I also accept that information relating to the Hurdle Rate and the Business Assessment Report is sensitive commercial information, the disclosure of which could be detrimental to stakeholders.

[21] I am also satisfied that the three prerequisites from the *Sherman Estate* case have been satisfied and that the sealing order covering the Confidential Appendices to the Report should be granted.

[22] In the result, the motion is granted and the Amended and Restated Order has been signed in the form presented.



Chief Justice G.B. Morawetz

Date: June 22, 2022