



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-22-00689857-00CL

DATE: 6 April 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: TRICHOME FINANCIAL CORP. et al

BEFORE: JUSTICE CONWAY

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**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE CONWAY:**

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated April 4, 2023.**
- [2] The Applicants in these CCAA proceedings seek an Approval and Vesting Order for a going concern transaction, structured as a Reverse Vesting Order (“RVO”).
- [3] The Monitor supports the transaction and the relief sought, as does the DIP Lender and the Agent, who are the parties with the primary economic interest in these CCAA proceedings.
- [4] The background is described in the affidavit of Michael Ruscetta sworn March 30, 2023 and the Monitor’s Fifth Report. Briefly, the Applicants conducted a sale and investment solicitation process, accompanied by a stalking horse bid, all pursuant to court order. The process was unsuccessful in generating any bids and the Stalking Horse Bidder subsequently advised that it would not complete the transaction.
- [5] Following that process, and after the DIP Lender said that it would not continue to fund the Applicants’ business operations, the Applicants determined that they would wind down the business. They continued to market the business, however, and engaged Hyde to lead an informal marketing process. That generated three letters of intent. The Purchaser’s bid was selected as the highest and best offer in terms of aggregate consideration, security and certainty provided.
- [6] The terms of the Sale Agreement are described in the materials. It is structured as an RVO in which the Purchaser will pay \$3,375,000 for the Purchased Shares, together with the Deferred Consideration. The Purchased Entities will remain liable for the Assumed Liabilities. The excluded assets, liabilities and contracts will be transferred to the Residual Cos., which will be added as Applicants to the CCAA proceedings. The Purchased Entities will be removed as Applicants from these proceedings.
- [7] Section 11 of the CCAA provides this court with the jurisdiction to approve an RVO where it will further the remedial objectives of the legislation. In this case, the Sale Agreement and the Transactions represent the only bid that emerged from the restructuring proceedings and preserve the business as a going concern, to the benefit of multiple stakeholders including employees, landlords and suppliers.
- [8] I have closely scrutinized the RVO as required by *Re Harte Gold Corp.*, 2022 ONSC 653 and considered the questions raised by Justice Penny in that case. I have also considered the factors in s. 36(3) of the CCAA and those set forth in *Royal Bank v. Soundair*, [1991] 7 CBR (3d) 1.
- [9] In this case, the Transactions are the only ones that emerged after a court-approved SISP was run, the Stalking Horse Bidder did not go forward, and an informal marketing process was run. The business and assets have been fully exposed to the market. The Monitor has been involved in each step along the way. The only alternative to these Transactions would be bankruptcy, which would be far less favourable to stakeholders and yield less recovery. The reason for the RVO is to preserve the Cannabis Licenses, which are critical to the business. The proposed structure does not disadvantage any stakeholder and, as said, preserves the business as a going concern. The consideration adequately reflects the value of preserving the Cannabis Licenses through the RVO structure. I therefore approve the Transactions and the RVO structure.

- [10] The Applicants seek approval of the Success Fee to Hyde, which was instrumental in procuring the Transactions. The Monitor, the DIP Lender and the Agent support the payment of this fee. I consider it appropriate in the circumstances and approve the Success Fee.
- [11] I am extending the Stay of Proceedings to October 31, 2023. I am satisfied that the Applicants are acting in good faith and with due diligence. The Applicants will have sufficient liquidity to fund their obligations and the CCAA proceedings throughout the extended period. The Monitor supports the extension.
- [12] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located below the text of paragraph [12].