

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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 OF TRICHOME FINANCIAL CORP., TRICHOME JWC ACQUISITION CORP., MYM NUTRACEUTICALS INC., TRICHOME RETAIL CORP., MYM INTERNATIONAL BRANDS INC., AND HIGHLAND GROW INC.

Applicants

**FACTUM OF THE APPLICANTS
(Returnable April 6, 2023)**

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TO: THE SERVICE LIST

TABLE OF CONTENTS

PART I:	OVERVIEW	1
PART II:	FACTS	3
A.	Background to and Developments in these CCAA Proceedings	3
B.	Conduct and Results of the SISP	5
C.	Termination of the Stalking Horse SPA and the Applicants' Wind-Down.....	6
D.	The Sale Agreement.....	8
E.	The Success Fee.....	10
F.	The Stay of Proceedings	11
PART III:	ISSUES.....	12
PART IV:	LAW AND ANALYSIS	12
A.	The Sale Agreement and the Transactions Should be Approved	12
1.	This Court has Jurisdiction to Approve a Reverse Vesting Transaction	12
2.	The Sale Agreement and the Transactions are Appropriate in the Circumstances	13
3.	The Ancillary Features of the Approval and Vesting Order are Appropriate in the Circumstances	19
B.	The Applicants Should be Authorized to pay the Success Fee.....	20
C.	The Stay of Proceedings Should be Extended	22
PART V:	RELIEF REQUESTED.....	24

PART I: OVERVIEW

1. The Applicants seek relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), to implement the only viable going concern sale transaction to have materialized in the course of these CCAA proceedings.
2. The sale is proposed to be effectuated pursuant to a reverse approval and vesting order (the "**Approval and Vesting Order**"). Among other things, the proposed Approval and Vesting Order:
 - (a) approves the Share Purchase Agreement (the "**Sale Agreement**") among Trichome Financial Corp. (the "**Vendor**" or "**Trichome**"), 1000370759 Ontario Inc. (the "**Purchaser**"), Trichome JWC Acquisition Corp. ("**TJAC**"), Trichome Retail Corp. ("**TRC**"), MYM Nutraceuticals Inc. ("**MYM**"), MYM International Brands Inc. ("**MYMB**") and Highland Grow Inc. ("**Highland**", and collectively with TJAC, TRC, MYM and MYMB, the "**Purchased Entities**"), dated March 28, 2023 and the transactions contemplated therein (collectively, the "**Transactions**");
 - (b) adds TJAC Residual Co., TRC Residual Co., MYM Residual Co., MYMB Residual Co. and Highland Residual Co. (each as defined in the Sale Agreement) (collectively, the "**Residual Cos.**"), as Applicants to these CCAA proceedings;
 - (c) vests in the Purchaser all of the Vendor's right, title and interest in and to the Purchased Shares (as defined below), free and clear of any Encumbrances (as defined in the Approval and Vesting Order);
 - (d) vests in and to TJAC Residual Co., TRC Residual Co., MYM Residual Co., MYMB Residual Co. and Highland Residual Co. absolutely and exclusively, all of the right, title and interest of TJAC, TRC, MYM, MYMB and Highland, respectively, in and

to the Excluded Assets, Excluded Contracts and Excluded Liabilities (each as defined in the Sale Agreement), and discharges all Encumbrances against the Purchased Entities and the Retained Assets other than the Permitted Encumbrances (each as defined in the Sale Agreement);

- (e) removes the Purchased Entities as Applicants in these CCAA proceedings; and
- (f) subject to the receipt of the Cash Payment (as defined in the Sale Agreement), release of the Deposit (as defined in the Sale Agreement) and completion of the Transactions, authorizes and directs the Vendor to pay the Success Fee (as defined below) to Hyde Advisory & Investments Inc. ("**Hyde**") in the manner set out in the proposed Approval and Vesting Order.

3. If approved and consummated, the Sale Agreement and the Transactions will maximize the going concern value of the Canadian Business (as defined below) and preserve the Applicants' cannabis licenses (the "**Cannabis Licenses**"), for the benefit of the Applicants' stakeholders. Given the Applicants' severely constrained liquidity, the Sale Agreement and the Transactions present the only commercially reasonable transaction capable of being effectuated before the value of the Canadian Business is further significantly impaired.

4. The relief sought under the proposed Approval and Vesting Order is supported by KSV Restructuring Inc., in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**"), and the parties with the primary economic interest in these CCAA proceedings – the DIP Lender and the Agent (each as defined below).

PART II: FACTS

5. The facts underlying this motion are more fully set out in the affidavit of Michael Ruscetta sworn March 30, 2023 (the "**Ruscetta Affidavit**").¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Ruscetta Affidavit or the Sale Agreement, as applicable.

A. Background to and Developments in these CCAA Proceedings

6. Through their licensed operating subsidiaries, TJAC and Highland, the Applicants cultivate, process and sell premium and ultra-premium cannabis for the adult-use market in Canada (the "**Canadian Business**"). Following months of liquidity challenges and despite concerted efforts to improve their financial position, conserve costs and restructure the Canadian Business, the Applicants faced a dire liquidity crisis.²

7. Having regard to the best interests of the Applicants and their stakeholders, and after extensive review and careful consideration of the strategic options and alternatives available, each of the Applicants' board of directors resolved to seek urgent relief under the CCAA. Accordingly, the Applicants sought, and on November 7, 2022, obtained an initial order under the CCAA (the "**Initial Order**").³

8. Among other things, the Initial Order:

- (a) appointed KSV Restructuring Inc. as the Monitor;

¹ Affidavit of Michael Ruscetta sworn on March 30, 2023 [Ruscetta Affidavit], Motion Record at Tab 2.

² *Ibid* at para 6, Motion Record at Tab 2.

³ *Ibid* at para 7, Motion Record at Tab 2.

- (b) stayed, until November 17, 2022, all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' directors and officers, or affecting the Canadian Business or the Property (as defined in the Initial Order), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (c) approved the Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**") pursuant to a DIP facility agreement dated November 6, 2022 (the "**DIP Agreement**"), among TJAC, as borrower, Trichome, TRC, MYM, MYMB and Highland, as guarantors, and Cortland Credit Lending Corporation ("**Cortland**"), as agent for and on behalf of the lenders party thereto (the "**DIP Lender**"); and
- (d) granted the Administration Charge, the Directors' Charge and the DIP Lender's Charge (each as defined in the Initial Order) over the Property.⁴

9. On November 17, 2022, the Applicants sought and obtained an amended and restated Initial Order pursuant to the CCAA, which, *inter alia*, extended the Stay of Proceedings to and including February 3, 2023, and approved increases to the Directors' Charge and the DIP Lender's Charge up to the maximum amounts of \$2,922,000 and \$4,875,000, respectively.⁵

10. In an effort to identify and implement a value-maximizing transaction, the Applicants sought and, on January 9, 2023, obtained an order (the "**Stalking Horse and SISP Approval Order**") under the CCAA, among other things:

⁴ *Ibid* at para 8, Motion Record at Tab 2.

⁵ *Ibid* at para 9, Motion Record at Tab 2.

- (a) approving a sale and investment solicitation process, including corresponding bidding and auction procedures (the "**SISP**");
- (b) approving the letter agreement dated November 7, 2022, among the Applicants and Stoic Advisory Inc. (the "**SISP Advisor**");
- (c) authorizing the SISP Advisor and the Applicants to implement the SISP, with the oversight of the Monitor;
- (d) authorizing and approving the Applicants' execution of the stalking horse share purchase agreement dated December 12, 2022 (the "**Stalking Horse SPA**"), among the Applicants and L5 Capital Inc. (the "**Stalking Horse Bidder**"), *nunc pro tunc*, and approving the Stalking Horse SPA, solely for the purposes of acting as the stalking horse bid in the SISP (the "**Stalking Horse Bid**"); and
- (e) granting an extension of the Stay of Proceedings to and including March 10, 2023.⁶

B. Conduct and Results of the SISP

11. The Applicants developed the SISP, in consultation with the Monitor and the SISP Advisor, to solicit interest in all of their right, title and interest in and to all of their assets or all of the shares in the capital of the Applicants (collectively, the "**Vendors' Assets**"). The SISP was intended to provide a flexible, efficient, fair and equitable process for canvassing the market for potential buyers of the Vendors' Assets or investors in the Canadian Business and maximizing recovery for the Applicants' stakeholders. In consultation with the Monitor, the Applicants also entered into the

⁶ *Ibid* at para 10, Motion Record at Tab 2.

Stalking Horse SPA to enhance the efficacy of the SISP and establish an appropriate floor for bids submitted in accordance therewith.⁷

12. In accordance with the SISP, the SISP Advisor sent approximately 200 Known Potential Bidders copies of the Teaser Letter and an NDA (each as defined in the SISP) on January 3, 2023. Five Potential Bidders (as defined in the SISP) executed NDAs and were provided with access to a confidential data room established by the SISP Advisor to facilitate their due diligence.⁸

13. Pursuant to the SISP, each Potential Bidder that wished to make a bid in the SISP was required to deliver a written copy of its bid by no later than 5:00 p.m. (Eastern Time) on February 6, 2023 (the "**Bid Deadline**"), with such bid including or conforming to the Required Bid Terms and Materials (as defined in the SISP). Any such bid, if satisfying the Required Bid Terms and Materials and received by the Bid Deadline, would constitute a "**Qualified Bid**" in the SISP.⁹

14. No Qualified Bids were submitted by the Bid Deadline, other than the Stalking Horse Bid, and no Potential Bidder advised the SISP Advisor, the Applicants or the Monitor that a Qualified Bid (or any bid at all) would be forthcoming if the Bid Deadline were to be extended. Accordingly, the Stalking Horse Bid was deemed to be the Successful Bid (as defined in the SISP) and the SISP did not proceed to an auction.¹⁰

C. Termination of the Stalking Horse SPA and the Applicants' Wind-Down

15. Despite being deemed to be the Successful Bid in the SISP, on February 13, 2023, the Stalking Horse Bidder formally and irrevocably advised that it did not intend to close the

⁷ *Ibid* at paras 19, 30, Motion Record at Tab 2.

⁸ *Ibid* at paras 21, 24-25, Motion Record at Tab 2.

⁹ *Ibid* at para 26, Motion Record at Tab 2.

¹⁰ *Ibid* at para 29, Motion Record at Tab 2.

transactions contemplated by the Stalking Horse SPA. The Stalking Horse SPA was subsequently terminated with the Monitor's consent.¹¹

16. The Termination of the Stalking Horse SPA coincided with the Applicants' receipt of lower than expected accounts receivables, resulting in the Applicants having insufficient availability under the DIP Facility to continue operating the Canadian Business in the ordinary course. Due to the Applicants' lack of availability under the DIP Facility (which has since matured), the termination of the Stalking Horse SPA and the absence of an alternative Qualified Bid, the DIP Lender advised the Applicants that it would not continue to fund the Canadian Business' ordinary course operations or a further formal marketing process.¹²

17. After consideration of the results of the SISP, the termination of the Stalking Horse SPA, the Applicants' limited liquidity and obligations under the DIP Agreement, and the then impending maturity of the DIP Facility, the Applicants, in consultation with the Monitor, sought and, on March 9, 2023, obtained an order (the "**Stay Extension Order**") under the CCAA, *inter alia*, extending the Stay of Proceedings to and including April 21, 2023.¹³

18. The Stay Extension Order was intended to provide the time and stability necessary to address the Applicants' liquidity challenges and to conduct an orderly wind-down of the Canadian Business (the "**Wind-Down**"). At that time, the proceeds of the Wind-Down were only expected to be sufficient to pay amounts secured by the Administration Charge, the Directors' Charge and a portion of the DIP Lender's Charge.¹⁴

¹¹ *Ibid* at para 32, Motion Record at Tab 2.

¹² *Ibid* at para 33, Motion Record at Tab 2.

¹³ *Ibid* at paras 12, 34, Motion Record at Tab 2.

¹⁴ *Ibid* at paras 13, 34, Motion Record at Tab 2.

19. With a view to improving the recoveries anticipated from the Wind-Down, the Applicants and the Monitor continued to market the Canadian Business and the Applicants' assets following the termination of the Stalking Horse SPA. After consultation with the DIP Lender and the Monitor, the Applicants engaged Hyde to lead an informal marketing process for the Canadian Business or the Applicants' assets during the Wind-Down.¹⁵

20. Hyde's marketing process was commenced on February 21, 2023, and solicited interest from twelve potential bidders. Of the twelve potential bidders contacted, seven expressed an interest in the acquisition opportunity and three (the "**LOI Parties**") provided letters of intent by March 10, 2023. After reviewing the "best bid" from each of the LOI Parties, the bid submitted by the Purchaser was selected as the highest and best offer given, among other things, the aggregate consideration, security and certainty provided.¹⁶

D. The Sale Agreement

21. The Sale Agreement contemplates a reverse vesting transaction to preserve the Cannabis Licenses, which could not otherwise be transferred in the ordinary course and are essential to the Canadian Business' operations. Pursuant to the Sale Agreement, the Purchaser will acquire all of the issued and outstanding shares in the capital of TJAC and MYM owned by Trichome (the "**Purchased Shares**") for a purchase price of \$3,375,000 (the "**Purchase Price**"), along with certain deferred consideration (the "**Deferred Consideration**").¹⁷

22. If the Sale Agreement and the Transactions are approved pursuant to the proposed Approval and Vesting Order, the Vendor, the Purchaser and the Purchased Entities intend to close

¹⁵ *Ibid* at paras 35-36, Motion Record at Tab 2.

¹⁶ *Ibid* at para 36, Motion Record at Tab 2.

¹⁷ *Ibid* at para 39, Motion Record at Tab 2.

the Transactions expeditiously and, in any event, by April 11, 2023. Following the implementation of the Closing Sequence, the Purchased Entities will retain all of the Retained Assets and remain liable for all of the Assumed Liabilities, and the Purchaser will be the owner of all of the Purchased Shares.¹⁸

23. Pursuant to the proposed Approval and Vesting Order, each of the Residual Cos. in which all of the Excluded Assets, Excluded Liabilities and Excluded Contracts will have been vested in and transferred to, will be added as Applicants in these CCAA proceedings as of the Effective Time (as defined in the Approval and Vesting Order). Correspondingly, the Purchased Entities will be removed as Applicants in these CCAA proceedings as of the Effective Time.¹⁹

24. For the purposes of determining the nature and priority of Claims (as defined in the Approval and Vesting Order) from and after the Effective Time and subject to the payment of the Success Fee:

- (a) the Deposit, the Cash Payment and any amounts received under the Secured Promissory Note (the "**Note Proceeds**") shall be allocated to the Vendor; and
- (b) any amounts received under any Deferred Consideration Note (collectively with the Deposit, the Cash Payment and the Note Proceeds, the "**Proceeds**") shall be allocated to the applicable Residual Cos.²⁰

25. Pursuant to the proposed Approval and Vesting Order, all Claims and Encumbrances will attach to the Proceeds, with the same priority as they had with respect to the Purchased Shares and the Retained Assets immediately prior to the sale.²¹

¹⁸ *Ibid* at paras 40-41, Motion Record at Tab 2.

¹⁹ *Ibid* at para 41, Motion Record at Tab 2.

²⁰ *Ibid* at para 43, Motion Record at Tab 2.

²¹ *Ibid* at para 44, Motion Record at Tab 2.

26. If received as anticipated, the Proceeds are currently expected to be sufficient to pay amounts secured by the Administration Charge, the Directors' Charge and a significant portion of the DIP Lender's Charge. Although the Proceeds will not be sufficient to satisfy claims subordinate to the Charges, the Proceeds will provide materially better recovery to the DIP Lender than that which could otherwise be achieved through the Wind-Down or in a bankruptcy.²²

E. The Success Fee

27. As referenced above, following the termination of the Stalking Horse SPA and after consultation with the DIP Lender and the Monitor, the Applicants engaged Hyde to lead an informal marketing process for the Canadian Business. Hyde provides various advisory and investment services to the global cannabis industry. Since its inception, Hyde has brokered the purchase and sale of numerous licensed cannabis businesses having an aggregate value of approximately \$38 million.²³

28. In consideration for providing advisory and investment services, the Applicants, in consultation with the Monitor and the DIP Lender, agreed to provide Hyde with a success fee (the "**Success Fee**") equal to 5% of the first \$2 million of the purchase price of any transaction brokered by Hyde (the "**Minimum Purchase Price**"), plus 7.5% of the amount by which the purchase price exceeds the Minimum Purchase Price. As the Sale Agreement was brokered by Hyde, the proposed Approval and Vesting Order authorizes and directs the Vendor to pay the Success Fee as follows:

²² *Ibid* at para 45, Motion Record at Tab 2; Fifth Report of KSV Restructuring Inc. dated April 3, 2023 s 5.2 at para 1 [Monitor's Report].

²³ Ruscetta Affidavit, *ibid* at paras 51-52, Motion Record at Tab 2.

- (a) to pay from the Cash Payment received on the Closing Date the amount of \$56,500.00 (for greater certainty, being \$50,000 plus applicable HST) to Hyde within five (5) business days of the Closing Date; and
- (b) to pay from the Note Proceeds (i) five percent of the first \$1 million in Note Proceeds received by the Vendor (the "**Initial Note Proceeds**"), and 7.5% of all Note Proceeds received by the Vendor in excess of the Initial Note Proceeds (the "**Additional Note Proceeds**"), in each case, plus applicable HST, to Hyde within five (5) business days of receipt of all of the Initial Note Proceeds and all of the Additional Note Proceeds, respectively.²⁴

29. In accordance with the proposed Approval and Vesting Order, the payment of the Success Fee is conditional upon the receipt of the Cash Payment, release of the Deposit and completion of the Transactions. Under the terms of the proposed Approval and Vesting Order the payment of the majority of the Success Fee is also conditioned upon receipt of the Initial Note Proceeds and the Additional Note Proceeds.²⁵

F. The Stay of Proceedings

30. The Stay of Proceedings granted under the Stay Extension Order will expire on April 21, 2023. Pursuant to the proposed Approval and Vesting Order, the Applicants are seeking to extend the Stay of Proceedings to and including October 31, 2023.²⁶

²⁴ *Ibid* at para 53, Motion Record at Tab 2.

²⁵ *Ibid* at para 54, Motion Record at Tab 2.

²⁶ *Ibid* at para 57, Motion Record at Tab 2.

31. The Applicants' revised cash flow analysis demonstrates that the Applicants will have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings throughout the Stay Period, provided that the Sale Agreement is approved and the Transactions close.²⁷

PART III: ISSUES

32. The issues to be considered on this motion are whether this Court should:

- (a) approve the Sale Agreement and the Transactions;
- (b) authorize the Applicants to pay the Success Fee; and
- (c) extend the Stay of Proceedings through the Stay Period.

PART IV: LAW AND ANALYSIS

A. The Sale Agreement and the Transactions Should be Approved

1. This Court has Jurisdiction to Approve a Reverse Vesting Transaction

33. It is "settled law" that the broad discretion inherent in section 11 of the CCAA to make any order considered "appropriate in the circumstances" vests this Court with jurisdiction to approve reverse vesting transactions akin to the proposed Transactions.²⁸

²⁷ *Ibid* at para 60, Motion Record at Tab 2; Monitor's Report, *supra* note 22 s 8.0 at para 2.

²⁸ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 s 11 [CCAA]; *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 at paras 29-31 [*Just Energy*]; *Re Harte Gold Corp*, 2022 ONSC 653 at paras 18, 37 [*Harte Gold*]. See also, *Re Quest University Canada*, 2020 BCSC 1883 at paras 150, 153-155 [*Quest*], aff'd 2020 BCCA 364. As this Court noted in *In the Matter of the Companies' Creditors Arrangement Act and In the Matter of CannaPiece Group Inc*, 2023 ONSC 841 at para 52 [*CannaPiece*], in addition to the broad jurisdiction conferred by section 11 of the CCAA, this Court also has jurisdiction to grant a vesting order pursuant to section 100 of the *Courts of Justice Act*, RSO 1990, c. C. 43.

34. The exercise of this Court's discretion under section 11 of the CCAA must "further the remedial objectives of the CCAA and be guided by the baseline considerations of appropriateness, good faith, and due diligence."²⁹

35. The CCAA's remedial objectives include "providing for timely, efficient and impartial resolution of a debtor's insolvency", "preserving and maximizing the value of a debtor's assets", and "balancing the costs and benefits of restructuring or liquidating the company."³⁰ In furtherance of these objectives, Courts have approved reverse vesting transactions where, as here, the proposed transaction is the only viable transaction to have emerged in the restructuring and preserves the debtors' highly-regulated business operations, licenses, permits, tax losses or statutory privileges.³¹

2. The Sale Agreement and the Transactions are Appropriate in the Circumstances

36. As appropriateness under section 11 of the CCAA "extends not only to the purpose of the order, but also to the means it employs",³² this Court has made clear that reverse vesting transactions should be closely scrutinized.³³ Scrutiny of a proposed reverse vesting transaction, as Justice Penny held in *Re Harte Gold Corp.*, may be informed by the following inquiries:

- (a) why is the reverse vesting order necessary in this case;
- (b) does the reverse vesting transaction structure produce an economic result at least as favourable as any other viable alternative;

²⁹ [9354-9186 Québec inc v Callidus Capital Corp., 2020 SCC 10](#) at para [70](#) [*Callidus*]; [Harte Gold](#), *ibid* at para [32](#); [Century Services Inc v Canada \(Attorney General\), 2010 SCC 60](#) at paras [15](#), [59](#) [*Century Services*].

³⁰ [Callidus](#), *ibid* at para [40](#); [Harte Gold](#), *ibid* at para [32](#); [Century Services](#), *ibid* at paras [15](#), [59](#), [70](#).

³¹ [Just Energy](#), *supra* note 28 at para [34](#); [Harte Gold](#), *ibid* at para [71](#); [Quest](#), *supra* note 28 at paras [158-162](#).

³² [Century Services](#), *supra* note 29 at para [70](#).

³³ [Harte Gold](#), *supra* note 28 at para [38](#); [CannaPiece](#), *supra* note 28 at para [58](#); [Just Energy](#), *supra* note 28 at para [33](#).

- (c) is any stakeholder worse off under the reverse vesting transaction structure than they would have been under any other viable alternative; and
- (d) does the consideration being paid for the debtors' business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the reverse vesting transaction structure.³⁴

37. When exercising its jurisdiction under section 11 of the CCAA to approve a reverse vesting transaction, this Court has also concurrently considered the non-exhaustive factors enumerated under subsection 36(3) of the CCAA and those articulated in *Royal Bank v Soundair*.³⁵ Together, these factors include:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the Court a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties;

³⁴ [Harte Gold](#), *ibid* at para [38](#); [CannaPiece](#), *ibid* at para [58](#); [Just Energy](#), *ibid* at para [34](#).

³⁵ [Harte Gold](#), *ibid* at paras [20-21](#), [23](#), [39](#); [CannaPiece](#), *ibid* at paras [53-54](#); [Just Energy](#), *ibid* at paras [31-32](#); [Re Green Relief Inc.](#), 2020 ONSC 6837 at paras [5-6](#) [*Green Relief*].

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value;
- (g) whether sufficient effort has been made to obtain the best price and that the debtors have not acted improvidently;
- (h) the efficacy and integrity of the process by which officers have been obtained;
- (i) whether the interests of all parties have been considered; and
- (j) whether there has been unfairness in the working out of the process.³⁶

38. Applied here, the foregoing considerations and factors support the approval of the Sale Agreement and the Transactions, and the granting of the proposed Approval and Vesting Order.

Namely:

- (a) ***The Process Leading to the Sale Agreement and the Transactions was Reasonable*** – The Sale Agreement and the Transactions are the culmination of: (i) an unsuccessful Court-approved SISP developed by the Applicants, in consultation with the Monitor and the SISP Advisor, which provided a flexible, efficient, fair and equitable process for canvassing the market for potential buyers of the Vendors' Assets or investors in the Canadian Business, in which no Qualified Bids were received; (ii) the Applicants' and the Monitor's marketing efforts following the termination of the Stalking Horse SPA; (iii) Hyde's efforts to solicit interest in the Canadian Business; and (iv) extensive negotiation between the Purchaser and the Applicants, in consultation with the Monitor, the DIP Lender and Cortland, in its

³⁶ [CCAA](#), *supra* note 28 s 36(3); [Royal Bank of Canada v Soundair Corp.](#), [1991] 7 CBR (3d) 1 at para 16. See also, [Harte Gold](#), *ibid* at paras 20-21; [CannaPiece](#), *ibid* at paras 53-54; [Just Energy](#), *ibid* at paras 31-32; [Green Relief](#), *ibid* at paras 5-6.

capacity as agent for and on behalf of the Applicants' senior secured lenders (the "**Agent**").³⁷

- (b) ***The Monitor Approved the Process Leading to the Sale Agreement and the Transactions*** – The SISP was developed in consultation with and supported by the Monitor, and was conducted in accordance with its terms and the Stalking Horse and SISP Approval Order, under the oversight of the Monitor. The Sale Agreement is the product of the Applicants', the Monitor's and Hyde's continued efforts to solicit interest in the Canadian Business or the Applicants' assets, and is supported by the Monitor.³⁸
- (c) ***The Proposed Sale Agreement and the Transactions Produce an Economic Result at Least as Favourable as any Other Viable Alternative*** – The Sale Agreement and the Transactions present the only commercially reasonable and viable transaction capable of being effectuated before the value of the Canadian Business is severely impaired given the Applicants' limited liquidity and inability to continue to fund the Canadian Business' operations. The Applicants' only reasonable restructuring alternative to the Sale Agreement and the Transactions, in view of their limited liquidity and the realizable value of their Assets in the circumstances, is a bankruptcy – an outcome that would foreclose a going concern result to the detriment of the Applicants' stakeholders, and which would involve

³⁷ Ruscetta Affidavit, *supra* note 1 at para 49, Motion Record at Tab 2; Monitor's Report, *supra* note 22 s 5.2 at para 1.

³⁸ Ruscetta Affidavit, *ibid* at paras 19, 37, 49, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at para 1.

significant regulatory issues because a trustee in bankruptcy cannot take possession of cannabis.³⁹

- (d) ***The Proposed Sale Agreement and the Transactions Effect a Superior Result to a Bankruptcy*** – In addition to yielding a superior economic result to that which could be obtained using a conventional asset purchase transaction, the reverse vesting transaction contemplated by the Sale Agreement provides a materially better recovery than would otherwise be achieved through the Wind-Down or in a bankruptcy.⁴⁰
- (e) ***The DIP Lender and the Agent were Appropriately Consulted*** – The parties with the primary economic interest in the Applicants and these CCAA proceedings, being the DIP Lender and the Agent, were consulted throughout the negotiation of the Sale Agreement and are supportive of the approval of the Sale Agreement and the consummation of the Transactions contemplated therein.⁴¹
- (f) ***The Proposed Reverse Vesting Structure is Necessary in the Circumstances*** – The proposed reverse vesting transaction structure is the only commercially reasonable means in the circumstances by which the Cannabis Licenses can be preserved and the Canadian Business can be sold and its value maximized. Absent the utilization of a reverse vesting transaction structure, the Cannabis Licenses, which are essential to the Canadian Business, could not be transferred expediently in the ordinary course. Moreover, even if the onerous regulatory restrictions governing the Cannabis Licenses could be overcome using an alternative transaction structure

³⁹ Ruscetta Affidavit, *ibid* at paras 48-49, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at paras 1-2.

⁴⁰ Ruscetta Affidavit, *ibid* at paras 45, 49, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at para 1-2.

⁴¹ Ruscetta Affidavit, *ibid* at paras 16, 49, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at para 1.

or new licenses obtained, the Applicants do not have the liquidity to support the Canadian Business, including those required to preserve the Applicants' current product listings, while such a transaction is devised and implemented. Simply put, proceeding by way of a reverse transaction is the only commercially reasonable means by which the value of the Canadian Business can be maximized, and a going concern result achieved, in the circumstances.⁴²

(g) ***The Proposed Reverse Vesting Structure does not Disadvantage any Stakeholder***

– The Applicants are not aware of any creditor that would be materially disadvantaged by the proposed Sale Agreement and the Transactions, including their implementation by way of a reverse vesting transaction. While the Applicants' unsecured creditors and shareholders will have no recovery in any available restructuring alternative, the proposed Sale Agreement and the Transactions will, unlike in the case of such alternatives, assure a going concern result.⁴³

(h) ***The Consideration is Reasonable and Fair and Adequately Reflects the Value of***

the Proposed Reverse Vesting Transactions – The Purchase Price, together with the Deferred Consideration, is commensurate with the value of the Purchased Shares and the Retained Assets and adequately reflects the value of preserving the Cannabis Licenses through the proposed reverse vesting transaction structure. No

⁴² Ruscetta Affidavit, *ibid* at paras 46-49, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at paras 1-2. See also, [Re MPX International Corporation, 2022 ONSC 7152](#) at para 7 where Justice Penny accepted that the need to preserve the debtors' cannabis licenses satisfied "the exceptional circumstances necessary for the threshold application of the RVO structure".

⁴³ Ruscetta Affidavit, *ibid* at para 49, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at paras 1-2.

higher or better offer was obtained despite the Canadian Business and the Applicants' assets being marketed extensively as described above.⁴⁴

3. The Ancillary Features of the Approval and Vesting Order are Appropriate in the Circumstances

39. Consistent with reverse vesting orders previously granted by this Court,⁴⁵ the proposed Approval and Vesting Order will (i) constitute the only authorization required by the Vendor and the Purchased Entities to proceed with the Transactions and (ii) terminate and cancel all options, securities and other rights held by any person that are convertible or exchangeable for any securities of the Purchased Entities (the "**Ancillary Relief**").

40. Read together, subsection 36(1) and section 11 of the CCAA authorize this Court to grant the Ancillary Relief. Subsection 36(1) of the CCAA expressly authorizes this Court to approve sale transactions notwithstanding "any requirement for shareholder approval" – the logic of which has been extended to reverse vesting transactions and the cancellation of equity interests – while section 11 permits this Court to make "any order that it considers appropriate in the circumstances."⁴⁶

⁴⁴ Ruscetta Affidavit, *ibid* at paras 29, 36, 49, Motion Record at Tab 2; Monitor's Report, *ibid* s 4.0 at para 3 and s 5.2 at paras 1-2.

⁴⁵ [*In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc.* \(June 10, 2021\), Toronto, CV-21-00655373-00CL \(Approval and Vesting Order\) \(ONSC\)](#); [*In the Matter of a Plan of Compromise or Arrangement of Green Relief Inc.* \(November 9, 2020\), Toronto, CV-20-00639217-00CL \(Order\) \(ONSC\)](#) at paras 4, 5(c) [Green Relief RVO]; [*In the Matter of a Plan of Compromise or Arrangement of Superette Inc. et al.* \(December 20, 2022\), Toronto, CV-22-00686245-00CL \(Approval and Vesting Order\) \(ONSC\)](#) at paras 4, 5(g) [Superette RVO]; [*In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.* \(January 28, 2022\), Toronto, CV-21-00673304-00CL \(Approval and Reverse Vesting Order\) \(ONSC\)](#) at paras 6, 7(c) [Harte Gold RVO]; [*In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.* \(November 3, 2022\), Toronto, CV-21-00658423-00CL \(Approval and Vesting Order\) \(ONSC\)](#) at paras 4, 5(e) [Just Energy RVO]; [*In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al.* \(December 15, 2022\), Toronto, CV-22-00684542-00CL \(Approval and Vesting Order\) \(ONSC\)](#) at paras 4, 5(e) [MPXI RVO].

⁴⁶ [CCAA](#), *supra* note 28 s [11](#), [s 36\(1\)](#); [Harte Gold](#), *supra* note 28 at paras [59-64](#); [Just Energy](#), *supra* note 28 at para [58](#).

41. As this Court recognized in *Re Harte Gold Corp.* and affirmed in *Just Energy Group Inc. et al. v Morgan Stanley Capital Group Inc. et al.*, where shareholders "have no economic interest, present or future, it would be unnecessary and, indeed, inappropriate to require a vote of the shareholders".⁴⁷ It is similarly appropriate to cancel equity interests where shareholders have no economic interest in an insolvent debtor company.⁴⁸

42. In this case, the Applicants submit that it is appropriate for this Court to exercise its discretion to approve the Ancillary Relief. To do otherwise would be contrary to the treatment of equity claims under subsections 6(8) and 22(1) of the CCAA.⁴⁹

B. The Applicants Should be Authorized to pay the Success Fee

43. As noted above, pursuant to section 11 of the CCAA, this Court retains broad discretion to make "any order that it considers appropriate in the circumstances."⁵⁰

44. Relying on section 11 of the CCAA, Courts have previously approved "success fees in the context of restructurings under the CCAA" and financial advisor arrangements in respect of sale processes and transactions.⁵¹ Courts have likewise provided such approval in the context of other analogous insolvency proceedings, and affirmed that "a success fee is both appropriate and necessary where the debtor lacks the financial resources to pay advisory fees on any other basis."⁵²

⁴⁷ *Harte Gold*, *ibid* at para 64; *Just Energy*, *ibid* at para 58.

⁴⁸ *Harte Gold*, *ibid* at para 64; *Just Energy*, *ibid* at para 58. See also, *Re Sino-Forest Corp.*, 2012 ONSC 4377 at paras 23-29; *Re Stelco Inc.*, 18 CBR (5th) 173 at para 11.

⁴⁹ CCAA, *supra* note 28 s 6(8), s 22(1); *Harte Gold*, *ibid* at paras 63-64.

⁵⁰ CCAA, *ibid* s 11.02(2).

⁵¹ *Re Tamerlane Ventures Inc.*, 2013 ONSC 5461 at para 22; *Re Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at paras 19, 27, 31-32 [*Walter Energy*]; *Re Target Canada Co.*, 2015 ONSC 303 at para 72 [*Target*]; *Re Sino-Forest Corp.*, 2012 ONSC 2063 at paras 46-47 [*Sino-Forest*]; *Re Colossus Minerals Inc.*, 2014 ONSC 514 at para 30 [*Colossus*].

⁵² *Re Danier Leather Inc.*, 2016 ONSC 1044 at paras 47-48 [*Danier*]; *Colossus*, *ibid* at paras 28, 30-31.

45. When determining whether to approve the engagement of and/or the fees payable to a financial advisor in an insolvency proceeding, Courts have considered, among others, the following factors:

- (a) whether the Court-officer overseeing the proceedings was involved in the selection of the financial advisor;
- (b) whether the debtors and the Court-officer overseeing the proceedings believe that the quantum and nature of the remuneration are fair and reasonable;
- (c) whether the fees approved are only payable in the event of a successful outcome; and
- (d) whether a success fee is necessary to incentivize the financial advisor.⁵³

46. Here, it is appropriate for this Court to exercise its discretion to authorize the Applicants to pay the Success Fee in accordance with the proposed Approval and Vesting Order as:

- (a) the Monitor and the DIP Lender were consulted on and consented to the Applicants' engagement of Hyde;
- (b) the Applicants and the Monitor are of the view that the quantum of the Success Fee is reasonable and appropriate in the circumstances, having regard to the breadth of Hyde's experience, the services provided, the outcome achieved and the benefit expected to accrue to the Applicants and their stakeholders as a result of Hyde's marketing efforts;

⁵³ *Danier*, *ibid* at para 47; *Colossus*, *ibid* at paras 30, 31-36; *Sino-Forest*, *supra* note 51 at para 47; *Walter Energy*, *supra* note 51 at paras 31-32, 35; *Target*, *supra* note 51 at para 72.

- (c) given the Applicants' limited liquidity, the payment of a success fee was the only practical manner in which the Applicants could retain Hyde's services to solicit interest in the Canadian Business;
- (d) the payment of the Success Fee is appropriately conditioned upon the receipt of the Cash Payment, release of the Deposit and completion of the Transactions, with the majority of the Success Fee being further conditioned upon receipt of the Initial Note Proceeds and the Additional Note Proceeds;
- (e) the Monitor, the DIP Lender and the Agent are supportive of the payment of the Success Fee to Hyde in the manner contemplated under the proposed Approval and Vesting Order; and
- (f) Hyde's engagement in these proceedings has furthered the remedial objectives of the CCAA by assisting in maximizing the value of the Canadian Business for the benefit of the Applicants' stakeholders.⁵⁴

C. The Stay of Proceedings Should be Extended

47. The Stay of Proceedings is currently set to expire on April 21, 2023.⁵⁵ Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the Stay of Proceedings for "any period that the court considers necessary".⁵⁶ To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.⁵⁷

⁵⁴ Ruschetta Affidavit, *supra* note 1 at paras 36-37, 51-56, Motion Record at Tab 2; Monitor's Report, *supra* note 22 s 6.0 at paras 1-5.

⁵⁵ Ruschetta Affidavit, *ibid* at para 57, Motion Record at Tab 2.

⁵⁶ [CCAA](#), *supra* note 28 s [11.02\(2\)](#); [Harte Gold](#), *supra* note 28 at para [87](#).

⁵⁷ [CCAA](#), *ibid* s [11.02\(2\)](#).

48. The jurisdiction conferred under section 11.02 "should be construed broadly to accomplish the legislative purposes of the CCAA".⁵⁸ These purposes include, among others, enabling the continuation of the debtors' business, avoiding the social and economic costs of a liquidation, preserving the value of the debtors' business and facilitating a value-maximizing restructuring.⁵⁹ Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides debtors with breathing room while they seek to restore solvency and arrange a "sale of assets in order to maximize recovery for stakeholders."⁶⁰

49. In this case, the proposed extension of the Stay of Proceedings is appropriate given that:

- (a) since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize the Canadian Business, advance their restructuring efforts, and identify and implement a value-maximizing transaction;
- (b) the proposed extension of the Stay of Proceedings is necessary to preserve the *status quo* and prevent enforcement action by, among others, the Applicants' contractual counterparties;
- (c) the proposed extension of the Stay of Proceedings will afford the Applicants the breathing space and stability required to close the Transactions expeditiously, with a view to preserving and maximizing value for the Applicants' stakeholders;

⁵⁸ [Canwest Global Communications Corp, 2011 ONSC 2215](#) at para 24 [*Canwest*].

⁵⁹ [Canwest](#), *ibid* at para 24; [Callidus](#), *supra* note 29 at para 40; [Century Services](#), *supra* note 29 at para 15; [Target](#), *supra* note 51 at para 8; [Re Timminco Limited, 2012 ONSC 2515](#) at para 15 [*Timminco*].

⁶⁰ [Timminco](#), *ibid* at para 15; [Century Services](#), *ibid* at para 14; [Target](#), *ibid* at para 8; [Canwest](#), *supra* note 58 at paras 24-25.

- (d) the proposed extension of the Stay of Proceedings will provide time for the Purchaser to (i) pay the Note Proceeds to the Vendor, and (ii) collect and remit the Deferred Consideration, pursuant to and in accordance with the Secured Promissory Note and each Deferred Consideration Note, respectively;
- (e) the proposed extension of the Stay of Proceedings will allow the Applicants to seek such further relief as may be required to facilitate the orderly wind-down of the Vendor and the Residual Cos., one or more distributions to the Applicants' creditors, and the termination of these CCAA proceedings;
- (f) the Monitor is supportive of the proposed extension of the Stay of Proceedings and does not believe that any creditor will be prejudiced by such extension; and
- (g) the Agent and the DIP Lender are supportive of the proposed extension of the Stay of Proceedings.⁶¹

50. Taken together, the Applicants submit that the proposed extension of the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, is consistent with the purposes of the CCAA, and is appropriate in the circumstances.

PART V: RELIEF REQUESTED

51. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,⁶² and respectfully request that the proposed form of Approval and Vesting Order be granted.

⁶¹ Ruscetta Affidavit, *supra* note 1 at paras 58-62, Motion Record at Tab 2; Monitor's Report, *supra* note 22 s 7.0 at paras 1-2.

⁶² See generally, [FIGR RVO](#), *supra* note 45; [Green Relief RVO](#), *supra* note 45; [Superette RVO](#), *supra* note 45; [Harte Gold RVO](#), *supra* note 45; [Just Energy RVO](#), *supra* note 45; [MPXI RVO](#), *supra* note 45.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF APRIL 2023

Bennett Jones LLP

BENNETT JONES LLP

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#)
2. [Canwest Global Communications Corp, 2011 ONSC 2215](#)
3. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
4. [In the Matter of the Companies' Creditors Arrangement Act and In the Matter of CannaPiece Group Inc, 2023 ONSC 841](#)
5. [In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc. \(June 10, 2021\), Toronto, CV-21-00655373-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
6. [In the Matter of a Plan of Compromise or Arrangement of Green Relief Inc. \(November 9, 2020\), Toronto, CV-20-00639217-00CL \(Order\) \(ONSC\)](#)
7. [In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp. \(January 28, 2022\), Toronto, CV-21-00673304-00CL \(Approval and Reverse Vesting Order\) \(ONSC\)](#)
8. [In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al. \(November 3, 2022\), Toronto, CV-21-00658423-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
9. [In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al. \(December 15, 2022\), Toronto, CV-22-00684542-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
10. [In the Matter of a Plan of Compromise or Arrangement of Superette Inc. et al. \(December 20, 2022\), Toronto, CV-22-00686245-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
11. [Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al, 2022 ONSC 6354](#)
12. [Re Colossus Minerals Inc, 2014 ONSC 514](#)
13. [Re Danier Leather Inc, 2016 ONSC 1044](#)
14. [Re Green Relief Inc, 2020 ONSC 6837](#)
15. [Re Harte Gold Corp, 2022 ONSC 653](#)
16. [Re MPX International Corporation, 2022 ONSC 7152](#)
17. [Re Quest University Canada, 2020 BCSC 1883](#)
18. [Re Sino-Forest Corp, 2012 ONSC 2063](#)
19. [Re Sino-Forest Corp, 2012 ONSC 4377](#)
20. [Re Stelco Inc, 18 CBR \(5th\) 173](#)
21. [Re Tamerlane Ventures Inc, 2013 ONSC 5461](#)
22. [Re Target Canada Co, 2015 ONSC 303](#)
23. [Re Timminco Limited, 2012 ONSC 2515](#)
24. [Re Walter Energy Canada Holdings, Inc, 2016 BCSC 107](#)
25. [Royal Bank of Canada v Soundair Corp, \[1991\] 7 CBR \(3d\) 1](#)

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Section 6

Compromises to be sanctioned by court

(1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a provincial pension plan as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the Bankruptcy and Insolvency Act if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

R.S., 1985, c. C-36, s. 61992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1232004, c. 25, s. 1942005, c. 47, s. 126, 2007, c. 36, s. 1062009, c. 33, s. 272012, c. 16, s. 82.

Section 11

General power of court

Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

Section 22

Company may establish classes

(1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Related creditors

(3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

1997, c. 12, s. 1262005, c. 47, s. 1312007, c. 36, s. 71.

Section 36

Restriction on disposition of business assets

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 1312007, c. 36, s. 782017, c. 26, s. 142018, c. 27, s. 269

Courts of Justice Act, R.S.O. 1990, c. C.43

Section 100

Vesting Orders

A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100.

**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
OF TRICHOME FINANCIAL CORP., TRICHOME JWC ACQUISITION CORP.,
MYM NUTRACEUTICALS INC., TRICHOME RETAIL CORP., MYM
INTERNATIONAL BRANDS INC., AND HIGHLAND GROW INC.**

Court File No.: CV-22-00689857-00CL

ONTARIO
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(COMMERCIAL LIST)

Proceeding commenced at Toronto

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