



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00717664-00CL

DATE: 11 April 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **HERITAGE CANNABIS HOLDINGS**

BEFORE JUSTICE: **Cavanagh**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Danish Afroz Harvey Chaiton	HERITAGE CANNABIS HOLDINGS CORP. 1005477 B.C. LTD. HERITAGE CANNABIS WEST CORPORATION MAINSTRAIN MARKET LTD. HERITAGE CANNABIS EAST CORPORATION PUREFARMA SOLUTIONS INC. 333 JARVIS REALTY INC. 5450 REALTY INC. HERITAGE CANNABIS EXCHANGE CORP. PREMIUM 5 LTD.	dafroz@chaitons.com harvey@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Virginie Gauthier Kate Yurkovich	BJK Holdings Ltd., the DIP Lender	Virginie.gauthier@gowlingwlg.com Kate.yurkovich@gowlingwlg.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Chris Burr	KPMG	pripatel@kpmg.ca
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ENDORSEMENT OF JUSTICE CAVANAGH:

1. On April 2, 2024, the Applicants sought and obtained an Order (the “Initial Order”) under the *Companies’ Creditors Arrangement Act* (“*CCAA*”). Pursuant to the Initial Order, KPMG Inc. was appointed Monitor of the Applicants (the “Monitor”).
2. The Applicants have brought this motion for:
 - a. an amended and restated initial order (the “ARIO”) granting, among other things: (i) an extension of the stay of proceedings to June 30, 2024; (ii) approval of the Applicants’ ability to borrow under a debtor-in-possession facility term sheet with BJK Holdings Ltd. (“BJK”) as lender (in such capacity, the “DIP Lender”); (iii) approval of the DIP Lender’s Charge (as defined in the motion materials); (iv) extension of the time limit to call and hold the annual general meeting of shareholders of Heritage Cannabis Holdings (“Heritage”) until after the completion of the *CCAA* proceedings; (v) approval of the Key Employee Retention Plan (“KERP”); and (vi) an increase to the amount of the Administration Charge and the Directors’ Charge (as defined in the motion materials); and
 - b. an order (the “SISP Order”) granting, among other things: (i) authority and approval for execution of the Stalking Horse Subscription Agreement (the “Stalking Horse Agreement”) among Heritage and Heritage Cannabis West Corporation, as sellers, and BJK and HAB Cann Holdings Ltd. (the “Stalking Horse Purchaser”), *nunc pro tunc*, and (ii) approval of the sale and investment solicitation process (the “SISP”) in which the Stalking Horse Agreement will serve as the “Stalking Horse Bid”.
3. The factual background to this motion is set out in the affidavit of David Schwede sworn April 9, 2024 and the First Report of the Monitor.
4. The issues on this motion are set out in the Applicants’ Factum, at para. 19. I address these issues below:
 - a. The Stay Period (as defined in the Initial Order) currently expires on April 12, 2024. The Applicants are requesting an extension of the stay of proceedings and the Stay Period to June 30, 2024. Since the granting of the Initial Order, the Applicants have acted, and are continuing to act, in good faith and with due diligence. The Monitor and the Applicants will need time in order to properly and diligently implement and carry out the SISP in accordance with its terms and the SISP Approval Order, to obtain the maximum value for all stakeholders. I am satisfied that the requested extension of the stay of proceedings should be granted.
 - b. The Applicants are seeking a DIP Lender’s Charge to secure amounts borrowed under the DIP Loan that will rank subordinate to the Administration Charge and the Directors’ Charge. The DIP Lender’s Charge will not secure obligations incurred before the ARIO is made. I am satisfied that

the proposed DIP financing and the proposed DIP Lender's Charge should be approved. In this respect, I accept the submissions made at paragraphs 22-24 of the Applicants' Factum.

- c. Section 94 (1) of the Ontario *Business Corporations Act* provides that a corporation must call an annual shareholders' meeting no later than fifteen months after holding the last preceding annual meeting. I am satisfied that, in light of the present *CCAA* proceedings, the Applicants' resources and time are better directed towards its restructuring efforts than holding the Annual General Meeting at this juncture. There will be no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in the *CCAA* proceedings and published on the Monitor's website.
- d. The Applicants established the KERP to incentivize certain key employees to remain in their employment during the *CCAA* proceedings. Under the KERP, 11 key employees will be entitled to aggregate payments in the approximate amount of \$76,000. I am satisfied that the terms of the KERP are fair and reasonable in the circumstances and will provide an incentive for the key employees to continue to perform their critical roles throughout the restructuring process. I approve the KERP.
- e. The Applicants are now seeking to increase the Administration Charge and the Directors' Charge. The Monitor supports the increases of these charges. I am satisfied that the requested increases are reasonable and should be approved. In this respect, I accept the Applicants' submissions made at paragraphs 33-39 of their Factum.
- f. A *CCAA* court has jurisdiction to approve a sale process in relation to a *CCAA* debtor's business and assets. In *Nortel Networks Corp. (Re)*, 2009 CanLII 39492, at para. 48, the Court identified several factors that should be considered in determining whether to authorize a sale process:
 - i. Is a sale transaction warranted at this time?
 - ii. Will the sale benefit the whole "economic community"?
 - iii. Do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
 - iv. Is there a better viable alternative?

I am satisfied that the proposed SISP should be approved. The Monitor has provided its view that the timelines and terms of the SISP are fair, reasonable and appropriate in the circumstances and provide sufficient time to allow interested parties to fully participate in the SISP. The Applicants are insolvent and are unable to indefinitely continue operations in their current state and must restructure to preserve their business. A sale will maximize value for the Applicants' stakeholders, either through allowing the business to continue as a going concern or through ascribing fair market value to the business and assets of the Applicants.

- g. The Applicants are seeking approval of the Stalking Horse Agreement solely for the purpose of approving it as the Stalking Horse Bid under the SISP. The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants, the Monitor and the Stalking Horse Bidder. The Monitor supports approval for the purpose of becoming the Stalking Horse Bid under the SISP. I am satisfied that the Stalking Horse Agreement should be approved for this purpose.
5. Orders to issue in forms of Orders signed by me today.