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COURT / ESTATE FILE NUMBER 25-3038201 B301-038201

COURT COURT OF KING'S BENCH OF ALBERTA

O20024

JUDICIAL CENTRE CALGARY

Feb 5, 2024
COM

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TOOL SHED BREWING COMPANY INC.

APPLICANT TOOL SHED BREWING COMPANY INC.

RESPONDENTS CANADA REVENUE AGENCY and ALBERTA GAMING, LIQUOR
AND CANNABIS COMMISSION

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MILLER THOMSON LLP
525 – 8 Ave SW, 43rd Floor
Calgary, AB T2P 1G1

Attention: James W. Reid / Bryan A. Hosking
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bhosking@millerthomson.com

File No.: 276443.0001

NOTICE TO RESPONDENTS:

This application is made against you. You are respondents.

You have the right to state your side of this matter before the justice assigned.

To do so, you must be in Court when the application is heard as shown below:

Date February 5, 2024

Time 2:00 p.m.

Where Calgary Courts Centre
To be held virtually via Webex

Before Whom The Honourable Justice B.B. Johnston

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, Tool Shed Brewing Company Inc. (the “**Company**” or “**Tool Shed**”) seeks an order substantially in the form attached hereto as **Schedule “A”**, among other things:
 - (a) abridging the time for service of this Application and the supporting materials, and deeming service thereof to be good and sufficient;
 - (b) directing the release to the Company of the Funds (defined below) held by the Alberta Gaming, Liquor and Cannabis Commission (“**AGLC**”); and
 - (c) granting such further and other relief as counsel may request and this Honourable Court may deem appropriate.

Grounds for making this Application:

The Company

2. Tool Shed is a body corporate incorporated pursuant to the laws of the Province of Alberta, having its registered office in the City of Calgary, Alberta.
3. Tool Shed is in the business of brewing craft alcoholic and non-alcoholic beer. It has been in operation for over 11 years, and its products are located in approximately 750 retailers.
4. Tool Shed employs approximately 20 full-time and part-time staff. It leases its premises in the Franklin Industrial Area of Calgary.
5. Tool Shed’s operating funds are mainly derived from wholesale revenue of their products in Alberta; however, Tool Shed is not directly compensated when they sell their liquor products to retailers, restaurants, and other institutional customers.
6. Tool Shed sells its product to the AGLC, who then sells Tool Shed product to customers. The AGLC then remits that sales income to Tool Shed. Therefore, Tool Shed’s main revenue stream goes through AGLC due to the nature of its business.

The Financial Circumstances for this Application

7. Like many industries, the brewing industry was significantly negatively impacted by the COVID-19 pandemic.
8. Since 2020, Tool Shed has faced an extraordinary strain on its financial resources, including the negative effects on the brewing industry brought on by the Covid-19

pandemic and the maturation of its credit facility which the Company was unable to re-finance.

9. Despite attempts to secure alternative financing, Tool Shed has been unsuccessful in securing an operating line of credit or any other method of alternative financing which would allow it to continue operations.
10. Tool Shed is insolvent and faces a serious liquidity crisis.

The CRA Debt and Requirement to Pay

11. Tool Shed has a significant amount of unremitted source deductions owing to the Canada Revenue Agency (the “**CRA**”). The amounts owing to the CRA on account of source deductions date back to January 2020.
12. In July of 2023, Tool Shed made an informal agreement with the CRA to begin paying down the arrears. However, due to the financial constraints of Tool Shed, payments on account of arrears stopped in November of 2023.
13. During the time period of July 2023 to November 2023, payments made to the CRA towards arrears totaled \$66,400. Tool Shed maintained payment for current source deductions from July 2023 until January 2024. Tool Shed has not made payments for source deductions since December 2023, missing its January 2024 remittances.
14. On January 9, 2024, the CRA issued a notice (the “**CRA Notice**”) to Tool Shed advising that a writ was obtained in the Federal Court on December 8, 2023, in the amount of \$564,237.84 and that as of January 9, 2024, \$571,091.70 (the “**CRA Debt**”) was due and owing. The CRA Notice provides that if the amounts owing to the CRA are not paid at once, the CRA may register a lien against Tool Shed’s real or personal property, or take enforcement efforts to sell Tool Shed’s assets.
15. On January 29, 2024, the Company was advised by the AGLC that the CRA issued a requirement to pay to it (the “**Requirement to Pay**”).
16. The AGLC is therefore holding back funds from the Company as a result of the Requirement to Pay (the “**Funds**”), which Funds are critical to Tool Shed’s ongoing operations.

17. Tool Shed anticipated receiving funds from AGLC in the amount of up to \$60,000 (the “**Funds**”) which represents approximately 2 weeks’ worth of revenue from the sale of Tool Shed’s products.

The Necessity for the Order

18. As a result of the AGLC withholding the Funds pursuant to the Requirement to Pay, Tool Shed’s ability to operate has been crippled. It no longer has access to its sole source of revenue. The Company does not have the cash flow it urgently requires to meet its approximately \$50,000 in payroll obligations owing to its employees next week. Tool Shed’s next payroll remittance is on February 7, 2024.
19. In addition to payroll, Tool Shed requires the funds to pay its critical suppliers and operational expenses.
20. In the face of AGLC holding back the Funds, on January 31, 2024, the Company filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”).
21. KPMG Inc. has been appointed as proposal trustee (the “**Proposal Trustee**”) in respect of these proposal proceedings (the “**NOI Proceedings**”).
22. Tool Shed is in the process of designing a formal court-supervised sale and investment solicitation process (the “**Proposed SISP**”), which would identify one or more purchasers or investors in the assets or business of the Company.
23. The Company anticipates that the Proposed SISP will utilize a stalking horse agreement to serve as the baseline for any bids received in the Proposed SISP, and subsequently, proposed auction, if necessary.
24. The Proposed SISP, with the stalking horse bidder, would allow the Company to pursue a transaction that contemplates paying the CRA Debt in full within a reasonable amount of time after the closing of a transaction.
25. Tool Shed has reserved court time before the Honourable Justice M.J. Lema on February 12, 2024 at 2:30 p.m., at which time it anticipates seeking, among others things, the following relief:

- (a) extension of time to file a proposal to its creditors for an additional 45-day period from the initial expiry of the stay;
 - (b) authorizing Tool Shed to borrow under a credit facility from an interim lender;
 - (c) granting an administration charge and interim lender's charge over the assets and property of Tool Shed;
 - (d) approval of the Proposed SISP; and
 - (e) approval of the stalking horse agreement as the stalking horse bidder as contemplated by the Proposed SISP.
26. Tool Shed requires immediate access to the Funds in order to continue operations long enough to move forward with the NOI Proceedings and pursue a restructuring transaction for the benefit of its stakeholders, including the CRA.

Material or evidence to be relied on:

- 27. Affidavit of James Costello, sworn February 1, 2024, to be filed.
- 28. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

- 29. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
- 30. *Alberta Rules of Court*, Alta Reg 124/2010.

Any irregularity complained of or objection relied on:

- 31. None.

How the application is proposed to be heard or considered:

- 32. Via WebEx on the Commercial List before the Honourable Justice B.B. Johnston.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

Proposed Form of Order

COURT/ESTATE
FILE NUMBER 25-3038201

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF TOOL SHED BREWING COMPANY
INC.

APPLICANT TOOL SHED BREWING COMPANY INC.

RESPONDENTS CANADA REVENUE AGENCY and ALBERTA GAMING, LIQUOR
AND CANNABIS COMMISSION

DOCUMENT **ORDER**

ADDRESS FOR
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PARTY FILING
THIS DOCUMENT

MILLER THOMSON LLP
525 – 8 Ave SW, 43rd Floor
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bhosking@millერთhompson.com

File No.: 276443.0001

DATE ON WHICH ORDER WAS PRONOUNCED: February 5, 2024

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice B.B. Johnston

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary

UPON THE APPLICATION by Tool Shed Brewing Company Inc. (the "**Company**") for an order, among other things, directing the Alberta Gaming, Liquor and Cannabis Commission to distribute the Funds (defined below) to the Company;

AND UPON the Company having filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 on January 31, 2024 (the “**NOI Proceedings**”);

AND UPON HAVING READ the Application and Affidavit of James Costello sworn February 1, 2024;

AND UPON HEARING the submissions of counsel for the Company, and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

FUNDS PAID TO THE COMPANY

2. During the course of the NOI Proceedings, or upon further Order of the Court, the Alberta Gaming, Liquor and Cannabis Commission is hereby directed to release to the Company all current and future funds currently due and owing to the Company, or that may become due and owing to the Company, and which funds are being held by the AGLC pursuant to the notice of requirement to pay issued by the Canada Revenue Agency (the “**Funds**”).

MISCELLANEOUS

3. Service of this Order shall be deemed good and sufficient by serving same on the persons who were served with notice of this application and any other parties attending or represented at the hearing of the application.
4. Service of this Order on any other person is hereby dispensed with.
5. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.