



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE HEARD: April 2, 2024

DATE RELEASED: April 5, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HERITAGE CANNABIS HOLDINGS CORP. AND OTHERS

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

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ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] At a hearing on April 2, 2024, the proposed applicants in an intended application sought creditor protection and other relief pursuant to an initial order under the *Companies' Creditors Arrangement Act*.
- [2] The Applicants submitted a form of Notice of Application to the Commercial List Office to be issued.
- [3] At the conclusion of the hearing, I granted the requested initial order, with reasons to follow.
- [4] These are my reasons.

Background Facts

[5] Heritage Cannabis Holdings ("Heritage"), 1005477 B.C. Ltd. ("1005"), Mainstrain Market Ltd. ("Mainstrain"), Purefarma Solutions Inc. ("Purefarma"), 333 Jarvis Realty Inc. ("333"), 5450 Realty Inc. ("5450"), Premium 5 Ltd. ("Premium"), Heritage Cannabis Exchange Corp. ("HCEC"), Heritage Cannabis East Corporation (formerly CannaCure Corporation) ("Heritage East"), and Heritage Cannabis West Corporation (formerly Voyage Cannabis Corp.) ("Heritage West") seek creditor protection and other relief pursuant to an order (the "Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "CCAA").

[6] Heritage is a reporting issuer listed on the Canadian Securities Exchange and on the OTC Pink, operated by the OTC Markets Group. It wholly-owns each of the other applicants and wholly-owns several other non-applicant affiliates. All applicants are Canadian companies.

[7] Through its subsidiaries and from facilities located in Ontario and British Columbia, Heritage focuses on extraction and creation of extract and extract-derivative brands for adult use, and cannabis-based medical solutions.

[8] The applicants are in default under certain material operating agreements including their secured loans with BJK Holdings Ltd. ("BJK"), and the leases for their two operating facilities. BJK is no longer willing to continue supporting the Heritage Group in its current financial circumstances. BJK has delivered demand letters demanding repayment of its loan along with Notices of Intention to Enforce Security pursuant to section 244 (1) of the *Bankruptcy and Insolvency Act*. In addition, the Canada Revenue Agency ("CRA") has delivered requirements to pay notices to a major customer of the applicants.

[9] The applicants' liabilities include \$11,770,310 owing to CRA on account of unremitted excise tax arrears. The subsidiaries of Heritage which owe excise tax arrears have entered into repayment plans with CRA pursuant to which they must make monthly payments to repay the entire excise tax arrears over a specified period of time.

[10] The applicants are facing a liquidity crisis and, absent protection under the *CCAA*, will not be able to continue to carry on their business in the ordinary course or meet their obligations as they become due. At a

comeback hearing, the applicants will be seeking additional financing through a debtor-in-possession loan to, among other things, provide them with immediate access to funding needed to continue to operate and preserve the value of their operations while a sale and investment solicitation process (“SISP”) is conducted.

[11] The facts supporting this application are more fully set out in the affidavit of David Schwede sworn April 2, 2024. The facts are summarized in the applicants’ factum at paragraphs 8-27.

[12] I address the issues on this application to grant the requested Initial Order.

[13] The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” whose liabilities exceed \$5 million. I am satisfied that each of the applicants is a “company” within the meaning of the CCAA to which the CCAA applies. In this regard, I accept the submissions made on behalf of the applicants at paragraphs 29-38 of their factum.

[14] Section 11.02 of the CCAA provides this Court with the jurisdiction to impose a stay of proceedings for a period of not more than 10 days if it is satisfied that circumstances exist that make the order appropriate. A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA as a going concern. Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period. This 10-day period allows for a stabilization of operations and a negotiating window. I am satisfied that the requested Initial Order is in accordance with this requirement.

[15] I am satisfied that the requested stay of proceedings should be granted. The applicants require a stay of proceedings to preserve the value of their business and provide them with breathing room to pursue the SISP, while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime. In the absence of a stay of proceedings, the applicants may face enforcement actions. I am satisfied that it would be detrimental to the applicants’ business and stakeholders if proceedings were commenced or continued or rights and remedies were executed against them.

[16] This Court has authority to extend the stay of proceedings to non-applicant stay parties pursuant to section 11 and 11.02 (1) of the CCAA which allows it to make an initial order on any terms that the court may impose. In doing so, courts have looked at factors including whether the subsidiaries of the CCAA applicants had guaranteed the applicants’ secured loan; whether the non-applicants were deeply integrated into the applicants’ business operations; and whether the claims against the non-applicants are derivative of the primary liability of the applicants. I am satisfied that the non-applicant stay parties are integrated into the applicants’ business. Heritage U.S. Holdings, a non-applicant stay party, is also a guarantor under the BJK loan. An extension of the stay to the non-applicant stay parties is required to prevent uncoordinated realization and enforcement attempts from being made in different jurisdictions, and to protect value for the applicants’ stakeholders.

[17] The applicants intend to seek approval of a SISP during the CCAA proceedings, which may include non-applicant stay parties. I am satisfied that without the benefit of the stay of proceedings, the applicants’ ability to market and sell their interests in the non-applicant stay parties and their respective assets may be compromised.

[18] The applicants are proposing in the Initial Order that they be authorized, but not required, and in all cases with the consent of the Monitor and BJK, and in accordance with the cash flow, to make payments for goods or services actually supplied to the applicants prior to the date of the Initial Order if, in the opinion of the applicants and the Monitor, the supplier or service provider is critical to preserve, protect, or enhance the value of the business.

[19] Section 11.4 of the *CCAA* gives the Court specific authority to declare a person to be a critical supplier and to grant a charge on the debtor's property to secure amounts owing for services provided after the filing. In addition, the Court has inherent jurisdiction to make provision for payment of pre-filing amounts to suppliers whose services are viewed as critical to the post-filing operations of the debtor, even where the debtor does not propose to secure payment of post-filing supplies with a critical supplier charge.

[20] The applicants are seeking a charge over the Property (as defined in the application materials) in the amount of \$900,000 to secure the indemnity of their respective directors and officers for liabilities they may incur in these *CCAA* proceedings (the "Directors' Charge"). The Directors' Charge is proposed to rank subordinate to the Administration Charge (as defined below).

[21] Section 11.51 of the *CCAA* affords the Court the jurisdiction to grant the Directors' Charge. This court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring. A court may not make the order if "the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost", and the court shall make an order declaring that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer "if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct".

[22] I am satisfied that it is appropriate in the circumstances for this Court to exercise its jurisdiction to grant the proposed Directors' Charge given that:

- a. the applicants require the active and committed involvement of the directors and officers in order to continue business operations in the ordinary course and to effectively execute the SISP.
- b. the directors and officers have indicated that their continued service and involvement in the *CCAA* proceedings is conditional upon the granting of the Directors' Charge;
- c. the Directors' Charge applies only to the extent that the directors and officers do not have coverage under another directors' and officers' insurance policy;
- d. the Directors' Charge would only cover obligations and liabilities that the directors and officers may incur after the commencement of the *CCAA* proceedings, and does not cover wilful misconduct or gross negligence;
- e. the amount of the Directors' Charge is reasonable in the circumstances and is limited to the potential exposure during the initial 10-day period; and
- f. the proposed Monitor is supportive of the Directors' Charge.

[23] The applicants are seeking a court-ordered charge over the Property in the amount of \$250,000 to secure the professional fees and disbursements of the proposed Monitor and its counsel, and the Applicants' insolvency counsel and corporate counsel at their standard rates and charges, incurred prior to, on, or subsequent to the granting of the Initial Order (the "Administration Charge").

[24] Section 11.52 of the *CCAA* expressly provides the Court with the jurisdiction to grant an administration charge. I am satisfied that it is appropriate for this Court to exercise its jurisdiction grant the proposed Administration Charge given that:

- a. the Applicants' business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;
- b. the beneficiaries of the Administration Charge have the requisite knowledge with respect to those regulations and have contributed to, and will continue to contribute to, the CCAA proceedings and assist the Applicants with their businesses:
- c. each proposed a beneficiary of the Administration Charge is performing distinct functions and there will be no duplication of roles;
- d. the quantum of the proposed Administration Charge is fair and reasonable; and
- e. the proposed Monitor is supportive of the Administration Charge.

[25] I am satisfied that the applicants should be granted relief to dispense with certain securities filing requirements, as requested.

[26] The applicants request an order staying their cannabis licenses which are required to permit them to operate their underlying businesses. If the licenses lapse or cancel, the applicants' operation and delivery of products will need to be halted or suspended. Accordingly, the lapsing or cancellation at the licenses would terminate the applicant's ability to restructure or continue as a going-concern business. I am satisfied that the requested stay order should be granted.

[27] These are my reasons for granting the Initial Order.

[28] The comeback hearing is scheduled for April 11, 2024 at 9:30 a.m. for one hour.