



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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TITLE OF PROCEEDING: NOYA HOLDINGS INC. v BDO CANADA LIMITED et al

BEFORE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

**For Applicant:**

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**ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] The Applicants, Noya Holdings Inc. (“NHI”) and Noya Cannabis Inc. (NCI”) bring this application for an initial order under the *Companies’ Creditors Arrangement Act*, as amended (the “*CCAA*”).
- [2] The facts underlying this application are more fully set out in the affidavit of Ziad Reda sworn October 28, 2024. Mr. Reda is the Chief Executive Officer of NHI as well as a member of the Board of Directors. He is also the Chief Executive Officer and a member of the Board of Directors of NCI, a wholly-owned subsidiary of NHI.
- [3] NHI is the ultimate parent company of NCI and 2675383 Ontario Limited (“267”). NCI holds the grow and sales cannabis license, and 267 holds of the micro-cultivation cannabis license.
- [4] NHI, through its wholly-owned subsidiary, NCI, operates a cannabis production business. NCI is the operating entity. It holds the necessary cannabis licenses and operates the production business out of a licensed facility located at property municipally known as 90 Beach Road, Hamilton, Ontario.
- [5] NCI is a licensed producer of premium cannabis products under the *Cannabis Act*. NCI has entered into a series of contractual relationships with different cannabis brands, suppliers or distributors, including sales and distribution agreements and production, supply and revenue sharing agreements. NCI’s production process involves growing its plants in a tightly controlled indoor environment, and then hand-drying and hand-curing the trimmings before they are used to produce various cannabis products.
- [6] The Applicants’ currently employ 18 employees.
- [7] Lending Stream Inc. (“Lending Stream”) is the Applicants’ senior secured creditor. As of August 31, 2024, NHI was indebted to Lending Stream pursuant to a convertible debenture in the approximate amount of \$1,850,000; and NCI was indebted to Lending Stream pursuant to a royalty agreement in the approximate amount of \$3,360,000. Lending Stream holds various security regarding these obligations. On or about September 23, 2024, Lending Stream demanded payment and issued *BIA* notices regarding these debts. The owner of Lending Stream is the brother of the owner of the Applicants.
- [8] 1955185 Ontario Inc. (“195”) is another secured creditor that provided to loans to NHI pursuant to two sets of loan and security documents. As of September 30, 2024, 195 had loaned the approximate amount of \$3.8 million to NHI. 195 is owned or controlled by the parents or relatives of the owner of the Applicants.
- [9] Another secured creditor is Gage Growth Corp. or TerrAscend Corp. As of September 30, 2024, NHI was indebted to TerrAscend or Gage under a limited guarantee, supported by a general security agreement, in the approximate amount of \$1.3 million.

- [10] There are inter-creditor agreements that govern the relationship of Lending Stream and TerrAscend or Gage regarding the Applicants.
- [11] The Applicants are also facing various contingent claims including from Pure Sunfarms Corp., Ignite International Brands (Canada) LTD, and 10805696 Canada Inc. o/a Mauve & Herbes. These claims arise primarily from contractual disputes and are unsecured claims. These claims are at different stages of litigation, mediation or arbitration and have upcoming deadlines which will require the Applicants to expend additional time, money and resources to meet those deadlines. These claims are in excess of \$5 million.
- [12] The secured creditors have registered security interests under the *PPSA*. The only other *PPSA* registration appears to be against the predecessor company of NCI by Alterna Savings and Credit Unit Limited on May 11, 2023, in the amount of \$34,500 regarding a secured corporate Visa.
- [13] The Applicants are up-to-date with payments to the Canada Revenue Agency in respective employment insurance and Canada Pension Plan deductions but owe excise tax remittances and HST remittances.
- [14] The Applicant owe various amounts to trade creditors.
- [15] The Applicants have faced pressures similar to other cannabis industry participants due to the over-supply in the market for cannabis products, the impact of the illegal market on the demand for legal cannabis products, inflation, and high interest rates. The Applicants are facing payment demands from their main secured creditor, Lending Stream, and contingent claims at different stages of litigation or arbitration, and are indebted to other secured creditors, in respect of claims totaling over \$10 million.
- [16] The Applicants' evidence is that they are insolvent and cannot meet their liabilities as they become due. They have determined that a *CCAA* proceeding is required to complete a sale process and otherwise address their current challenges by restructuring their operations.
- [17] The Applicants are proposing that BDO Canada Limited ("BDO") act as monitor of the Applicants in these proceedings.
- [18] Each of the Applicants is incorporated pursuant to the laws of Ontario and they have their registered head offices in Ontario. I am satisfied that the Applicants are unable to meet their obligations as they generally become due, and they face the risk of a liquidity challenge or "cash crunch" in the near future. The Applicants have total debts well in excess of the \$5 million threshold.
- [19] I am satisfied that the Applicants are debtor companies to which *CCAA* applies.

- [20] Pursuant to section 11.02 of the *CCAA*, a court may grant a stay of proceedings on an initial application under the *CCAA* for a period of no more than 10 days, provided that the court is satisfied that circumstances exist that make the order appropriate.
- [21] A stay of proceedings is appropriate where provides a debtor with breathing space as the debtor seeks to restore solvency and emerge from the *CCAA* on a going concern basis. During that period, the purpose of the *CCAA* stay of proceedings is to maintain the *status quo* to provide a structured environment in which an insolvent company can continue to carry on business and develop a restructuring plan for the benefit of the Company and all of its stakeholders. See *Century Services v. Canada (Attorney General)*, 2010 SCC 60, at para. 60.
- [22] Absent exceptional circumstances, the relief to be granted at the initial hearing should be limited and, whenever possible, the *status quo* should be maintained during the initial 10-day period. This 10-day period allows for, among other things, a negotiating window followed by a comeback hearing where the request for expanded relief can be considered on proper notice to all affected parties. See *Re Lydian* 2019 ONSC 7473, at para. 26.
- [23] I am satisfied that given the current financial condition of the Applicants, the payment demand from Lending Screen, and the claims by contingent creditors, a stay of proceedings for an initial period of 10 days is appropriate. The Applicants have limited the relief sought in this application under section 11.001 of the *CCAA* to relief that is reasonably necessary in the circumstances to maintain the status quo and to give the Applicants the breathing room necessary to stabilize their operations, seek and finalize DIP financing and develop a sale process for the benefit of their stakeholders.
- [24] I am satisfied that the stay of proceeding should be extended to the Applicants' directors and officers so that they may focus on the *CCAA* proceedings, including developing and implementing the sale process. Section 11.03 of the *CCAA* allows for the extension of the stay to a debtor's directors.
- [25] I am satisfied that the stay of proceedings should also cover NCI's cannabis licenses. The cannabis licenses of NCI are valuable assets, and they are required to permit the Applicants to continue operating their underlying business.
- [26] The Applicants are also seeking to extend the stay of proceedings to 267 because it holds a cannabis micro-cultivation license and an excise cannabis license, it is integrated with the business and/or operations of the Applicants, and 267's licenses may be a part of or impacted by the anticipated sale process. The requested extension of the stay of proceedings 2267 is intended partly to prevent any regulatory actions related to 267's licenses due to the commencement of the *CCAA* proceeding by the Applicants.

- [27] The Court has authority to extend the stay of proceedings to 267 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 determining whether a stay should be extended to non-parties, courts have considered numerous factors, including whether the subsidiaries of the applicants had guaranteed secured loans of the applicants, whether the non-applicants were deeply integrated into the business operations of the applicants, and whether the claims against the non-applicants were derivative of the primary liability of the applicants. See *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645, at paras. 42-45.
- [28] I am satisfied that the stay of proceedings should apply to 267 including its directors and include a regulatory stay over the 267 licenses. 267 is integrated with the business and/or operations of the Applicants. 267's licenses may be part of or impacted by the anticipated sale process. The stay will prevent uncoordinated realization and enforcement attempts. The directors and officers of 267 should be permitted to focus on the *CCAA* proceeding, including developing and implementing the sale process.
- [29] The Applicant seek a first-ranking court-order charge in the amount of \$200,000 over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (the "Administration Charge").
- [30] Under section 11.52 of the *CCAA*, courts have jurisdiction to grant a priority administration charge. I am satisfied that the requested Administration Charge should be granted. The nature of the Applicants' business requires the expertise, knowledge and continuing participation of the beneficiaries of the Administration Charge. Each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles. I am satisfied that the amount of the proposed Administration Charge is reasonable.
- [31] The Applicants seek a Directors' Charge on the Applicants' Property in favour of the Applicants' current officers and directors in priority to all other charges (other than the Administration Charge), up to a maximum of \$100,000. Pursuant to section 11.51 of the *CCAA*, a court may grant a directors' charge on a super-priority basis.
- [32] I am satisfied that in order to ensure the ongoing stability of the Applicants' business during the *CCAA* proceedings, the continued participation of its officers and directors is necessary. While the Applicants' directors and officers have the benefit of a D&O insurance policy that provides them of coverage for certain claims and liabilities that may arise, the policy coverage is generally limited to the amount of \$1 million and may contain exclusions to coverage. The Applicants' ordinary course operations during the *CCAA* proceedings will give rise to potential director or officer liability, including for employees' source deductions and sales tax. The directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period.

[33] The amount of the Directors' Charge was developed with the assistance and support of the proposed Monitor. I am satisfied that the requested Directors' Charge should be granted and that the amount is reasonable to address circumstances that could lead to potential directors' liability prior to the comeback hearing.

[34] A court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial *CCAA* order is made pursuant to section 11.7 of the *CCAA*. I am satisfied that BDO should be appointed monitor of the Applicants during the *CCAA* proceedings.

[35] The comeback hearing is scheduled for November 15, 2024, at 9:30 a.m. by Zoom.

[36] Order to issue in the form of the Order signed by me today.