



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710259-00CL

DATE: 22 August 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: OLD MM GP INC v. 15320 BAYVIEW AVENUE HOLDINGS LIMITED et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff:

Name of Person Appearing	Name of Party	Contact Info
Kristine Spence	Lawyer for the Applicant, Old MM GP Inc.	KSpence@dwpv.com

For Defendants:

Name of Person Appearing	Name of Party	Contact Info
Josh Nevsky	CCAA Monitor	jnevsky@alvarezandmarsal.com
Joshua Foster	Lawyer for Court Appointed Monitor	fosterj@bennettjones.com

ENDORSEMENT OF JUSTICE STEELE:

[1] Alvarez & Marsal Canada Inc., the Monitor of Old MM GP Inc. and Old MM LP (formerly the Mastermind entities), seeks an order under the CCAA to make a distribution to the Debtor Companies' creditors and terminate the CCAA proceedings, among other things. The proposed termination order:

- a. Approves the distribution methodology and authorizes the Monitor to make the distributions;
- b. Authorizes the Debtor Companies to make assignments in bankruptcy under the *Bankruptcy and Insolvency Act*;
- c. Terminates these CCAA proceedings upon the Monitor's service of a termination certificate;

- d. Discharges and releases the Charges and A&M as Monitor as of the CCAA Termination Time;
- e. Grants certain releases;
- f. Approves the Monitor's reports and activities; and
- g. Approves the fees and disbursements of the Monitor and its counsel.

[2] There is no opposition to the order sought.

[3] Following prior Court orders, the Debtor Companies have liquidated certain of their retail stores and finalized a going-concern transaction for the rest of the business. Subsequently, the Monitor implemented a claims procedure to determine the claims against the Debtor Companies. At this time, the Monitor seeks to make distributions to the creditors of the Debtor Companies further to the claims procedure, then terminate these CCAA proceedings.

Proposed Distribution Order

[4] Under the Proposed Termination and Distribution Order, the Monitor seeks authorization to distribute to each claimant with a Proven Claim such Claimant's *pro rata* amount of the cash pool (which cash pool is expected to be about \$1.88 million).

[5] The broad discretion under section 11 of the CCAA permits the Court to approve interim or final distributions to secured or unsecured creditors absent a plan of compromise or arrangement: *Re Nortel Networks Corp.*, 2014 ONSC 4777 at paras. 54-58; *Re Timminco Ltd.*, 2014 ONSC 3393 at para. 38.

[6] For the reasons set out at para. 34 of the Monitor's factum, I am satisfied that it is appropriate and consistent with the CCAA's objectives, for the Court to authorize the proposed distributions.

Assignment in Bankruptcy and Procedural Consolidation

[7] The Monitor asks for authorization for each of the debtor companies to make an assignment in bankruptcy under the BIA prior to the CCAA Termination Time.

[8] In addition, the proposed order would authorize the Trustee to procedurally consolidate the debtor companies' bankruptcy estates to reduce the costs of administration.

[9] As noted by Morawetz J. (as he then was) in *Re Ornge Global GP Inc.*, 2013 ONSC 4518, at para. 14, the procedural consolidation of bankruptcy estates is appropriate where it will avoid unnecessary duplication in their administration and such estates arise "out of the same transactions and occurrences." That is the case here.

[10] The Court has used its broad discretion under section 11 of the CCAA to authorize the assignment of debtor companies into bankruptcy pursuant to the BIA, including on a procedurally consolidated basis: *In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.* (March 1, 2024), Toronto, CV-23-00703350-00CL (Order CCAA Termination) (ONSC).

- [11] For the reasons set out at para. 37 of the Monitor's factum, I am satisfied that the debtor companies' assignments in bankruptcy and the procedural consolidation of their estates is appropriate in the circumstances.

Termination of CCAA Proceedings

- [12] Following the service of the Termination Certificate certifying that the distributions have been made and all other CCAA matters completed to the Monitor's satisfaction, the Monitor asks that the CCAA proceedings be terminated. At that time, the Monitor seeks a release and discharge as Monitor and the termination, release and discharge of the Administration Charge and Directors' Charge.
- [13] Under s. 11 of the CCAA the Court has broad discretion to make "any order that it considers appropriate in the circumstances." As noted in the Monitor's factum (including the numerous examples in footnote 30), Courts have routinely granted orders similar to the requested order terminating CCAA proceedings and discharging the Court-appointed monitor and Court-ordered charges.
- [14] I agree with the Monitor that it is appropriate for the Court to exercise its jurisdiction to terminate these CCAA proceedings and discharge the Monitor and Court charges for the reasons set out at para. 32 of the Monitor's factum.

Releases

- [15] The proposed Order releases (i) the current and former directors, officers, employees, partners, managers, agents and advisors of the debtor companies, and (ii) the Monitor, Monitor's counsel, the debtor companies' counsel and each of their respective employees, agents, etc. from the Released Claims.
- [16] As is required, the releases do not release any claim that is not permitted to be released under s. 5.1(2) of the CCAA. Further, as is typically the case, the releases do not apply in respect of any act or omission determined by a court to have constituted fraud, wilful misconduct or gross negligence.
- [17] The Court has the authority under its broad discretion in section 11 of the CCAA to approve releases in favour of the directors and officers of debtor companies and third parties: *Re Green Relief Inc.*, 2020 ONSC 6837 at paras. 16-17, 23-26, *Re Harte Gold Corp.*, 2022 ONSC 653 at paras. 78-79.
- [18] When determining whether it is appropriate to grant releases pursuant to s. 11 of the CCAA, the Court will consider the factors for approving third party releases in the context of a plan of compromise or arrangement:
- a. Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
 - b. Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
 - c. Whether the plan could succeed without the releases;

- d. Whether the parties being released were contributing to the plan; and
- e. Whether the release benefitted the debtors as well as the creditors generally.

Lydian International Limited (Re), 2020 ONSC 4006, at para. 54

[19] None of the above factors is determinative: *Lydian*, at para. 54.

[20] I am satisfied that the requested releases should be granted. I note the submissions of the Monitor in para. 41 of the factum. As noted, the proposed releases will eliminate indemnification claims which would further erode the available cash flow. Further, the released parties have made significant contributions to these CCAA proceedings and the restructuring efforts of the debtor companies. Among other things, the consummation of the transaction in these proceedings helped preserved about 590 jobs. The Monitor is not aware of any creditor that opposes the granting of the proposed releases. Further, as noted above, the proposed releases do not release claims arising out of fraud, gross negligence or wilful misconduct or that are not permitted to be released under s. 5.1(2) of the CCAA.

Approval of Monitor's Reports and Fees

[21] I am satisfied that the Monitors' reports and activities should be approved. The Court is frequently called upon to approve such reports and there are good policy reasons for doing so: *Re Target Canada Co.*, 2015 ONSC 7574 at paras. 22-23.

[22] Finally, I am satisfied that the fees and disbursements of the Monitor and its counsel are fair and reasonable in the circumstances. In determining whether the fees and disbursements are fair and reasonable, the Court has regard to the non-exhaustive list of factors set out in *Re Nortel Networks Corp.*, 2017 ONSC 673 at para. 14. The Court is not to under a "docket-by-docket or line-by-line assessment of the accounts:" *Nortel Networks Inc.*, 2022 ONSC 6680, at para. 10.

[23] A&M's fees for the Application Period (from Nov. 19, 2023 to Aug. 3, 2024) are \$660,439.50, plus \$26,052.90 of disbursements and HST of \$89,204.36 (total \$775,696.76). The total legal fees of the Monitor's counsel (exclusive of disbursements and applicable taxes) to July 31, 2024 are \$420,374.

[24] In the instant case, the Monitor was a "super" monitor, with an enhanced role in the proceeding. I agree with the Monitor's submission that the fees and disbursements of the Monitor and its counsel (both supported by fee affidavits) are commensurate with the complexity of these proceedings, the cost of comparable services, and the activities undertaken and to be undertaken by the Monitor and its counsel.

[25] Order attached.

