



No. S-244212
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c.57, AS
AMENDED

AND

IN THE MATTER OF GOOD NATURED PRODUCTS INC., & THOSE ENTITIES LISTED
IN SCHEDULE "A"

PETITIONERS

APPLICATION RESPONSE

Application response of: Capital West Partners Ltd.

THIS IS A RESPONSE TO the notice of application of good natured Products Inc., and those entities listed in **Schedule "A"**, filed October 24, 2024.

The application respondent estimates that the application will take two (2) hours.

Part 1: ORDER CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: **NIL**

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 1 and 2 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs NIL of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. Capital West Partners (the “**Sales Agent**”) entered into an agreement (the “**Engagement Agreement**”) with good natured Products Inc. on July 11, 2024, to act as exclusive financial advisor to good natured Products Inc., its shareholders, and/or any related, associated or affiliated entities (collectively, the “**Company**”) in connection with the sale and investment solicitation process (the “**SISP**”) approved by this Honourable Court by order made July 11, 2024, by the Honourable Madam Justice Fitzpatrick.
2. A copy of the Engagement Agreement is attached as exhibit “A” to the Affidavit #3 of Paul Antoniadis made July 11, 2024.
3. The Engagement Agreement provided that the Sales Agent was to solicit one or more or any combination of (1) a restructuring, recapitalization or other form of reorganization of the business and the affairs of one or more of the Company as a going concern or otherwise; or (2) a sale of all, substantially all or one or more components of the Company’s assets and/or business operations as a going concern or otherwise.
4. The services to be provided by the Sales Agent are set out in the engagement letter under the heading “Scope of Engagement”. The Sales Agent performed all the services required of it.
5. The Engagement Agreement provides for a success fee of 3% of Enterprise Value of the transaction with a minimum of \$1,250,000.00 (the “**Success Fee**”) to be paid in full at the closing of the transaction that resulted from the SISP. “Enterprise Value” is defined in the Engagement Agreement as “the sum of the fair market value of the cash, securities and other amounts paid or payable to the Company...”.
6. The transaction for which approval of the court is sought was a direct result of the services provided by the Sales Agent.
7. The transaction presented for approval provides for a possible success fee to the Sales Agent of \$315,000.00.
8. The consideration being paid by the purchaser includes the total indebtedness of the Petitioners to Wells Fargo, RBC, TD, ACB and EDC (collectively the “**Secured Creditors**”) and other amounts. The estimated amount owing to the Secured Creditors is approximately \$44 million. In addition, the purchaser is providing a \$7 million revolving credit facility to the company including a \$2 million drawdown on closing to fund working capital requirements as well as the \$315,000.00, paid to the monitor, perhaps for the Success Fee of Capital West. Several other liabilities of the company are being assumed by the purchaser, as well.

9. Pursuant to the order of Justice Fitzpatrick made July 11, 2024 (the “**DIP Approval Order**”), the Sales Agent is entitled to a charge (the “**CapWest Success Fee Charge**”) on any proceeds derived from the sale of the Petitioners’ property as a result of a sale resulting from the SISP, which charge ranks in priority to all other claims and charges in the amount of \$1,250,000.00 for its Success Fees charged pursuant to the CapWest engagement letter.

Part 5: LEGAL BASIS

10. In order to approve a sale pursuant to section 36 of the *CCAA*, the court must consider the non-exclusive list of factors in section 36(3). Those factors include:
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties.
11. The court will also consider the principles articulated in *Royal Bank v. Soundair Corp.* These considerations include:
 - (b) the interests of all parties; and
 - (d) whether there has been unfairness in the working out of the process.
12. The Sales Agent negotiated a success fee for its work in finding a purchaser. It was granted a priority charge for that Success Fee. The priority charge in favour of the Sales Agent is on “any proceeds derived from the sale of the Petitioners’ property”. “Proceeds” is not defined. However, the charge is not stated to be only on the cash portion of any purchase price.
13. The Engagement Agreement provides that the Success Fee is based on the Enterprise Value of the transaction achieved. The Enterprise Value is defined very broadly and is not restricted to a cash payment of the purchase price.
14. The purchase price to be paid by the purchaser includes the assumption of most if not all the secured debt as well as other obligations of the Petitioners. Those amounts are “derived from the sale of the Petitioners’ property”. The Sales Agent’s charge takes priority over the claims and charges of those secured parties.
15. The proposed transaction, including the RVO, clearly has an adverse effect on the Sales Agent which is unfair in the process. The transaction should not be approved.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit # 4 of Paul Antoniadis, made October 23, 2024
2. The Monitor’s Fifth Report to the Court dated October 25, 2024
- The application respondent has filed in this proceeding a document that contains the application respondent’s address for service.

X The application respondent has not filed in this proceeding a document that contains an address for service.

The application respondent's ADDRESS FOR SERVICE is:

c/o Nathanson, Schachter & Thompson LLP, 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone (604) 662-8840, and whose email address for service is prearson@nst.ca with a copy to rpearson@nst.ca.

Date: October 25, 2024



Counsel for the Capital West Partners Ltd.
Peter J. Reardon

THIS APPLICATION RESPONSE is prepared by Peter J. Reardon of the firm of Nathanson, Schachter & Thompson LLP whose place of business and address for service is 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone: (604) 662-8840, and email: preardon@nst.ca.

SCHEDULE A

Canadian Petitioners

1. good natured Products Inc.
2. good natured Real Estate Holdings (Ontario) Inc.
3. 1306187 B.C. Ltd.
4. good natured Products (CAD) Inc.
5. good natured Products Packaging Canada GP Inc.
6. good natured Products Packaging Brampton GP Inc.
7. good natured Products Industrial Canada GP Inc.
8. good natured Products Packaging Canada LP
9. good natured Products Packaging Brampton LP
10. good natured Products Industrial Canada LP

US Petitioners

11. good natured Products (US) Inc.
12. good natured Products (Illinois), LLC
13. good natured Products Real Estate U.S., LLC
14. good natured Products Packaging US LLC
15. good natured Products Direct LLC
16. good natured Products (Texas) LLC