

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
15315441 CANADA INC.**

Applicant

**FACTUM OF THE APPLICANT
(Re: Stay Extension)**

April 7, 2024

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TO: THE SERVICE LIST

PART I - OVERVIEW¹

1. The F&F Entities obtained relief under the CCAA by an Initial Order dated June 5, 2023, which was amended and restated on June 15, 2023. On June 19, 2023, this Court granted the SISP Order which among other things, approved the SISP and authorized the F&F Entities and the Monitor to immediately commence the SISP.
2. Following completion of the SISP, on August 29, 2023, the F&F Entities sought and obtained the Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement and the Transactions contemplated therein and approved the Claims Process, as the Transactions generated approximately \$13 million in excess of the secured debt of the F&F Entities.
3. The Transactions closed on September 15, 2023. Among other things, all Excluded Assets, Excluded Contracts, Excluded Leases, and Excluded Liabilities vested absolutely and exclusively in Residual Co., and the F&F Entities were deemed to cease being applicants in these CCAA Proceedings, with Residual Co. becoming an applicant in these CCAA Proceedings.
4. On January 29, 2024, Residual Co. sought and obtained the Stay Extension and Late Claims Approval Order which: (a) extended the Stay Period until and including April 15, 2024; and (b) authorized the Monitor to accept, revise or disallow late claims filed after the Claims Bar Date.
5. This factum is filed in support of Residual Co.'s motion for an order extending the Stay Period from April 15, 2024, until and including July 15, 2024.

PART II - FACTS

6. The facts with respect to this motion are more fully set out in the Grewal Affidavit and the Sixth Report. Dollar amounts referred to herein are in Canadian dollars unless otherwise stated.

¹ All capitalized terms used in this factum and not otherwise defined have the meanings given to them in the affidavit of Avininder Grewal sworn on April 3, 2024 (the "**Grewal Affidavit**") and the Sixth Report of the Monitor dated April 3, 2024 (the "**Sixth Report**").

A. Background

7. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with many retail cannabis stores open across Canada and two (2) licensed wholesale distribution facilities. Certain subsidiaries of FFHC also carry on business as a wholesale cannabis distributor and operate digital platforms which provide various services and software products relating to cannabis products.²

8. Facing a severe liquidity crisis, the F&F Entities sought and were granted protection under the CCAA pursuant to the Initial Order granted on June 5, 2023 (which was amended and restated by the ARIO). The Initial Order and ARIO, among other things:

- a. appointed FTI as Monitor;
- b. granted a stay of proceedings in favour of the F&F Entities until and including September 1, 2023;
- c. approved the execution by the F&F Entities of the DIP Facility Agreement, pursuant to which the F&F Entities were authorized to borrow up to a total amount of \$9.8 million;
- d. approved the KERP and granted a corresponding KERP Charge in the amount of \$1.16 million; and
- e. granted the Administration Charge in the amount of \$600,000, the DIP Lender's Charge in the amount of \$9.8 million, and the D&O Charge in the amount of \$2.8 million.³

9. On June 19, 2023, the F&F Entities sought and obtained the SISP Order, which, among other things: (a) approved the SISP and authorized the F&F Entities and the Monitor to immediately commence the SISP; and (b) approved the Stalking Horse Agreement between FFHC and ACT, solely for the purpose of constituting the Stalking Horse Bid under the SISP.⁴

² Grewal Affidavit at para. 4.

³ *Ibid* at paras. 5-7.

⁴ *Ibid* at para. 8.

10. Following the completion of the SISP, the F&F Entities with the assistance of the Monitor identified the successful bid and transaction. On August 29, 2023, the F&F Entities sought and obtained from the Court:

- a. An Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement and the Transactions contemplated therein, and extended the Stay Period until and including October 15, 2023; and
- b. A Claims Process Order which approved the proposed claims process pursuant to which claimants may file claims against Residual Co.⁵

11. The Transactions closed on September 15, 2023. Among other things, the following occurred upon closing of the Transactions:

- a. all of FFHC's right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co. All applicable Claims and Encumbrances continued to attach to the Excluded Assets and to the Purchase Price;
- b. all Excluded Contracts, Excluded Leases and Excluded Liabilities were channeled to, assumed by and vested absolutely and exclusively in Residual Co.; and
- c. the F&F Entities were deemed to cease being applicants in these CCAA Proceedings, with Residual Co. becoming an applicant in these CCAA Proceedings, and the F&F Entities were deemed to be released from the purview of the ARIO and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order.⁶

12. As a result of the Transactions, the F&F Entities are continuing to operate, with the majority of employees retaining their employment, majority of their landlords retaining a paying tenant and a majority of their suppliers retaining a paying counterparty. In addition, the Transactions

⁵ *Ibid* at para. 9.

⁶ *Ibid* at para. 10.

generated approximately \$13 million in proceeds in excess of the secured debt of the F&F Entities.⁷

13. On January 29, 2024, the Applicant sought and obtained the Stay Extension and Late Claims Approval Order which (a) extended the Stay Period until and including April 15, 2024; and (b) authorized the Monitor to accept, revise or disallow late claims filed after the Claims Bar Date.⁸

B. Update on Applicant's Activities

14. Since the granting of the Stay Extension and Late Claims Approval Order, the Applicant has been working with the Monitor in good faith and with due diligence towards completing the Claims Process and making a distribution to its creditors.⁹ More particularly, the Applicant, together with the Monitor, has continued to reconcile the Claims received and have started to coordinate a determination of the disputed Claims with the Claims Officer.¹⁰

15. In addition to the Applicant's efforts to advancing the Claims Process, it has:

- a. appeared before the Saskatchewan Labour Relations Board (the "**SLRB**") on February 26, 2024, for a virtual case management conference to determine whether the SLRB should interpret the Approval and Reverse Vesting Order to make a finding as to whether the Labour Claims were transferred to Residual Co.; and
- b. appeared before this Court for a virtual case conference in relation to the Pineapple Express Litigation and intends to work in good faith with the parties to resolve matters and avoid the need for a motion to be brought in these CCAA Proceedings.¹¹

⁷ *Ibid* at para. 11.

⁸ *Ibid* at para. 13.

⁹ *Ibid* at para. 15.

¹⁰ *Ibid* at paras. 25-26.

¹¹ *Ibid* at paras. 18-23.

PART III – ISSUE

16. The sole issue to be determined on this motion is whether the Court should extend the Stay Period until and including July 15, 2024.

PART IV – LAW AND ARGUMENT

A. The Stay Extension Should be Granted

17. The current Stay Period expires on April 15, 2024. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.¹²

18. The Applicant is seeking to extend the Stay Period from April 15, 2024, to and including July 15, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to allow the Applicant and the Monitor to complete the Claims Process and make a distribution to the Applicant's creditors.¹³

19. As stated above, the Applicant has worked in good faith and with due diligence since the granting of the Stay Extension and Late Claims Approval Order and has, among other things:

- a. continued to work with the Monitor to reconcile the Claims received and started to coordinate a determination of the disputed Claims with the Claims Officer;
- b. appeared before the SLRB with respect to the Labour Claims; and
- c. appeared before this Court for a virtual case conference in relation to the Pineapple Express Litigation.¹⁴

20. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to July 15, 2024. The Applicant is not carrying on active operations and is expected

¹² CCAA, *supra* s. 11.02(2) and (3).

¹³ Grewal Affidavit at para. 29.

¹⁴ *Ibid* at paras. 15, 18-23, and 25-26.

to maintain liquidity through the proposed extension of the Stay Period.¹⁵

21. The Monitor supports the proposed extension of the Stay Period to and including July 15, 2024.¹⁶

PART V – ORDER SOUGHT

22. For the reasons set out above, the Applicant respectfully submits that the Court should grant the proposed Order in the form attached to the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of April, 2024.

/s



STIKEMAN ELLIOTT LLP

¹⁵ *Ibid* at paras. 30-31.

¹⁶ Sixth Report at para. 32.

SCHEDULE "A"
TEXT OF STATUTES AND REGULATIONS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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Court File No. CV-23-00700581-00CL

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PROCEEDING COMMENCED AT TORONTO

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(RE: STAY EXTENSION)**

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