

**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 and Approval of Monitor's Activities)**

July 10, 2024

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TO: THE SERVICE LIST

## PART I - OVERVIEW<sup>1</sup>

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 April 9, 2024, Residual Co. sought and obtained an order extending the Stay Period until and including July 15, 2024.
5. This factum is filed in support of Residual Co.'s motion for, among other things: (a) approval of the Monitor's Reports and the activities of the Monitor referred to therein; and (b) extending the Stay Period from July 15, 2024, until and including November 29, 2024.

## PART II - FACTS

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

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<sup>1</sup> 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 July 8, 2024 (the "**Grewal Affidavit**"), the Fifth Report of the Monitor dated January 23, 2024 (the "**Fifth Report**"), the Sixth Report of the Monitor dated April 3, 2024 (the "**Sixth Report**"), and the Seventh Report of the Monitor dated July 9, 2024 (the "**Seventh Report**", and collectively, the "**Monitor's Reports**").

## A. Background

7. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain. At the time that the CCAA Proceedings were commenced, FFHC operated 91 retail cannabis stores 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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<sup>2</sup> Grewal Affidavit at para. 4.

<sup>3</sup> *Ibid* at para. 5.

<sup>4</sup> *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.<sup>5</sup>

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.<sup>6</sup>

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

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<sup>5</sup> *Ibid* at para. 9.

<sup>6</sup> *Ibid* at para. 10.

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

13. On April 9, 2024, the Applicant sought and obtained an order extending the Stay Period until and including July 15, 2024.<sup>8</sup>

**B. Update on Applicant's Activities**

14. Since the granting of the last order extending the Stay Period until and including July 15, 2024, Residual Co. 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. More particularly, the Applicant, together with the Monitor, has continued to reconcile the Claims received.<sup>9</sup>

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

- a. responded to creditor and stakeholder enquiries regarding these CCAA Proceedings; and
- b. conserved cash by:
  - i. engaging in discussions with FIKA and the UFCW which avoided the need for the Court to adjudicate the issue of whether the RVO had the effect of transferring the Labour Claims to Residual Co.; and
  - ii. engaging in discussions with FIKA and the plaintiffs in the Pineapple Express litigation to agree on a consent order which avoided the need for the Court to make a determination as to the interpretation of the RVO's effect on the Pineapple Express litigation.<sup>10</sup>

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<sup>7</sup> *Ibid* at para. 11.

<sup>8</sup> *Ibid* at para. 14.

<sup>9</sup> *Ibid* at paras. 16-19.

<sup>10</sup> *Ibid* at para. 26.

**C. Activities of the Monitor and TGF**

16. During the relevant periods of time described in the Monitor's Reports (the "**Period**"), the Monitor fulfilled the role of the Monitor as such role is described in the ARIO and prescribed by the CCAA.

17. During the Period, the Monitor has undertaken, among other things, the following activities:

- a. continued to operate and monitor its telephone hotlines and email account for stakeholder inquiries;
- b. repaid the amount owing to ACT in accordance with the Stay Extension, Distribution, and Fees Approval Order;
- c. participated in certain post-closing matters together with Residual Co. and FIKA, which included:
  - i. commencement of the reimbursement of an insurance premium payment relating to the pre-closing period;
  - ii. the remittance of payments pertaining to the run-off of the directors' D&O insurance policy, as more particularly described in the Grewal Affidavit; and
  - iii. engaging in discussions with counsel to FIKA relating to the payment of post-filing amounts that were not paid by F&F prior to the closing of the sale transaction with FIKA and continue to remain unpaid;
- d. supervised and assisted with activities relating to the Claims Procedure, which included:
  - i. reviewing Proofs of Claim;
  - ii. engaging in discussions with Claimants;
  - iii. reconciling Claims together with F&F, TGF and Stikeman;

- iv. sending Notices of Revision or Disallowance to Claimants where a Claim was revised or disallowed;
  - v. receiving, reviewing, and responding to Notices of Disputes where a Claimant disputed a Notice of Revision or Disallowance; and
  - vi. engaging in discussions with the Claims Officer regarding outstanding Notices of Dispute to determine the method of adjudication for certain disputed claims and next steps to initiate the adjudication process;
  - vii. coordinating and communicating the process as set out by the Claims Officer, and facilitating the delivery of applicable materials to the Claims Officer;
  - viii. litigating certain Notices of Dispute; and
  - ix. engaging in discussions with the sole director of Residual Co. as part of dealing with Claims in Dispute;
- e. engaged in discussions with counsel involved in the dispute before the SLRB in an effort to resolve same and attended the hearing before the SLRB; and
  - f. attended the case conference with respect to the Pineapple Express Litigation.<sup>11</sup>

### **PART III – ISSUES**

18. This issues to be considered on this motion are whether this Court should:
- a. approve the Monitor’s Reports and the conduct and activities of the Monitor referred to therein; and
  - b. extend the Stay Period until and including November 29, 2024.

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<sup>11</sup> Fifth Report at para. 15; Sixth Report at para. 16; Seventh Report at para. 18.

## PART IV – LAW AND ARGUMENT

### A. The Monitor’s Activities in the Monitor’s Reports Should be Approved

19. A request to approve a monitor’s report “is not unusual”.<sup>12</sup> There are policy and practical reasons for the Court to approve the Monitor’s activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, Court approval:

- a. allows the Monitor to move forward with next steps in the CCAA Proceedings;
- b. brings the Monitor’s activities before the Court;
- c. allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- d. enables the Court to satisfy itself that the Monitor’s activities have been conducted in prudent and diligent manners;
- e. provides protection for the Monitor not otherwise provided by the CCAA; and
- f. protects the creditors from the delay and distribution that would be caused by:
  - i. re-litigation of steps taken to date, and
  - ii. potential indemnity claims by the Monitor.<sup>13</sup>

20. The form of the proposed order, with respect to approval of the Monitor’s Reports and the Monitor’s activities described therein, is consistent with the language used in *Target*<sup>14</sup> and subsequent proceedings.<sup>15</sup>

21. In the present case, the Monitor’s Reports and the conduct and activities of the Monitor referred to therein should be approved.

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<sup>12</sup> *Re Target Canada Co*, [2015 ONSC 7574](#) at para 2 [*Target*].

<sup>13</sup> *Target*, *Ibid* at [para 22](#).

<sup>14</sup> *Target*, *Ibid* at [paras 7 and 26](#).

<sup>15</sup> See, for example: [Re Clover Leaf Foods](#) (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor’s Activities and Fees and for Stay Extension) at para 3.



22. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO. No party has put forward evidence to the contrary. It is respectfully submitted that in the circumstances, the Court should respect the good faith decisions of the Monitor and its legal counsel related to the CCAA Proceedings.

**B. The Stay Extension Should be Granted**

23. The current Stay Period expires on July 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.<sup>16</sup>

24. The Applicant is seeking to extend the Stay Period from July 15, 2024, until and including November 29, 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.<sup>17</sup>

25. The Applicant has acted in good faith and with due diligence since the granting of last order extending the Stay Period. As stated above, the Applicant has, among other things:

- a. together with the Monitor, continued to reconcile the Claims received;
- b. engaged in discussions with FIKA and the UFCW which avoided the need for the Court to adjudicate the issue of whether the RVO had the effect of transferring the Labour Claims to Residual Co.; and
- c. engaged in discussions with FIKA and the plaintiffs in the Pineapple Express litigation to agree on a consent order which avoided the need for the Court to make a determination as to the interpretation of the RVO's effect on the Pineapple Express litigation.<sup>18</sup>

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<sup>16</sup> CCAA, *supra* s. 11.02(2) and (3).

<sup>17</sup> Grewal Affidavit, *supra* at para. 27.

<sup>18</sup> *Ibid* at para. 26.

26. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to November 29, 2024. The Applicant is not carrying on active operations and is expected to maintain liquidity through the proposed extension of the Stay Period.<sup>19</sup>

27. The Monitor supports the proposed extension of the Stay Period until and including November 29, 2024.<sup>20</sup>

#### **PART V – ORDER SOUGHT**

28. 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 10<sup>th</sup> day of July, 2024.

/s/ 

**STIKEMAN ELLIOTT LLP**

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<sup>19</sup> *Ibid* at paras. 28-29.

<sup>20</sup> Seventh Report, *supra* at para. 35.

**SCHEDULE "A" – LIST OF AUTHORITIES**

1. *Re Target Canada Co*, [2015 ONSC 7574](#).
2. *Target Canada Co. (Re)*, [2017 ONSC 327](#)
3. *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont. Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension).

**SCHEDULE “B”  
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.

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

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

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

**Applicant**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT  
(RE: STAY EXTENSION AND APPROVAL OF  
MONITOR'S ACTIVITIES)**

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