Form 49
Rule 13.19

COURT FILE NUMBER	2401-17986	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTER	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED and 420 DISPENSARIES LTD.	
APPLICANTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED, and 420 DISPENSARIES LTD.	
DOCUMENT	**AFFIDAVIT**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**STIKEMAN ELLIOTT LLP** Barristers & Solicitors 4200 Bankers Hall West 888-3rd Street SW Calgary, AB T2P 5C5 **Karen Fellowes, K.C. / Archer Bell** Tel: (403) 724-9469 / (403) 724-9485 Fax: (403) 266-9034 Email: kfellowes@stikeman.com / abell@stikeman.com File No.: 155857.1002	

AFFIDAVIT NO. 5 OF SCOTT MORROW
SWORN FEBRUARY 3, 2025

I, Scott Morrow, of the City of Beaumont, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**"), Green Rock Cannabis (EC 1) Limited ("**GRC**") and 420 Dispensaries Ltd. ("**420 Dispensaries**") (collectively, "**FOUR20**" or the "**Applicants**"). I have been the CEO of FOUR20 since January 1, 2021, and a member of the boards of directors since May 6, 2021.

2. I am responsible for overseeing the operations of the Applicants, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise

stated. I have also reviewed the records and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the "**Application**") returnable before the Alberta Court of King's Bench (Commercial List) (the **"Court**") on February 12, 2025, for the following relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"):

   (a) an Order:

      (i) abridging the time for serving and deeming service of this Application and supporting materials good and sufficient;

      (ii) declaring that the Landlord Claims (as defined herein) are properly valued pursuant to subsection 65.2(4) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") as follows:

         (A) Strathcona Building Inc. c/o Skyslimit Inc. ("**Strathcona**"): $56,615;

         (B) The Meadowlands Development Corporation ("**Meadowlands**"): $228,176;

         (C) Palisades Edmonton Holdings Ltd. and Palisades Edmonton G.P. Ltd. c/o Humford Management Inc. ("**Palisades**"): $237,187; and

         (D) RioCan Holdings (Brentwood Village) Inc. c/o RioCan Real Estate Investment Trust ("**RioCan**"): $255,550; and

      (iii) extending the current CCAA stay period which is set to expire on February 25, 2025 (the "**Stay Period**") up to and including March 31, 2025, or such other date as this Court may deem appropriate;

   (b) such further and other relief as counsel may request and this Honourable Court may deem just.

4. I previously swore two affidavits in the Applicants' previous NOI proceedings (the "**NOI Proceedings**") on June 19, 2024 (the "**First Morrow Affidavit**") and August 6, 2024 (the "**Second Morrow Affidavit**") and two affidavits in the CCAA Proceedings on September 10, 2024 (the "**Third Morrow Affidavit**") and November 25, 2024 (the "**Fourth Morrow Affidavit**").

A. BACKGROUND

5. On May 29, 2024, the Applicants filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA. On September 16, 2024, the Applicants filed an application under the CCAA seeking to convert the NOI Proceedings to the present CCAA Proceedings. Further information regarding the Applicants, the events leading to the NOI Proceedings and subsequently these CCAA Proceedings, and events occurring prior to September 10, 2024 (the date that I swore the Third Morrow Affidavit) is provided in the Third Morrow Affidavit, attached hereto (without exhibits) as **Exhibit "A"**.

6. On September 19, 2024, the Honourable Justice Jones granted the Applicants the following Orders:

   (a) the Initial Order, pursuant to which the NOI Proceedings were continued under the CCAA, KSV Restructuring Inc. was appointed as the Monitor (the "**Monitor**"), and an initial stay of proceedings until September 29, 2024 was granted (the "**Initial Stay**");

   (b) the ARIO, pursuant to which the Initial Stay was extended to December 16, 2024 (the "**Stay Period**");

   (c) an order approving the Sale and Investment Solicitation Process (the "**SISP**") proposed by the Applicants (the "**SISP Order**"); and

   (d) an Order approving the claims process (the "**Claims Process**"), pursuant to which all claims against the Applicants were to be determined (the "**Claims Procedure Order**").

7. On October 8, 2024, the Honourable Justice Feasby heard an appeal by 420 Parent (the "**420 Appeal**") of a summary judgment order (the "**Summary Judgment Order**") obtained by High Park Shops Inc. ("**High Park**") on its counterclaim (the "**High Park Counterclaim**") earlier in 2024 in ongoing litigation between 420 Parent and High Park (the "**Litigation**"). 420 Parent was successful in its appeal, and High Park's Summary Judgment Order was overturned. The Summary Judgment Order had been one of the major stressors on the Four20 business prior to the NOI filing, and impacted the contingent nature of the High Park claim in the restructuring proceedings, as it was determined to not yet be due and owing. High Park has since appealed Justice Feasby's decision, and a hearing on that appeal is set for April 2025. This aspect of the litigation between 420 Parent and High Park remains ongoing despite the stay of proceedings under the CCAA. A true copy of Justice Feasby's decision is attached and marked as **Exhibit "B"** to this affidavit.

8. On December 5, 2024, the Honourable Justice Harris granted the Applicants an order extending the Stay Period to February 25, 2025 during the hearing before Justice Harris it was confirmed that

certain deadlines in the SISP were being extended to allow the Monitor and FOUR20 more time to work with bidders to finalize bids.

B. THE SISP AND CLAIMS PROCESS

9. Following approval by this Court of the SISP on September 19, 2024, the Applicants, in conjunction with the Monitor, commenced the SISP and the Claims Process. Pursuant to the Claims Procedure Order, the Claims Process deadline was October 20, 2024 (the "**Claims Bar Date**"). Since then, the Monitor has worked diligently to review all of the claims received through the Claims Process, including various claims that were received after the Claims Bar Date; I understand that the Monitor will be providing an update to the Court in the Claims Process in the Second Report of the Monitor, to be filed.

10. Under the SISP Order approved by the Honourable Justice Jones, the following deadlines for key milestones were approved governing the conduct of the SISP:

Milestone	**Deadline**
Commencement Date (prepare data room and associated documents)	On or before September 27, 2024
Marketing Stage: Publication of Notice and Sending Teaser to Known Potential Buyers	On or before October 4, 2024
Completion of "Phase I" – interested parties to submit a non-binding letter of intent	November 15, 2024
Completion of "Phase II" – interested parties to submit a binding offer that meets at least the requirements set forth in the SISP	November 30, 2024
Selection of the highest or otherwise best bid(s) (the "**Successful Bid(s)**")	December 6, 2024
Seek a Court order approving the Successful Bid(s)	As soon as practical
Close the transaction completed in the Successful Bid(s)	As soon as practical

11. The SISP was soliciting interest in, and opportunities for: (a) the purchase of some or all of the assets of the Applicants; (b) an investment in the Applicants; or (c) some combination thereof.

12. During Phase I of the SISP, the Applicants received multiple non-binding letters of intent from interested parties (the "**Interested Parties**") and worked with the Monitor to determine which of the Interested Parties could advance to Phase II and be invited to submit a binding offer.

13. On December 5, 2024, in order to provide more time for the Monitor and the Applicants to work with Interested Parties on advancing their bids and answering due diligence requests, the Applicants and the Monitor advised that the SISP deadlines were being revised, as allowed under the terms of the SISP, moving the deadline for completion of Phase II to December 20, 2024 and the deadline for selection of the best bid(s) to January 6, 2025 (the "**Revised Deadlines**").

14. As a result of the Revised Deadlines, on December 20, 2024, FOUR20 received several final bids from Interested Parties and began reviewing the bids in conjunction with the Monitor. Unfortunately, some of the bids received in Phase I did not materialize in Phase II, including bids that the Applicants were previously giving strong consideration to.

C. THE PLAN OF ARRANGEMENT

15. In light of the changing circumstances in the SISP and in order to ensure that FOUR20 would be able to continue as a going concern for the benefit of all stakeholders and see creditors receive the best recoveries, FOUR20 simultaneously began exploring other options available to it. It is important to note that the Applicants have never viewed the within CCAA proceedings as liquidation proceedings; FOUR20's goal is, and has always been, to undergo a restructuring and remain a going concern. After disclaimer of uneconomic leases, FOUR20 has been able to run on a cash positive basis without the need for DIP financing. FOUR20 is a profitable business in these circumstances, and while a sale of assets could have made sense for the right price, FOUR20 does not need to do a liquidation in order to deal with its relatively small group of creditors, and in fact, a sale of assets could have a detrimental effect on the secured collateral held by parties to the Litigation. FOUR20's position before this Court has always been that it is exploring all options, including undertaking a plan of arrangement. Attached and marked as **Exhibit "C"** is a copy of the transcript from the hearing before the Honourable Justice Jones on September 19, 2024 wherein 420's legal counsel repeatedly emphasized that FOUR20's goal was to restructure and that all options, including a plan of arrangement, were being considered.

16. On January 9, 2025, FOUR20 became party to a term sheet pursuant to which they obtained funding for a plan of compromise or arrangement to FOUR20's creditors (the "**Plan**"). FOUR20, in consultation with the Monitor, developed the Plan to, among other things, effect a transaction whereby (i) FOUR20 will borrow a pool of cash consideration which, along with cash consideration contributed by FOUR20, will be used to satisfy in full the creditors of 420 OpCo and Green Rock, provided the Landlord Claims (as defined below) are calculated pursuant to subsection 65.2(4) of the BIA; (ii) Stoke Canada Finance Corp., the senior secured lender at the 420 OpCo level, will be satisfied in full (iii) the secured creditors of 420 Parent and 420 Dispensaries will be unaffected, (iv) the Litigation (which FOUR20 views as a significant asset), including the High Park Counterclaim, will be preserved and can continue unaffected following FOUR20's emergence from CCAA

protection, and (v) the continuation of FOUR20 and their retail operations for the benefit of all stakeholders will be ensured.

17. FOUR20's creditor structure is unique, in that the existing secured creditors at the 420 Parent level, do not also have direct security over the assets at the 420 OpCo level. As a result, an opportunity presented itself to advance a Plan which deals with creditors at the 420 OpCo level, without effecting the secured position of creditors at the 420 Parent level, while preserving the Litigation and High Park Counterclaim until such time as all appeals have been exhausted or the matter finally determined.

18. Ultimately, FOUR20 has determined that if the creditors accept the proposed Plan, the creditors will be in an equal or materially better position than if FOUR20 accepted any of the bids in the SISP. In order to maintain the integrity of the SISP process, I have not included details of the bids in my affidavit, but I understand that the Monitor will be presenting details of the bids to the Court in a confidential appendix to the second report of the Monitor.

19. FOUR20's creditors have been consulted, including its largest and priority secured creditor, Nomos Capital I-A LP who we understand to be supportive of the Plan. We have met with counsel for High Park and understand that they do not support the Plan and object to the rejection of their bid. However, it should be noted that as a result of Justice Feasby's ruling overturning the Summary Judgment Order, their claim is a contingent liability which is difficult to value – as a result, I believe their treatment as an Unaffected Party is the fairest way to preserve High Park's legal rights while enhancing the recovery for other stakeholders.

20. I believe the High Park's objections to our Plan is part of their litigation strategy and that their objections throughout these proceedings are an attempt to use these restructuring proceedings to gain control of the Litigation and end the liability against them, which liability directly impacts their interests alone. Attached and marked as **Exhibit "D"** is a true copy of a letter received from High Park's counsel dated November 13, 2024, which puts 420 Parent on notice that if assets are sold in the proceeding such that specific performance is no longer available, they will hold 420 Parent responsible for damages. I believe the Plan (which does not dispose of any FOUR20 assets) is responsive to High Park's concerns and therefore, their objections to the Plan are based on other unrelated factors.

21. FOUR20 is largely prepared to advance the Plan at this time; the Plan has been substantially developed, a term sheet to provide funding for the Plan has been executed and definitive documents are expected to be executed forthwith, and the Applicants understand that there is support from the Monitor pending this Court's determination of the valuation of the Landlord Claims (as defined below) and pending a final determination of the characterization of and amounts of the

Intercompany Loans (as defined below). FOUR20 understands that the Monitor will provide an analysis of the benefits of the proposed Plan versus a sale of assets in advance of the next hearing after it can fully evaluate the Plan following these determinations.

D. LANDLORD CLAIMS

22. As of the date that the Applicants filed their NOIs in the NOI Proceeding, 420 OpCo was party to 44 leases. After filing the NOIs, 420 OpCo issued 16 Notices of Disclaimer pursuant to section 65.2 of the BIA for nine uneconomic locations and seven non-operating locations, including its head office (collectively, the "**Disclaimed Leases**").

23. The Notices of Disclaimer for the Disclaimed Leases were issued by FOUR20, in consultation with and approval of the Monitor (then the Proposal Trustee), after it was determined that they were in the best interests of the respective companies, creditors, employees and other stakeholders, and necessary for the making of a viable proposal.

24. In June 2020, two of the landlords of the Disclaimed Leases (the "**Landlords**"), Meadowlands and Strathcona, brought applications for, *inter alia*, declarations that the Notices of Disclaimer issued by 420 OpCo do not apply to their respective leases. Both Meadowlands and Strathcona subsequently agreed to adjourn their applications *sine die* to see if a result acceptable to both parties could instead be reached through these insolvency proceedings, either through the SISP or through a plan of arrangement.

25. Four of the landlords of the Landlords, including Meadowlands and Strathcona, have since filed proofs of claim as part of the claims process in the CCAA Proceedings. As the Disclaimed Leases were all disclaimed pursuant to section 65.2 of the BIA, the Landlords' claims with respect to the Disclaimed Leases (the "**Landlord Claims**") are all properly valued pursuant to subsection 65.2(4) of the BIA.

26. Using the calculation outlined in subsection 65.2(4) of the BIA, FOUR20 has calculated the values of the Landlord Claims as follows:

Landlord	Monthly rent	3 years rent	Lease expiry	Date post 1 year	Remaining term post 1 year (months)	Remainder post 1 year	1 year rent	15% of remainder	Total[1]
Strathcona	$3,371	$121,354	3/1/2028	6/30/2025	32	$107,759	$40,451	$16,164	$56,615
Meadowlands	$13,685	$492,660	9/30/2028	6/30/2025	39	$533,042	$164,220	$79,956	$228,176[2]
Palisades	$15,554	$559,930	11/14/2028	6/30/2025	40	$628,773	$186,643	$94,316	$237,187[3]
RioCan	$9,879	$399,168	9/30/2032	6/30/2025	87	$1,000,864	$131,421	$150,130	$275,405[4]

27. I understand that the Monitor supports calculating the Landlord Claims pursuant to subsection 65.2(4) of the BIA and will be providing further analysis in the Second Report of the Monitor.

E. STAY EXTENSION

28. Following determination of this Application, the Applicants intend to work with the Monitor to promptly advance the Plan. The Applicants are currently seeking tax advice with respect to the treatment of intercompany loans between 420 Parent and 420 OpCo (the "**Intercompany Loans**") but expect to resolve that matter within the next few weeks. The Applicants also understand that the Monitor is working an assessing the Intercompany Loans. The Monitor has asked for, and the Applicants have provided, further information and documentation with respect to the Intercompany Loans. Based on the most recent requests from the Monitor, FOUR20 is continuing to collect additional information requested by the Monitor to complete this analysis. Once these matters are resolved, the Applicants intend to apply to this Court to, *inter alia*, authorize filing of the Plan and setting a creditors' meeting to vote on the Plan. As such, the Applicants have already booked Court time on March 14, 2025 to hear this forthcoming application.

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[1] These numbers may be subject to change depending on tax treatment; the Court will be advised of any such revisions if necessary.

[2] The total pursuant to the BIA calculation is $244,176, minus $16,000 in remaining security deposit held by Meadowlands.

[3] The total pursuant to the BIA calculation is $280,959, minus $43,773 in remaining security deposit held by Palisades.

[4] The total pursuant to the BIA calculation is $281,551, minus $26,000 in remaining security deposit held by RioCan.

29. An extension of the Stay Period past February 25, 2025 is required to allow for determination of the issues in the within Application and to allow the Applicants to continue advancing the Plan, as set forth above.

30. I understand that the Monitor supports the proposed extension of the Stay Period.

31. It is my belief that the Applicants have at all times been acting in good faith and with due diligence.

32. The Applicants currently have sufficient cash flow to continue operating and funding these CCAA Proceedings through to the end of the proposed extension of the Stay Period without the need for DIP lending.

33. If the Stay Period is not extended, the stay of proceedings under the CCAA will expire on February 25, 2025, which will terminate the Applicants' restructuring efforts, which have been ongoing for several months and are a critical point towards reaching a conclusion in the new year.

34. I make this Affidavit in support of the relief sought in the Application and for no other improper purpose.

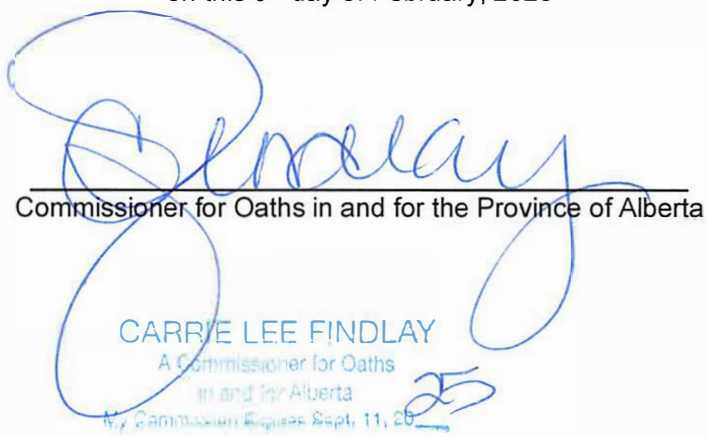
SWORN at Beaumont, Alberta, this 3rd day of February, 2025.

Commissioner for Oaths in and for the Province of Alberta

CARRIE LEE FINDLAY
A Commissioner for Oaths
in and for Alberta
My Commission Expires Sept. 11, 2025

SCOTT MORROW

This is Exhibit "A" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Beaumont, in the Province of Alberta,
on this 3rd day of February, 2025



Commissioner for Oaths in and for the Province of Alberta

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Sept 19, 2024

Form 49
Rule 13.19

COURT FILE NUMBER	25-3086318 / B301-086318	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	C90694
JUDICIAL CENTRE	CALGARY	
MATTER	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED and 420 DISPENSARIES LTD.	
APPLICANTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED, and 420 DISPENSARIES LTD.	
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ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**STIKEMAN ELLIOTT LLP** Barristers & Solicitors 4300 Bankers Hall West 888-3rd Street SW Calgary, AB T2P 5C5 **Karen Fellowes, K.C. / Natasha Doelman** Tel: (403) 724-9469 / (403) 781-9196 Fax: (403) 266-9034 Email: kfellowes@stikeman.com / ndoelman@stikeman.com File No.: 155857.1002	

AFFIDAVIT OF SCOTT MORROW
SWORN SEPTEMBER 10, 2024

I, Scott Morrow, of the City of Beaumont, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**"), Green Rock Cannabis (EC 1) Limited ("**GRC**") and 420 Dispensaries Ltd. ("**420 Dispensaries**") (collectively, "**FOUR20**" or the "**Applicants**"). I have been the CEO of FOUR20 since January 1, 2021, and a member of the boards of directors since May 6, 2021.

2. I am responsible for overseeing the operations of the Applicants, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise

stated. I have also reviewed the records and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the "**Application**") returnable before the Alberta Court of King's Bench (Commercial List) (the **"Court**") on September 19, 2024, for the following relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"):

(a) An Initial Order (the "**Initial Order**") substantially in the form attached as **Schedule "A"** to the Application for the following relief:

(i) abridging the time for serving and deeming service of this Originating Application and supporting materials good and sufficient;

(ii) declaring that each of the Applicants are companies to which the CCAA applies;

(iii) declaring the proposal proceedings of 420 Parent, 420 Premium and GRC (collectively, the "**420 NOI Entities**") commenced under Division I of Part III of the *Bankruptcy and Insolvency Act* (the "**BIA**", and such proceedings the "**NOI Proceeding**") are taken up and continued under the CCAA pursuant to section 11.6(a) thereof, declaring that Division I of Part III of the BIA has no further application to the 420 NOI Entities, and terminating the NOI Proceedings, provided that, notwithstanding the termination of the NOI Proceedings, the charges granted in the First Stay Extension Order and KERP Sealing Order (each as defined below) be taken up and continued to apply in these CCAA proceedings;

(iv) appointing KSV Restructuring Inc. ("**KSV**") as Monitor of the Applicants;

(v) stay, for an initial period of not more than 10 days, all proceedings and remedies taken or that might be taken in respect of the Applicants;

(vi) authorizing the Applicants to carry on business in a manner consistent with the preservation of its business and property;

(vii) authorizing the Applicants to pay the reasonable expenses incurred by it in carrying out its business in the ordinary course;

(viii) authorizing the Applicants to pay the reasonable fees and disbursements of the Monitor and its counsel, and Applicants' professional advisors;

(ix) continuing and taking up under the CCAA such charges and the amounts secured under the First Stay Extension Order as defined below (except for the KERP Charge, which will reduced due to amounts already paid out to entitled recipients), confirming such charges attach to all of the assets and property of the Applicants and continue to rank in priority to all other charges, mortgages, liens, security interests and other encumbrances therein, and in the following order priority amongst themselves:

(A) first – a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements, to a maximum amount of $300,000 (the "**Administrative Charge**");

(B) second – a charge in favour of the directors and officers of the Applicants, to a maximum amount of $433,000 (the "**D&O Charge**");

(C) third – a charge in favour of certain key employees of the Applicants, to a maximum amount of $373,928.17 less amount already paid. (the "**KERP Charge**");

(b) an Order (the "**SISP Approval Order**") substantially in the form attached as **Schedule "B"** to the Application:

(i) approving the sales and investment solicitation process ("**SISP**") attached as **Appendix "A"** to the SISP Approval Order to be undertaken by the Applicants, the Monitor and the Sales Advisor, and authorizing and directing them to implement the SISP in accordance with the terms thereof;

(c) an Order (the "**Claims Procedure Order**") substantially in the form attached as **Schedule "C"** to the Application approving the solicitation, determination and resolution of claims against the estate of the Applicants (the "**Claims Process**");

(d) Such further and other relief as this Honourable Court deems just.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

A. OVERVIEW

5. FOUR20 is a cannabis retailer who has faced financial difficulties since its inception, primarily due to the financial burden from unprofitable or non-operating leasehold store locations. Adding to this financial burden, 420 Parent has been engaged in lengthy litigation as a result of a failed corporate

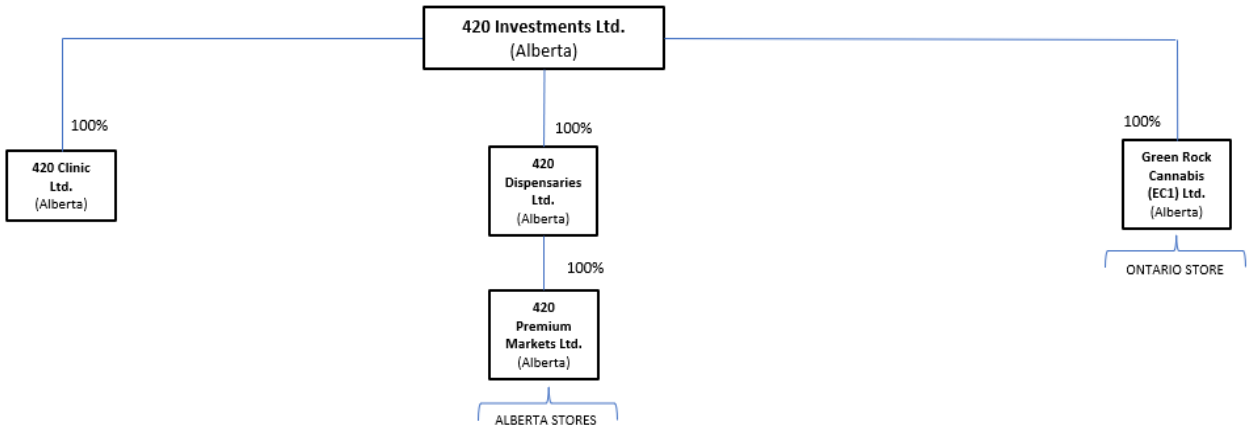
transaction (the "**Litigation**") and the counterparty to that litigation obtained a Summary Judgment Order (as defined below) on its counterclaim and commenced enforcement proceedings including the registration of a writ of enforcement, a garnishee of bank accounts, and other steps. As a result, on May 29, 2024 (the "**Filing Date**"), three associated members of the 420 corporate group (the 420 NOI Entities) filed Notices of Intention to Make a Proposal (the "**NOIs**") with the Office of the Superintendent of Bankruptcy Canada under Part III of the BIA. KSV was appointed Proposal Trustee for each of the 420 NOI Entities. Attached and marked as **Exhibit "A"** are copies of the NOIs.

6. Through the NOI Process, FOUR20 has worked diligently to downsize its operations, including closing stores, terminating employees and vacating its corporate head office. FOUR20 has also obtained an order expediting its appeal of the Summary Judgment Order (as defined below), which will bring certainty to the process. FOUR20 now seeks to launch a SISP and Claims Process, which will extend these process beyond the 6-month deadline under the NOI Proceedings. As a result, FOUR20 needs to convert the NOI Proceedings into proceedings under the CCAA, and proposes to add an additional member of its affiliated corporate group to the proceedings, in order to give potential bidders maximum flexibility for an asset sale or share sale.

B. FOUR20'S BUSINESS

(a) Corporate Structure

7. FOUR20 operates through a group of companies comprising the "FOUR20" brand. The organizational chart showing the corporate structure of FOUR20 is as follows:



8. Each of the Applicants are private corporations existing under the laws of the Province of Alberta, with their registered offices located in Calgary, Alberta. Copies of Alberta corporate searches for each of the Applicants are attached and marked as **Exhibit "B".**

9. 420 Parent is the ultimate parent company of a group of companies that includes the Applicants and 420 Clinic Ltd. ("**420 Clinic**"). The group carries on business as a cannabis retailer predominantly in Western Canada, with a single retail location in Ontario.

10. 420 Parent has five directors: Freida Butcher; Gordon Cameron; Geoff Gobert; Scott Morrow; and Aaron Serruya. 420 Parent is owned by a small group of privately held individuals and corporations.

11. 420 Premium, 420 Dispensaries and GRC each have three directors: Freida Butcher; Geoff Gobert; and Scott Morrow. GRC's sole shareholder is 420 Parent. 420 Premium's sole shareholder is 420 Dispensaries, a wholly owned subsidiary of 420 Parent. 420 Dispensaries is a holding company and has no operations or assets other than its shareholdings in 420 Premium.

12. 420 Clinic's sole shareholder is 420 Parent. 420 Clinic was historically in the business of providing cannabinoid education and introducing patients to medical cannabis treatments through education and referring patients to authorized producers. 420 Clinic is no longer in operations.

13. All of the financial statements of FOUR20 are prepared on a consolidated basis with 420 Dispensaries and 420 Clinic. 420 Dispensaries and 420 Clinic have no material assets or liabilities (excluding the shares of 420 Premium held by 420 Dispensaries).

(b) FOUR20's Operations

14. FOUR20 is in the business of direct-to-consumer sales of cannabis and cannabis accessories through its retail locations. Prior to the filing of the NOIs, 420 Premium operated 33 licensed cannabis retail stores under the name of "FOUR20" in Alberta. GRC operates one licensed cannabis retail store in Ontario under the name "FOUR20".

15. FOUR20 operates in a highly regulated environment, in accordance with the *Cannabis Act* (Canada) and applicable provincial and municipal legislation. Each province and territory is responsible for determining the regime for the sale and distribution of cannabis within its jurisdiction. Among other things, these governments establish rules regarding how cannabis can be sold, how retail stores must be operated, where such stores can be located and who is allowed to sell cannabis. Adult-use recreational cannabis products are only permitted to be sold through retailers authorized by provincial and territorial governments.

16. As of the date of filing NOIs, 420 Premium and GRC held all required permits and licences to sell cannabis at all then operated stores as follows:

(a) In Alberta, 420 Premium holds 33 licences to operate cannabis retail stores, issued by the Alberta Gaming, Liquor and Cannabis Commission;[1] and

(b) In Ontario, GRC held one licence to operate a cannabis retail store, issued by the Alcohol and Gaming Commission of Ontario.

(c) Employees

17. As of the Filing Date, the Applicants employed a total of 175 active employees and 10 employees on leave. The Applicants also engaged three part time contractors. Since the Filing Date, the Applicants have terminated 15 full time employees and 34 part time employees to right size the FOUR20 business and improve cash flows.

(d) Leased Locations

18. All of 420 Premium's retail stores are operated from leased premises. 420 Premium also had a leased property in Calgary, Alberta, which it used as a corporate office. As of the date of filing the NOIs, 420 Premium was party to 44 leases. GRC operates from one leased premises in Ontario.

19. After filing the NOIs, 420 Premium issued 16 Notices of Disclaimer for nine (9) uneconomic operating locations and seven (7) non-operating locations, including its head office (collectively, the "**Disclaimed Leases**").

20. The Notices of Disclaimer for the Disclaimed Leases were issued by 420 Premium, in consultation with and approval of the Proposal Trustee, after it was determined that they were in the best interests of the respective companies, creditors, employees and other stakeholders, and necessary for the making of a viable proposal. The Proposal Trustee has estimated that the disclaimer of operating leases alone will result in an estimated net improvement in profitability of approximately $850,000 annually.

21. Since the issuance of the Notices of Disclaimer, two landlords have filed applications to challenge the same pursuant to section 65.2(1) of the BIA (the "**Disclaimer Applications**") – Strathcona Building Inc. and Meadowlands Development Corporation (together, the "**Landlords**")

22. I am advised by my counsel, and verily believe, that the Disclaimer Applications were originally scheduled to be heard by this Court on September 19, 2024, but were adjourned *sine die* by consent to provide the Landlords with certain requested information.

23. The Applicants are in the process of compiling such requested information with the view to resolving the Disclaimer Applications. I believe resolution of the Disclaimer Applications is necessary and

[1] This figure excludes licences that may still be held by the Applicants in connection with closed stores.

desirable to preserve the value of the Applicants' estates for the benefit of all stakeholders and that any ongoing issues related to the Disclaimer Applications may be dealt with in the CCAA Proceedings should this application be granted.

C. FINANCIAL POSITION OF FOUR20

24. A copy of FOUR20's unaudited consolidated financial statements for the fiscal year ended December 31, 2023, is attached as **Exhibit "C"**.

(a) Assets

25. As appears in FOUR20's Q4 2023 Financial Statement as at December 31, 2023, FOUR20 had assets with an unaudited book value of approximately $32,449,000, which consisted of the following:

Asset Type	**Value ($)**
Current Assets	
Cash	1,378,000
Trade and other receivables	515,000
Merchandise inventories	2,167,000
Prepaid and other assets	432,000
Non-Current Assets	
Deposits	552,000
Property and equipment, net	6,514,000
Right-of-use assets, net	17,207,000
Goodwill (inc. Intangibles)	3,684,000
Total Assets	**32,449,000**

(b) Liabilities

26. As appears in FOUR20's Q4 2023 Financial Statement as at December 31, 2023, FOUR20 has liabilities with an unaudited book value of approximately $30,720,000, which consisted of the following:

Liability Type	**Value ($)**
Current Liabilities	
Accounts payable and accrued liabilities	2,411,000

Debentures and loans[2]	8,452,000
Other current liabilities	82,000
Non-Current Liabilities	
Lease liabilities	19,775,000
Total Liabilities	**30,720,000**

27. While the financial statements above represent the financial condition in December of 2023, it was already clear that FOUR20 lacks adequate working capital, with $4,492,000 in current assets and $10,945,000 in current liabilities. Even if FOUR20 could realize on the full book value of its current assets, then it would still be unable to satisfy its current liabilities in the immediate term.

(c) Shareholder Loans

28. As of the date of filing the NOIs, the shareholder loans of 420 Parent totaled $340,000, plus interest. There are no shareholder loans to 420 Premium, 420 Dispensaries and GRC.

(d) Secured Debt

29. Attached and marked as **Exhibit "D"** are copies of the personal property registry searches of 420 Parent, 420 Premium, 420 Dispensaries and GRC.

(i) 420 Parent

(1) Nomos Litigation Funding Agreement

30. On September 24, 2020, 420 Parent, as funded party, and Nomos Capital I-A LP, as funder, entered into a litigation funding agreement (the "**Funding Agreement**") related to the Tilray Proceeding (as defined and described below). The Funding Agreement was assigned from Nomos Capital I-A LP to Nomos Capital I, L.P. ("**Nomos**") on September 24, 2021. The Funding Agreement provides Nomos with a priority secured interest in any proceeds arising from the Tilray Proceeding and property of 420 Parent. As of the Filing Date, $1,062,660.57 was due and owing to Nomos under the terms of the Nomos Funding Agreement (the "**Nomos Loan**").

(2) High Park Loan Agreement

31. On August 28, 2019, 420 Parent, High Park Shops Inc. ("**High Park**") and Tilray, Inc. ("**Tilray**") each entered into an arrangement agreement (the "**Arrangement Agreement**") relating to High Park and Tilray purchasing all of the outstanding shares in 420 Parent (the "**Tilray Transaction**").

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2 Includes the HP Loan of $7,000,000. As discussed below, the HP Loan was the subject of a Summary Judgment Order on February 7, 2024, which resulted in the HP Judgment being awarded against 420 Parent in the amount of $9,810,364.12.

I understand that High Park was formed for the purpose of the acquisition of 420 Parent and is a subsidiary of Tilray.

32. In connection with the Tilray Transaction, 420 Parent, as borrower, and High Park, as lender, entered into a Loan Agreement (the "**HP Loan Agreement**") whereby High Park agreed to advance $7,000,000 to 420 Parent (the "**HP Loan**"). In accordance with the terms of the HP Loan Agreement, High Park advanced $5,000,000 to 420 Parent on August 29, 2019, and a further $2,000,000 on November 29, 2019. 420 Parent's obligations under the HP Loan Agreement are secured by a general security agreement dated August 28, 2019, executed by 420 Parent. No other FOUR20 entities are parties to the GSA and no guarantees of the HP Loan were sought or given by any other FOUR20 entities.

33. In late January and February of 2020, High Park and Tilray delivered a series of breach notices and notices that purported to terminate the Arrangement Agreement.

34. On February 21, 2020, 420 Parent commenced an action for breach of contract and related relief with respect to the terminated Arrangement Agreement (the "**420 Claim**"). High Park and Tilray each defended the 420 Claim (the "**HP Defence**"). 420 Parent's position is that the Arrangement Agreement was wrongfully terminated. 420 Parent is seeking specific performance or, alternatively, damages in excess of $130 million, which includes set-off of any amounts advanced under the HP Loan . The 420 Claim has not yet been determined, although questioning has occurred, and undertakings are in the course of being answered. Attached and marked as **Exhibit "E"** is a copy of the 420 Claim and attached as **Exhibit "F"** is a copy of the HP Defence.

35. On March 11, 2020, High Park provided 420 Parent with a Notice of Acceleration, which demanded full payment of the HP Loan immediately.

36. On March 20, 2020, High Park filed a counterclaim in relation to the HP Loan (the "**HP Counterclaim**") and three years later filed an application for summary judgment on March 2, 2023. Attached and marked as **Exhibit "G"** is a copy of the HP Counterclaim and attached as **Exhibit "H"** is a copy of the Statement of Defence to Counterclaim.

37. On February 7, 2024, Applications Judge J.R. Farrington granted High Park summary judgment (the "Summary Judgment Order") on the HP Counterclaim in the amount of $9,810,364.12, inclusive of pre-judgment interest and costs (the "**HP Judgment**"). Attached and marked as **Exhibit "I"** is a copy of the endorsement, HP Judgment, and associated Writ of Enforcement. High Park's attempts to execute on the Writ of Enforcement was the main trigger for the NOI filing.

38. 420 Parent has appealed the HP Judgment. The appeal of the HP Judgment was originally scheduled to be heard on December 5, 2024, however at the Second Stay Extension Application

(as defined below) the Court ordered that the appeal be heard on an expedited basis on the Commercial List. The appeal is scheduled to be heard on the Commercial List on October 8, 2024 by the Honourable Justice Feasby of the Alberta Court of King's Bench. 420's brief of argument in relation to the appeal is attached as **Exhibit "J"** and attached as **Exhibit "K"** is High Park's brief of argument. Additional written submissions may be filed by either party in advance of the appeal in accordance with the Scheduling Order (as defined below).

(ii) 420 Premium

(1) **Stoke Canada Finance Corp**.

39. On June 26, 2023, 420 Premium and Stoke Canada Finance Corp. ("**Stoke**") entered into an asset-based loan agreement whereby Stoke agreed to provide to 420 Premium a revolving line of credit in the original principal amount of $500,000 to be evidenced by one or more promissory notes (the "**Stoke Line of Credit**"). The Stoke Line of Credit was secured by a general security agreement dated June 26, 2023. As of the date of filing, 420 Premium owed $300,497.48 to Stoke in relation to the Stoke Line of Credit.

(e) Unsecured Creditors

40. As of the date of filing the NOIs, the Applicants owed the following amounts to unsecured creditors:

(a) 420 Parent: $921,693.86;

(b) 420 Premium: $1,394,828.17; and

(c) GRC: $0.00.

41. There will be additional claims from landlords as a result of lease disclaimers. These will be better determined through the claims process, subject to any reductions due to mitigation

42. The Applicants obligations to the Canada Revenue Agency are current.

D. EVENTS LEADING TO THE APPLICANTS' INSOLVENCY

(a) Market Conditions and Leased Locations

43. FOUR20 has been operating at a loss since its inception. While FOUR20's financial difficulties were driven by a variety of factors, the significant net losses suffered by the business are largely in relation market conditions and uneconomic and/or non-operating leased locations.

(i) Market Conditions

44. On April 13, 2017, the Government of Canada introduced Bill C-45 - the *Cannabis Act* (Canada) - intended to legalize the production and sale of cannabis for recreational purposes in Canada. After the Senate passed Bill C-45, the Government of Canada announced that the production and use of recreational cannabis would become legal on October 17, 2018.

45. I understand, based on my experience and exposure to the cannabis industry, that this industry has experienced a variety of challenges since its legalization including increased competition, oversupply of industry capacity, margin pressure; a decrease in the availability of adequate funding; a period in which the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**") froze licence distribution; and general regulatory uncertainty. There remains an entrenched black market for cannabis in Canada that, to my knowledge, continues to operate notwithstanding the strict regulations of the *Cannabis Act* (Canada). Each of these factors contribute to downward pressure on revenue, and in the case of the Applicants, has resulted in financial returns that are lower than what was initially expected when the cannabis industry was legalized. Given how many peer companies I have witnessed commence insolvency proceedings, I do not believe that the Applicants are alone in their financial struggles.

(ii) Leased Locations

46. 420 Premium entered into several leases in anticipation of receiving licences from the AGLC. However, licences for these locations were ultimately not issued for a variety of unanticipated reasons, such as their proximity to a sensitive use area or a decline in expected revenue due to market deterioration and/or increased competition. 420 Premium also entered into leases for stores that were licensed and subsequently closed following a review of operating results and revised expectations regarding their potential profitability.

47. As a result, prior to the Lease Disclaimers and negotiations described below, 420 Premium was party to multiple uneconomic leases. I understand that this situation is not unique to 420 Premium. To my knowledge, there are several major cannabis retailers in Canada that hold or held leases for anticipated cannabis retail stores that, for a variety of reasons, were never licensed by the applicable licensing authority and never ultimately opened. Similarly, I am aware of major cannabis retailers that entered into leases and opened or planned to open cannabis retail stores but either closed the stores after opening or never proceeded to open them due to low profits or profit forecasts.

48. Lease obligations are a significant portion the Applicants' overall liabilities, representing approximately 64% of FOUR20's aggregate liabilities as of December 31, 2023. As of the Filing Date, the Applicants' lease obligations were approximately $19,553,000. The Applicants' lease

obligations have impacted cash flows, and this impact has been exacerbated due to the retail locations related to these lease obligations not generating the level of revenue that they were anticipated to generate.

49. In an effort to downsize its business, 420 Premium negotiated out of 11 leases in exchange for paying significant settlement amounts for uneconomic and non-operating locations beginning in or around March 2020. Notwithstanding these efforts, FOUR20 continued to struggle with profitability in its remaining portfolio of locations on the Filing Date. After the Filing Date, 420 Premium disclaimed 16 leases in an effort to preserve liquidity and facilitate the making of a viable proposal, as discussed above. I understand that the Proposal Trustee was supportive of the Lease Disclaimers.

(b) Ongoing Litigation with Tilray and High Park

50. As described above, 420 Parent has been actively involved in the Tilray Proceeding since February 2020. 420 Parent believes that the 420 Claim is well-founded and is a very valuable asset which will result in a significant award (over $130 million) if successful at trial. The 420 Claim has not yet been determined and the on-going litigation has resulted in a net drain on 420 Parent's resources. The 420 Claim and HP Judgment are closely related and stem from the Arrangement Agreement with Tilray and High Park, as the HP Loan was advanced for the purposes of building out and opening new locations following the close of the proposed arrangement.

51. As a result of the HP Judgment and related enforcement steps taken by High Park and Tilray, the Applicants urgently required creditor protection to stabilize its business operations with a view to restructuring its business and commenced proceedings under the BIA. If High Park were to have enforced the HP Judgment, it would have had disastrous consequences for the Applicants' stakeholders, landlords, suppliers and the then 185 FOUR20 employees, and ability to remain a going concern.

E. THE NOI PROCEEDINGS

52. As noted above, the NOI Entities (420 Parent, 420 Premium and GRC) commenced NOI Proceedings on May 29, 2024. KSV was appointed Proposal Trustee in the NOI Proceedings.

53. On June 27, 2024, the NOI Entities brought an application (the "**First Stay Extension Application**") to the Alberta Court of King's Bench (the "**Court**") for an Order: (i) extending the time for the NOI Entities to file a proposal to August 12, 2024, (ii) administratively consolidating the NOI Entities' estates, and (iii) granting an Administration Charge, a D&O Charge and KERP Charge; and (iv) approving a KERP. The Court granted the NOI Entities First Stay Extension Application in full (the "**First Stay Extension Order**"). The Court also granted a sealing order with respect to the

KERP (the "**KERP Sealing Order**"). Attached and marked as **Exhibit "L"** is a copy of the First Stay Extension Order and attached as **Exhibit "L"** is a copy of the KERP Sealing Order

54. On August 12, 2024, the NOI Entities brought an application (the "**Second Stay Extension Application**") to the Court for an Order: (i) extending the time for the Applicants to file a proposal to September 26, 2024 (the "**Stay Period**") (the "**Second Stay Extension Order**"), and (ii) scheduling an appeal of a judgment granted by Applications Judge J.R. Farrington in Alberta Court of King's Bench Action No. 2001-02873 (the "**Scheduling Order**"). The Second Stay Extension Application was granted in full. Attached and marked as **Exhibit "M"** is a copy of the Second Stay Extension Order and attached as **Exhibit "M"** is a copy of the Scheduling Order.

55. Since the commencement of the NOI Proceedings, the Applicants have acted, and continue to act, in good faith and with due diligence and have taken the following steps, among others:

(a) continuing to provide the Proposal Trustee with access to the Applicants' books and records;

(b) working with the Proposal Trustee and the Applicants' counsel, Stikeman Elliott LLP ("**Stikeman**") generally, and in particular with respect to:

(i) exploring and considering the various exit strategies available to the Applicants in the context of these NOI Proceedings, including the structure and financing of any Proposal and/or sales process;

(ii) preparing cash flow projections and identifying issues with respect to the Applicants' financial condition;

(c) communicating and engaging with stakeholders, employees, contractors and vendors;

(d) communicating through counsel and the Proposal Trustee the release of funds withheld by Moneris and the Bank of Montreal;

(e) reviewing its operating expenses, pursuing collection of accounts receivable and taking other steps to ensure the Applicants remain financially viable;

(f) issuing the Notices of Disclaimer for the Disclaimed Leases;

(g) terminating 15 full time employees and 34 part time employees;

(h) consolidating inventory to operating stores from locations subjected to the Disclaimed Leases;

(i) reduced compensation in employment and contractor contracts;

(j) operating the remaining portfolio of 27 stores in the ordinary course;

(k) scheduling the appeal of the HP Judgment on an expedited basis;

(l) communicating with the Landlords to prepare requested information and schedule their respective Disclaimer Applications;

(m) held meetings with potential sales advisors, including the Proposal Trustee, to assist with development of a marketing strategy and sales and investment solicitation process;

(n) developing the SISP;

(o) developing the Claims Process;

(p) advanced discussions with potential stalking horse bidders; and

(q) reviewed operating expenses, pursued the collection of accounts receivable and took other steps to ensure the Applicants remain financially viable during these proposal proceedings.

F. REQUIREMENT FOR CONVERSION TO CCAA PROCEEDINGS

56. The Applicants are in urgent need of protection under the CCAA to preserve value for all stakeholders. Unless an extension to file a proposal is granted, or these NOI Proceedings are converted to CCAA proceedings, the Applicants will be deemed bankrupt on September 26, 2024, being the last day of the Stay Period. In addition, the six months available to complete the NOI Proceeding under the BIA ends on November 29, 2024.

57. The Applicants have developed the SISP and Claims Process (each described further below) in consultation with the Sales Advisor and Proposal Trustee, which contemplate a conclusion date beyond the Stay Period. As such, there is insufficient time available under the NOI Proceedings for the Applicants to conclude and close a transaction under the SISP.

G. CCAA RELIEF SOUGHT

(i) Applicability of the CCAA

58. The Applicants are companies to which the CCAA applies. The Board of Directors of each of the Applicants have resolved to authorize the within CCAA proceedings.

59. The Applicants are affiliated companies for the purposes of the CCAA. The Applicants have claims against them in excess of $5,000,000 CAD. The Applicants are insolvent and unable to meet their obligations generally as they become due.

(ii) Stay of Proceedings and ARIO

60. The Applicants require time to conclude the SISP and Claims Process. Unless an extension is granted, or the NOI Proceedings are converted to the CCAA proceedings, the Applicants will be automatically bankrupt as of September 26, 2024. Further, it is in the parties' best interest to ensure the stay of proceedings continues beyond September 26, 2024, until such time as the Applicants can finalize the Claims Process and, with the assistance of the Proposed Monitor, commence the SISP, select a successful bidder, return to Court to seek approval of the successful bidder and then close that transaction.

61. Given the imminent commencement of the SISP and Claims Process, the Applicants seek a stay of proceedings against the Applicants and their property until December 16, 2024, pursuant to the ARIO, which is being sought concurrently with the initial CCAA application, in order to provide stability and maintain the status quo in respect of the Applicants until the SISP has closed.

62. I have been advised by the Applicants' legal counsel that typically in a CCAA proceeding, an ARIO is granted at a "comeback hearing" that takes place within ten days of the Initial Order being granted, and that this ten-day period is provided to allow the debtor sufficient time to notify its creditors of the comeback hearing.

63. Given that all major stakeholders have been involved in the NOI Proceedings and have notice of these applications, the Applicants propose to bring an application for the ARIO immediately after (and assuming) the Initial Order is granted. It should be noted that all of the Applicants' creditors have been notified of the insolvency proceedings and consequent stay of proceedings by virtue of the statutory notice that was issued by the Proposal Trustee at the outset of the NOI Proceedings, a copy of which is attached hereto as **Exhibit "N"** (the "**Statutory Notice**"). All pertinent documentation in the NOI Proceedings has been posted on the Proposal Trustee's website, a reference to which is contained in the Statutory Notices. Parties interested in following the proceedings have asked to be placed on the Service List maintained by the Applicants and the Proposal Trustee in the NOI Proceedings, and the entire Service List has been provided with notice of these proceedings. On this basis, the Applicants' creditors have been aware of the stay imposed as a result of the NOI Proceedings.

64. Given the prior notice of the NOI Proceedings, I do not believe that any creditors will be prejudiced by the consecutive granting of the Initial Order and the ARIO. Proceeding in this manner will also preserve resources by decreasing professional fees and will conserve valuable judicial resources.

65. The stay of proceedings is critical for the Applicants' ability to conduct the Claims Process and SISP and complete transactions thereunder for the benefit of their respective stakeholders. Without the benefit of a stay of proceedings, there could be an immediate and significant erosion of value to the detriment of all stakeholders. The need for a stay is demonstrated by garnishment steps taken by High Park and Tilray in relation to the HP Loan which predicated these insolvency proceedings.

(iii) Proposed Monitor

66. The Applicants seek the appointment of the Proposed Monitor, KSV Restructuring Inc., as monitor in these proceedings. KSV is qualified and competent to act at the Proposed Monitor under the CCAA and has consented to as the Proposed Monitor of the Applicants in the within proceedings, subject to approval of the Court and is supportive of the relief sought. Attached and marked as **Exhibit "O"** is a copy of the Proposed Monitor's Consent to Act.

67. The professionals of KSV who will have carriage over this matter as the Proposed Monitor have acquired knowledge of the Applicants, their business, financial circumstances and strategic and restructuring efforts to date through its role as Proposal Trustee. I believe that the Proposed Monitor is capable of assisting the Applicants with their restructuring efforts in these CCAA proceedings. The Proposed Monitor is a licensed insolvency trustee and has not served an auditor of the Applicants.

68. In addition to any powers or obligations provided for by the CCAA, the Applicants hereby request that this Court grant the Proposed Monitor the powers, rights, obligations and protections detailed in the Initial Order and, if granted, the Amended and Restated Initial Order, including the orders relating to the Administration Charge.

(iv) Cash-Flow Forecast

69. The Applicants, with the assistance of the Proposed Monitor, have prepared cash flow statements, attached to the Pre-Filing Report of the Monitor (the "Cash-Flow Projections").

70. As set out in the Cash-Flow Projections, the Applicants' principal use of cash will be used to fund working capital, and run the Sales Process, the Claims Process and other restructuring fees.

(v) Continuation of Court-Ordered Charges

71. The First Stay Extension Order granted, among other things, certain court ordered charges (collectively, the "**Charges**") as follows:

(a) first – the Administrative Charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements, to a maximum amount of $300,000;

(b) second – the D&O Charge in favour of the directors and officers of the Applicants, to a maximum amount of $433,000; and

(c) third – a KERP Charge in favour of certain key employees of the Applicants, to a maximum amount of $373,928.17.

72. The Applicants seek to continue the Charges in the CCAA Proceedings to secure the continued involvement of professionals, the directors and officers of the Applicants and certain key employees subject to the KERP. Each of these parties are critical to the success of the Applicants' restructuring efforts. Moreover, to reflect that some of the KERP has been paid out to eligible recipients, the Applicants seek a reduction of the KERP to accent for these payments in an amount to be confirmed.

73. The Applicants also seek to extend the Administration Charge to secure the professional fees of KSV in its capacity as Monitor, along with the legal fees of the Monitor's legal counsel. In addition, the Administration Charge would be continued to cover any unpaid fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, the Applicants' legal counsel incurred during the NOI Proceedings that have not otherwise been paid to date.

74. I believe the Charges are reasonable and appropriate in the circumstances and is critical to the success of the Applicants' insolvency proceedings. The proposed Court-Ordered Charges sought are in the same quantum as in the NOI Proceedings, except for the KERP Charge, as explained above.

(vi) Approval of SISP

75. The Applicants and the Proposed Monitor, which will assist the Applicants in canvassing the market for, and assessing, potential bidders or refinancing transaction alternatives through the SISP have prepared the SISP whereby interested parties will have the opportunity to submit an offer to: (i) purchase shares or assets of the Applicants (or any one of them), or (ii) make an investment in the Applicants' business by way of a refinancing, reorganization, recapitalization, restructuring or other business transaction involving the Applicants, or any one of them. The SISP will be a key step in the restructuring process to maximize value for the Applicants' creditors and stakeholders. Attached and marked as **Exhibit "P"** is a copy of the proposed SISP.

76. The SISP contemplates a two-phase sale process to occur over approximately 10 weeks. Phase I of the SISP is intended to solicit non-binding letters of intent from potential bidders. Phase II of the SISP is intended to allow bidders to perform further due diligence and submit binding offers in accordance with the criteria specified in the SISP. The key milestones and deadlines in the SISP are as follows:

Milestone	Deadline
Commencement Date (prepare data room and associates documents)	On or before September 27, 2024
Marketing Stage: Publication of Notice and Sending Teaser to Know Potential Buyers	On or before October 4, 2017
Completion of "Phase I" – interested parties to submit a non-binding letter of intent	November 15, 2024
Completion of "Phase II" – interested parties to submit a binding offer that meets at least the requirements set forth in the SISP	November 30, 2024
Selection of the highest or otherwise best bid(s) (the "Successful Bid(s)")	December 6, 2024
Seek a Court order approving the Successful Bid(s)	As soon as practical
Close the transaction contemplated in the Successful Bid(s)	As soon as practical

77. The timeline of the SISP was designed balance the Applicants concerns with a lengthy and expensive CCAA proceeding, with the need for sufficient flexibility to allow interested parties a reasonable opportunity to formulate and submit bids to maximize the Applicant's success in the SISP.

78. Notably, the SISP does not contemplate a sale or disposition of the 420 Claim and expressly excludes the litigation with High Park and Tilray. The Applicants believe that the 420 Claim is compelling and a significant asset in the estate of 420 Parent (over ~$130M), and intend to pursue the litigation in order to monetize this asset and bring value to the estate and stakeholders.

79. High Park and Tilray have advised that they intend to participate in a sales process, either through a vote on a proposal, a credit bid on assets through a SISP, or a sale or assignment of their debt and security. The Applicants have well-founded concerns that High Park and Tilray may credit bid the 420 Claim and attempt to purchase the shares of 420 parent in order to abandon the litigation, which may strip 420 Parent of its most significant asset to the detriment of all stakeholders.

80. The Proposed Monitor has advised that it is supportive of the proposed SISP and is prepared to assist the Applicants in carrying out the SISP.

(vii) Approval of Claims Process

81. The Applicants are seeking this Court's approval of a Claim Process substantially in the form proposed in the Claims Procedure Order. The Claims Process is designed to be completed before the conclusion of the SISP and to address all creditors of the Applicants, including secured and unsecured creditors, as well as landlords of 420 Premium.

82. The estimated timing for execution of the Claim Process is as follows:

Milestone	Deadline
Claims Process Order to be granted	September 19, 2024
Claims package will be sent to all claimants, posted on website and published	September 20, 2024
Claims bar date for claimants to file proof of claim	October 20, 2024
Deadline for receipt by the Monitor of any notice of dispute	15 days following date of Notice of Revision or Disallowance
Deadline for filing application with respect to notice of dispute	10 days following delivery of Notice of Dispute

83. The Claims Process provides for a timely and efficient process for determination of the claims of the Applicants. In particular, it will provide some clarity to potential investors and bidders who wish to participate in the SISP process or the Applicants plan of arrangement.

84. The Proposed Monitor supports the establishment of the Claims Process in the form of the proposed Claims Procedure Order and is prepared to assist with the implementation of the Claims Process.

H. CONCLUSION

85. I make this Affidavit in support of the Applicants' Application for an Initial Order and, to the extent that the Initial Order is granted, the Amended and Restated Initial Order pursuant to the CCAA.

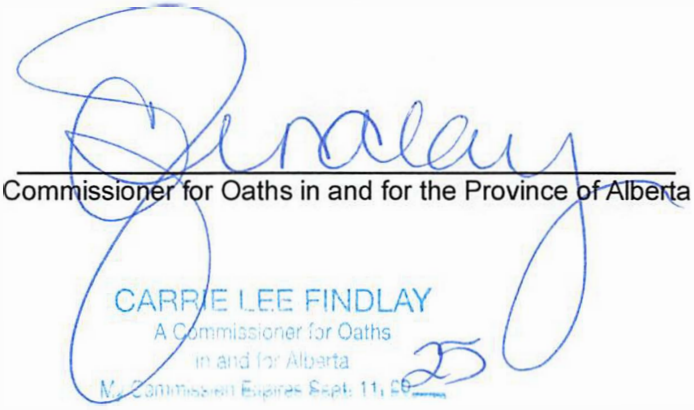
SWORN at Beaumont, Alberta, this 10th day of September, 2024.

A Commissioner for Oaths
in and for the Province of Alberta

SHIVANGI KAUR PARMAR
A Commissioner for Oaths
in and for Alberta
My Commission Expires February 19, 2026

SCOTT MORROW

This is Exhibit "B" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Beaumont, in the Province of Alberta,
on this 3rd day of February, 2025



Commissioner for Oaths in and for the Province of Alberta

Court of King's Bench of Alberta

Citation: 420 Investments Ltd v Tilray Inc, 2024 ABKB 610

Date:
Docket: 2001 02873
Registry: Calgary

Between:

420 Investments Ltd.

Appellant

- and -

Tilray Inc. and High Park Shops Inc.

Respondents

Reasons for Decision
of the
Honourable Justice Colin C. J. Feasby

I. Introduction

[1] 420 Investments Ltd ("420") owned and operated retail cannabis stores in Alberta. Tilray Inc ("Tilray") and High Park Shops Inc ("High Park") agreed to acquire 420 pursuant to an Arrangement Agreement dated August 28, 2019 (the "Arrangement Agreement") for $70 million plus a potential additional $44 million in contingent consideration. As part of the arrangement transaction, High Park provided $7 million in bridge financing to 420 to continue to develop retails stores in the interim period prior to the closing of the arrangement transaction (the "Bridge Loan"). The terms of the Bridge Loan were memorialized in a Loan Agreement also dated

August 28, 2019 (the "Loan Agreement"). The Bridge Loan was repayable on the later of: (i) 180 days from the advance of funds; or (ii) the termination of the Arrangement Agreement.

[2] Tilray and High Park provided 420 notices of alleged breaches of the Arrangement Agreement on January 28, 2020 and February 4, 2020. 420 rejected these notices on the grounds that Tilray and High Park had not provided particulars of the alleged breaches as required by the Arrangement Agreement. 420 submits that it required the particulars to understand and potentially cure the alleged breaches in accordance with the terms of the Arrangement Agreement. On February 21, 2020, 420 commenced an action against Tilray and High Park for, among other things, specific performance. On February 26, 2020, Tilray and High Park issued a notice of termination on the grounds that 420 had failed to cure the alleged breaches within the 10 days afforded by the Arrangement Agreement.

[3] After purporting to terminate the Arrangement Agreement, on March 11, 2020, High Park issued a notice of acceleration requiring 420 to repay the Bridge Loan. When 420 refused to repay the Bridge Loan, Tilray and High Park counterclaimed seeking repayment of the $7 million. Applications Judge Farrington granted High Park's application for summary judgment in respect of the Bridge Loan in an unpublished endorsement dated February 7, 2024. 420 appeals that decision.

[4] This appeal turns the question of the meaning of the word "termination" in the Loan Agreement provision that the Bridge Loan is repayable upon the termination of the Arrangement Agreement. Does this require only notice of termination, as Tilray and High Park contend, or does it require that the termination be accepted by 420 or determined by a court to be a valid termination, as 420 submits?

II. Applications Judge's Decision

[5] The Applications Judge considered the meaning of Loan Agreement s 7.1 which provides:

> The total outstanding amount of the Loan ... shall be repaid in full on the later of (i) the date falling one hundred and eighty (180) days after the date of the advance of the Loan; and (ii) the termination of the Arrangement Agreement....

[6] The Applications Judge concluded that 420's position "that the matter cannot be determined without determining whether there was a proper termination ... is contrary to the agreement reached between the parties, and contrary to commercial business sense." He went on to say that "[i]f the termination [of the Arrangement Agreement] was improper, High Park and Tilray may be liable as alleged in the statement of claim." But in the meantime, he held, it was appropriate for High Park to enforce the Bridge Loan.

[7] He bolstered his reasoning by referring to Loan Agreement s 6.1 which provides that "payments due and payable" under the Loan Agreement "shall be made ... without any set-off." The Applications Judge found that by providing that there be no set-off the parties had signalled their clear intent "to sever the terms regarding the payment of the loan from the other dealings between the parties."

[8] The Applications Judge further had regard to what he considered to be "commercial business sense." To him, the issue was "which of the parties should have use of the loan funds pending determination of the balance of the action?" The answer was obvious to him because

"[t]here is no doubt that the monies are owed here." He asked rhetorically, "Should a party be able to obtain a stay on the loan repayment obligation simply by filing a pleading and adducing evidence on the Arrangement Agreement aspects of the claim when it agreed to pay the loan without set-off?" He further likened High Park to a third-party lender who would "certainly be entitled" to enforce in similar circumstances.

III. Standard of Review

[9] The parties agree that the applicable standard of review is correctness: ***Lesenko v Wild Rose Ready Mix Ltd***, 2024 ABKB 333 at paras 13-16; ***Bacheli v Yorkton Securities***, 2012 ABCA 166 at para 3; ***Western Energy v Savanna Energy***, 2022 ABQB 259 at para 22 aff'd 2023 ABCA 125.

[10] The critical issue on this appeal is the interpretation of the Loan Agreement. The question that I must ask is whether the Applications Judge correctly interpreted the Loan Agreement. If I conclude that he did not, I must substitute my own interpretation of the Loan Agreement.

[11] Had this appeal been subject to the usual appellate standard of review set out in ***Housen v Nikolaisen***, 2002 SCC 33 I would have been required to treat the interpretation of the Loan Agreement as a question of mixed fact and law pursuant to ***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53. If this were the relevant approach, I would have had to consider whether the Applications Judge made a palpable and overriding error as opposed to asking whether his interpretation of the Loan Agreement was correct.

IV. Analysis

A. Summary Judgment Standard

[12] Rule 7.3(1)(a) provides that the Court may grant "summary judgment in respect of all or part of a claim" if "there is no defence to a claim or part of it." The Supreme Court of Canada in ***Hryniak v Mauldin***, 2014 SCC 7 at para 49 set out a three-part test to determine whether summary judgment is appropriate:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[13] Justice Slatter adopted this approach in ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49 at para 21.

[14] The parties made submissions regarding the appropriate principles to apply on an application for partial summary judgment. Whether partial summary judgment is appropriate raises two issues – fairness and efficiency. Justice Karakatsanis in ***Hryniak*** bundled these together under the rubric of the "interest of justice." She wrote at para 60:

> [I]f some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary

> judgment may run the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice.

[15] The Applications Judge granted summary judgment in respect of Tilray and High Park's counterclaim. Tilray and High Park's application did not, strictly speaking, seek partial summary judgment as that term is used in Rule 7.3 because a counterclaim is an independent action according to Rule 3.57. With that said, partial summary judgment principles may be applicable to summary judgment on a counterclaim where the counterclaim is based on many of the same facts and raises some of the same legal issues as the main claim: ***Stankovic v 1536679 Alberta Ltd***, 2019 ABCA 187 at para 54.

[16] The Court of Appeal in ***Stankovic*** found at para 54 that the claim and counterclaim were "sufficiently interconnected that it would be unjust" to allow a party to enforce a mortgage on a summary basis prior to the determination of related issues between the parties. Justice Smith in ***Kaspersky Lab, Inc v Bradshaw***, 2010 BCSC 68 at para 22 concluded that partial summary judgment was not an appropriate procedure where one party claimed a breach and the other party made a claim for wrongful termination on the basis that the purported termination occurred without the required notice and opportunity to cure the alleged breach. Smith J held the "issues are inextricably intertwined and it would be unjust to decide only part of the case on this application. It would also not assist the efficient resolution of this proceeding because most of the same evidence would have to be considered on the trial of the counterclaim." The reasoning in ***Stankovic*** and ***Kapersky Lab*** applies to the present case.

B. Interpreting the Loan Agreement

[17] The Applications Judge recognized that Tilray and High Park may be liable in respect of 420's main claim but did not see that as an obstacle to the enforcement of the Loan Agreement. His view was that the money advanced to 420 was owing, and the Loan Agreement provided there was to be no set-off. He concluded that this meant that any claim regarding the Arrangement Agreement should be decided separately. Accordingly, it was appropriate to grant summary judgment in respect of the counterclaim for the amount of the Bridge Loan.

[18] The Applications Judge's approach overlooked the words of Loan Agreement s 7.1. Loan Agreement s 7.1 makes repayment of the Bridge Loan contingent on the termination of the Arrangement Agreement. Put differently, termination of the Arrangement Agreement is a condition precedent to the enforcement of the Bridge Loan. This requires the Court to determine whether the Arrangement Agreement has been terminated.

[19] The Arrangement Agreement can only be terminated in accordance with its terms. Article 7.1 of the Arrangement Agreement provides the grounds on which it may be terminated, and art 4.7 outlines the required contents of a notice to terminate. To determine whether there has been a "termination of the Arrangement Agreement" for the purposes of Loan Agreement s 7.1 it is necessary to determine whether the procedural and substantive requirements for termination under the Arrangement Agreement have been satisfied. The parties have adduced conflicting evidence concerning whether the procedural and substantive requirements for termination of the Arrangement Agreement have been satisfied.

[20] Termination of the Arrangement Agreement is a question that is integral to 420's main claim for specific performance and Tilray and High Park's defence to that claim. Termination of the Arrangement Agreement is not amenable to summary determination. Whether the notices of

termination provided the particulars required by Arrangement Agreement art 4.7 and whether the alleged grounds of termination can be proved are issues for trial. It would be contrary to the interests of justice to decide these issues summarily in the face of conflicting evidence when those issues are central to the main action.

[21] The only way around the interpretation of Loan Agreement s 7.1 that I have outlined is to do what the Applications Judge did and effectively read "termination of the Arrangement Agreement" as meaning "delivery of a notice of termination." This reading is not consistent with the text of Loan Agreement s 7.1 which refers to the Arrangement Agreement and, in my view, thereby requires the Court to consider whether the evidence shows that the termination provisions of the Arrangement Agreement have been satisfied. Further, from a practical standpoint, such an interpretation allows Tilray and High Park to call the Bridge Loan by issuing a notice of termination of the Arrangement Agreement even if they do not have a *bona fide* basis to issue a notice of termination.

V. CCAA Proceedings

[22] 420 is currently engaged in restructuring proceedings pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36. Tilray and High Park provided post-hearing submissions on October 15, 2024 wherein they raised the question of whether an Order granted by Justice Jones on October 2, 2024 in the *CCAA* proceedings approving a Sales and Investment Solicitation Process (the "SISP Order") meant that 420's action against Tilray and High Park could no longer seek specific performance and, in turn, whether that meant that the Applications Judge's decision should be upheld.

[23] The process set in motion by the SISP Order may result in a sale of 420 or its assets. However, if the SISP concludes with a sale of 420 or its assets, specific performance would be impossible. If the Arrangement Agreement cannot be performed, it is effectively terminated. Therefore, upon the SISP being completed with a sale of 420 or its assets, 420 may only continue its claim for relief other than specific performance.

[24] The potential imminent unavailability of specific performance does not change my analysis. My interpretation of the Loan Agreement cannot change just because one party, long after the fact, commences *CCAA* proceedings. A contract is to be interpreted according to its text and the factual matrix known to the parties at the time of contracting: ***Sattva*** at para 47. Events occurring long after the formation of the contract have no bearing on the intention of the parties at the time of contracting.

[25] Tilray and High Park raise the spectre that if I do not uphold the Applications Judge's decision 420 may take the position that High Park is not a creditor in the *CCAA* proceedings. I suppose that is possible. But the law is clear that the *CCAA* "does not limit the claims that may be dealt with by a Plan under the *CCAA* to presently existing liabilities": ***Re SemCanada Crude Company (Celtic Exploration Ltd #2)***, 2012 ABQB 489 at para 24, quoted with approval in ***Repsol Canada Energy Partnership v Delphi Energy Corp***, 2020 ABCA 364 at para 17. Further, if the SISP concludes with a sale of 420 or its assets, the Bridge Loan may become enforceable as a current liability if there is no longer a dispute as to whether the Arrangement Agreement is terminated.

VI. Conclusion

[26] The appeal is allowed. If the parties are unable to agree on costs, they may make submissions in writing of two pages or less supported by a bill of costs.

Heard on October 8, 2024 with additional written submissions on October 15, 2024.
Dated at the City of Calgary, Alberta this 16th day of October, 2024.

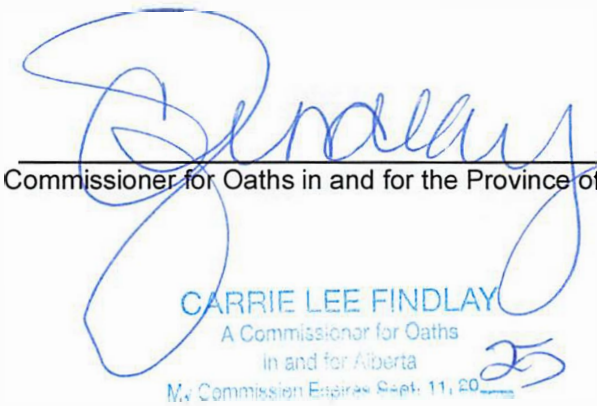
Colin C. J. Feasby
J.C.K.B.A.

Appearances:

Robert Hawkes, KC and Sarah Miller, JSS Barristers LLP
for the Appellant

David Tupper and Tom Wagner, Blake, Cassels & Graydon LLP
for the Respondents

This is Exhibit "C" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Beaumont, in the Province of Alberta,
on this 3rd day of February, 2025



Commissioner for Oaths in and for the Province of Alberta

Action No.: B301-086318
E-File Name: CVK24420
Appeal No.: _____

IN THE COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED and 420 DISPENSARIES LTD.

P R O C E E D I N G S

Calgary, Alberta
September 19, 2024

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TABLE OF CONTENTS

Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

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September 19, 2024	Afternoon Session
The Honourable Justice Jones	Court of King's Bench of Alberta
K. L. Fellowes, KC (remote appearance)	For 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (EC 1) Limited and 420 Dispensaries Ltd.
A. Bell (remote appearance)	For 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (EC 1) Limited and 420 Dispensaries Ltd.
M. Selnes (remote appearance)	For Proposal Trustee and Proposed Monitor, KSV Restructuring Inc.
K. J. Bourassa (remote appearance)	For High Park Shops
M. V. Fleming (remote appearance)	For Nomos
S. A. Kour (remote appearance)	For Stoke Inventory Partners
J. Liakos	Court Clerk

Discussion

THE COURT: Good afternoon, everyone.

MS. FELLOWES: Good afternoon, Justice Jones.

THE COURT: Ms. Fellowes, you're with us?

MS. FELLOWES: Yes, I am, Justice Jones. Can you hear me all right?

THE COURT: I can. How are you today?

MS. FELLOWES: Excellent, I'm -- I'm very well, thank you.

THE COURT: Perhaps you could introduce your friends who may be with you today?

MS. FELLOWES: Yes, I'm pleased to do so. Thank you. For the record, my name is Fellowes, initial K., KC, and I am counsel to the applicants in these

proceedings, 420 Investments and related corporations.

THE COURT: Right.

MS. FELLOWES: With me in the courtroom virtually today is my associate, Archer Bell, from the law firm of Stikeman Elliott, and as well, I have several members of the 420 board and management, including Scott Morrow, the CEO, and two members from the board of directors, Freida Butcher and Geoff Gobert. They, of course, will not be making submissions, but are here to observe.

THE COURT: Okay. Thank you. Welcome.

And who else may be here?

MS. FELLOWES: Yes, with -- with counsel's permission, I will take the liberty of introducing my friends.

THE COURT: Thank you.

MS. FELLOWES: In -- in the virtual courtroom today is Ms. Sharon Kour from Reconstruct firm in Toronto, and she is counsel for Stoke Inventory Partners --

THE COURT: M-hm.

MS. FELLOWES: -- who are a -- the priority's creditor at the parent company.

THE COURT: Right.

MS. FELLOWES: I'm just going through my screen, so this is no particular order. Next, I'm introducing Mr. Michael Selnes from the law firm of Bennett Jones, and he is counsel for KSV, who is the proposal trustee and proposed monitor in these proceedings.

THE COURT: Right.

MS. FELLOWES: Next on my screen is Ms. Kelly Bourassa from the law firm of Blakes --

THE COURT: M-hm.

MS. FELLOWES: -- and she is counsel for High Park Shops, who is a secured creditor at the parent company level in a second position and is also a counterparty to some litigation.

THE COURT: Second position behind ...

MS. FELLOWES: Behind Nomos.

THE COURT: Okay.

MS. FELLOWES: And that -- that's my next introduction, Sir.

THE COURT: Okay.

MS. FELLOWES: The next counsel on my screen is Mr. Maurice Fleming from the law firm of Loopstra Nixon in Toronto, and he is counsel for Nomos --

THE COURT: Right.

MS. FELLOWES: -- who are the secured -- first secured creditor at the parent company level.

THE COURT: Okay.

MS. FELLOWES: And I think the only other person on my screen is Mr. Basi, Mr. Andrew Basi from KSV, and he, of course, represents the proposal trustee and proposed monitor.

THE COURT: Okay. Thank you, Ms. Fellowes. By way of introduction, I've read your materials, all of it, thank you, and, Ms. Bourassa, I was able to get some time yesterday to read your materials.

So, Ms. Fellowes, over to you, this is your application. Are we essentially here to spend the afternoon discussing the SISP and little else, or do you want to tell me that we have other contentious issues on the other orders? Perhaps you can give me a lay of the land as of right now.

MS. FELLOWES: I'm happy to do so, and I'm happy to report that the only opposition that I am aware of to the relief that we are seeking today is the opposition from Ms. Bourassa's client with respect to the inclusion or exclusion of the litigation from the SISP.

THE COURT: Right.

MS. FELLOWES: If anyone on this call wishes to express any concerns about any of the other forms of relief, I haven't heard from them yet, and in fact, I've heard some support for the other forms of relief from other counsel, but I, of course, am -- am willing to be corrected if anyone wishes to state otherwise.

THE COURT: Okay. Before I hear from other counsel, I suspect we could spend the better part of the afternoon talking about the litigation inclusion or exclusion issue, so just so that we don't forget to address your other requests, and since parties' positions on your other requests may, to some extent, be contingent on the outcome of my decision on the SISP, I'm not saying they will, but perhaps they will, depending on which direction the SISP discussion is going. Maybe we should spend 10, 15 minutes going through the other orders so they're out of the way. Does that make sense to you, Ms. Fellowes?

MS. FELLOWES: Absolutely, and it's important to put those on the record so, with your permission, I -- I don't want to take up too much time, but I will, of course, lay the evidentiary basis on which you can make these orders.

THE COURT: Perfect.

Submissions by Ms. Fellowes (CCAA)

MS. FELLOWES: All right. Well, thank you, Justice Jones. Yes. Okay. So just to confirm, there are two applications in front of you today seeking four different orders. I can advise that service is in order. My assistant, Ms. Jessica Watts, has prepared an affidavit of service. I don't think it's yet reached filing at the KB level, but it is prepared and sworn, and I can advise you that all the parties were served last Tuesday and there were no reported instances of any bounce back of emails or problems with service, and with the Court's permission, I undertake to file the affidavit of service following this hearing.

THE COURT: That's good. Thank you.

MS. FELLOWES: Justice Jones, we have two applications before you today and there is quite a bit of material. I -- I thank you for reading it all, but for the purpose of the record, I do just want to quickly summarize all the materials that have been filed to make sure that the Court has all of those materials.

THE COURT: Good idea.

MS. FELLOWES: All right. The first is an originating application with respect to the commencement of proceedings under the *Companies' Creditors Arrangement Act*, and the second is an application for an amended and restated initial order.

THE COURT: Got those.

MS. FELLOWES: Thank you. In support of both of those applications, the following evidence has been filed: an affidavit of Scott Morrow --

THE COURT: M-hm.

MS. FELLOWES: -- who is the CEO of 420 Investments.

THE COURT: Right.

MS. FELLOWES: There is a brief filed by my office and a book of authorities --

THE COURT: Got those.

MS. FELLOWES: -- and -- yes, and just yesterday, we filed a supplementary affidavit, which is a secretarial affidavit from my assistant, Ms. Watts, simply attaching three pieces of additional evidence, including a copy of the order which was granted on August 12th relating to the appeal.

THE COURT: Got that.

MS. FELLOWES: All right. Excellent. There is some other material, of course. The trustee's third report --

THE COURT: Got that.

MS. FELLOWES: -- which was filed and served, I think last Friday --

THE COURT: Yes.

MS. FELLOWES: -- and then there is an affidavit filed by High Park Shops, Ms. Bourassa's office, brief, and a book of authorities.

THE COURT: Got those. Good.

MS. FELLOWES: Excellent. I'm -- I'm not quite done yet, though.

THE COURT: Okay. M-hm.

MS. FELLOWES: Also before the Court are the forms of order we're seeking today.

THE COURT: Right.

MS. FELLOWES: So there should be a -- a draft initial order and a black line of the initial order to the template under the Alberta Court Rules.

THE COURT: Yes.

MS. FELLOWES: Okay. Good. There should also be an amended and restated initial order.

THE COURT: Yes, I have that.

MS. FELLOWES: Excellent. Finally, there -- or -- or not quite finally, there should be a claims process order.

THE COURT: I have that.

MS. FELLOWES: Excellent. And, finally, there should be the -- the sales investment and solicitation process, or SISP, order.

THE COURT: Indeed, I have that, too.

MS. FELLOWES: Excellent. All right.

THE COURT: This is why, counsel, hand delivery to my attention just makes so much more sense than relying on the filing and drives here at the court because, this way, everybody knows what I'm looking at, and that's very helpful in avoiding unnecessary adjournments. So thank you, counsel, for preparing these materials and indulging me in having them hand delivered, but I think it makes a big difference.

Carry on, Ms. Fellowes.

MS. FELLOWES: Not -- not at all, and -- and I'm pleased to be able to -- to get those to you in a timely manner. I should state that there was some initial errors in the documents which were initially filed on Tuesday. There were some clerical typos and other edits that needed to be removed from the -- the first form of orders, but those were quickly noticed and rectified and the service list was provided with the corrected copies the next day.

THE COURT: Thank you.

MS. FELLOWES: All right. Thank you.

THE COURT: All right.

MS. FELLOWES: Okay. Justice Jones, yes.

THE COURT: How do you want to proceed application-wise? Do you wish to make comments on the overriding objective of elevating this to CCAA, the merits of that? I presume we'll have --

MS. FELLOWES: I do.

THE COURT: -- no objection to that, unless, for example, Ms. Bourassa is unhappy with the possibility of it going into CCAA should I, I'm not saying I will, but should I decide to exclude the litigation. Don't know whether she's going to make that a condition of her support for CCAA proceedings, but we'll find out from her when she decides to respond to that. So why don't we talk about CCAA?

MS. FELLOWES: Yes. Excellent. Thank you. You'll -- this is an application for a conversion of the proceedings from the proposal proceedings under the *Bankruptcy and Insolvency Act* and to the *Companies' Creditors Arrangement Act*. There is a statutory provision which confirms that proceedings may be converted from a BIA into a CCAA proceeding on the condition that the formal requirements for a CCAA proceeding are met and the company has not yet filed a proposal. I can confirm in this case the company has not yet filed a proposal and the evidence before you is that the company does meet the formal requirements of a filing under the CCAA, it -- and its affiliated companies have debt in excess of $5 million and they have filed the necessary financial statements and other materials in support of the application. They are in urgent need of creditor protection in order to continue and finalize the restructuring process that began several months ago.

THE COURT: Thank you.

MS. FELLOWES: The -- the following application is an application for an amended and restated initial order under the CCAA --

THE COURT: M-hm.

MS. FELLOWES: -- and the Court will know that, usually, there is a 10 day period between the initial order and the amended and restated initial order, or the comeback hearing.

THE COURT: M-hm.

MS. FELLOWES: In this case, we propose to have both applications heard on the same day, therefore -- therefore, skipping over the usual 10 day period, but my -- in my submission, that is appropriate for the following reasons. In this case, there are no additional court ordered charges being ordered, which have -- would have the effect of prejudicing rights of any creditors. Importantly, the Court ordered charges that were granted the initial BIA proceedings, the admin charge of $300,000 the directors and officers charge, and the key employee retention plan charge, is simply being preserved and ported over into the new proceedings. There is no attempt to increase those charges, and, in fact, the key employee retention plan charge has now been decreased by 25 percent because there was a payment made to those key employees back in July.

THE COURT: I see.

MS. FELLOWES: Furthermore, there is no party prejudiced by having both of these matters heard on the same day. All of the creditors have been very involved in the BIA proceedings for several months now and have had notice of these proceedings and, because their rights are not being affected in any way other than the conversion of the -- the restructuring and (INDISCERNIBLE) process and the extension of the time, of course, we submit that it's appropriate to have both applications heard on the same day.

THE COURT: Thank you.

MS. FELLOWES: It's simply a way to conserve legal fees in what is already a very -- a restructuring which is -- is very focused on preserving fees as much as possible.

THE COURT: I understand.

MS. FELLOWES: Yes. I should note that, unlike many restructurings, this -- in this case, the company has, so far, avoided needing a debtor in possession or interim financing, and that's actually to the benefit of all the creditors that costs -- restructuring costs are kept low so that we can avoid having to get DIP funding to fund this process, and that, of course, is to the benefit of all creditors because their position is not (INDISCERNIBLE) by DIP funding.

THE COURT: Thank you.

MS. FELLOWES: All right. Thank you.

THE COURT: So I've read the initial order, I've read the ARIO, and subject to any further comments you may have on those and comments that I will invite from anyone else here, do you think, Ms. Fellowes, it would be appropriate, then, to say the Court will tentatively approve those forms of orders subject to, number one, any comments anyone may wish to make in connection with them at this stage, and, number two, any comments anyone may wish to make after we've had a more fulsome discussion of the SISP order, does that seem reasonable?

MS. FELLOWES: It does, indeed, Justice Jones. I -- I should note, just because I should put this on the record as well, that there is a slight change from the BIA proposal proceedings into the CCAA in that there is a new applicant that we are adding to these proceedings --

THE COURT: M-hm.

MS. FELLOWES: -- and that is a company called 420 Dispensaries.

THE COURT: Right. Got that.

MS. FELLOWES: It was -- yes, it was not originally put into the BIA proceedings because it is simply an empty shell company and has no assets or liabilities other than the shareholdings of its subsidiaries, but because we are now going into a CCAA process and a SISP, we thought there might be some buyers out there who might be interested in that shell company, so it was better to put all of the family of companies together in -- in one pool.

THE COURT: Am I correct it's a wholly owned set of 420 investments?

MS. FELLOWES: That's correct.

THE COURT: Okay. Makes sense to me.

MS. FELLOWES: Okay.

THE COURT: So --

MS. FELLOWES: All right.

THE COURT: -- Ms. Fellowes --

MS. FELLOWES: Yes.

THE COURT: -- anything more you want to talk about on those two orders, or is this an appropriate time for me to invite any other comments? Up to you, it's your application.

MS. FELLOWES: I believe those are all my comments on those two orders, the initial order of the (INDISCERNIBLE) and the ARIO.

THE COURT: Thank you. Would anybody else like to comment on those or anything else they've heard Ms. Fellowes and I discuss thus far?

Submissions by Ms. Bourassa (CCAA)

MS. BOURASSA: Good afternoon, Sir. Kelly Bourassa for the record. I don't have any objection to what you have proposed by way of proceeding. I don't intend to have a later objection to the conversion to the CCAA on the basis of any decision you make on the SISP, but I do see them as being somewhat interrelated because you will have seen in our materials we are questioning whether there has been an acting diligently and in good faith, which ties into our view on the SISP, and given that is a threshold requirement, I just wanted to put that on the record at this stage so that it wasn't lost sight of later as we're having our discussions.

THE COURT: Well, good, because I anticipated you might want to have the opportunity to make some representations in that regard, Ms. Bourassa, which is why I was careful to predicate my approval of those two orders on any subsequent discussion we may have in connection with the SISP or assertions that perhaps one or more parties may not have acted in good faith and the extent to which that may or may not colour the decision the Court makes, so we're on the same wavelength as to procedure here.

Anything else you want to say about these, Ms. Bourassa, at this stage?

MS. BOURASSA: Nothing on those orders, no. Thank you.

THE COURT: Thank you. Anyone else like to comment on that? Anybody from KSV?

Submissions by Mr. Selnes (CCAA)

MR. SELNES: Yeah. Thank you, Sir. This is Michael Selnes from Bennett Jones who is counsel for KSV, the current proposal trustee and the proposed monitor.

THE COURT: Yes.

MR. SELNES: And you have indicated that you've had the opportunity to review the proposal trustee's report, so I don't intend to go through that in verbatim or in any significant way, but just wanted to note both for you and for the record that at section 5.2, the proposal trustee has indicated that it does support that the companies (INDISCERNIBLE) the proposal trustee proceedings have been acting in good faith and with due diligence and that the CCAA will be advantageous by allowing for a longer stay period past November 29th, 2024 to both run the claims process that has been proposed, as well as to run the SISP in whatever form may or may not be approved, and that there's no specific material prejudiced to anybody in continuing the CCAA, and so in that regard, the Monitor has consented to act and has provided a -- a written consent to act as Monitor.

And I think the other important thing to reference, and I don't know if you wanted to get into this now or later, but the cashflows up until the end of the stay period proposed are attached as schedule B to the report, and the key point there being is there is sufficient liquidity in the cashflows to run through the next 2 1/2 months or so. And as Ms. Fellowes had noted, there's on current need for debtor in possession financing that's been identified.

THE COURT: Okay. Thank you, Mr. Selnes, for those comments. You and I will have a more fulsome discussion later today about KSV's position on what should or shouldn't form part of the SISP, so we'll return to KSV's views and recommendations on that narrower point later on. Thank you, though.

Anybody else like to comment? Hearing no response to that invitation, Ms. Fellowes, let's park those. Do you want to go to the claims procedure order and clear that out of the way?

MS. FELLOWES: Yes, let's do that.

THE COURT: I have it in front of me.

Submissions by Ms. Fellowes (Claims Procedure Order)

MS. FELLOWES: All right. Thank you. Part of our application for the initial CCAA order attached a draft form of claims process order, which I believe was schedule C to the application.

THE COURT: M-hm.

MS. FELLOWES: I can advise the form of -- the form of order has not changed in any substantive way since the filing of the materials, however, there is a section of the order which directs the Monitor to file an advertisement in the Globe and Mail by September 20th, and the Monitor has advised that that's going to be quite difficult to do as the Globe and Mail needs a little more time to get that advertisement ready to go, so they have requested that we make a small change to the claims process order simply stating that the advertisement shall run as soon as possible in the Globe and Mail.

THE COURT: Okay.

MS. FELLOWES: I -- I didn't have time to revise the order before the -- the hearing today, but with the Court's permission, I will make that small change and then send over the revised form of order for your signature.

THE COURT: Perfect.

MS. FELLOWES: Okay. Just to briefly touch on the substantive reasons for the claims process, the company is now moving into the stage of these proceedings where it's going to be very important for them to understand exactly how much is owed to both their unsecured creditors and, more importantly, the landlords to which we have issued disclaimer notices.

THE COURT: M-hm.

MS. FELLOWES: If you've read the materials, you'll see that we were originally party to 44 leases at the time of the filing and, since the filing, we have disclaimed 16 of those leases.

THE COURT: Right.

MS. FELLOWES: Two of the disclaimed leases have hired counsel who have filed an application to object to the disclaimer of those leases, and in fact, the time that was originally reserved for this hearing was set aside to deal with those landlord disclaimers. However, that -- those -- those objections and the application surrounding those objections were adjourned sine die on the consent of all the parties involved as we continue to provide counsel for the landlords with further financial disclosure and also continue to work with them hopefully to find a resolution to their concerns.

THE COURT: Okay.

MS. FELLOWES: But importantly, Sir, at the operating company level, which is the 420 Premium Markets, which is, you know, the -- the level of our company which holds these unsecured claims and landlord liabilities --

THE COURT: M-hm.

MS. FELLOWES: -- in fact, there is only one secured creditor at that opco level, and that is Stoke, represented by Ms. Kour, and they are owed approximately just over 300, $320,000.

THE COURT: Okay.

MS. FELLOWES: Given that the value at this opco level, including the inventory and all of the stores and the value of the leases, far exceeds the amount of the secured claim, there's actually a very good chance, depending on the outcome of the SISP here, that the creditors at this level may have an opportunity to be paid in full, but in order to work towards a proposal that will see them paid in full, we need to know exactly how much they are owed, and that is the purpose of the claims process.

So we propose a 30 day claims process where the parties can submit their proof of claim to be reviewed by the Monitor, and then there are various forms and processes if there is any objection to the claimed mess. The universe of creditors is not large. We -- it's -- we're not talking about hundreds and hundreds of creditors here, we're -- we're talking about dozens and dozens of creditors, and so we're hopeful that at the end of the sales process we'll see -- we'll have some certainty, and that will help us greatly in developing a proposal for those creditors.

THE COURT: I didn't see a reference to a CRA claim, so I take it they're happy?

MS. FELLOWES: Yes. The good news is there are at least no

known CRA claims here. The company was up to date on all its GST remittances at the time of the filing and we understand the CRA has no concerns or ongoing audits.

THE COURT: Okay. Thank you. That's nice. Anything else you want to tell me on the claims procedure order?

MS. FELLOWES: No, I think that's -- those are my submissions. The trustee -- we worked with the trustee and proposed monitor closely in developing the timelines and the processes and they, I -- I believe, are reasonable in the circumstances.

THE COURT: Okay. Thank you.

Ms. Bourassa, Mr. Selnes, Ms. Power, comments from you, and anyone else?

MS. BOURASSA: I have no comment on the claims process, Justice Jones. Thank you.

THE COURT: Thank you.

Mr. Selnes?

Submissions by Mr. Selnes (Claims Procedure Order)

MR. SELNES: And very, very briefly, Sir. Again, the proposal trustee's written third report at section 8 on page 14 contains its submissions regarding the -- the claims process, and we don't understand there's any opposition and we do support the application for the claims process in the manner that Ms. Fellowes has presented, namely that it's necessary to complete one or more plans of arrangement to potentially exit the proceedings through a restructuring that allows for landlord claims to be quantified and it would feed into a sales process. And so I think importantly as well, it's the proposal trustee and proposed monitor's opinion that the timelines are sufficient and consistent with similar processes and, therefore, recommend that this Court would approve that.

THE COURT: Thank you, Mr. Selnes.

Ms. Power, anything from you? Do we have a Ms. Power with us?

MS. BOURASSA: Oh, I believe you mean Ms. Kour.

THE COURT: I'm sorry, Ms. Kour. Thank you.

MS. BOURASSA: Yes, no, that's fine.

THE COURT: My mistake.

MR. KOUR: Good afternoon, Justice.

THE COURT: Sorry, Ms. --

MR. KOUR: Nothing from us. We do wish to (INDISCERNIBLE) for some of the relief that the applicants are seeking, including the SISP, but we -- I'll speak to that when you're ready.

THE COURT: Okay. Thank you, Ms. Kour.

Anybody else want to comment before we move on?

Okay. We'll treat the claims procedure order as we have treated the interim order and the amended interim order.

So, Ms. Fellowes, we move to the SISP --

MS. FELLOWES: Yes, we do.

THE COURT: -- and I have thought about this a lot and tried to understand the reasons why 420 and High Point diverge, and I must say I thought it might be helpful for me, if you don't mind, before we have a more fulsome discussion of the merits of either including or excluding the litigation from the SISP, if it's clear that I understand what my options are today.

So what I thought I would do is share with you and everyone else what I understand to be the choices that are presented to me. One is simply approve the SISP without the litigation or the 420 shares. The second is do not approve the SISP without the litigation, simply say, you know, with no litigation, which I am not prepared to order -- or, I'm sorry, let me back up and say option number two is to say to you, no, Ms. Fellowes, I will not approve your SISP unless you agree to add the litigation and the shares, so that would be option number two. Option number three would be a direction from me to say, yes, I'm approving the SISP and, yes, you're adding the litigation and the shares. So slightly different from two because it's a direction to do something, not a simply, no, unless you decide you want to add those two. Do you see the distinction that I'm drawing there?

MS. FELLOWES: I do.

THE COURT: Okay. And I guess another option that occurred to me is why not do a part of this job and say, We're going into CCAA, we're converting, we are approving a claims procedure order, but we are deferring a decision on the SISP until, I don't know, Justice Feasby has had a chance to do something, I don't know whether that's hear it or hear it and decide it or hear and decide it and the Court of Appeal's heard it and decided it or the Court of Appeal's heard it and decided it and you sought leave, somebody sought leave, to the Supreme Court, but, you know, and this may have no merit from a practical point of view and I expect you and your colleagues to tell me if that's the case, but another option that occurred to me, option four, was give you part of what you're asking for, but defer the rest. That may not be a practical result, but if that's an option that's open to me, then it seems to me relatively important for me to understand if that is a choice I can make.

So care to comment on those four possible doors through which I will walk through this afternoon?

MS. FELLOWES: Yes. Thank you. And -- and I think you've correctly summarized your options. I suppose there -- there might be another option where you -- you set a date, we -- we pick a date and say, Well, the litigation isn't going to be included now, but it will be on or before a date certain. And I can advise you this is -- this is a difficult position, I will speak with respect to the allegations of bad faith against my client, but practically speaking here, we are less than 3 weeks away from the appeal of a summary judgment application. Justice Feasby will be hearing the appeal on October 8th and --

THE COURT: Oh, the 8th? I'm sorry. Okay. The 8th.

MS. FELLOWES: Yes. Yeah.

THE COURT: M-hm.

MS. FELLOWES: And, in fact, we've gone to great lengths to make sure that this appeal was expedited and would be heard with additional materials, and we realize how important this hearing is to the proceeding.

THE COURT: Well, we'll have a discussion --

MS. FELLOWES: So it's not that the --

THE COURT: We'll have a discussion about that because I'm

not convinced that it is, so, but, yes --

MS. FELLOWES: Okay.

THE COURT: -- we'll have a further discussion about that in a minute. Carry on. Sorry.

MS. FELLOWES: Okay. All right. In -- in our view, this has been a gatekeeping item, a threshold, a watershed moment in this restructuring is going to be the hearing of this appeal and/or the determination of this appeal.

THE COURT: M-hm.

MS. FELLOWES: And I realize we don't know what's going to happen on the appeal, perhaps we win, perhaps we lose, but we want to keep our options open until that time, and part of keeping the options open means preserving this litigation not just because there's some liquidation value in it, but because it could form a piece of collateral against which a new litigation funder or a new investor might put some new money into this company, but they're never going to do that with the -- with an appeal pending and with the uncertainty surrounding the appeal.

Discussion

THE COURT: Okay. Let me challenge you on everything you've said. So my first point is, if I thought anything Feasby would say on or about October 8th would be the end of the matter, I might have more sympathy for your position, but I've worked here long enough to realize that we can't say that with any certainty. So I can't easily embrace the notion that October 8th is going to be a defining date in the history of CCAA because whatever he says and whenever he says it, it may end up somewhere else. And so to say that that's an important date, you know what, maybe you've got intelligence that I don't have, but I'm just sitting here today trying to figure out what degree of certainty I can achieve in saying, yes, people's interests aren't adversely prejudiced here, Tilray isn't being hung out to dry, this whole process doesn't take longer than it really should and cost a heck of a lot more than it need otherwise take because this issue of the 420 judgment is going to be resolved in the next few weeks. I'm not comfortable that's the case, but maybe, as I say, you've got a different reason for coming to that conclusion.

My second point is, and we might as well get to it right now because, if you don't mind, you know I like to ask questions and then have you answer as we go so I can figure out where we are, but, yes, okay, sure, I get it, the 420 judgment and the litigation, the main action, is important for obvious reasons, you know, it affects the balance sheet of 420

profoundly, it basically is the balance sheet or largely the balance sheet of 420, but my threshold question for you is this. It seems to me you're the one with the onus of establishing what a principal basis is, what is the principal basis for excluding this litigation from the SISP? Because, otherwise, unless I'm mistaken, the default would be that it would be included.

So back to you to tell me what the principal reason for excluding it is.

MS. FELLOWES: Sure.

THE COURT: And, secondly, you've got to say, Wow, if the value of the litigation, the main action, and the value of 420's judgment, the 420 judgment is so important, like what better place to determine what if anything it's worth for CCAA protections than in the course of, and I'm sure you were expecting me to ask this question, what better place to determine what it's worth than in the context of a SISP where arm's length parties can come in, spend their money, figure out what it's worth, get a couple of actuaries or litigation consultants to tell them what the outcome of this litigation is going to be, and formulate their views on what the true fair market value of both the 420 judgment and the main action is? But that doesn't happen until the litigation is in the SISP.

Thoughts on those two points?

MS. FELLOWES: Well, firstly, I'll say I -- I agree with you that the best way of valuing an item for liquidation or marketing or otherwise is to put it in a SISP. But I think it's important that we don't just focus on the sales part of a SISP, but also the investment part of a SISP. To be clear, this is not a liquidation proceeding.

THE COURT: Okay.

MS. FELLOWES: 420 is not hopelessly insolvent. In fact, they -- their -- their revenue is -- is quite good right now. We have great hopes and belief that this company can be saved. This company can make a viable proposal or a plan to its creditors, see its unsecured creditors and landlords paid out in full, deal with their secured debt, and emerge from these proceedings. It is one of the few, frankly, viable cannabis companies that are -- are operating in Alberta today. It's a bit of a success story and it got derailed by this litigation.

THE COURT: Is it fair to say, then --

MS. FELLOWES: So --

THE COURT: -- Ms. Fellowes, that the degree to which there is a realistic prospect of 420 carrying on into the future happily depends directly and, importantly, on resolution of issues surrounding the litigation and the 420 judgment, and so, therefore, the sooner those issues are resolved, the value of the 420 judgment and the value of the litigation, the sooner those issues are resolved in a SISP process, the quicker everybody can move to that happy state that you say quite probably lies ahead for 420?

MS. FELLOWES: Well, I would agree with you except it's not just the litigation, it's the counterclaim.

THE COURT: M-hm.

MS. FELLOWES: They work together, right, so the -- the claim is for breach of contract, the counterclaim is for repayment of debt, and then there's an argument about whether that counterclaim is actually due and owing and there's an argument about setoff. So they do work together, and the certainty that can be brought to this process if we win the appeal is a huge part whether anyone is going to invest in this company and whether this company can make a viable proposal. I'm not predicting what will happen, but if we lose the appeal, it's going to be very difficult to move forward --

THE COURT: Well, if I was a litigant --

MS. FELLOWES: -- but if we win the appeal --

THE COURT: -- I might be heard to disagree with you, I might be heard to say, you know what, what Feasby does or doesn't think about the 420 judgment is neither a determination of its value, because, presumably, it's a liability on 420's balance sheet and the main action for $130 million is a contingent asset on its balance sheet, so we've got a balance sheet with an asset and a liability, and what Feasby says about it, neither one will not be final and really isn't going to be an expression of value. And while it may influence somebody's attempts to value it, I guess I'm just saying to you, if what we're seeking is the same thing, which is to place a value on the asset represented by the main action and the liability represented by the 420 judgment, why don't we let the people who are the ones going to be writing the cheques make that determination? (a) it puts responsibility in the hands of the people whose money is in play; number two, it has to move fairly quickly and seems to be somewhat independent of whether there is or isn't an appeal from Feasby's judgment, and, I don't know, in my simple mind, (c) it seems somewhat consistent with the purposes and objectives of CCAA because it expedites resolution, allows parties with an interest to make a determination of what things are or are not worth to them, and, I don't know, maybe balances the interests of stakeholders by utilizing market forces in a rational way.

That's my thinking on that, subject to what you have to say. Back to you.

MS. FELLOWES: Well, thank you, Justice Jones. I -- I emphasize again this is not a fire sale liquidation, this is a restructuring --

THE COURT: M-hm.

MS. FELLOWES: -- and in a restructuring process, a debtor is not obliged to put everything on the market. They can choose to restructure this company the way they want to, they can choose to put forward a SISP that is going to be responsive to the needs of the creditors, the market, and the company.

Importantly here, Ms. -- Ms. Bourassa's client states that we acted in bad faith because we proposed in our SISP to exclude the litigation, but if you actually read the SISP, it's a matter of timing. We are not attempting to take away any of High Park's rights, we're not attempting to take away their rights to credit bid, we're simply asking to delay, including the SISP, until the appeal is determined --

THE COURT: But --

MS. FELLOWES: -- so it's a matter of timing.

THE COURT: But aren't you compromising the interests of Tilray's shareholders? If I was a Tilray shareholder, couldn't I be heard to say, no way, I want this issue of the 420 judgment, its value, and I want this issue of the litigation, the main action, determined as soon as possible because I'm sitting here as a shareholder of a public company and share values being impaired by, you know, a litigation for 130 million bucks on its books. Don't I have some responsibility to consider the interests of the Tilray shareholders as shareholders in a significant creditor?

MS. FELLOWES: Well, I don't know anything about the shareholders of Tilray, but Tilray has counsel here and -- and has made it known that they -- they do want the litigation included in the SISP.

THE COURT: Yes.

MS. FELLOWES: It's -- it's important to -- to talk a little bit about the discussions that have been going on I think between counsel as well because I was taken aback when I heard from Ms. Bourassa and her client that they were alleging bad faith on our part. It has always been part of our discussions with Tilray that they could

credit bid and they could participate in the SISP pending the appeal if -- and that's -- that's the part that's missing from all of this dialogue here, it's a matter of timing. We would like to have a little more time --

THE COURT: M-hm.

MS. FELLOWES: -- to see if we can -- if we can win the appeal and if we can then get an investor to put some new money into this company, to fund the litigation again, to see a payout to our unsecured creditors and landlords --

THE COURT: Okay.

MS. FELLOWES: -- and make a proposal. So that's what we're asking for, is some breathing room and --

THE COURT: My decision on the SISP is not going to turn on the bad faith argument, subject to what Ms. Bourassa has to say. My decision on the SISP is going to turn -- well, I'm not saying the bad faith argument is irrelevant, but I'm saying, from where I'm sitting right now, I don't want to spend more time on that than on other issues because I think --

MS. FELLOWES: All right.

THE COURT: -- my job here isn't to punish 420 for alleged bad faith. I don't know what that accomplishes except to say, yes, okay, the litigation and shares are going in the SISP because you've been naughty, I don't know that that's a particularly constructive thing for the Court to say. I think a more constructive approach for the Court to take is, okay, given the equities here, of which, you know, the bad faith argument is arguably a part, but given the equities, the diverse interests of the shareholders, which I still come back to and say must include the shareholders of a major secured creditor, Tilray here, I want to try to approach this issue of what should or shouldn't be in the SISP at this stage, from that perspective, with less emphasis on the bad faith argument, and I think you would agree that irrespective of how the bad faith argument is or isn't resolved, that's a more logical and rational and equitable approach. Is that fair to say, Ms. Fellowes?

MS. FELLOWES: That is fair but, however, an allegation of bad faith is something that both myself and my client take quite seriously --

THE COURT: Okay.

MS. FELLOWES: -- so I would like an opportunity to address that, if I may?

THE COURT: You may, and I will sit and listen. Go ahead.

MS. FELLOWES: All right. Thank you. I understand from my friend's brief there are two main concerns by which she alleges that my client has acted in good -- bad faith, sorry. Firstly, she points to a piece of correspondence between my office and hers dated August 23rd, which is excerpted in her brief --

THE COURT: M-hm. Yes.

MS. FELLOWES: -- at page -- or at paragraph 23 states: (as read)

> 420 has no objection to High Park or its valid assignees' participation in a SISP process or credit bid that specifically relates to 420 Investments Ltd. subject to any direction from the Court hearing the appeal.

So it's that last part of the sentence that I think perhaps there was a bit of miscommunication over, but it was always the intention that Tilray could exercise those rights after the appeal was heard. That's why we put those words in that sentence.

Similarly, when you read the SISP that we put in our materials last week, it's not saying that the -- the litigation is excluded so that Tilray cannot credit bid or sell its position, it simply says it's excluded until the determination of the appeal. So our intent was not to prejudice any parties' rights, it was to put a time limit --

THE COURT: Okay.

MS. FELLOWES: -- around the inclusion of the litigation, and I'm not talking about months and years here. The -- the appeal, I know you -- you say that nothing important is going to happen on October 8th but, respectfully, we disagree. It's a -- it's a very important point for us. It's possible that Justice Feasby makes a ruling from the bench that day and it's possible that, as a result of that, we could see some real opportunities for refinancing.

THE COURT: Okay.

MS. FELLOWES: So we want to preserve that opportunity.

THE COURT: Okay. Fair enough. And I'm glad you pushed back on that. Thank you.

MS. FELLOWES: Okay.

THE COURT: So --

MS. FELLOWES: So --

THE COURT: Carry on. Yes, go ahead.

MS. FELLOWES: Yeah.

THE COURT: But let me ask you this, then. So you're not buying what I'm selling when I say, that's where I proceed subsequentially, value is important, clearly, the value of the 420 judgment is important, the value of the main litigation is important, but you're not buying what I'm selling when I say the best way to determine value is stick it all in the SISP now because you're not going to be getting offers before Feasby has done what you hope he'll do on October 8th, so why not get the valuation process started? And, in fact, maybe there'll be some useful information emerging from that analysis. What's wrong with kind of jumpstarting that process?

MS. FELLOWES: Well, that's a good question. To -- to be candid, we've already started that process, and, in fact, there -- there -- this isn't in evidence, but certainly Ms. Bourassa's client will know that this litigation proceeded to a mediation last year --

THE COURT: Oh.

MS. FELLOWES: -- which failed --

THE COURT: Okay.

MS. FELLOWES: -- but as a result of that mediation, there were experts' reports prepared and filed and exchanged between the parties. We didn't want to include those in any of our court materials now, of course --

THE COURT: Right.

MS. FELLOWES: -- because they are privileged and confidential --

THE COURT: Right.

MS. FELLOWES: -- but some work has been done on the valuation aspect of this already as part of that mediation.

THE COURT: I see. Okay. Thank you. That's important.

MS. FELLOWES: Yeah. And that has been shared with the proposal trustee, so they are aware of it as well.

THE COURT: So what am I missing, Ms. Fellowes, when I simply state, it seems to me that we agree valuation of these two items is important, one is an asset, one is a liability, how does sticking them in the SISP at this stage prejudice your client given that there will be no offers before Feasby has done what Feasby has done, and given that the Court ultimately will or will not approve a proposal which is put before it? I guess I'm just struggling to understand, and maybe I'm slow, but I'm struggling to understand why we can't move down both paths at the same time, appeal of the 420 judgment and a more comprehensive SISP. I mean, let's suppose Feasby says something, right, on or about October 8th. Is there a chance that, depending on what he says, there may be a comeback application to discuss, based on what he said, whether the litigation and shares should or shouldn't be part of the SISP? Or are you telling me that they're going to be stuck in the SISP, irrespective of which direction Feasby goes on or about October 8th? You're just waiting for the decision, but you're not telling the Court, are you, that irrespective of what the decision is, this stuff is going in?

MS. FELLOWES: Well, that's -- that's very -- that's a very cogent comment, Justice Jones, because we -- we've been trying to find a solution. I can tell you that I've reached out to Ms. Bourassa and her client several times in the last week to try to find some sort of way we can bring some finality to this process and also address her concerns and preserve my clients' optionality. And I did propose that perhaps we just adjourn bringing this into the -- the SISP for a month, but that -- that option was -- was -- or to a date certain and we find a date and we say it's either, you know, the -- the date the appeal is finally concluded or a date certain, I think I suggested some time in November, whichever is sooner. I've -- I've been trying to find some options --

THE COURT: Yes.

MS. FELLOWES: -- that would balance this out but, so far, we've been unable to reach an agreement on that.

THE COURT: But as we discussed at the beginning, that is an

option that we think is open to me, don't we? At least you and I. I can say, okay, I'm approving everything except the SISP is in stasis for a month or so, come back on October 10th and we'll have another discussion.

MS. FELLOWES: Absolutely. I -- I think that is within your authority and discretion.

THE COURT: That at least gets your client into CCAA, so September 27th isn't as bad a date. I guess the claims procedure order is still effective, it still works, and people are still pursuing that. The only thing that's not quick started, or jumpstarted, is the SISP. Is that a fair statement if I make that kind of an order?

MS. FELLOWES: Yes, as -- as I understand it. Obviously, we'd like to avoid multiple court hearings just with an eye to keeping this as lean a process as possible, but, yes, I -- I think anything is -- is open. I do see Ms. Kour has put her camera on, perhaps she wants to add something to this.

THE COURT: Sure, but before I entertain comments from Ms. Kour, let me ask you the threshold question again. If I put the litigation in the SISP and I put the shares in the SISP, given everything you and I have discussed, and thank you for your feedback, where is the irreparable harm to your clients for me making that direction?

MS. FELLOWES: Well, I -- I certainly am not suggesting there's irreparable harm, what I'm saying is we're trying to preserve our optionality, we're in the midst of restructuring where there's a lot of different variables --

THE COURT: M-hm.

MS. FELLOWES: -- and there are different purchasers floating around out there, there's different investors floating out around there. We think the proposal we've put forward gives us the best opportunity to engage with those people at this time, and that's what we're trying to preserve here in terms of our optionality, but we do -- I'll recognize, of course, that, you know, Tilray and High Park are not the only creditors here, there's Ms. Kour's client, who's actually in first position on the opco assets, and then there's Nomos, who is in first position on the parent co assets, and both of those parties want the SISP to get going, they've been waiting several months already for this SISP to get going, and they'd like to see a SISP that gives them optimum opportunity to get paid out in full.

THE COURT: Okay. And before I hear from Ms. Kour, why then -- you've just that, in your view, leaving these assets out of the SISP provides greater

optionality, that's the term you've used --

MS. FELLOWES: Correct.

THE COURT: -- which presumably means it preserves a wider range of choices available to your clients and, presumably, the Court, for dealing with the appropriate path forward in CCAA. Can you tell me why doing so increases the options? Help me understand why your optionality, as I've just described it, is enhanced by delaying including these assets in the SISP, or is that proprietary information that you would prefer not to put before the Court?

MS. FELLOWES: All I can say is, in the view of the people we've been discussing things with --

THE COURT: M-hm.

MS. FELLOWES: -- October 8th is a very important date, and it will, if we can get past that date and we're successful on that date or shortly thereafter, there are different avenues that we can pursue and we want to be able to preserve those.

THE COURT: Fair enough. I had to ask the question, but I also wanted you to know that I could appreciate the fact that you may feel uncomfortable giving me the kind of answer that you think I would like to have, so we're on the same page. Thank you very much.

Ms. Kour, would you like to speak on this?

Submissions by Ms. Kour (Claims Procedure Order)

MR. KOUR: I would, Justice, and thank you. My client, Stoke, is the first secured creditor at the (INDISCERNIBLE) level. It is not a creditor at the parent company level, and so has really no interest in the value of the (INDISCERNIBLE) anything to do with the litigation.

Stoke's concern is primarily that it has sat through the NOI process and cooperated with the applicant, and it was anticipated that a sale process would be run in that NOI process. (INDISCERNIBLE) a conversion to CCAA and (INDISCERNIBLE) with the applicant looking to approve a SISP, and that is -- that is urgent from my -- my client's perspective. We are --

THE COURT: I'm sorry, can you say that again? I'm sorry, I

didn't quite catch that.

MR. KOUR: The -- the -- apologies, Justice. The commencement of a SISP, from my client's perspective, shouldn't be delayed any further.

THE COURT: Okay. Can you say why?

MR. KOUR: Our position is that --

THE COURT: Can you tell me why?

MR. KOUR: Yes. Our position is that the - the marketing of the operating company assets --

THE COURT: M-hm.

MR. KOUR: -- shouldn't be delayed for the purpose of waiting for an appeal on litigation that has really nothing to do with the operating company and its assets.

THE COURT: I see. Okay.

MR. KOUR: So these are two -- two discreet categories of ethics, from -- from our perspective, and the company should be entitled to commence a SISP to start the marketing of assets that apparently no -- no party here opposes the sale of, and that's the operating company. So I don't hear anybody here objecting to the sale of the opco assets, and any delay, given that we are in an insolvency proceeding, Justice, time is not on our side and any delay results in the deterioration of my client's security and the value of the assets.

THE COURT: I see.

MR. KOUR: And what we wouldn't want is a delay of the SISP that may ultimately truncate the marketing period for these assets and, therefore, prejudice the realization of value.

THE COURT: Okay. That makes sense. Can you answer a question for me? Can you tell me what your position is on whether the litigation shares of 420 should or shouldn't be included as part of the SISP, or do you care?

MR. KOUR: My client takes no position because, again, these

are discreet assets, and, in fact, I -- I would say that the assets being packaged together may well prejudice the -- the creditors at the operating company level because there is some certainty -- uncertainty to the valuation of the litigation, and we wouldn't want bidders to be either confused or have any question as to valuation when they are submitting their bids. So the packaging of the assets may well be not beneficial to the creditors at the opco level.

THE COURT: Okay. Good. Thank you. Anything else you want to tell me before I ask Mr. Fleming to speak?

MR. KOUR: That is all, Justice, and thank you for letting me weigh in there.

THE COURT: Thanks very much.

Mr. Fleming, what would you like to tell me?

Submissions by Mr. Fleming (Claims Procedure Order)

MR. FLEMING: Hello, Justice. I act on behalf of Nomos, who is the first secured creditor, as stated before, for the holding company. We support the position of the company on the motion as drafted. The applicant, I think, has made a good case for the optionality part of it. We think that a hearing of the appeal will bring more certainty to the value by some degree, and we're prepared to support the company to keep that asset of the SISP until such time as the appeal is heard or dispensed with.

THE COURT: Okay. So at a high level, Mr. Fleming, your view is that it just keeps more doors potentially open, and it's also your view that there is no inappropriate prejudice to Tilray or its stakeholders, its shareholders, or anybody else by deferring that decision until after the appeal is heard. Would that be a fair statement?

MR. FLEMING: I -- I don't know enough of the Tilray position to say there's no prejudice. I don't think it's substantial enough to hinder our interest in proceeding post-disposition or finality of the -- of the Feasby -- Feasby hearing that we think should be heard before it's included in the SISP. So in terms of weighing that against the Tilray interest, I don't think I have enough information to do that, but we certainly support the company in the way they've drafted the motion.

THE COURT: Okay. And you seem to be confident that something of value to this whole process is going to emerge on or about October 8th from the Feasby decision. You, for whatever reason which you don't have to disclose, don't share my anxiety about whether that will actually bring some meaningful resolution to the

420 judgment?

MR. FLEMING: I think whatever degree of information we get in the -- in the hearing of that application will bring more certainty than we currently have, which will add to the ability to assess the value of that litigation in a more certain fashion. It's -- it's not going to be a hundred percent, but it's going to be better than what we have now.

THE COURT: Okay. Thank you, Mr. Fleming.

Ms. Bourassa, I'd like to hear from you. You've had the opportunity of hearing me challenge your friends and the basis for my anxieties, or questions. I'm trying to think of whether or not I have a high-level threshold question for you, but I guess if I did, it would be on the basis of what I've heard your friends tell me thus far, where is the prejudice in your view to your client from delaying inclusion of the shares and the litigation as the SISP? Over to you, Ms. Bourassa.

Submissions by Ms. Bourassa (Claims Procedure Order)

MS. BOURASSA: Sure. Thank you. And I -- I will answer your question, but I do want to kind of get one thing off the table. I'd like it to be very clear my view, and perhaps this isn't the jurisprudence, but my view is that good faith versus bad faith are not binary. If someone is not acting in good faith, I don't know that necessarily means they're acting in bad faith, and I would like just to be clear there are no allegations of bad faith. I think this is a spectrum and I -- what our materials say is it is not clear that the applicants have been acting diligently, and I'll come to the reasons for that, and it is not clear that they have been acting in 100 percent good faith. So I just -- I wanted that off the table because it was quite troublesome to my friend, Ms. Fellowes, and I wanted to make clear there -- there are no allegations with respect to conduct of the counsel at this hearing.

THE COURT: Okay. If it's that amorphous, do we really need to discuss the good faith/bad faith or somewhere in-between the two issue or can we just park it?

MS. BOURASSA: I -- I think we can park it, but I do think that it's important to know it's out there because it's a threshold consideration for the conversion, but, obviously, we're talking about the SISP now, and it's also a threshold consideration in any order that a Court grants in a CCAA. So it was important to be on the record, I can go into more detail of some of the particular issues.

But as far as the prejudice to our client, you have to recognize that our client wears two

different hats. Our client is a defendant in the litigation but, additionally, they are a secured creditor and, in fact, the largest secured creditor of this entire group of companies, and both of those aspects need to be considered, and the fact that they have a nearly $10 million claim which is secured and the only asset of -- against which they're likely to get recovery and which my friends say are the most valuable asset of the entire (INDISCERNIBLE), are not being (INDISCERNIBLE) the market, and so that's the prejudice, it's the delay and the fact that (INDISCERNIBLE) commentary about what the value of this asset is, but there's no evidence (INDISCERNIBLE).

THE COURT: So how significant is the delay? Talk to me about the delay, please. Why is the delay as requested by Ms. Fellowes to somewhere on or about October 8th so prejudicial? If you can, tell me.

MS. BOURASSA: So there are -- there are two different timelines that I wanted to take you through that -- that speak to the delay. This proceeding started on May 29th, so we're nearly 4 months later and there's been no progress on a -- a SISP, and -- and I do want to speak about the sale versus investment and -- and respond to some of my friend's comments in that regard because I -- I don't disagree with her. Putting the litigation in the SISP is not putting an asset into a fire sale. She herself indicated that there may be investors that are interested in putting in an investment dealing with this piece of litigation. How does one do that without putting it into a process and testing the market?

There -- so I'll start from the perspective, and -- and I think, Sir, that you said it to my friend earlier, it is the applicant who bears the burden of proving that the order sought is appropriate, and they have not given us any cogent reason, in our view, as to why the litigation cannot be included now.

Additionally, I see all of the concerns that have already been raised with the hearing before Justice Feasby in terms of no further certainty but, additionally, it doesn't change anything. The litigation is the litigation, the appeal, the summary judgment, is the summary judgment. And -- and just to put a bit of flavour on it, in Mr. Morrow's affidavit, he suggests that the litigation can be worth as much as $130 million. My client's claim is for just under 10. So if this asset is truly worth that kind of money, there's no mischief that can be had by putting it out to market. There's nothing in the sales process, and, in fact, I reviewed this morning for this point, there's nothing in the sales process that says once an asset is in it, they must sell it. This is the market test. My client, as a creditor, wants to know what value might be out there in the market for its collateral and --

THE COURT: Well, let me stop you there. Do you agree with my overly long comments to Ms. Fellowes that, gosh, value is really important both in the 420 judgment and the main action and, gosh, what's the best place to determine that? It's

in the market. And as you've said, it isn't going into the market unless and until it's in the SISP. And I've repeatedly asked Ms. Fellowes what exactly are these options that are kept open by deferring this until Feasby has made some sort of a call, and I understand completely why she and Mr. Fleming might be reluctant to expand upon those, but that's a problem for me because I don't know what benefit here, what tangible benefit to stakeholders, other than this general statement that it keeps our options open, I don't understand what benefit that really confers, but in my simple mind, getting this into a process where valuation can take place on the part of those who really have some skin in the game, people who might write cheques, seems to me, especially since it isn't going to result in a Court approved sale before October 8th, just kind of seems to me like a simple and straightforward way of dealing with this.

MS. BOURASSA: And -- and those would have been our submissions as well, that we think they should be put in. The other thing is, as far as the SISP goes, and -- and one of the concerns that we had is we want all of the assets put into a process -- in response to Ms. Kour's comments, the -- the SISP is clear that partial bids, there's -- there's nothing in the SISP that suggests that someone has to bid on every item in there, and I think the parties are sophisticated enough and the proposal trustee or the Monitor, if appointed as such, is quite capable of explaining to interested parties that they can bid on -- on some or all of what is on offer in the SISP.

But I wanted to take you to another timeline which goes to your prejudice point. So February 2020 was the commencement of the 420 action. March 2020 is High Park's counterclaim. March 20 -- March 2nd of 2023, so 3 years later, was the summary judgment application before Application Judge Farrington.

THE COURT: M-hm.

MS. BOURASSA: And the decision was in February of 2024. So as you can see, this -- this has already been a long drawn out process. My friend indicated at the end of her submissions that a decision of Justice Feasby would be important if they were successful, and so what I took her to be saying is that, if they are successful in their appeal before Justice Feasby, that that makes some difference. I don't know what that difference is, the Court doesn't know what that difference is, that difference is not in evidence, but I do want to -- want to point out, and as you've already flagged, that is not a final decision, there's still rights of appeal from Justice Feasby's decision.

And to go back to the timeline in this case today, after the -- after the February 2024 summary judgment decision and these -- this is -- this is all on the record, it's just in different places, but most of the litigation is attached to Mr. Morrow's affidavit. There is a secretarial affidavit that we had filed, which attaches a couple additional of the litigation

documents, and what those additional documents show is that after Judge Farrington's decision, there was an application for a stay of effectiveness of his decision and that was denied and then that was appealed the Justice Sidnell and Justice Sidnell equally denied it.

So you will see there is a long history of litigation in this matter. We sit here saying we do not understand how Justice Feasby's hearing -- the hearing before Justice Feasby in 2 weeks time, or whenever it is, makes any difference to anything because we know that won't be the final word.

THE COURT: So two questions emerging from what you've just said because I think I'm hearing a lot of what I've said coming back. Do you agree that the Court, as part of its CCAA function, should be cognizant of the interests of Tilray shareholders in this particular process, that they are stakeholders, albeit indirectly, through Tilray, but nonetheless their interests, however you define them, are things which this Court should properly take into account in making its decisions; yes or no?

MS. BOURASSA: Well, I think very clearly, High Park, who is a subsidiary of Tilray --

THE COURT: Yeah.

MS. BOURASSA: -- is a very clear stakeholder in these proceedings and is a creditor. I think that Tilray and High Park together are stakeholders to the extent this Court is making any decisions with respect to the litigation to which they are defendants.

THE COURT: Okay. So if that's true --

MS. BOURASSA: And by instance, then I suppose the shareholders.

THE COURT: Oh, okay. So if that's true, does it follow in your mind that in assessing the merits of Ms. Fellowes' client's request I should, knowing that time is probably not a friend and delay is probably not a friend of Tilray and High Park's shareholders, that I should have a good reason for asking them after the timeline you just explained to wait that much longer to begin a process that may help bring about a resolution, good or bad, sooner rather than later, given the importance of the time value of money?

MS. BOURASSA: I think that is a fair summary. We very clearly would like to get on with things and the only way to know what there is to get on with is to put this litigation out to the market to determine value.

THE COURT: Okay. My second question from what you've said is this, in reading the applicants' materials, and I think including either KSV's report or Mr. Morrow's affidavit, there's a concern expressed that allowing the litigation and shares to go into SISP will result in your client effectively stealing an asset of significant value as a result of a successful credit bid. To which I would ask you, well, if in fact it has that value, we'll find out, won't we? We'll find out if there's real robbery going on here as a result of the SISP and the Court will intervene in time to prevent that kind of a theft by virtue of the fact that it must approve a final order. Is that a fair statement?

MS. BOURASSA: I think that the only way to test the market is to put the assets out to the market.

THE COURT: Yeah.

MS. BOURASSA: Whether my client or an assignee of my client's claim make credit bid will really only go to value. There's no way to steal an asset out of a public process. If there is no value beyond the value of the secured claim, we'll know. I mean, Mr. Fleming is here. His client was the litigation funder prior to the proceedings, but they terminated the litigation funding in and around the -- the commencement of the proceeding, so I'm -- it's not entirely clear whether he has any interest, other than as secured creditor to tune of a million dollars, and that money is in front of my client. So the only way to know whether there's value in this litigation is find out if someone will buy it and maybe there's no value, we don't know.

THE COURT: Okay. Well, I think you're saying what --

MS. BOURASSA: But I do --

THE COURT: -- I said, which is, and perhaps "steal" was the wrong word, but the inference I drew from submissions was there's some concern that a very valuable asset may inappropriately disappear from 420's balance sheet as a result of placing the litigation and shares in the SISP and having a successful credit bid, to which I asked you and Ms. Fellowes, well, wait a minute, that's what the SISP is going to do. It's going to tell us just how valuable that asset is and there will be appropriate checks and balances here to make sure that "theft" doesn't arise, and I think you're agreeing with that.

MS. BOURASSA: I am. And I was just going to conclude by saying that you had asked -- you had specifically referenced the fact that it comes back to Court and you're quite right. It's not as though approving this process today is approving the ultimate sale that will come forward at the end, if any.

THE COURT: So --

MS. BOURASSA: There is with (WEBEX AUDIO INTERRUPTED) and opportunity, this has to be brought to court and the Court has to be comfortable on the application of the applicants and -- and hearing from the -- from the proposal trustee or Monitor that whatever's being brought forward is the highest and best and in the best interests of all of the stakeholders.

THE COURT: Okay. That's helpful. So question for you, Ms. Bourassa, a delayed fuse, if you will, lighting the SISP process, but having a deferral, if you will, of putting the litigation and shares in the SISP, perhaps postponed to a date certain on or about October 8th doesn't get your client where your client wants to be and that is because what, there's been inordinate delay to date in your mind?

MS. BOURASSA: Well, there has been inordinate delay. And I don't even know that I should characterize it as inordinate, you know. I'm a creature of real time litigation. I don't know if this is longer than a regular litigation. We all know it takes a long time, but there has been significant time that has passed. And to our point -- my point at the beginning, in terms of the diligence of -- of the company in bringing forward -- forward a sale process, when they appeared in court on June 27th, which was the first court appearance after the NOI proceedings were commenced, they said that the SISP would come forward in July and now we're at the end of September and they bring it forward and it doesn't contain what they say is their most valuable asset.

The proposal trustee says that the SISP -- and this is in section 7, paragraph 1 of the proposal trustee's report. The proposal trustee says the SISP will enable the companies to test the market and pursue a transaction or investment that maximizes value for the company's stakeholders. And what my client says is, Why are they not concerned about the most significant secured creditor and why are they not concerned about (INDISCERNIBLE) market, the -- what they say is their most valuable asset.

But to your direct question about the -- the delayed fuse, I have two answers. The one is, given there is no rationale in evidence as to why the (INDISCERNIBLE) be delayed and there is nothing that will happen on October 8th that will change the fact that there is a litigation claim which has a separate counterclaim where there's a summary judgment. Maybe that summary judgment is overturned. Either way, that is going -- and -- and unlikely that there will be that decision (WEBEX AUDIO INTERRUPTED). That decision will likely be reserved and then there will be appeals and who knows what will happen. But the way the -- this is proposed is that the phase 1 bid deadline is not until November 15th.

We say, put it out there, make sure it's in the data room (phonetic), make sure it's in the sim, in the teaser, so that everything is moving on the same timeline. And part of that is because, yes, our client may (WEBEX AUDIO INTERRUPTED) a bidder in the proceedings. They may credit. And if they do so and if they are the successful bidder, they want to be able to rely on a comprehensive process. You punt this down the road more, you're just (WEBEX AUDIO INTERRUPTED). And -- and contrary to the overreaching (INDISCERNIBLE) CCAA proceedings, which is a timely (INDISCERNIBLE) and impartial (WEBEX AUDIO INTERRUPTED) policy.

My friends who have the (WEBEX AUDIO INTERRUPTED) of proving that the order they're seeking should be sought have provided no reason why there should be delay. And so it's a bit difficult to respond to that (INDISCERNIBLE) --

THE COURT: Okay.

MS. BOURASSA: And (INDISCERNIBLE) onus, they have (INDISCERNIBLE). In response to your next question, they have (WEBEX AUDIO INTERRUPTED) and now they have commenced a SISP that doesn't include the assets that they know our client is interested in.

They are also -- and this is the concern that we've raised in our brief and I don't want to -- I don't want to belabour that because I know you've -- you've read our materials, if we allowed the SISP to proceed without the ligation or with the litigation carved out in some fashion, there is a -- there is a severe risk that what the Court is authorizing is that applicants essentially take any residual value out of this company. They sell the asset of the operating companies and they pay their creditors and they leave our client in a shell company that has no assets and has a $10 million liability (INDISCERNIBLE) --

THE COURT: Okay. So --

MS. BOURASSA: -- which has been (INDISCERNIBLE).

THE COURT: -- stop there. So that point comes through in your brief. So your concern here is that this could work harm and evil, if you will, to your client because, if I've got your argument properly, keeping the litigation and shares out of the SISP and dealing only with other assets and the prospects of being able to monetize those will, given the security arrangements, strip these companies of anything that your client could meaningfully realize against. If I've got that right, then your argument is, but that evil is partially addressed, or totally addressed, by including the litigation and the shares as part of the SISP, what, because it just provides for a more fulsome analysis of the asset

liability matrix that various potential investors or purchasers should want it know about? Help me understand that.

MS. BOURASSA: And -- and because they're -- they're moving on the same -- on a parallel track. There's nothing that says one thing had to be done before the other. Our view is they should all go on a parallel track. The -- the SISP should continue. The litigation should be in it so that the entire package of assets is in the market, although it's very clear that this isn't a packaged sale. The hearing of the appeal can continue on a parallel track and any party who is interested in making a bid on the litigation will be fully advised of how that ongoing appeal impacts them.

One would think that the value of the litigation is more diminished by the fact that -- that litigation has only just begun and there's a long way to go to get it through to the end and there's a lot of uncertainty about value. But I'm sorry, I lost your -- your direct --

THE COURT: Well, --

MS. BOURASSA: -- question.

THE COURT: -- no, you've answered it.

MS. BOURASSA: Missed -- I went around the circle, I think.

THE COURT: Yeah. Except that I'm not clear on one thing. So I get the delay argument, right. I get that. What I'm not grasping is your argument there is an economic downside risk to your client of not including the SISP in the share -- I'm sorry, not including the litigation and SISP -- sorry, the litigation and shares in the SISP. I understand the delay argument, but what I don't understand is why not including those assets in the SISP corrupts, if you will, the process of various interested parties arriving at a clear and comprehensive understanding of the acquisition/investment opportunity that may be here. Do you see my question?

MS. BOURASSA: No, I don't actually, I'm sorry. Can you try that again?

THE COURT: It's okay. I will. I understand why you are concerned that deferring the inclusion of the litigation and the shares in the SISP creates additional delay with all of the unfortunate consequences of that. But what I thought I heard you say, and I may be wrong, but I thought I heard you say is there is an economic detriment to your client, quantifiable economic detriment to your client, not just because of delay, but because if the litigation and shares aren't included in the SISP, I thought you

were saying that is going to distort the valuation process. It's going to corrupt or distort the process of investors, purchasers, arriving at a fulsome appreciation of what this opportunity does or doesn't provide. And therefore, in order to avoid that corruption, that distortion of the, you know, investment analysis or economic analysis of whether I want to be an investor or a purchaser of assets or both, including the litigation and shares in the SISP helps to respond to that potential for distortion. Does that seem clear?

MS. BOURASSA: I don't think that I'm suggesting that because --

THE COURT: Okay.

MS. BOURASSA: -- in fact, I'm not suggesting that the party interested in the operating assets would also be interested in the litigation, which I think --

THE COURT: Okay.

MS. BOURASSA: -- is what you're thinking about. The issue is our client is the largest secured creditor of this company. There is a process that has been commenced to test value and what the applicants have said is their most valuable asset, the only evidence of that we have is Mr. Morrow saying, This is our most valuable asset, and I don't know Mr. Morrow to be an expert. And so as a secured creditor of 420 parent, my client says, Well, what about me? You're looking after all the other creditors, you're marketing for sale or investment the assets that they have as their collateral or against which they have unsecured claims, but you're sidelining and we should be included in the process and we should be treated the same as other creditors, meaning our collateral should also be put out and the market tested. And there's already been 4 months of delay, which is the reason that my friends are now seeking to convert this to a CCAA because they haven't been able to move it quickly enough through the notice of intention proceeding.

And so we're saying, Look, we've been in this litigation for 4 years, we've had this summary judgment for, you know, 6 months, we've had the applicant continuously hinder that in terms of seeking a stay, appealing the stay order and now there is a stay of proceedings that hinders our ability to enforce or to collect on our -- our (INDISCERNIBLE). And -- and now, we finally get to the sale and you decide not to include the asset that if there's some great investment opportunity and a ton of money, we'll get our secured claim paid out. We may still have to defend the litigation, but if there (WEBEX AUDIO INTERRUPTED) $130 million, just to use the number from Mr. Morrow's affidavit, and I'm -- I'm not suggesting that we agree with that number, I don't know where that number comes from and if someone --

THE COURT: Well, doesn't it --

MS. BOURASSA: -- paid --

THE COURT: -- come from the request in the Statement of Claim for $110 million worth of damages, plus 20 million of punitive damages?

MS. BOURASSA: That must. That must.

THE COURT: Okay.

MS. BOURASSA: So if someone pays $130 million for this claim, our client, as a secured creditor, at least gets its secured claim paid, right? It still has to litigate.

THE COURT: Yeah.

MS. BOURASSA: Fine, but presumably, if someone's paying $130 million dollars for a claim, they're not impecunious.

THE COURT: Okay. So I think I heard you say a few minutes back -- oh, I'm not losing you, am I, Ms. Bourassa? No.

MS. BOURASSA: No, I've lost my pen. It's very disconcerting to me.

THE COURT: I may or may not have heard you say this, but I thought it was important, and that is I thought you said, that by not including the litigation and shares in the SISP, the Court might be viewed as showing a preference for the interest of some creditors to the detriment of others, i.e. your client. So in other words, there's kind of an inequity here amongst the class consisting of all creditors as a result of that exclusion.

MS. BOURASSA: I don't think I was suggesting that the Court would be seen as giving a preference, but I was very clearly saying that the proposal is a proposal to not treat all creditors the same, which is part of why it's inequitable and why it shouldn't be approved. You saw the -- our discussion about the *Soundair* factors in -- in our brief and that is why of your -- of your options at the beginning of the -- of my friend's submissions on this, it seemed that approving the SISP with the direction that the litigation be included was -- and in our -- in our brief we say that, right? We say, Either the SISP should not be approved or it should include the litigation. And I do just want to clarify a point on the shares --

THE COURT: Yeah.

MS. BOURASSA: -- because there seems to be some confusion about that. I am not aware of a basis upon which the shares of 420 parent would be excluded.

THE COURT: I thought the concern was that, if you got a controlling interest in the company, you could effectively do things you might not otherwise be able to do.

MS. BOURASSA: That I agree with. I agree with what the concern might have been, but what I'm saying is the shares of 420 parent are not held by debtor companies and my client does not have security over the shares of 420 parent. My client has security over the shares of all op cos that are assets of 420 parent --

THE COURT: Can your --

MS. BOURASSA: -- and so --

THE COURT: -- client make a credit bid for the shares that would control the ultimate outcome of litigation?

MS. BOURASSA: Not to my knowledge.

THE COURT: Why is that? Why can't they take their summary judgment award and -- which is, I guess, against investments, correct?

MS. BOURASSA: We -- yeah. Yeah. 420 parent, 420 Investments, that's right.

THE COURT: Why can't they use that as a credit bid to allow them to put a proposal forward, which would give them control of investments and therefore control of the litigation?

MS. BOURASSA: That -- I'm just a mere restructuring lawyer, not a corporate lawyer, but I think they would have to -- I don't know how they (WEBEX AUDIO INTERRUPTED) because, of course, the shareholders of 420 Investments are (INDISCERNIBLE) parties who are not party to the insolvency, right? They're -- they're not applicants in these proceedings and so a company's ability to get its shares back from its shareholder, I suppose, they'd -- we'd have to do a shared buyback. I'm -- I'm not in my depth here.

THE COURT: Well, no, no, no.

MS. BOURASSA: This is where I'm saying --

THE COURT: Sorry, maybe --

MS. BOURASSA: -- because we have -- we have --

THE COURT: -- I'm out of my depth --

MS. BOURASSA: Oh, go ahead.

THE COURT: -- but if you and I acquire the controlling interest in investments, can't we discontinue the litigation?

MS. BOURASSA: We could, but I don't know how we obtain it, is what I'm saying.

THE COURT: Well, okay.

MS. BOURASSA: It -- it --

THE COURT: If we're owed $9 million by the company and we say, Yeah, tell you what, we'll take the shares and our consideration is our judgment, why can we do that as part of a credit bid?

MS. BOURASSA: Because the shares aren't for sale. And this -- and this is what I'm saying is 420 Investments --

THE COURT: Okay. You've answered the question.

MS. BOURASSA: -- has its -- has its asset package, right? Like if you look at paragraph 18 of Mr. Morrow's affidavit that has the corporate chart --

THE COURT: Yeah.

MS. BOURASSA: -- which we also have in our brief, there's nothing above 420 Investments because those parties, the shareholders, are not parties to these proceedings. Our collateral is over 420 Investments and its property. The shares that are -- the shares of 420 Investments that are held by third parties are not property in that sense

of 420 Investments.

THE COURT: Okay. Then --

MS. BOURASSA: So I'm not -- I'm not suggesting that they should be included because no mischief can come of it. What I'm saying is I don't know where that come from because in any other insolvency, the parent co's shares would never form part of --

THE COURT: Okay.

MS. BOURASSA: -- parent co's assets.

THE COURT: Perfect. I mean, you're aware of the fact that's in the procedure. There is an attempt to exclude the shares and so I --

MS. BOURASSA: I know. And I take no objection to that is I guess what I'm saying. I didn't understand why it needed to be spelled out --

THE COURT: Okay.

MS. BOURASSA: -- because I wouldn't have expected to see that.

THE COURT: Okay. But you're not objecting to it? Okay.

MS. BOURASSA: And -- and as I said, we couldn't -- we couldn't credit bid on those shares --

THE COURT: Okay.

MS. BOURASSA: -- because they're not our collateral.

THE COURT: Okay. Yeah. Well, they're not for sale, so maybe Ms. Fellowes will tell me --

MS. BOURASSA: (INDISCERNIBLE)

THE COURT: Yeah. Maybe Ms. Fellowes will tell me why they're excluded under the SISP process. Anything else you want to tell me before I turn it back to Ms. Fellowes, Ms. Bourassa?

MS. BOURASSA: I do want to just look at my notes for one minute.

THE COURT: Yeah. For sure. Yeah. I appreciate counsel indulging me in answering my questions. I hope it's not too repetitive. And I think Ms. Kour has come on. She may --

MS. BOURASSA: I --

THE COURT: -- wish to speak too, but go ahead, Ms. Bourassa.

MS. BOURASSA: And I think that I've -- I've covered off my notes in answer to your question. Just in summary, we do not see this connection in the appeal and the litigation that my friends have suggested and we see no prejudice in including the litigation at this stage and we see a potential prejudice to our client, as a secured creditor, in this not being put out to at least assess value.

THE COURT: Okay. Thanks, Ms. Bourassa.

Ms. Kour, did you --

MS. BOURASSA: Thank you.

THE COURT: -- have something you wanted to add?

Submissions by Ms. Kour (Claims Procedure Order) (Reply)

MS. KOUR: I did, Justice. Just two points that I heard come up and I just wanted to clarify because, forgive me, it may be that I mistook what was said, but I heard Ms. Bourassa say that there -- there's potentially a different -- difference in treatment of creditors. And I just wanted to clarify that there are in fact various groups of creditors based on which operating company and which parent company we're speaking of.

THE COURT: M-hm.

MS. KOUR: And given that my understanding is we are not substantively consolidating the companies or the assets, we're not pooling them together, that the creditors remain delineated by company and there isn't -- I was just wondering whether or not there was some suggestion that the creditors of op co should be treated somehow in the same way as the creditors of parent co, and I don't think there's any basis for that. So I just wanted to clarify that and I wasn't sure whether that was what was being

suggested, or maybe I had misunderstood the -- the submission.

THE COURT: Well, that may be my fault, Ms. Kour. The way I put the question to Ms. Bourassa may have been misguided or misleading. And she can answer for herself, but what I thought I'd heard her say and which I think I heard her confirm she said was that -- and I don't think she intended to say or said that all creditors somehow rank equally or have the same claims to the same assets. I think her overarching point was, as part of the Court's responsibility, it should be mindful of the interest of all creditors and how they arise and what assets they do or don't apply to and what entities they relate or don't relate to, but that the Court needs to be mindful that there are a number of different creditors here and a SISP, which operated to constrain, if you will, the rights of recovery of one class of creditors, however their claims arise, may be perceived as effecting an unfairness.

Do I have that right, Ms. Bourassa?

MS. BOURASSA: I think that was an excellent summary and I would just confirm for my friend that I was not suggesting that there would be a substantive consolidation or anything like that.

MS. KOUR: Understood. And I agree with that -- that submission. So in terms of the second point that I heard about potentially stripping value and I think this -- this went to the question that the Court had about what the economic impact of the SISP was. I heard that there was concern by Tilray that the sale of op co assets would strip value that would otherwise benefit them. I just want to be clear that my understanding of the security landscape here is that Tilray is not a secured creditor at the op co level, which means that they don't have direct claim into those assets at the op co level.

So the -- the value that would accrue to Tilray in respect of anything coming out of op co would be after the satisfaction of any creditor claims at the op co level. Meaning that if there's creditor with claims against the op co assets or where op co is a debtor, they would get paid first and then any residual recovery would get then distributed to parent co. Or the alternative would be that they -- their value would be the shares of op co, which, presumably, would price in whatever creditor claims there were at the op co level. So in either -- in either case, I don't see the SISP as necessarily resulting in the stripping of value because I think from Tilray's perspective, with claims at parent co's level, whatever happens at op co should be value neutral to them.

THE COURT: That was very clearly said. Thank you for putting that on the record, Ms. Kour.

MS. KOUR: Thank you, Justice.

THE COURT: Mr. Fleming, anything you want to say?

MR. FLEMING: No, Your Honour. I'm -- I'm content with the submissions.

THE COURT: Ms. Fellowes, back to you. Oh, hold it. Hold it, Ms. Fellowes, I want to give you the last word.

Mr. Selnes.

Submissions by Mr. Selnes (SISP Order)

MR. SELNES: Thank -- thank you, Justice, and I appreciate the opportunity to provide a few comments from the proposal trustee and potential monitor's perspective. And just here to focus in on the -- the SISP issues. I think we've fairly set aside and have dealt with the others and subject, obviously, to any ruling you're making in relation to the SISP, but a couple thoughts about how this was being structured and the proposal trustee's involvement in the structuring of the process. And I think was raised right early on by Ms. Fellowes, but I don't want to lose the track of thought, which is that this is a restricting proceeding right now, it's not a liquidation and so it has never been viewed, at least by the proposal trustee, that the litigation or operating co -- or, sorry, parent co itself must be sold. And so there's the potential at least for more value to an emerging entity if the litigation is retained and there's an investment that allows them to prosecute that litigation. And so I think there is at least an entitlement to the debtor companies in this case to go in and structure this restricting so that they retain the litigation.

And you raised, I think, some very astute points as to what is the -- I guess the harm or the -- the prejudice of the delay and then what will happen through the appeal and -- and I know this is a minor point, but -- but one element of certainty that can be added from the appeal is depending what Justice Feasby determines. He's hearing that appeal on a de novo basis, versus a Court of Appeal from there hearing it on a higher standard of review, so there's, at least I think, a bit more certainty for a bidder as to what the -- the determination is going to be on the summary judgment aspect.

THE COURT: M-hm.

MR. SELNES: And it's a minor point, but it is a de novo --

THE COURT: Good point.

MR. SELNES: -- hearing from the applications judge, so --

THE COURT: It's a good point.

MR. SELNES: -- in that sense, it's the challenge of our system that you almost get two kicks at the can, but that -- that's the way it works. And I'm sure you've sat over some of those where there's differences, given to the extent that he'll be reviewing what was decided, but it's -- it's his determination as to what is being made there and in how that outcome could affect things and I -- my understanding at least has always been and -- and this is, I think, the challenge because there's a lot of moving parts within the litigation, but that the 420 claim was at least in part asserting that the amounts of the secured debt are not due and owing if -- unless there is a determination of they are. And this is at paragraph 33 of the Statement of Claim of 420, so going way back in the litigation, but what -- what they had planned, at least in the first instance, was it was always contemplated and the arrangement agreement reflects that the bridge loan will not be repaid unless and until the defendants close the arrangement, at which point it would have been an intercompany transaction entirely within their control or it was legitimately terminated.

Those conditions do not presently exist and the bridge loan is not repayable. So I think at least the potential, and I'm not going to speak for Justice Feasby, and I -- but the potential at least is there would be some certainty about whether or not that loan has matured or is due and payable. And I think where that can come in in a restructuring context then is there's nothing being sought to compromise that debt, but it could be that 420 parent emerges, the -- the 8 million to -- with whatever interest on top of it is a unaffected liability and then the litigation continues because I think their ability and somebody investing in it would want to know if that is immediately due and payable.

Now, I can't say for certain he's going to determine that, but, again, I think that's where there could be a value added to the proposition of if I'm an investor coming in knowing is -- the secured creditor have the right to immediately determine that. And -- and, again, that's been at least my -- my basic understanding of part of what the appeal may or may not determine, but that, I think, is ultimately for Justice Feasby to decide what he rules in -- in that circumstance.

THE COURT: Okay. That's an interesting point. I just want to take your point a little further, if you don't mind?

MR. SELNES: Yes.

THE COURT: So that seems logical when you say it. Tell me why you think including the litigation in the SISP at this stage, knowing there won't be a final order likely until Feasby has at least said something, is somehow prejudicial to the effect of operation of the CCAA regime?

MR. SELNES: And -- and in that regard, I think, I don't see necessarily prejudice to the operation of the regime, but it's the ability of the -- the debtor seeking the restructuring to put that process in as they -- as they choose and to do it, as long as it's in good faith. And, again, I think what at least was being done with the proposal trustee is the view that, if that is going to go in, it should be going in when it can be -- be value maximized and, if they don't want to sell it, it's not a requirement of them to sell it. And so they will have a better determination of -- of what to do.

Now, it is in some ways going to go in regardless, based on the way that the -- the SISP is drafted and -- at least I took some of the comments previously from -- from all counsel that there is no obligation to conclude a sale and I think, if that's the case and that's the representations that are being made, there -- there's always the fear that you -- an offer is made, the company comes back and says, Well, we've looked at it with the Monitor and we don't think that it's going to value maximize, so we don't want to sell. And then the secured creditor comes in and says, Well, that's -- they were never going to sell it and so this was not being done in good faith either. And I think there -- it's a little bit circular, until you know the answer of -- of what Justice Feasby says, but I think it comes back to the fact that the company is entitled to put together a process and not sell that asset if it doesn't want to.

THE COURT: Okay. Next question. Thank you. So can a SISP, and I need counsel to advise me on this, can a SISP be structured so that an offer can be made subject to or conditional upon a particular result emerging from the Feasby appeal, so that, just to follow up on your point, a potential purchaser or investor might want to know what the outcome of that appeal is before formulating some kind of an offer? Can they nevertheless make an offer that would be conditional upon the outcome of the appeal, or is the proposal trustee and everybody else going to reject that as a viable option?

MR. SELNES: It's --

THE COURT: Mr. Selnes?

MR. SELNES: -- it's a fair --

THE COURT: Go ahead, Mr. Selnes.

MR. SELNES: Yeah. And that's a fair question, Sir, and I'm -- I'm just taking a look at the SISP right now and supposedly what would be a qualifying bid.

THE COURT: Well, if necessary, could we amend the SISP to provide that? And I think Ms. Fellowes will probably want to tell me in a minute that just doesn't make any sense at all. But what I thought it might do is address your point that a potential investor/purchaser wants to know what Feasby's going to say. Meanwhile, we jumpstart the valuation process, get it going and then get other people's money spent arriving at a value here instead of 420's scarce resources to help everybody advance responsible proposals, but nobody has to write cheques until they've seen what Feasby has to say.

And I thought there was a provision -- Ms. Fellowes, you'll know where that is, but doesn't the -- it says, The bid should not be conditional on the outcome of unperformed due diligence by a phase 2 qualified bidder. M-hm. Anyway, Ms. Fellowes, what are your thoughts on that? Is that just not doable?

Submissions by Ms. Fellowes (SISP Order)

MS. FELLOWES: Thank you, Justice. It's -- it's an interesting option, but in most cases, to be a successful bidder, you have to have an unconditional bid.

THE COURT: Right.

MS. FELLOWES: So I think it's -- it's difficult to add conditionality into the bid, but --

THE COURT: Why?

MS. FELLOWES: -- I suppose not impossible.

THE COURT: Why? If I'm the bidder, wouldn't it --

MS. FELLOWES: As I say, not impossible, but it's -- it's not something I had contemplated.

THE COURT: Well, isn't that a potential win-win for everybody? It gets Ms. Bourassa's client happy because the valuation process gets started. The delay issues she's referred to is somewhat ameliorated, but at the same time it addressed Mr. Selnes' and your good point that, for reasons you can't really share with me,

a lot of people here have an interest in knowing what the outcome of the Feasby bill is going to be.

MS. FELLOWES: Yes. So -- so just to be clear, we would amend the SISP to say that any offer with respect to the litigation could be or would be conditional upon the final determination of the -- the appeal?

THE COURT: I don't know what it would say. What I'm trying to say is there a way that counsel who are more experienced in these matters than I clearly am can jumpstart the process, get the valuation process going, force people to put their feet to the pedal here and get their actuaries, evaluators, legal counsels and chartered accountants working to place a value on the 420 judgment and the litigation main action so that at some point in time, when time does become of the essence, that homework is done, but at the same time permit potential investors/purchasers an opportunity to refine their thinking and analysis and therefore their offers of acquisition or investment by letting them see what Feasby has to say? You seem to think that what Feasby will say is going to be really, really important and that the possibility of an appeal is less important. You seem to be telling me that it's the threshold decision that Feasby makes which is going to influence a lot of people's thinking here, not whether it goes to appeal or not. So I'm asking you, what's wrong with --

MS. FELLOWES: Correct.

THE COURT: -- that process? Can't I make any order I want?

MS. FELLOWES: Yeah, absolutely, that's -- that within your discretion. I just -- as I say, it might be difficult logistically. Just to be clear, the concern, of course, is that we want to keep it out to keep our options open. Ms. Bourassa's client is wearing two hats, as she herself said. They are the largest secured creditor, but maybe their claim isn't due and owing yet depending on the results of this appeal. They are also the defendant. They are the party who breached a contract with my client. The reason why we have such a big litigation asset is because of her client's action in breaching the contract. So they're acting both in their position as a creditor and wanting to get their -- their $10 million back, I understand that, but they're also acting in the same shoes as a defendant to a large piece of litigation, which they would dearly love to see go away.

THE COURT: Sure. But the --

MS. FELLOWES: So --

THE COURT: -- evil twin sister of that argument, Ms. Fellowes,

is a financially strapped entity should not be permitted to avoid a day of reckoning by starting a lawsuit against one of its creditors and therefore --

MS. FELLOWES: Oh -- oh --

THE COURT: Let me finish.

MS. FELLOWES: No, no. And -- yeah.

THE COURT: You know what? I mean, you point out that Ms. Bourassa's client has a multitude of interests here in achieving the goal it seeks to achieve and pursing the path it seeks to pursue and I'm, if you're saying that that somehow clouds the equities or taints their bona fides, which maybe you weren't saying, but if you were saying that and that is the consideration you would want me to think about, I might respond by saying, Well, yeah, but maybe launching a lawsuit and staying with a lawsuit for so much money against your creditor is a way of deferring your creditor's ability to meaningfully realize on their claim against you. Or it's a way of deferring the day of reckoning that results in your liquidation, the sale of your assets or somebody taking over your company. Anyway, I don't mean to suggest that that was the reason for the lawsuit, but I just want to be careful about imputing motives to Tilray for pursuing the course of action they seek to pursue because one might be heard to say the same thing about 420 Investments. Do you see what I'm saying?

MS. FELLOWES: Well, I'm -- I'm not litigation counsel for 420 Investments, but I'm -- I'm sure you're read -- read the pleadings and understand how the litigation arose in the first place.

THE COURT: Look --

MS. FELLOWES: And in fact, the need for this company to file for protection under the NOI and the CCAA is directly attributable to the actions taken by Ms. Bourassa's client where they issued a garnishee on her bank account. So what we're trying to do --

THE COURT: (INDISCERNIBLE)

MS. FELLOWES: -- here is safe this company and I'm just saying that Ms. Bourassa's clients have a different motivation.

THE COURT: Sure. I think the company -- you want to save the company for the benefit of the company, for the benefit of the various stakeholders of

the company, however that stake arises, I get that. And I'm just trying to work with you and Ms. Bourassa in seeing if there's some solution to this that does minimal damage to the legitimate concerns which each of your clients have expressed. And --

MS. FELLOWES: Mm.

THE COURT: -- if people aren't buying -- people don't want to buy what I'm selling, then I'll just make the hard call.

Ms. Bourassa, do you think there's --

MS. FELLOWES: Yeah.

THE COURT: -- do you think there ...

MS. FELLOWES: Oh, sorry.

THE COURT: Oh, go ahead, Ms. Fellowes.

MS. FELLOWES: Sorry, Justice Jones.

THE COURT: Yeah.

MS. FELLOWES: Yes. Sorry. Just one -- one quick point. In your remarks you have said you want to get the valuation process going and that's one of the reasons why you see it's important to -- to include it in the SISP now.

THE COURT: M-hm.

MS. FELLOWES: I just caution you, valuing litigation is -- is a difficult thing to do and, whereas, valuing -- you know, operating stores and leases at the op co level is -- is quite different. So my just concern is, if we put the litigation in the SISP now, there is, you know, a universe of bidders out there who are not going to spend time doing the due diligence and the valuation that they need to do on the litigation when they can just be part of a simple SISP process for now that just deals with the op co assets. So, in my view, it makes it quicker and easier to have a simple SISP process now and add the litigation in later.

THE COURT: Maybe. I would argue the contrary. It's a chose in action. As you well know, companies' balance sheets are often replete with chose in action. It's, in my simple mind, similar to valuing the interest, arguably, in a discretionary

trust, which is done all the time and which I used to have to do in practice. You involve actuaries, estimates of the probability of success, an analysis of, you know, the underlying factual circumstances and contingencies that can arise.

And so I don't dispute for a minute that it's difficult, but it seems to me, unless I've missed the fundamental premise here, and I may, unless I've missed the fundamental premise which is that arriving at a value for the 420 judgment and for the litigation is really important to the creditors, to the company, to the Court in ultimately arriving at a fair and justice (sic) position of proceedings, if that's true, and I think it's true, tell me if I've got that wrong, but if that's true, then difficult though valuation may be, it's prudent to get it started. It's prudent to get it started if it doesn't result in some nefarious outcome which prejudices your client or its stakeholders. It may ultimately be perceived as advancing the interests of your clients and their stakeholders by expediting and hastening a resolution of this. And if your client thinks, as Mr. Morrow does, this litigation is worth 130 million bucks, well, let's see what the valuation process produces. It may not be 130, but, gosh, if it's 50, Ms. Bourassa's client's going to get paid out and everybody else is going to be paid out and there's going to be some cash left. Anway, I just respond to your observation, which I accept, that valuation is difficult. Valuation of a chose in action is always difficult, it's just not impossible. Anything else you want to add that? Challenge me on --

MS. FELLOWES: No, other -- no, no, I agree. I don't -- with respect, I don't think this is about a valuation exercise now. It's about trying to keep our options open and I cannot, you know -- for -- for various reasons in that this is the company's restructuring, this is the plan we have devised, we have the support of the proposal trustee and the Monitor, we have the support of Nomos, who is the first priority creditor, we have the support of Stoke's. No one else has raised any concerns with this except Tilray and Tilray, of course --

THE COURT: M-hm.

MS. FELLOWES: -- has two hats. So --

THE COURT: Yeah. Okay.

MS. FELLOWES: I plead with the Court, this is a debtor in possession statute, please let us complete our plans. I don't see any material prejudice to Tilray that a short delay would entail and it would give us the optionality that we're asking for at this time.

THE COURT: So how would I articulate the short delay in the SISP order? I would say, just blue skying here, the litigation is excluded from the SISP

until when? And then it gets automatically included or there's a comeback hearing and we have another debate or discussion about this? Which of those is the suggested solution from your perspective?

MS. FELLOWES: Well, I am mindful of preserving the client's -- the -- the company's costs and having multiple court proceedings.

THE COURT: Right.

MS. FELLOWES: This will -- however, the -- the SISP deadline I believe is the end of November and we will be back in court in early December to get a further extension and probably report on the results of the SISP, so there would be an opportunity at that time. And by that time, you know, there'll be what, almost 2 months will have passed since the decision of -- or the hearing before Justice Feasby and I would hope, if we haven't got a result at that time, then that could be, you know, the point where we just say, Okay, let's just include it now because this is -- this is taking too long.

THE COURT: Okay. And you're not enthusiastic about amending the SISP procedure to provide a condition which permits an investor/purchaser to withdraw an offer depending on the outcome of the Feasby appeal? Doesn't --

MS. FELLOWES: I'm just -- I'm just -- yeah. I think they would have that option anyway and I'm just very hesitant to -- to bind the discretion of a bidder who knows what they -- conditions that they may or may not want to put in, so.

THE COURT: Well, they have that option anyway. I think I heard you say, if they have that option anyway, so I make a bid based on a sustained attempt to value the litigation and I come up with a number based on that effort, having spent my own money, and I make an offer, but if Feasby says (a), I might be able to withdraw my offer?

MS. FELLOWES: Well, it depends which phase they're in. I think there's a phase 1 bidding deadline and a phase 2.

THE COURT: Right.

MS. FELLOWES: I think it does become binding after phase 2 but, until that time, they could -- they could withdraw, yes.

THE COURT: And by my --

MS. BOURASSA: Sir --

THE COURT: We're not going to be in phase 2 until, what, December?

MS. FELLOWES: No, November 12th.

THE COURT: Oh, November 12th.

MS. FELLOWES: Or 15th, sorry.

THE COURT: Sorry. A month after Feasby.

MS. FELLOWES: November 15th.

THE COURT: A month after Feasby --

MS. BOURASSA: Sir --

THE COURT: -- clarifies the law for all of us.

Okay. Go ahead, Ms. Bourassa.

Submissions by Ms. Bourassa (SISP Order)

MS. BOURASSA: Justice Jones, and -- and my apologies. Typically when the Monitor gets up to speak, I wouldn't anticipate having further opportunity, but I thought that the Monitor's submissions were a little bit more partisan than one would typically expect. But I did want to assist the Court on this point. In looking at the SISP, paragraph 30 specifically says that the phase 2 qualified bid will be evaluated based on various factors. And then it says, Including any conditions attached to the bid and the expected feasibility of such conditions. So, in other words, there is an ability for a conditional bid to be put in. Understandably, with the operating assets, to my friend's comment, typically you would want an unconditional bid, but the conditionality that both Ms. Fellowes and -- and you have addressed are already built into the SISP.

THE COURT: So, if I hear you, what that means is I can go out, start my due diligence, start my valuation, arrive at a number, but if Feasby says something that I didn't think he was going to say and it totally trashes the valuation that I have paid to get, if I have made the results of the Feasby appeal a condition of my offer moving forward, that's my get out of gaol free card?

MS. BOURASSA: It's something that the Monitor will evaluate, right? The -- the risk is that the Monitor and the company will evaluate and say, We don't like this condition so we're not moving you into -- you know, we're not making you a successful bidder. But there's nothing that says that the qualified -- phase 2 qualified bid has to be unconditional.

THE COURT: And if I heard --

MS. BOURASSA: And, in fact --

THE COURT: And if I heard the Monitor, the Monitor's counsel told me a moment ago that he thinks that it makes some sense from a flexibility and fairness point of view to exclude the litigation until we've heard what Feasby has to say. And if that's what I thought I heard Mr. Selnes say, aren't I effectively doing that? Or aren't we effectively doing that by recognizing somebody who might want to wait until Feasby's decision is out before formulating a position? Aren't we essentially giving him the same rights by saying, Formulate your position now, roll up your sleeves and spend some money valuing this litigation but, if you don't like what Feasby said, all bets are off and you walk? Except for the money you spent, if any.

Submissions by Mr. Selnes (SISP Order) (Reply)

MR. SELNES: I think part of the question there, Sir, is it -- realistically, what due diligence parties were putting upfront, at the end of the day though, the conditionality, I think Ms. Bourassa is correct, but that conditionality is going to be a factor of the Monitor and in competition (phonetic) with the company of moving a bid forward or not and I think there's always a fear of encouraging conditionality in bids because it adds an inherent uncertainty to the process, but if I understand what you're trying to do, Sir, it's find a way to get through where parties' concerns on both sides are recognized but to get some kind of process started.

THE COURT: Did I hear you say, Mr. Selnes, correct me if I'm wrong, but did I not hear you say that the process is enhanced by waiting until we know what Feasby says, and the process is enhanced because it provides a degree of certainty that we don't currently have, and that degree of certainty is useful in allowing various stakeholders to assess their positions and formulate their offers, and potentially helpful to a CCAA Court in assessing the merits of particular proposals? If I heard you say that, I think a simplified way of saying it is, as long as nobody is bound by what they have put forward as an offer, unless and until they've seen what Feasby had to say, that's another way of saying what I just said a moment ago, then isn't the conditionality that's

contemplated in this agreement that Ms. Bourassa pointed out to me perhaps not as elegant a way of achieving that result but, nonetheless, arguably a rougher way of doing it?

MR. SELNES: I think it can -- it can get there -- and, again, I think the question in this becomes a practical sides and I think Ms. Fellowes is probably better to speak to it than myself, and I think at least my recollection from when there were conversations about the structuring of this, it's how do you -- how do you get those bids being solicited at the time when parties would be the most interested in doing that due diligence and potentially putting a bid in and so it's a bit of when -- when it starts, but I do understand what you're saying, Sir.

THE COURT: Well, I kind of like it, not just because it may or may not address the concerns which Ms. Fellowes, and which you I think have expressed on behalf of KSV, which is that more information is better than less information. And what Feasby says is more information. It just, in my mind, strikes me as a way of achieving a greater degree of equity and fairness if we can address the divergent interests of a variety of stakeholders at the same time so that everybody has a bit of a win. Ms. Bourassa's client has a bit of a win because litigations in the SISP, valuation process may or may not start, people other than 420 are spending money placing a value on this, people other than KSV are spending money, other than 420's money, in placing a value on this. That information will be useful to the Court, useful to KSV, useful to 420. But at the same time, as you point out, this valuable information which will emerge from the Feasby decision, but which nobody can tell me why it will be valuable for various reasons, which I understand, nevertheless is still available, it's still on the table, it still gives prospective investors and purchasers an opportunity to bail because, you know what, they didn't like what Feasby had to say, so, well.

Ms. Fellowes, anything you want to add to that? Oh, you're muted, Ms. Fellowes.

MS. FELLOWES: I'm sorry, my apologies.

THE COURT: It's okay.

Submissions by Ms. Fellowes (SISP Order) (Reply)

MS. FELLOWES: No, I have been -- have been thinking on this and, to Mr. Selnes' point, this -- this is a difficult balancing act, but the practicalities is this litigation has a cloud over it right now with this pending appeal on the -- no, I really don't think it's practical that any bidder's going to spend a lot of money doing due diligence on an asset right now knowing that there, in 2 weeks time, there's going to be this appeal which may affect the valuation.

THE COURT: Okay.

MS. FELLOWES: I'm wondering if we could revise the SISP timelines, and this is just an idea I had, so that we have a different timeline for the op co assets and another timeline for the -- the parent co assets, which starts a little later. Starts in -- after the hearing.

THE COURT: Okay. So --

MS. FELLOWES: It's unusual, but --

THE COURT: Yeah. Yeah. No. Thank you.

MS. FELLOWES: -- I just wondered if that might be --

THE COURT: No, that's very helpful. Thank you very much for coming forward with that. So that's, I guess, another way of splitting the baby. So we say the op co assets are in the SISP now, the litigation is not in the SISP now. That addresses Ms. Kour's concern to a large extent, given her client's interests in the op co's assets. It doesn't start the valuation process on the litigation because the litigation isn't in the SISP at this point in time and, therefore, no offers are expected to be formulated, if I've understood what you're suggesting.

MS. FELLOWES: Yes. We just give a little more time for the offer deadline on the -- on the offers to be made on the SISP because, realistically, I don't think we can get this started at the same time as we can start the other process.

THE COURT: Okay. Fair enough. So --

MS. FELLOWES: I just don't see any bidders diving into this, knowing that there's an appeal in 2 weeks.

THE COURT: Okay. Okay. Well, okay, but isn't the response to that, Ms. Fellowes, Okay, fine, bidders, don't spend your money, don't spend your time, and if you're not prepared to do it, you're not prepared to do it, but no harm, no foul. The litigation is in the SISP. If somebody out there wants to roll up their sleeves and spend money getting a valuation, have at it, more power to you. But where is the harm to anyone if, as you have hypothesized, nobody's willing to do that? We at least admitted of the possibility of somebody being willing to do it and spend some money on valuation, but if nobody's done it, so great. We just basically haven't achieved anything by putting the

litigation in the SISP, but now that Feasby has spoken, we can have a further discussion about that.

MS. FELLOWES: Yeah. Understood. I'm just mindful that, you know, right now November 15th, which is the phase 1 deadline, seems like a long way away, but it'll come quickly, especially if people can't really dig into this until after, you know, the middle of October.

THE COURT: Can I --

MS. FELLOWES: So I'm just trying to --

THE COURT: Can I modify deadlines? Can the Court modify deadlines based on a reappearance before the Court to suggest there might be good reasons for doing that?

MS. FELLOWES: I think that would be within your discretion.

Submissions by Mr. Selnes (SISP Order) (Reply)

MR. SELNES: And -- and to speak to that, Justice, and I apologize, I don't mean to cut anybody off here, but I think there's two ways that that could be dealt with. And if you turn to 45 -- paragraph 45 of the SISP.

THE COURT: M-hm.

MR. SELNES: Well, let me just -- so it states that the Monitor shall have the right, in consultation with 420, modify the SISP and the deadlines set out herein, including without limitation, pursuant to the bid process letter, if in the reasonable business judgment such modification will enhance the process or better achieve the objectives. And so in some ways the most efficient manner would be either to extend those deadlines right now or have everybody, at least in the room, knowing that depending when and what happens with the Feasby decision, there may be an extension of that phase 1 bid deadline to push it out a bit further. I mean, the process does contemplate, I think, your question, a bit of an extension built in, and it may not even require the Court.

THE COURT: Okay. I think I'm prepared to make a decision today, but does anybody want to say anything before I do?

MR. SELNES: There -- there was one other point I wanted to make, very briefly, Sir, and it's just to make sure we're all on the same page and I think

Ms. Bourassa fairly stated the issue with the shares being purchased and -- and I think perhaps I was just in the contemplation of how that would be put together. There can certainly be an investment in 420 parent where it's -- you would have, in effect, a subscription agreement where the old shares would be cancelled, the new shares are issued and so in effect somebody could come in and purchase the shares in the sense that they would be purchasing the operating interest in the company. And so I think that's what you were speaking to, Sir, and we may have almost been on a bit of a different page as to the precise mechanics, but I think there is still the ability for somebody to, in effect, purchase parent co, which would then own the asset of the litigation.

THE COURT: Okay. So do you think the procedure as drafted, which purports to exclude those shares, is the right -- do you think that should be in there if we're going to exclude the litigation, we should exclude those shares?

MR. SELNES: And -- and perhaps maybe the right way to put it is, if the shares -- or the litigation's going to be excluded, that an investment to take over the entirety of parent co be excluded pending -- I think it's just the -- the idea of a controlling interest in parent co being taken by a creditor or a purchaser --

THE COURT: Yeah.

MR. SELNES: -- I think that's the thought process that went into that. And I'm not trying to complicate anything here, I just wanted to make sure there wasn't a misunderstanding between the parties as to what kind of investment could be made.

Decision

THE COURT: No. Thank you for raising that issue. Well, this has been interesting. Thank you, counsel, for your excellent submissions, both written and oral, and for indulging my questions. I hope I haven't been too tedious. But I want the litigation shares to be included in the SISP.

I'm not satisfied there's any significant demonstrable benefit from excluding it at this time. I think valuation is important. Valuation process may not make any meaningful headway until the outcome of the Feasby decision, but I don't think this prejudices anybody, at least not in ways that I'm capable of understanding, whereas, at the same time it does admit of the possibility, however remote that may be, of a valuation being commenced and information being obtained which is ultimately of value to everyone, as well as helping to some extent, though not significantly in my mind, ameliorate the concerns which Tilray has over delay to date.

If I thought that including the litigation and shares in the SISP was going to manifestly prejudice the interests of any of the stakeholders in this, I would be very hesitant to do it, but no one has convinced me that the overriding paradigm of arriving at a valuation of assets as quickly and expeditiously as possible has been supplanted by concern over the interests of various stakeholders, particularly, as Mr. Selnes has pointed out through his careful review of the terms of the SISP procedure, KSV has, and all the parties have, the ability to come back and say, Look, Jones, the landscape has changed since you made this decision; here are other considerations which need to be taken into account in modifying the SISP process. And that's exactly what's the Court's going to be here to do.

So there you have it. I don't think this will benefit from a written decision and the reason I don't think it will benefit from a written decision is I think my reasons should be evident from the record, which I will order. Mr. Clerk, would you order a transcript of this?

THE COURT CLERK: (INDISCERNIBLE) day?

THE COURT: 10-day turnaround.

I think my reasons, thinking, will be evident from my questioning and analysis, and I don't really think there's a lot of law to be made or reconciled here. And I want to go on the record as saying this in case somebody decides to go over to the TransCanada PipeLine building and appeal my decision, I want the record to disclose my determination. Nobody has provided me case law directly on point which helps to resolve this issue to my satisfactory, so I deduced from that this is a very fact-dependent analysis and the decision is very fact-dependent and so I want the record to disclose that my assessment of the facts is as I have described. It's important to commence the process to avoid further delay. The interests of various stakeholders are appropriately addressed by doing that. Prejudice to 420 and its stakeholders has not, in my mind, been established in a way that would override my view in that regard.

So thank you, counsel, for your presentations. Ms. Fellowes, I presume you can make an amendment to that order fairly quickly and get your four orders over to me so I can sign them and get them back to you and you can do whatever it is you must now do with those orders.

MS. FELLOWES: Yes. Thank you, Justice Jones, and I will circulate drafts of the amendments to my friends just to make sure I have their -- their consent to those before forwarding them to you.

THE COURT: All right. Well, thank you, counsel. That was

very interesting and it's always a pleasure for me to deal with the very best, and today I feel as though, once again, I have had the privilege of dealing with the very best. Your arguments were rational, focussed, insightful and coherent and thank you for giving me the opportunity to work with you on this today. Have a good evening.

MS. FELLOWES: Thank you.

THE COURT: Thank you, Mr. Clerk.

PROCEEDINGS ADJOURNED

Certificate of Record

I, Jarod Liakos, certify that this recording is a record made of evidence in the proceedings in the Court of King's Bench, held in courtroom 1702, virtual courtroom 60 (phonetic), at Calgary, Alberta, on the 19th day of September, 2024, and that I was the court official in charge of the sound-recording machine during proceedings.

Certificate of Transcript

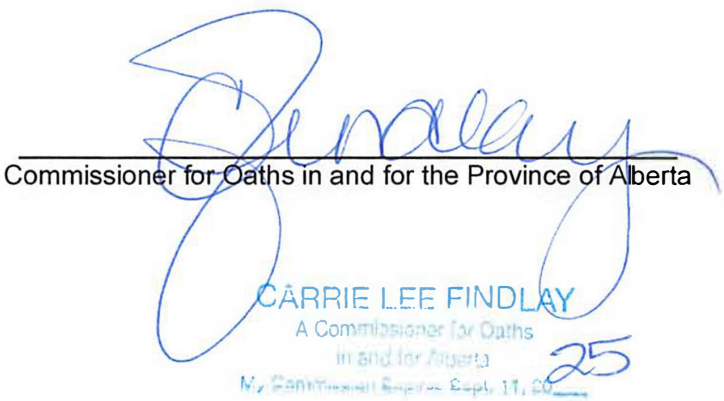
I, Lori Nelson, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Lori Nelson, (Operating as Pro-to-type Word Processing)
Order: TDS-1069181
Dated: September 27, 2024

This is Exhibit "D" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Beaumont, in the Province of Alberta,
on this 3rd day of February, 2025



Commissioner for Oaths in and for the Province of Alberta

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November 13, 2024

VIA E-MAIL

Reference: 191284/35

JSS Barristers
800, 304-8 Avenue SW
Calgary, AB T2P 1C2

Attention: Robert Hawkes, KC, Gavin Price, and Sarah Miller

Re: Notice of Intention to Seek Damages

Dear Robert, Gavin, and Sarah,

We write about the litigation between 420 Investments Ltd. ("**Four20**"), Tilray Inc. ("**Tilray**"), and High Park Shops Inc. ("**High Park**") and the ongoing insolvency proceedings of Four20.

As you know, on October 16, 2024, Justice Feasby denied the application for summary judgment brought by High Park with respect to its loan of $7 million, plus interest (the "**Loan**") made to Four20. High Park filed a Civil Notice of Appeal on October 29, 2024, appealing Justice Feasby's decision (the "**Appeal**"). High Park asked that the Appeal be heard on an expedited basis because High Park would like to credit bid the Loan as part of the ongoing sales and investment solicitation process in the Four20 insolvency proceedings. While High Park does not believe that the Appeal should have any bearing on its ability to credit bid the Loan, Four20 has taken the opposite position.

On October 31, 2024, Four20 sent a letter to the Case Management Officer of the Alberta Court of Appeal in Calgary opposing High Park's application to expedite the Appeal (the "**Four20 Response**"). Four20's Response indicates that Four20 is of the view that High Park cannot credit bid for Four20's assets unless it has a binding judgment for repayment of the Loan. The Four20 Response also admitted that High Park may suffer financial harm if it is prevented from using the Loan to credit bid as a part of the sales and investment solicitation process.

High Park's request to expedite the Appeal was denied. Given that the Appeal will not be heard on an expedited basis, it is unlikely that High Park will have a binding judgment for repayment of the Loan prior to the completion of the sales and investment solicitation process. As a result, High Park may be wrongfully denied the opportunity to credit bid the Loan in the sales and investment solicitation process. If that occurs, High Park will suffer harm, including loss of profits and loss of opportunity.

To that end, High Park provides notice to Four20 of High Park's intention to seek all damages that it may incur as a result of any refusal to permit High Park to credit bid its Loan in Four20's sales and investment solicitation process, should High Park ultimately be successful on appeal.

Yours truly,

Tom Wagner

cc. Karen Fellowes KC (Stikeman Elliott)
Archer Bell (Stikeman Elliott)
David Tupper (Firm)
Casey Stiemer (Firm)