Court of King's Bench of Alberta

Citation: 420 Investments Ltd (Re), 2025 ABKB 183

Date:
Docket: 2401 17986
Registry: Calgary

In the Matter of the *Companies' Creditors Arrangement Act* RSC 1985, c. C-36, as amended
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.

Reasons for Decision
of the
Honourable Justice M.H. Bourque

I. Introduction and Background

A. NOI Proceedings

[1] On May 29, 2024 (**Filing Date**), 420 Investments Ltd (**420 Parent**), 420 Premium Markets Ltd (**420 OpCo**), and Green Rock Cannabis (EC 1) Limited (**Green Rock**), (collectively, **NOI Entities**) each filed a Notice of Intention to Make a Proposal (**NOI**) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (***BIA***), (**NOI Proceedings**). KSV Restructuring Inc (**KSV**) consented to act as proposal trustee (**Proposal Trustee**) in the NOI Proceedings.

[2] On June 27, 2024, the Court granted an order, among other things, extending the stay and time to make a proposal to August 12, 2024, approving a key employee retention plan, and granting typical administration and related charges.

[3] On August 12, 2024, the Court granted two orders, among other things, further extending the stay and time to make a proposal to September 26, 2024, and directing and accelerating the scheduling of an appeal of the decision of Applications Judge Farrington's decision in an action involving, on the one hand, 420 Parent, and, on the other, Tilray Inc (**Tilray**) and High Park Shops Inc. (**High Park**) (**Tilray Litigation**), described in greater detail below.

B. *CCAA* Proceedings

[4] On September 19, 2024, the Court granted an initial order on the application of the NOI Entities and 420 Dispensaries Ltd (**Dispensaries**) (collectively, **Applicants**) continuing the NOI

Proceedings under the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (***CCAA***) (***CCAA* Proceedings**). On the same date, the Court granted an amended and restated initial order (**ARIO**) extending the stay period to December 16, 2024, as well as a claims procedure order.

[5] On October 2, 2024, Jones J granted an order (**SISP Order**), approving a sale and investment solicitation process (**SISP**). As discussed in greater detail later, the SISP did not result in a sale transaction.

[6] On December 5, 2024 and again on February 14, 2025, the Court granted orders extending the *CCAA* stay period to February 25, 2025 and March 31, 2025 respectively.

C. Tilray Litigation

[7] At all material times, 420 Parent owned and operated retail cannabis stores in Alberta. Pursuant to an Arrangement Agreement dated August 28, 2019 (**Arrangement Agreement**), Tilray and High Park agreed to acquire 420 Parent for $70 million plus a potential additional $44 million in contingent consideration. As part of the proposed transaction, pursuant to a loan agreement (**Loan Agreement**), High Park provided $7 million in bridge financing (**Bridge Loan**) to 420 Parent to facilitate the continued development of retail stores before the closing of the Arrangement Agreement. The Loan Agreement provided for the repayment of the Bridge Loan on the later of (i) 180 days from the advance of funds or (ii) the termination of the Arrangement Agreement.

[8] On January 28, 2020, and February 4, 2020, Tilray and High Park provided 420 Parent with notices of alleged breaches of the Arrangement Agreement, which 420 Parent rejected because Tilray and High Park had not particularized the alleged breaches. On February 21, 2020, 420 Parent commenced an action against Tilray and High Park. On February 26, 2020, Tilray and High Park issued a notice of termination, citing 420 Parent's failure to cure the alleged breaches within the time allowed under the Arrangement Agreement.

[9] On March 11, 2020, High Park issued a notice of acceleration requiring 420 Parent to repay the Bridge Loan. When 420 Parent refused to repay the Bridge Loan, Tilray and High Park counterclaimed, seeking the repayment of the $7 million advance (**High Park Counterclaim**). In an unpublished endorsement dated February 7, 2024, Applications Judge Farrington granted High Park's application for summary judgment (**High Park Summary Judgment**), the effect of which was to make enforceable the repayment of the amount advanced under the Bridge Loan plus interest. 420 Parent appealed the High Park Summary Judgment. Shortly thereafter, High Park commenced enforcement proceedings against 420 Parent, which led the NOI Entities to file the NOI. 420 Parent appealed the High Park Summary Judgment.

[10] On October 16, 2024, Feasby J allowed 420 Parent's appeal of the High Park Summary Judgment (***420 Investments Ltd v Tilray Inc***, 2024 ABKB 610 (**Feasby Decision**)). Given their importance in these proceedings, I have set out the relevant portions of the Feasby Decision:

> [17] The Applications Judge recognized that Tilray and High Park may be liable in respect of [420 Parent'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 [Parent] 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.

[emphasis added in para 18]

[11] Accordingly, repayment of the Bridge Loan is not currently enforceable by High Park against 420 Parent because its repayment is contingent on whether termination of the Arrangement Agreement has occurred. The issue of whether the Arrangement Agreement has been terminated remains unresolved, and according to Justice Feasby, it cannot be resolved in a summary manner. High Park has appealed the Feasby Decision. The Court of Appeal has scheduled the hearing of High Park's appeal for April 17, 2025.

[12] Although the parties disagree on the degree of progress and advancement of 420's claim against Tilray and High Park, one claiming not very advanced, the other, significantly so, I need not decide as it does not impact my decision.

II. Applications and Cross-Application in Issue

[13] The Applicants seek an order permitting the filing of a plan of compromise and arrangement (**Proposed Plan**) and calling for a meeting of creditors to vote on the plan (**Creditors' Meeting**). Although the Applicants indicated an April 3, 2025 Creditors' Meeting date, in response to my questions at the hearing regarding the suitability of holding it after the Court of Appeal hearing, the Applicants expressed openness to doing so.

[14] The salient features of the Proposed Plan include the following:

a. the Applicants will borrow a pool of cash (**Creditor Cash Pool**);

b. the unsecured creditors of 420 OpCo and Green Rock (**OpCo Unsecured Creditors**) will have their proven claims satisfied in full through a combination of their proportional share of the Creditor Cash Pool, currently estimated at 55 cents on the dollar, and by electing to potentially receive the other 45 cents on the dollar, either from:

   (i) the issuance by 420 Parent of such number of its shares having equivalent value to the differential; or

   (ii) future proceeds from a final judgment obtained in the Tilray Litigation, if any, in an amount equal to but not exceeding the differential;

c. Stoke Canada Finance Corp. (**Stoke**), the senior secured lender of OpCo, will have its claim paid in full;

d. the secured creditors of 420 Parent and 420 Dispensaries to be unaffected creditors;

e. the Tilray Litigation, including the High Park Counterclaim, is preserved and can continue unaffected following emergence from the *CCAA* proceedings;

f. the Applicants and their retail operations would continue for the benefit of all stakeholders.

[15] Under the Proposed Plan, two classes of affected creditors would be created, voting separately. If accepted in sufficient number and value, the Applicants will return to the Court to seek approval of the Proposed Plan and have reserved time on April 24, 2025 (**Sanction Hearing**).

[16] The Applicants also seek an order extending the *CCAA* stay to April 30, 2025.

[17] High Park opposes the applications and cross-applies for orders that enhance the Monitor's powers and direct the Monitor to resume the SISP.

III. Analysis

A. Should the Court Grant the Creditors' Meeting Order?

1. Legislative Authority and Decision-Making Framework

[18] The Court derives its authority to order a creditor meeting from sections 4 and 5 of the *CCAA*: ***Delta 9 Cannabis Inc (Re)***, 2024 ABKB 657 (***Delta 9***), para 9. The statutory provisions are permissive and require the exercise of judicial discretion in furtherance of the *CCAA's* remedial purpose (para 10-11).

[19] The *CCAA* is remedial and seeks to provide for timely, efficient and impartial resolution of a debtor's insolvency, preserving and maximizing the value of a debtor's assets, ensuring fair and equitable treatment of the claims against a debtor, protecting the public interest, and balancing the costs and benefits of restructuring or liquidating the company: ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10 (***Callidus***), paras 40-42; ***Delta 9***, para 11.

[20] Historically, proceedings under the *CCAA* typically involved an approach to "facilitate the reorganization and survival of the pre-filing debtor company" as "a going concern", failing which "the alternative course of action [is] a liquidation through either a receivership or under the *BIA*" (***Callidus*** para 41). Over time, the approach has evolved "to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation" (***Callidus***, para 42).

[21] In ***Delta 9***, Marion J comprehensively surveys Canadian jurisprudence regarding the test as to whether a creditor meeting should be ordered. As he observes, the decision to order a meeting requires an assessment of whether it is in the best interests of the debtor and its stakeholders to hold such a meeting. The decision to order a meeting is performed on a low standard. Because an order directing a creditors' meeting is often uncontroversial, the decision-making process generally does not involve argument as to whether the proposed plan is fair and reasonable (paras 12-13).

[22] As in this case, where the application for a creditors' meeting is opposed, Marion J explains that the Court should more carefully examine the material filed and the issues or concerns raised. Moreover, "the Court may consider the equities as they relate to the debtor companies and its secured creditor" (***Delta 9***, para 14).

[23] Marion J provides a non-exhaustive list of circumstances where courts have refused to grant a creditors' meeting order (***Delta 9***, para 15):

a. the plan is not in the best interests of the debtor and its stakeholders;

b. where there is no reasonable chance the debtor will be able to continue in business;

c. where the plan "lacks economic reality";

d. where there is no hope creditors would approve the plan, but the Court should not impose too a heavy burden on the proponent to establish the likelihood of success or second guess the probability of success (except where doomed to fail);

e. where the Court would not approve the plan, including where the Court lacks jurisdiction to sanction it;

f. where the plan is inconsistent with court orders or the *CCAA* process did not unfold fairly and transparently.

[24] Of the instances enumerated above, High Park opposes the Creditors' Meeting Order under a, d, and f. In addition, High Park argues that the Plan should not be approved because it disregards and negatively and unfairly impacts High Park, a secured creditor of 420 Parent, and prohibits High Park from voting on the Proposed Plan.

2. What happened in the SISP?

[25] High Park's opposition to the Creditors' Meeting Order is largely shaped by its perspective on how the SISP unfolded. To provide context, I have outlined the parties' perspectives on what occurred in the SISP. In doing so, I have largely borrowed from their counsels' briefs. Accordingly, the reader should not interpret my reasons in this section as making findings or inferences of fact, except if specifically stated.

a) High Park's Perspective

[26] The SISP proceeded in two phases. In Phase 1, interested parties were required to provide non-binding letters of intent (LOI). The Monitor was tasked with determining whether an LOI qualified for participation in Phase 2; qualified parties would then provide binding offers in accordance with the SISP requirements and timelines. Following the Phase 2 bid deadline, the Monitor was tasked with assessing the bids and notifying bidders as to whether any of their respective bids constituted a Phase 2 Qualified bid.

[27] High Park states that it actively engaged in good faith with the SISP. It made an offer to 420 Parent, which could have been pursued by the Applicants in combination with any bid for their operating assets by another party. High Park also partnered with One Plant (Retail) Corp (**One Plant**), and together, they prepared and submitted an LOI in Phase 1. On November 22, 2024, the Monitor confirmed that High Park and One Plant were deemed qualified bidders for Phase 2 of the SISP, jointly in respect of their joint LOI, and High Park alone, in respect of its individual bid.

[28] High Park and One Plant assert that they prepared a detailed bid for Phase 2 of the SISP (**Joint Bid**) and confidentially provided it to the Monitor on December 20, 2024, in accordance with the timelines and requirements under the SISP. They say the Joint Bid followed the template subscription agreement provided by the Applicants and the Monitor. High Park and One Plant paid a cash deposit in trust to the Monitor in connection with the Joint Bid. In their view, the Joint Bid provided two options for the purchase price, which would be either a combination of cash and a credit bid of certain amounts outstanding under the Loan Agreement, or entirely cash consideration. The quantum of cash consideration is the subject of a sealing order.

[29] According to High Park, under either option, the cash consideration provided under the Joint Bid was sufficient to pay in full (a) all secured creditors of 420 OpCo and Green Rock, (b) all third-party unsecured creditors of 420 OpCo and Green Rock, and (c) all claims against 420 Parent which rank in priority to High Park's claim, including Nomos' secured claim. The reference to third-party unsecured claims is to distinguish from the intercompany claims owed by 420 OpCo and Green to 420 Parent, which would be assumed under the Joint Bid.

[30] In their view, the Joint Bid was not conditional on any due diligence or financing. The Joint Bid provided for a going concern sale. High Park and One Plant would assume leases in respect of nearly all of the Applicants' stores (save up to 3 identified before closing). Offers of

employment would be extended to at least 90% of the Applicants' employees at retail and head office levels.

[31] Neither the Applicants nor the Monitor provided any feedback or asked any questions of High Park after the Joint bid was submitted. According to High Park, it was prepared to engage in good-faith negotiations.

[32] On January 7, 2025, High Park received a letter from the Monitor confirming the Joint Bid was a Phase 2 Qualifying Bid, but that the Applicants had advised that no bid would be selected in the SISP and the Applicants had elected to advance a plan of arrangement "intended to provide realizations to creditors that are [in] excess of any potential realizations creditors may receive by advancing a Phase 2 Qualified Bid". According to High Park, this was the first time that High Park was informed that a plan of arrangement was substantially ready for acceptance.

[33] High Park asserts that the Proposed Plan does not provide realizations to creditors exceeding those available under the Joint Bid.

[34] High Park says that it became apparent that the Monitor and the Applicants may have misunderstood certain aspects of the Joint Bid. Through its counsel (not High Park's counsel on this application), High Park wrote to the Monitor's counsel to clarify the Joint Bid, reiterating that the Joint Bid would see all third-party creditors repaid in full, and indicating that High Park and One Plant remained ready and willing to progress the Joint Bid. Notwithstanding the clarifications provided, the Applicants proceeded to pursue the Proposed Plan, which High Parks says is a "materially less favourable Plan".

b) The Applicants' Perspective

[35] According to the Applicants, the SISP involved significant marketing efforts, and they, along with the Monitor, worked diligently with interested bidders to provide information, solicit bids in Phase I, and advance bids from Phase 1 to Phase 2. According to the Applicants, the SISP Order required bidders to put their best foot forward by the Phase 2 bid deadline, after which the Applicants and monitor would determine the best bid.

[36] Upon their review of the Joint Bid, the Applicants assert that they and the Monitor concluded that the Joint Bid was not the best bid as it not only did not offer full cash payout to unsecured creditors as High Park claims it does, but it also did not offer the best cash payout to unsecured creditors out of the bids received. Further, according to the Applicants, it did not appear that Stoke, 420 OpCo's secured creditor, would receive any payment under the Joint Bid.

c) The Monitor's Third Report

[37] The Monitor is the Court-appointed officer designated by the Initial Order to, among other things, report to the Court concerning matters relevant to the *CCAA* proceedings.

[38] In its Third Report, the Monitor confirms that the Applicants and the Monitor reviewed the Joint Bid. Contrary to High Park's assertion that the consideration under the Joint Bid would repay in full all of 420 OpCo's and Green Rock's third-party unsecured creditors and 420 Parent's senior secured creditor, at the time of reviewing the Joint Bid, the Monitor and the Applicants concluded that the Joint Bid, as structured, did not accomplish the payout of 420 OpCo's and Green Rock's third-party creditors. The Monitor's analysis is also detailed in a Confidential Annex to the Third Report, which is the subject of a restricted court access order.

[39] Moreover, the Monitor indicates that the Applicants were of the view that the offers received for the Tilray Litigation did not maximize value. The Third Report confirms that the Applicants rejected the Joint Bid and all other bids received in the SISP because the Applicants believed they could advance a plan that would result in an equal or greater outcome for stakeholders.

[40] In its Third Report, the Monitor confirmed receipt of the letter from High Park and Tilray's counsel (not its counsel in this proceeding) referenced earlier. Following its receipt, the Monitor responded, explaining and commenting on other matters that both the Monitor's and the Applicants' understanding of the mechanics of the Joint Bid was that it would not result in distributions to 420 OpCo's creditors. A further email was sent to High Park's counsel, further explaining the Monitor's views on the Joint Bid.

[41] Following receipt of the Monitor's letter and email, High Park's counsel on this application wrote to the Monitor further clarifying the Joint Bid, which, in their view, would provide for a full recovery for the creditors of 420 OpCo. However, High Park's counsel acknowledged that the allocation of the consideration in the Joint Bid was not clear, and that the lack of clarity was caused by the Applicants' deficient form of subscription agreement, which did not allow for the allocation of the consideration.

[42] At page 24 of the Third Report, the Monitor states:

> The Monitor is of the view that it now understands the intent of the Joint Bid with the subsequent clarifications, (the "Clarified Joint Bid"), however, it remains of the view that the initial Joint Bid did not achieve the intent of the Clarified Joint Bid.
>
> The Monitor understands the intent of the Resumed SISP would therefore allow High Park to clarify and resubmit its bid for consideration by the Applicants and their creditors. If the Clarified Joint Bid were advanced as clarified, it would result in the assumption of the Intercompany Claims and a full cash payment of the Affected Claims. However, the Monitor cannot guarantee that the Clarified Joint Bid would be advanced in the manner presented or that this Court would sanction a transaction arising from the Clarified Joint Bid.

[43] As expected in the case of a court-appointed officer, the Monitor confirms in its Third Report that it takes no position in these applications.

3. Should the Court make the Creditors' Meeting Order?

[44] In this section, I will assess whether the Creditors' Meeting Order should be granted by reference to the grounds upon which High Park says it should be refused.

a) Is the Proposed Plan not in the best interests of the Applicants' creditors?

[45] The thrust of High Park's argument can be summarized as follows: the Joint Bid immediately puts more money into the Applicants' creditors' hands than does the Proposed Plan; therefore, the Proposed Plan cannot be in the best interests of the Applicants' creditors, only the Joint Bid is in the best interests of the creditors, and their interests can only be best served by reopening the SISP. I reject High Park's argument for the following reasons.

[46] First, in the context of the *CCAA* proceedings, while the quantum of recovery is an important consideration in assessing the best interests of creditors, it is not the only one. Undoubtedly, unsecured creditors strive for the greatest recovery possible; however, as Counsel for RioCan pointed out, unsecured creditors, such as RioCan, which supports the Proposed Plan, are also interested in "certainty and finality in a speedy process". While not necessarily quantifiable in pecuniary terms, I agree that certainty and finality can provide a range of value to stakeholders, depending on their circumstances, and is an important consideration in the best interests analysis.

[47] Second, while the Proposed Plan does not offer immediate 100% recovery, it does offer a path to full recovery. As currently contemplated, affected creditors are expected to receive 55 cents on the dollar and can elect between two options that may make them whole in the future. One option involves the election to receive such number of 420 Parent shares equal in value to the differential. Some creditors, perhaps those having confidence in 420 Parent's management team and longer-term prospects, may find this option attractive as it represents an opportunity to invest and obtain considerably more than the differential. The other option, a future right to receive the differential via proceeds from the successful prosecution of and recovery from the Tilray Litigation, may be attractive to those affected creditors who value certainty and finality in a speedy process.

[48] Third, I find it essential to consider whose interests the Joint Bid *best* serves. I find the answer is evident: High Park.

[49] When the Applicants sought the SISP Order, they argued that the Tilray Litigation should not be included. High Park strenuously argued that it should be included. In deciding to include the Tilray Litigation in the SISP, Justice Jones posited that the best way to determine the value of the Applicants' assets was to include all of them in the SISP, including the Tilray Litigation, and that some useful information *may* emerge from the process. Based on my review of the information provided by the Monitor in the confidential appendices to its Second and Third Reports, it turns out that very little information regarding the valuation of the Tilray Litigation emerged.

[50] In my view, the fact that very little useful information about the value of the Tilray Litigation emerged is likely explained by the unique nature of this intangible asset. Some intangible assets are not only more easily valued than others, but they may also be more desirable to an investor. Take, for instance, an intangible asset, such as goodwill or a client list. A hypothetical investor may be inclined to acquire and ascribe value to that asset because it contributes positively to the underlying business's profit-making apparatus. Compare that scenario with an interest in a contractual breach lawsuit, which is also an intangible asset. In my view, there are several reasons why a hypothetical investor may be less inclined to acquire or value such an asset. Although potentially lucrative if successful, lawsuits generally do not significantly contribute to a business's profit-making apparatus. They generally don't increase revenue or attract a new business clientele. They require time and often divert management's attention from its focus on the business and its profitability. A hypothetical investor may not wish to retain those in the management group with the requisite information and knowledge to pursue the lawsuit successfully.

[51] Unlike the hypothetical investor, High Park is highly motivated to acquire the Tilray Litigation. By submitting the Joint Bid, which would have resulted in the acquisition of nearly all

the Applicants' assets, including the Tilray Litigation, for a price that results in full recovery to all creditors (which High Park says is the only bid in the stakeholders' best interests), not only can High Park set as low a price as possible for the Tilray Litigation but it can also argue that any arrangement or compromise plan put forward that does not offer full recovery is not in the stakeholders' best interests. It's a circular argument.

[52] I am not persuaded that the Creditors' Meeting Order should not be granted because it is not in the creditors' best interests.

b) Is there no hope that the creditors will approve the Proposed Plan?

[53] High Park submits that there is no hope that the creditors will approve the Proposed Plan as it appears unlikely that those creditors are aware of at least one alternative available that would see them immediately repaid in full: the Joint Bid. At least one unsecured creditor, with knowledge of the Joint Bid, indicated at the hearing of this application that it supported the Proposed Plan, preferring certainty and finality over recovery.

[54] I am not persuaded that the Creditors' Meeting Order should not be granted because there is no hope that the creditors will approve the Proposed Plan.

c) Did the process not evolve fairly or transparently?

[55] High Park submits that, in exercising its discretion whether to grant the Creditors' Meeting Order, I should examine the unique circumstances surrounding the SISP that was conducted and then "abruptly" abandoned. High Park points to the fact that the Applicants "plainly did not want to include the Litigation Asset in the SISP." While it is true that the Applicants argued against the inclusion of the Tilray Litigation in the SISP, they were also clear that they did not view their insolvency as a liquidation, nor were they obliged to put everything on the market, nor complete a sale under the SISP. That the Applicants did not proceed with a transaction under the SISP and instead are now proceeding with the Proposed Plan does not mean the process did not evolve fairly or transparently. I find no unfairness or lack of transparency in how the process evolved.

[56] High Park also advances arguments regarding the funding the Applicants have obtained to fund the Proposed Plan, which High Park says may impact its ability to recover amounts advanced under the Loan Agreement. According to High Park, the details of the proposed financing ought to be disclosed to creditors and the Court. Based on the record before me, I am unable to determine whether the new funding will adversely impact High Park's ability to eventually recover on the Bridge Loan. That said, as Feasby J determined, repayment of the Bridge Loan is contingent on the Court's determination of whether the Arrangement Agreement has been terminated. At this stage, I am not prepared to deny the Creditors' Meeting Order because of the potential impact the proposed financing may have on repayment of the Bridge Loan. Depending on the outcome of the Creditors' Meeting and the hearing in the Court of Appeal, this may be an issue better suited for the Sanction Hearing.

d) Should the Proposed Plan not be approved by the Court?

[57] In its brief, High Park argues that the Court should not approve the Proposed Plan for two main reasons: (i) it is an affected creditor entitled to vote on the Proposed Plan, and (ii) there is no reasonable chance that the applicants will be able to continue their business if the Proposed Plan is approved. I will address these issues in reverse order.

(1) Is there no reasonable chance that the applicants will be able to continue their business if the Proposed Plan is approved?

[58] High Park advances several arguments under this heading, which I find to be largely speculative.

[59] Regarding the appeal of the Feasby Decision, the Court of Appeal's disposition may render the Applicants unable to continue their business if repayment of the Bridge Loan becomes enforceable. However, that is not the current situation, and these *CCAA* proceedings should not be grounded to a halt awaiting the outcome. Nor should they be because the Applicants have not disclosed how they intend to fund the continued pursuit of the Tilray Litigation.

[60] Regarding High Park's submission that 420 Parent has no means to repay the Nomos debt and that that debt will be immediately due upon implementation of the Proposed Plan if approved by the creditors and sanctioned by the Court, I have no information regarding Nomos' intentions if the Proposed Plan is approved. Given that the Applicants were able to obtain financing to fund the Proposed Plan, I surmise that the Applicants and/or the proposal funder may have received some assurances regarding Nomos' intentions.

(2) Is High Park an affected creditor entitled to vote at the Creditors' Meeting?

[61] Although it is generally accepted that creditors with provable claims are usually entitled to vote on plans of arrangement, it is "subject to the proper exercise of discretion by the supervising judge to constrain or bar the creditor's right to vote" (***Callidus***, para 56; ***Delta 9***, para 19). Barring a creditor from voting at a plan approval meeting should only occur "where the circumstances demand such an outcome", which is "necessarily a discretionary, circumstance-specific inquiry" (***Callidus***, para 69). In addition (at para 70):

> ... The exercise of this discretion must further the remedial objectives of the *CCAA* and be guided by the baseline considerations of appropriateness, good faith, and due diligence. This means that, where a creditor is seeking to exercise its voting rights in a manner that frustrates, undermines, or runs counter to those objectives — that is, acting for an "improper purpose" — the supervising judge has the discretion to bar that creditor from voting.

See also: ***Canada v Canada North Group***, 2021 SCC 30, per Côté J at para 21; per Karakatsanis J at para 138.

[62] The Applicants argue that High Park's claim is contingent. They submit that the situation is analogous to that in ***Nalcor Energy v Grant Thornton Poirier Ltd***, 2015 NBQB 20. I agree with High Park that the facts of that case are very different. Importantly, the case did not, like here, involve an advance of money. In the High Park Counterclaim, the issue for determination is the timing of when the advance of money is repayable, an issue which Feasby J determined was not capable of being decided in a summary way. As matters stand, the Bridge Loan is not currently repayable and will not be until after a decision has been made at trial. Several years away.

[63] In my view, this case presents unique circumstances that necessitate denying High Park the right to vote on the Proposed Plan. Repayment of the Bridge Loan is currently not enforceable, and it is unlikely to become enforceable for some time. A trial decision favourable

to 420 Parent may result in the Bridge Loan being set off against damages awarded to 420 Parent. If High Park were allowed to vote at the creditors' meeting, the outcome would be a foregone conclusion. In my view, to allow High Park to vote would unduly prejudice the other creditors, particularly the unsecured creditors, who are not awaiting a trial judgment but are presently owed money, and who may be interested in certainty and finality in a speedy process.

[64] Moreover, a failed creditors' meeting would undoubtedly lead to the resumption of the SISP and the likely liquidation of the Applicants. It is not readily apparent to me that a liquidation of the Applicants is required. As the Applicants' CEO, Mr. Morrow, attests, the Applicants have been able to run on a cashflow positive basis in these proceedings without the need for DIP financing. It must also be recalled that the Applicants find themselves in these *CCAA* proceedings as a result of the High Park Summary Judgment and High Park's enforcement measures. Those measures have ceased in light of the Feasby Decision.

[65] For these reasons, I am exercising my discretion to deny High Park the right to vote on the Proposed Plan at the Creditors' Meeting.

e) Creditors' Meeting Order is granted

[66] For all these reasons, the application seeking an order permitting the filing of the Proposed Plan and calling the Creditors' Meeting is granted.

B. Should the *CCAA* Stay be Extended?

[67] The current *CCAA* Stay is set to expire on Monday. Given my decision to permit the filing of the Proposed Plan and calling the Creditors' Meeting, extending the stay is appropriate. I am satisfied that the Applicants have acted and continue to act in good faith and with due diligence.

[68] Although the Applicants had requested that the stay be extended to April 30, 2025, this may not provide sufficient time to finalize the Proposed Plan and hold the Creditors' Meeting. The Applicants also expressed some willingness to call the meeting for a date after the hearing of the appeal of the Feasby Decision. I express no opinion on the appropriateness of delaying the Creditors' Meeting. Given these considerations and the costs associated with a court application to merely extend the stay, I would order the stay be extended to Friday, May 23, 2025.

C. Resumption of SISP with Enhanced Powers to the Monitor

[69] Given my decision to permit the filing of the Proposed Plan and calling the Creditors' Meeting, I dismiss High Park's application seeking the resumption of the SISP and the granting of enhanced powers to the Monitor.

Heard on the 14th day of March, 2025.
Dated at the City of Calgary, Alberta this 27th day of March, 2025.

Michel Bourque

M.H. Bourque
J.C.K.B.A.

Appearances:

Karen Fellowes KC, Archer Bell, and Matti Lemmens, Stikeman Elliott LLP
for the Applicants, 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (EC 1) Limited and 420 Dispensaries Ltd.

Kelly J. Bourassa, Jenna Willis and N. Huertas, Blake, Cassels & Graydon LLP
for the Respondents High Park Shops Inc.

S. Miller, JSS Barristers
Litigation Counsel for High Park Shops Inc.

Michael Selnes, Bennett Jones LLP
for the Monitor, KSV Restructuring Inc.

L. Galessiere, Camelino Galessiere LLP
for RioCan REIT

M. Fleming, Loopstra Nixon LLP
for Nomos Capital

G. Schacter for Stoke Inventory Partners Inc.

D. Segal, Justice Canada
for Canada Revenue Agency