



COURT FILE NUMBER

25-3086318 / B301-86318

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PROCEEDING

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

C111647
COM
Dec 5, 2024

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.

DOCUMENT

FIRST REPORT OF THE MONITOR

NOVEMBER 28, 2024

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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1.0 Introduction

1. On May 29, 2024 (the “**Filing Date**”), 420 Investments Ltd., 420 Premium Markets Ltd., and Green Rock Cannabis (EC 1) Limited (collectively, the “**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, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) (the “**NOI Proceeding**”). KSV Restructuring Inc. (“**KSV**”) consented to act as proposal trustee (the “**Proposal Trustee**”) in the NOI Proceeding.
2. On September 19, 2024, the NOI Entities and 420 Dispensaries Ltd. (together with the NOI Entities, the “**Applicants**” or “**FOUR20**”) sought and obtained an initial order (the “**Initial Order**”) from the Court of Kings’ Bench of Alberta (the “**Court**”) granting, among other things, a continuation of the NOI Proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c C-36, as amended (the “**CCAA**”) (the “**CCAA Proceeding**”). This report (the “**First Report**”) is filed by KSV in its capacity as monitor (the “**Monitor**”) in the CCAA Proceeding.

1.1 NOI Proceedings Background

1. On June 27, 2024, NOI Entities were granted an Order (the “**First Extension Order**”) by the Court which included, amongst other matters, relief for the following:
 - a) extending the period in which the NOI Entities can make proposals to their creditors in the NOI Proceedings and the stay of proceedings up to and including August 12, 2024;
 - b) consolidating the NOI Proceedings for procedural purposes;
 - c) granting the following charges against the NOI Entities’ current and future assets, undertakings and properties of every nature and kind whatsoever (including all real and personal property), and wherever situated, including all proceeds thereof (collectively the “**Property**”) in the following relative priorities:
 - i. First – a charge to not exceed \$300,000 as security for the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, Bennett Jones LLP, and the NOI Entities’ counsel, Stikeman Elliott LLP (“**Stikeman**”) (the “**Administration Charge**”);

- ii. Second – a charge in favour of the NOI Entities’ directors and officers to a maximum amount of \$433,000 (the “**D&O Charge**”); and
 - iii. Third – a charge in favour of the Key Employee Retention Plan for amounts payable to certain key employees up to a maximum amount of \$373,928.17 (the “**KERP Charge**”, and together with the Administration Charge and the D&O Charge, the “**Charges**”).
2. On August 12, 2024, the Court granted two orders, which, amongst other matters:
 - i. extended the period in which the NOI Entities can make a proposal to its creditors and the stay of proceedings from August 12, 2024 up to and including September 26, 2024; and
 - ii. provided direction to the Commercial Coordinator to schedule a half-day application for the appeal of the order for summary judgment granted by Applications Judge J.R. Farrington to be heard by the Honourable Justice Feasby on February 7, 2024 (the “**Appeal**”).

1.2 CCAA Proceedings Background

1. The Initial Order granted, among other things, the following relief within the CCAA Proceeding:
 - a) declaring the NOI Proceedings of the NOI Entities is taken up and continued under the CCAA, pursuant to section 11.6(a) of the CCAA;
 - b) terminating the NOI Proceedings;
 - c) granting a stay of all proceedings, rights, and remedies against or in respect of the Applicants not exceeding 10 days following this Application (the “**Stay Period**”); and
 - d) confirming the grant and priority of the Charges pursuant to the First Stay Extension Order in the NOI Proceedings, and taking up such Charges and amounts under the CCAA Proceeding except for the KERP Charge, which shall be reduced based on the amounts paid out to date to eligible recipients.

2. On September 19, 2024, the Court granted the Applicants' application for an amended and restated initial order ("**Amended and Restated Initial Order**"), which, amongst other matters, extended the Stay Period to, and including, December 16, 2024.
3. Further, on September 19, 2024, the Court granted the Applicants' application for an order (the "**Claims Procedure Order**") approving the solicitation, determination and resolution of claims against the Applicants (the "**Claims Procedure**").
4. On October 2, 2024, the Court granted the Applicants' application for an order (the "**SISP Order**") which approved, amongst other matters, a sales and investment solicitation process ("**SISP**").

1.3 Purposes of this First Report

1. This First Report is intended to provide the Court with further information related to the relief sought by the Applicants in their application scheduled for December 5, 2024. This First Report specifically provides information regarding:
 - a) the Monitor's activities since the Monitor's pre-filing report (the "**Pre-Filing Report**") and the third report of the Proposal Trustee, dated September 13, 2024;
 - b) the Applicants' activities since the Pre-Filing Report;
 - c) an update on the SISP;
 - d) an update on the Claims Procedure;
 - e) the Monitor's comments and report on the Applicants' cash flow statement for the period commencing on September 9, 2024 and ending December 16, 2024 (the "**Fourth Cash Flow Statement**");
 - f) the Applicants' actual performance to date versus the Fourth Cash Flow Statement;
 - g) the Monitor's comments and report on the Applicants' cash flow statement for the period commencing on November 25, 2024 and ending March 2, 2025 (the "**Fifth Cash Flow Statement**");

- h) the Applicants' Application for a stay extension order, which among other things, extends the Stay Period to and including February 25, 2025 (the "**Second Stay Extension Order**"); and
- i) the Monitor's application for an order (the "**Sealing Order**") sealing the Phase 1 Bid Summary (as defined below), until the closing of a transaction involving substantially all of the Property or further order of the Court.

1.4 Scope and Terms of Reference

1. In preparing this First Report, the Monitor has relied upon the Applicants' unaudited financial information, books and records, information available in the public domain and discussions with the Applicants' management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this First Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own due diligence.
3. An examination of the Fifth Cash Flow Statement as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future-oriented financial information relied upon in this First Report is based upon the Applicants' assumptions regarding future events; actual results achieved may vary from this information, and these variations may be material. The Monitor does not express any opinion or other form of assurance on whether the Fifth Cash Flow Statement will be achieved.
4. This First Report should be read in conjunction with the materials filed by the Applicants, including the First Affidavit of Scott Morrow, the Chief Executive Officer of the Applicants, sworn June 19, 2024, the Second Affidavit of Scott Morrow, sworn August 6, 2024, the Third Affidavit of Scott Morrow, sworn September 10, 2024, the Fourth Affidavit of Scott Morrow, sworn November 25, 2024 and any supplemental affidavit filed by the Applicants in advance of the December 5, 2024 hearing

(collectively, the “**Morrow Affidavits**”). Capitalized terms not defined in this First Report have the meanings ascribed to them in the Morrow Affidavits.

1.5 Currency

1. Unless otherwise noted, all currency references in this First Report are in Canadian dollars.

1.6 Court Materials

1. Court materials filed in these proceedings are made available by KSV on its case website at www.ksvadvisory.com/experience/case/420 (the “**Case Website**”).

2.0 Activities of the Applicants and Monitor

2.1 Activities of the Monitor

1. Since its Pre-Filing Report, the Monitor has performed the following key activities:
 - a) attending ongoing meetings with management to discuss the proposal process, the SISP, and the Claims Procedure;
 - b) attending the Applicants’ application for the appeal of the judgment of Applications Judge J.R. Farrington dated February 7, 2024, the decision for which is attached hereto as **Appendix “A”**;
 - c) assisting the Applicants with their communications to both internal and external stakeholders;
 - d) monitoring the affairs of the Applicants’ business including reviewing financial information with management;
 - e) assisting in preparing the Fifth Cash Flow Statement;
 - f) corresponding and holding numerous discussions with various stakeholders, and/or respective legal counsel to stakeholders;
 - g) conducting the activities outlined and directed under the SISP and responding to due diligence questions raised in connection with same;

- h) reviewing various letters of intent (“**LOI**”) submitted by interested parties at the conclusion of the first phase of the SISP;
- i) corresponding and attending calls with interested parties and their counsel regarding bids in the SISP;
- j) conducting the activities as outlined and directed under the Claims Procedure and responding to creditor inquiries in connection with same;
- k) reviewing claims received in accordance with the Claims Procedure;
- l) responding to calls and emails from creditors, suppliers, landowners, and other stakeholders;
- m) maintaining the Case Website; and
- n) preparing this Report.

2.2 Activities of the Applicants

1. The Monitor has observed certain key activities of the Applicants since the Pre-Filing Report, such as:
 - a) continuing their efforts to improve the operations of the business and managing day-to-day operations;
 - b) communicating with various stakeholders and creditors regarding the CCAA Proceedings, in consultation with the Monitor;
 - c) with the assistance of the Monitor, responding to various questions by vendors;
 - d) corresponding with the Applicants' legal counsel, Stikeman, and the Monitor and its counsel, and assisting in conducting the SISP and the Claims Procedure;
 - e) communicating on an ongoing basis with certain creditors and/or their advisors;
 - f) reporting to the Monitor on a weekly basis in respect of the Applicants' receipts and disbursements;

- g) working with the Monitor in preparing the Fifth Cash Flow Statement and providing variance reporting against the Fourth Cash Flow Statement; and
- h) working with its legal counsel and the Monitor to prepare materials in support of the Second Stay Extension Order.

3.0 Cash Flow Statement

3.1 Performance Against the Fourth Cash Flow Statement

1. In accordance with the CCAA, the Monitor has continued to review and evaluate the state of the Applicants' business and financial affairs during the CCAA Proceeding.
2. Pursuant to the CCAA, the Applicants prepared the Fourth Cash Flow Statement for the extended stay period. The Fourth Cash Flow Statement for the period ending December 16, 2024, together with management's Report on the Cash-Flow Statement as required pursuant to Section 10(2)(b) of the CCAA are attached hereto as **Appendix "B"**.
3. The Applicants have remained current in respect of their obligations that have arisen since the Pre-Filing Report except for the rental payments owing at the leased locations that were disclaimed during the NOI Proceedings and where landlords could apply a security deposit against the post-filing arrears owed under the disclaimed lease. Further details on the disclaimed leases are documented in the first report of the Proposal Trustee dated June 24, 2024. The Monitor understands that applications by 2 landlords challenging the disclaimers will be heard by this Court at a future date and that both landlords submitted a claim, which are currently under review by the Monitor in accordance with the Claims Procedure.
4. A review process was established with the Applicants to review weekly cash variances. A comparison of the Applicants' receipts and disbursements to the Fourth Cash Flow Statement for the period from the Pre-Filing Report to November 24, 2024 (the "**Reporting Period**") is as follows:

| Post Filing Reporting Period (\$CAD) | Actual | Fourth Cash Flow Statement | Favourable / (Unfavourable) Variance |
|--------------------------------------|---------|-------------------------------|--|
| Opening Cash balance | 242 | 242 | (0) |
| Receipts | 6,309 | 5,792 | 517 |
| Operating Disbursements | (5,828) | (5,507) | (321) |
| Net Cash Flow from Operations | 481 | 285 | 196 |
| Non-operating disbursements | (396) | (420) | 24 |
| Net Cash Flow | 86 | (135) | |
| Closing cash balance | 328 | 107 | |

Monitor's Comments

1. During the Reporting Period, the Applicants continued to experience higher business activity, resulting in more receipts than anticipated and contributing to a favourable ending cash balance.
2. Operating disbursements were approximately \$321,000 higher than projected primarily as a result of the continued higher business activity driving the need for increased inventory purchases. Non-operating disbursements remained relatively consistent with projections during the Reporting Period.
3. The Monitor has reviewed the variances with the Applicants and concluded the variances are mainly attributed to favourable business activity.

3.2 The Fifth Cash Flow Statement

1. The Applicants prepared the Fifth Cash Flow Statement for the purposes of the extended Stay Period. The Fifth Cash Flow Statement assumptions are largely consistent with the Fourth Cash Flow Statement assumptions except for the time period covered.
2. The Fifth Cash Flow Statement and the Applicants' statutory report on the cash flow pursuant to Section 10(2)(b) of the CCAA is attached as **Appendix "C"**.
3. The Fifth Cash Flow Statement reflects that the Applicants have sufficient liquidity for the duration of the Stay Period.

4. Based on the Monitor’s review of the Fifth Cash Flow Statement, the assumptions appear reasonable. The Monitor’s statutory report on the Fifth Cash Flow Statement is attached hereto as **Appendix “D”**.

4.0 Sale and Investment Solicitation Process (SISP)¹

4.1 Marketing

1. The Monitor carried out the SISP in accordance with the SISP Order. A copy of the SISP is attached as **Appendix “E”**. A summary of the key SISP activities to date since the Pre-Filing Report is set out below:
 - a) following the issuance of the SISP Order, the Monitor launched the first phase of the SISP (“**Phase 1**”) on October 4, 2024 by distributing an interest solicitation letter (the “**Teaser**”) detailing the acquisition opportunity (the “**Opportunity**”). A copy of the Teaser was placed on the Case Website and emailed to approximately 124 potentially interested parties (the group of potential purchasers and investors is referred herein as the “**Interested Parties**”). The Interested Parties were comprised of Canadian and US operators and investors in the cannabis industry;
 - b) attached to the Teaser was a form of a confidentiality agreement (“**NDA**”). Interested Parties that executed the NDA were provided with access to an online data room managed by the Monitor (the “**Dataroom**”);
 - c) the Dataroom contained certain historical and projected financial information and certain other relevant diligence information, including litigation information, operational metrics, material contracts and agreements in respect of the Applicants and their assets; and
 - d) pursuant to the SISP, the deadline for Interested Parties to submit non-binding letters of intent was 12:00 p.m. (Calgary Time) on November 15, 2024 (the “**Phase 1 Bid Deadline**”).

¹ Capitalized terms in this section have the meaning provided to them in the SISP, unless otherwise defined herein.

4.2 Results

1. 15 Interested Parties executed the NDA and were provided with access to the Dataroom. A significant number of parties that accessed the Dataroom conducted due diligence in respect of the Opportunity. The Applicants, with assistance from the Monitor, provided fulsome and timely responses to all due diligence questions raised during the initial phase of the SISP.
2. Prior to the Phase 1 Bid Deadline, the Applicants received LOI's from several Interested Parties and, with assistance from the Monitor, have now invited certain Interested Parties to the second phase of the SISP ("**Phase 2**"). A summary of the Phase 1 bids (the "**Phase 1 Bid Summary**") is attached hereto as **Confidential Appendix "1"**.
3. Phase 2 of the SISP involves the Applicants seeking binding bids in accordance with the criteria set out in the SISP.
4. Several Phase 2 Qualified Bidders requested that the Phase 2 Deadline for submitting a bid be extended to allow for more time to conduct due diligence and prepare definitive transaction documents. The Monitor, in consultation with the Applicants and their counsel, determined it was in the best interest of the SISP and all stakeholders to extend the Phase 2 Deadline. Accordingly, the Monitor extended the Phase 2 Deadline to 12:00 p.m. (Calgary time) December 20, 2024, and the deadline for selecting the Successful Bid to January 6, 2025 (the "**Extended Dates**"). The Monitor communicated this extension to all Phase 2 Qualified Bidders.

5.0 Claims Procedure²

1. Following the pronouncement of the Claims Procedure Order, the Monitor has worked diligently to conduct the Claims Procedure in accordance with the timelines set out therein, and more particularly described in the Monitor's Pre-Filing Report. The key activities completed to date include:
 - a) Preparing a claims package and delivering the same to the known creditors of

² Capitalized terms in this section have the meaning provided to them in the Claims Procedure Order unless otherwise defined herein.

the Applicants;

- b) Posting a copy of the claims package on the Case Website;
- c) Posting a Notice to Claimants in a single edition of *The Globe and Mail* (National Edition); and
- d) Collecting and documenting claims received to date and extensively corresponding with Claimants.

2. A summary of the claims received in the Claims Procedure are as follows:

| 420 Investment Ltd. | # | (\$) |
|--|----------|-------------------------|
| Secured claims | 2 | 11,457,077 |
| Ordinary claims – preferred | 1 | 46,660 |
| Ordinary claims – pre-filing | 8 | 1,638,871 |
| Ordinary claims – restructuring | 1 | 465,052 |
| 420 Premium Markets Ltd. | | |
| Secured claims | 1 | 300,497 |
| Ordinary claims – preferred | 1 | 46,660 |
| Ordinary claims – pre-filing | 14 | 33,673,277 ³ |
| Ordinary claims – restructuring | 4 | 738,871 |
| Green Rock Cannabis (EC1) Limited | | |
| Ordinary claims – pre-filing | 2 | 2,189,960 |
| 420 Dispensaries Ltd. | | |
| Ordinary claims – pre-filing | 1 | 1,798,940 |
| Ordinary claims – restructuring | 1 | 189,651 |

3. Of the claims noted above, 14 were received after the Claims Bar Date (the “**Late Claims**”). As of the date of this First Report, the Monitor is working to review each claim and write to certain creditors to obtain further information regarding their claims prior to admission or disallowance of the claim. Further to this, a claim submitted in the Claims Procedure may be impacted by the Reasons for Decision of the Honourable Justice Colin C.J. Feasby attached as Appendix “A”. The Monitor will

³ Of this balance, \$30.45mm is comprised of an inter-company claim submitted by 420 Investments Ltd.

provide this Court with a further update on the Claims Procedure at a future court application.

4. Additionally, the Monitor anticipates that it may, together with the Applicants, bring a future court application to allow the Monitor to not rule Late Claims as invalid or disallowed on the grounds of late filing.

6.0 Applicants' Request for an Extension

1. The Applicants are seeking an extension of the stay of proceedings from December 16, 2024 to February 25, 2025. The Monitor supports the extension request for the following reasons:
 - a) the Applicants are acting in good faith and with due diligence;
 - b) to allow the necessary time to complete the SISP, within the Extended Dates;
 - c) the extension will provide additional time to complete a review of the claims received in the Claims Procedure; and
 - d) the extension should not adversely affect or prejudice any group of creditors as the Applicants are projected to have sufficient liquidity for the extended Stay Period as contemplated by the Fifth Cash Flow Statement.

7.0 Sealing

1. The Monitor is seeking the Sealing Order to seal **Confidential Appendix "1"** until the earlier of: (i) the closing of a transaction or transactions with respect to substantially all of the Property; or (ii) further order of this Court, as **Confidential Appendix "1"** contains confidential information, including a summary of bids received at the Phase 1 Bid Deadline. Making this information publicly available prior to closing a transaction or transactions could have a detrimental impact on the value of a potential transaction or transactions under the SISP. Sealing **Confidential Appendix "1"** is necessary due to the risk that the public disclosure of the information contained in the same could cause irreparable prejudice to creditors and other stakeholders.

2. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Monitor is not aware of any party that will be prejudiced if the information in **Confidential Appendix “1”** is sealed or any public interest that will be served, if such details are disclosed in full. The Monitor is of the view that the sealing of **Confidential Appendix “1”** is consistent with the decision in *Sherman Estate v. Donovan, 2021 SCC 25*. Accordingly, the Monitor believes the proposed sealing of **Confidential Appendix “1”** is appropriate in the circumstances.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the relief sought by the Applicants.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
in its capacity as Monitor of the Applicants,
and not in its personal capacity**

Appendix “A”

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 retail 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 *Kaspersky 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

Appendix “B”

420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd.
Cash Flow Forecast
September 9, 2024 to December 16, 2024
(Unaudited; C\$000s)

| | Note | Period ending | | | | | | | | | | | | | | Total |
|-------------------------------------|------|---------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------|
| | | 15-Sep-24 | 22-Sep-24 | 29-Sep-24 | 06-Oct-24 | 13-Oct-24 | 20-Oct-24 | 27-Oct-24 | 03-Nov-24 | 10-Nov-24 | 17-Nov-24 | 24-Nov-24 | 01-Dec-24 | 08-Dec-24 | 16-Dec-24 | |
| | 1 | | | | | | | | | | | | | | | |
| Receipts | | | | | | | | | | | | | | | | |
| Collection of Accounts Receivable | 2 | 550 | 550 | 550 | 525 | 525 | 525 | 525 | 511 | 511 | 511 | 511 | 625 | 625 | 694 | 7,736 |
| Total Receipts | | 550 | 550 | 550 | 525 | 525 | 525 | 525 | 511 | 511 | 511 | 511 | 625 | 625 | 694 | 7,736 |
| Disbursements | | | | | | | | | | | | | | | | |
| Inventory purchases | 3 | 359 | 359 | 359 | 342 | 342 | 342 | 342 | 333 | 333 | 333 | 333 | 406 | 406 | 451 | 5,041 |
| Payroll and KERP | 4 | - | 197 | - | 197 | - | 197 | - | 197 | - | 197 | - | 197 | - | 197 | 1,377 |
| Rent | 5 | - | - | - | 180 | - | - | - | 180 | - | - | - | - | 180 | - | 539 |
| Other operating expenses | 6 | 26 | 31 | 26 | 66 | 27 | 33 | 52 | 36 | 27 | 27 | 37 | 44 | 34 | 23 | 488 |
| Total Operating disbursements | | 385 | 586 | 385 | 784 | 369 | 572 | 394 | 745 | 360 | 557 | 370 | 647 | 620 | 671 | 7,446 |
| Net Cash Flow before the Undernoted | | 166 | (36) | 166 | (260) | 156 | (48) | 130 | (235) | 151 | (46) | 141 | (23) | 5 | 23 | 290 |
| Professional Fees | 7 | - | 90 | - | - | - | 135 | - | - | - | - | 195 | - | - | - | 420 |
| Net Cash Flow | | 166 | (126) | 166 | (260) | 156 | (183) | 130 | (235) | 151 | (46) | (54) | (23) | 5 | 23 | (130) |
| Opening Cash balance | 8 | 242 | 408 | 282 | 448 | 188 | 344 | 161 | 292 | 57 | 207 | 161 | 107 | 84 | 89 | 242 |
| Net Cash Flow | | 166 | (126) | 166 | (260) | 156 | (183) | 130 | (235) | 151 | (46) | (54) | (23) | 5 | 23 | (130) |
| Closing cash balance | | 408 | 282 | 448 | 188 | 344 | 161 | 292 | 57 | 207 | 161 | 107 | 84 | 89 | 112 | 112 |

The above financial projections are based on management's assumptions detailed in Appendix "1-1".
The note references correspond to the assumption numbers shown in Appendix "1-1".

420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd.

Notes to Projected Statement of Cash Flows

September 9, 2024 to December 16, 2024

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the consolidated cash flow of 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd. (the "Applicants") for the period September 9 to December 16, 2024 (the "Period").

Hypothetical

2. Cash collections include funds received from sales of cannabis-related products at various retail store locations and data program revenues.

Most Probable

3. Represents inventory stock purchases for retail locations.
4. Reflects payroll costs of employees and proposed KERP payments.
5. Represents occupancy costs for the various retail locations.
6. Other expenses include marketing costs for each retail location and general administrative expenses.
7. Includes the estimated payments to the Applicant's legal counsel, the Monitor, and the Monitor's legal counsel.
8. Opening cash reflected as of September 8, 2024.

IN THE COURT OF KING'S BENCH OF ALBERTA

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

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

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The management of 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd. (the "**Applicants**") have developed the assumptions and prepared the attached consolidated statement of projected cash flow as of the 12th day of September, 2024 for the period September 9, 2024 to December 16, 2024 ("**Fourth Cash Flow Statement**"). All such assumptions are disclosed in the notes to the Fourth Cash Flow Statement.

The hypothetical assumptions are suitably supported and consistent with the purpose of the Fourth Cash Flow Statement as described in Note 1 to the Fourth Cash Flow Statement, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Fourth Cash Flow Statement.

Since the Fourth Cash Flow Statement is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Fourth Cash Flow Statement has been prepared solely for the purpose outlined in Note 1 using a set of probable assumptions set out therein. Consequently, readers are cautioned that the Fourth Cash Flow Statement may not be appropriate for other purposes.

Dated at Calgary, AB this 12th day of September, 2024.

**420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1)
LIMITED AND 420 DISPENSARIES LTD.**

Ryan Pernal

Per: Ryan Pernal, CFO

Appendix “C”

420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd.
Cash Flow Forecast
November 25, 2024 to March 2, 2025
(Unaudited; C\$000s)

| | Note | Period ending | | | | | | | | | | | | | | Total |
|-------------------------------------|------|---------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------|
| | | 01-Dec-24 | 08-Dec-24 | 15-Dec-24 | 22-Dec-24 | 29-Dec-24 | 05-Jan-25 | 12-Jan-25 | 19-Jan-25 | 26-Jan-25 | 02-Feb-25 | 09-Feb-25 | 16-Feb-25 | 23-Feb-25 | 02-Mar-25 | |
| Receipts | 1 | | | | | | | | | | | | | | | |
| Collection of Accounts Receivable | 2 | 536 | 536 | 557 | 579 | 633 | 522 | 533 | 533 | 533 | 541 | 541 | 541 | 541 | 543 | 7,667 |
| Total Receipts | | 536 | 536 | 557 | 579 | 633 | 522 | 533 | 533 | 533 | 541 | 541 | 541 | 541 | 543 | 7,667 |
| Disbursements | | | | | | | | | | | | | | | | |
| Inventory purchases | 3 | 333 | 363 | 407 | 442 | 345 | 353 | 346 | 346 | 346 | 360 | 360 | 360 | 360 | 361 | 5,079 |
| Payroll and KERP | 4 | 197 | - | 197 | - | 197 | - | 205 | - | 205 | - | 205 | - | 205 | - | 1,410 |
| Rent | 5 | - | 180 | - | - | - | 180 | - | - | - | - | 180 | - | - | - | 539 |
| Other operating expenses | 6 | 26 | 56 | 34 | 29 | 46 | 36 | 26 | 32 | 42 | 27 | 36 | 27 | 47 | 32 | 494 |
| Total Operating disbursements | | 555 | 599 | 638 | 470 | 588 | 569 | 577 | 378 | 593 | 386 | 780 | 386 | 612 | 392 | 7,523 |
| Net Cash Flow before the Undernoted | | (20) | (63) | (81) | 109 | 45 | (46) | (45) | 155 | (60) | 154 | (239) | 154 | (71) | 151 | 144 |
| Professional Fees | 7 | - | - | 110 | - | - | - | - | 110 | - | - | - | - | - | 100 | 320 |
| Net Cash Flow | | (20) | (63) | (191) | 109 | 45 | (46) | (45) | 45 | (60) | 154 | (239) | 154 | (71) | 51 | (176) |
| Opening Cash balance | 8 | 328 | 308 | 245 | 54 | 164 | 208 | 162 | 117 | 162 | 102 | 257 | 18 | 172 | 101 | 328 |
| Net Cash Flow | | (20) | (63) | (191) | 109 | 45 | (46) | (45) | 45 | (60) | 154 | (239) | 154 | (71) | 51 | (176) |
| Closing cash balance | | 308 | 245 | 54 | 164 | 208 | 162 | 117 | 162 | 102 | 257 | 18 | 172 | 101 | 151 | 151 |

The above financial projections are based on management's assumptions detailed in Appendix "1-1".
The note references correspond to the assumption numbers shown in Appendix "1-1".

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the consolidated cash flow of 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd. (the "Applicants") for the period

Hypothetical

2. Cash collections include funds received from sales of cannabis-related products at various retail store locations and data program revenues.

Most Probable

3. Represents inventory stock purchases for retail locations.
4. Reflects payroll costs of employees.
5. Represents occupancy costs for the various retail locations.
6. Other expenses include marketing costs for each retail location and general administrative expenses.
7. Includes the estimated payments to the Applicant's legal counsel, the Monitor, and the Monitor's legal counsel.
8. Opening cash reflected as of November 25, 2024.

IN THE COURT OF KING'S BENCH OF ALBERTA

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

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

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The management of 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd. (the "**Applicants**") have developed the assumptions and prepared the attached consolidated statement of projected cash flow as of the 27th day of November, 2024 for the period November 25, 2024 to March 2, 2025 ("**Fifth Cash Flow Statement**"). All such assumptions are disclosed in the notes to the Fifth Cash Flow Statement.

The hypothetical assumptions are suitably supported and consistent with the purpose of the Fifth Cash Flow Statement as described in Note 1 to the Fifth Cash Flow Statement, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Fifth Cash Flow Statement.

Since the Fifth Cash Flow Statement is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Fifth Cash Flow Statement has been prepared solely for the purpose outlined in Note 1 using a set of probable assumptions set out therein. Consequently, readers are cautioned that the Fifth Cash Flow Statement may not be appropriate for other purposes.

Dated at Calgary, AB this 27th day of November, 2024.

**420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1)
LIMITED AND 420 DISPENSARIES LTD.**

Ryan Pernal

Per: Ryan Pernal, CFO

Appendix “D”

IN THE COURT OF THE KING'S BENCH OF ALBERTA

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

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

MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash flow of 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd. (the "**Applicants**") as of the 28th day November, 2024, consisting of a weekly projected cash flow statement for the period November 25, 2024 to March 2, 2025 (the "**Fifth Cash Flow Statement**") has been prepared by the management of the Applicants for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Fifth Cash Flow Statement.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the management of the Applicants. We have reviewed the support provided by management for the probable and hypothetical assumptions and the preparation and presentation of the Fifth Cash Flow Statement.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Fifth Cash Flow Statement;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Fifth Cash Flow Statement, given the hypothetical assumptions;
or
- c) the Fifth Cash Flow Statement does not reflect the probable and hypothetical assumptions.

Since the Fifth Cash Flow Statement is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Fifth Cash Flow Statement will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Fifth Cash Flow Statement has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Calgary, AB this 28th day of November, 2024.

KSV Restructuring Inc.

KSV RESTRUCTURING INC.,
solely in its capacity as the proposed monitor of
420 Investments Ltd., 420 Premium Markets Ltd.,
Green Rock Cannabis (Ec 1) Limited and 420 Dispensaries Ltd.

Appendix “E”

COURT FILE NUMBER 25-3086318 / B301-086318
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

Clerk's stamp



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 **ORDER (APPROVING SALE AND INVESTMENT
SOLICITATION PROCESS)**

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

DATE ON WHICH ORDER WAS PRONOUNCED: September 19, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Jones

UPON the application of Applicants, 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**"); **AND UPON** having read the Application for an Amended and Restated Initial Order, the Affidavit of Scott Morrow sworn on September 10, 2024, the Affidavit of Jessica Watts sworn on September 18, 2024, the Affidavit of Service of Jessica Watts sworn on September 19, 2024, Third Report of the Proposal Trustee and Pre-Filing Report of the Proposed Monitor dated September 13, 2024 (the "**Pre-Filing Report**"); **AND UPON** hearing counsel for the Applicants, and any other interested parties appearing at the application;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") together with all supporting materials is hereby deemed good and sufficient and this application is properly returnable today.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the sales and investment solicitation process attached hereto as **Appendix "A"** ("**SISP**").
3. The SISP is approved in the form attached, which includes all or part of FOUR20's Property and Business as defined in the SISP, without exception. For clarity, the litigation between 420 Parent and Tilray Inc and High Park Shops Inc. in Court of King's Bench of Alberta Court file No. 2001-02873 may be included in any Sale Proposal or Investment Proposal as described within the SISP, and the shares of 420 Parent may form part of an Investment Proposal as described in the SISP. The Applicants, the Monitor (as defined below) and their advisors are authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations under the SISP.
4. Each of the Applicants, the Monitor and their respective affiliates, partners, directors, employees, advisors (including but not limited to legal counsel), agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP (as determined by this Court). Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Debtors and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP, but only to the extent desirable or required to carry out the SISP. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Applicants and the Property, and if it does not complete such a transaction, shall return all such information to the Monitor, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

MISCELLANEOUS MATTERS

5. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
6. Notwithstanding Rule 6.11 of the Alberta Rules of Court, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
7. Service of this Order shall be deemed good and sufficient by serving the same by posting a copy of this Order on the Monitor's website at: <https://www.ksvadvisory.com/experience/case/420>



Justice of the Court of King's Bench of Alberta

Appendix "A"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

On May 29, 2024, 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**"), Green Rock Cannabis (EC 1) Limited ("**GRC**") filed with the Alberta Court of King's Bench (the "**Court**") and the Office of the Superintendent of Bankruptcy a Notice of Intention to make a Proposal under Part III of the *Bankruptcy and Insolvency Act*, 1985, c. B-3 (the "**BIA**") (the "**NOI Proceedings**").

On September 10, 2024, 420 Parent, 420 Premium, GRC and 420 Dispensaries Ltd. ("**420 Dispensaries**") (collectively, "**FOUR20**") filed an application pursuant to s. 11.6(a) of the *Companies' Creditors Arrangement Act*, 1985, c C-36 ("**CCAA**") to continue the NOI Proceedings thereunder.

On September 19, 2024, the Alberta Court of King's Bench (the "**Court**") granted an Initial Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, 1985, c C-36 ("**CCAA**"), among other things, appointing KSV Restructuring Inc. ("**KSV**") as the monitor (the "**Monitor**") of FOUR20.

On September 19, 2024, the Court granted an amended and restated initial order (the "**ARIO**").

On September 19, 2024, the Court granted an order (the "**SISP Approval Order**") which, among other things, directed and empowered FOUR20, in consultation with the Monitor, to prepare and conduct a strategic sales and investment solicitation process ("**SISP**") to solicit offers for the Business or Property of FOUR20, in whole or in part, or investments related thereto. Capitalized terms not defined herein shall have the meaning ascribed to them in the ARIO.

The SISP Approval Order and this SISP shall exclusively govern the process for soliciting and selecting bids for the sale of all, substantially all, or one or more portions of FOUR20's Business or Property, or for the restructuring, recapitalization or refinancing of FOUR20 and FOUR20's Business. Under the SISP, all qualified interested parties will be provided with an opportunity to participate in the SISP.

This document outlines the SISP, which is comprised principally of three stages: pre-marketing, marketing, and offering/evaluation.

OPPORTUNITY AND SISP SUMMARY

1. The SISP is intended to solicit interest in, and opportunities for a sale of, or investment in, all or part of FOUR20's Property or Business (the "**Opportunity**"). In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:
 - (a) the sale of FOUR20's interests in the Property. In particular, interested parties may submit proposals to acquire all, substantially all or a portion of FOUR20's Property (a "**Sale Proposal**"); or

- (b) an investment in the Business, which may include one or more of the following: a restructuring, recapitalization or other form of reorganization of the Business and affairs of FOUR20 as a going concern, together with a plan of compromise or arrangement pursuant to the CCAA (an "**Investment Proposal**").
2. Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined below), any Sale Proposal or any Investment Proposal will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by, the Monitor or FOUR20, or any of their respective affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of FOUR20 in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.
 3. Solicitation of interest for Sale Proposals and Investment Proposals will be on an unpriced basis whereby no set asking price will be stipulated.
 4. This SISP shall be conducted by the Monitor, in consultation with FOUR20.
 5. As described more fully in this SISP, the major stages in the within procedure will be comprised of the following:
 - (a) Pre-Marketing: preparation of all marketing material, assembly of all relevant due diligence material, establishment of an electronic data;
 - (b) Marketing: advertising, contacting potential buyers/investors, responding to requests for information and disseminating marketing material to potential buyers and investors; and
 - (c) Offer Submission and Evaluation: solicitation, receipt of, evaluation and negotiation of offers from potential buyers and investors, as described below.
 6. The offer submission and evaluation stage of the SISP will be comprised of a two phase offering process: "**Phase 1**" being the submission of letters of intent ("**LOIs**") from qualified bidders, and "**Phase 2**" being the submission of formal binding offers from those parties that submitted LOIs and that have been invited by the Monitor, in consultation with FOUR20, to participate in Phase 2 (defined below as Phase 1 Qualified Bidders).

TIMELINE

7. The Monitor, in consultation with FOUR20, shall commence the within SISP on or before September 27, 2024 (such time being referred to herein as the "**Commencement Date**"). As soon as reasonably practicable following the Commencement Date, the Monitor shall publish on its website established with respect to FOUR20's CCAA proceedings, a timeline of the key milestones set out below setting out the specific dates of the respective milestones. Furthermore, the Monitor shall publish the timeline in the Teaser Letter, referenced below.
8. The following table sets out the key milestones under the SISP:

| 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 |

PRE-MARKETING STAGE

9. Prior to the Commencement Date:
- (a) the Monitor, in consultation with FOUR20, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; (ii) a non-disclosure agreement with the Monitor and FOUR20 (an "**NDA**"); and (iii) a confidential Information Memorandum ("**CIM**"). The Teaser Letter, NDA and CIM shall be in form and substance satisfactory to the Monitor, in consultation with FOUR20. The CIM will specifically stipulate that the Monitor, FOUR20 and each of their respective advisors make no representation or warranty as to the accuracy or completeness of the information contained in the CIM, the Data Room (as defined below), or made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by FOUR20 and/or the Monitor;
 - (b) the Monitor, with the assistance of FOUR20 will gather and review all required due diligence material to be provided to interested parties and shall establish a secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Monitor during the SISP; and
 - (c) FOUR20 and the Monitor will develop a draft form of LOI ("**LOI Form**") and a purchase and sale agreement or investment agreement for use during the SISP.

MARKETING STAGE

10. As soon as reasonably possible after the Commencement Date, the Monitor shall:
- (a) arrange for a notice of the SISP (and such other relevant information as the

Monitor, in consultation with FOUR20 considers appropriate) (the "**Notice**") to be published in the Calgary Herald, the website of the Monitor and any other newspaper or journals as the Monitor, in consultation with FOUR20 considers appropriate, if any; and

- (b) send the Teaser Letter and NDA to all parties that have approached the Monitor or FOUR20 indicating an interest in the Opportunity; and (ii) local, national and international strategic and financial parties who the Monitor believes may be interested in purchasing all or part of the Business and Property or investing in FOUR20 pursuant to the SISP (collectively, "**Known Potential Bidders**"), and to any other party who responds to the Notice as soon as reasonably practicable after such identification or request, as applicable.
11. The Monitor will send the CIM and grant access to the Data Room to those parties who have executed and delivered the NDA to the Monitor as soon as reasonably practicable after such execution and delivery.
 12. Requests for information and access to the Data Room will be directed to the Monitor, to the attention of the persons listed in Schedule "A" hereto. All printed information shall remain the property of FOUR20 and, if requested by the Monitor, shall be returned without further copies being made and/or destroyed with an acknowledgement that all such material has either been returned and/or destroyed and no electronic information has been retained.
 13. Any party who expresses a desire to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM and access to the Data Room, provide to the Monitor an NDA executed by it, and which shall inure to the benefit of any ultimate Successful Bidder.
 14. If a Potential Bidder has delivered the NDA and a Qualified LOI (as defined below) that is satisfactory to the Monitor, acting reasonably, then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**". No Potential Bidder shall be deemed not to be a Phase 1 Qualified Bidder without the approval of the Monitor.

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1

Due Diligence

15. The Monitor in consultation FOUR20, and subject to competitive and other business considerations, will afford each Phase 1 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as it deems appropriate. Due diligence access may further include management presentations with participation of the Monitor where appropriate, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and to which the Monitor, in its reasonable business judgment, may agree. The Monitor and FOUR20 will each designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. None of the Monitor or FOUR20 will be obligated to furnish any information relating to the Property or Business to any person other than to Phase 1 Qualified Bidders. Further and for the avoidance of doubt, selected due diligence materials

may be withheld from certain Phase 1 Qualified Bidders if the Monitor, in consultation FOUR20, determines such information to represent proprietary or competitively sensitive information.

LOI Submission

16. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they ultimately enter into with FOUR20.
17. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an executed LOI, identifying each specific Property or Business the Phase 1 Qualified Bidder is interested in, to the Monitor at the addresses specified in **Schedule "A"** hereto (including by email or fax transmission), so as to be received by them not later than 12:00 PM (Calgary time) on or before November 15, 2024 (the "**Phase 1 Bid Deadline**").
18. An LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if:
 - (a) it is submitted on or before the relevant Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;
 - (b) it contains a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals and direct and indirect beneficial owners of the Potential Bidder it contains an indication of whether the Phase 1 Qualified Bidder is making a:
 - (i) Sale Proposal; or
 - (ii) an Investment Proposal;
 - (c) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
 - (ii) a description of each Property that is expected to be subject to the transaction and any of the Property or obligations for each Property expected to be excluded;
 - (iii) a specific indication of the financial capability, together with evidence of such capability, of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;
 - (iv) a description of the approvals required for a final and binding offer;
 - (v) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose including any asset and liability thresholds that must be met for the

- Phase 1 Qualified Bidder to submit a final and binding offer;
- (vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
- (vii) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (d) in the case of an Investment Proposal, it identifies the following:
 - (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or FOUR20 (including a description of which entity(s) will be invested in) in Canadian dollars;
 - (iii) the underlying assumptions regarding the *pro forma* capital structure;
 - (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
 - (v) a description of the approvals required for a final and binding offer;
 - (vi) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose including any asset and liability thresholds that must be met for the Phase 1 Qualified Bidder to submit a final and binding offer;
 - (vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose;
 - (viii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - (ix) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (e) in the case of a Sale Proposal, it contains a statement that the Phase 1 Qualified Bidder meets all eligibility requirements of governmental authorities to purchase and accept a transfer of the Property, including without limiting the generality of the foregoing, the eligibility requirements of the applicable federal and provincial legislation.
- (f) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Monitor from time to time.

19. The Monitor, in consultation with FOUR20, may waive compliance with any one or more of

the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

20. Following the Phase 1 Bid Deadline, the Monitor will assess the Qualified LOIs with respect to the Property or Business in consultation with the Monitor and FOUR20. If it is determined by the Monitor that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided; then such Phase 1 Qualified Bidder will be deemed to be a "**Phase 2 Qualified Bidder**", provided that the Monitor may, in its judgment but with the consent of the Monitor, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.
21. The Monitor, in consultation with FOUR20, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will include a draft purchase and sale agreement or investment agreement (a "**Draft Purchase/Investment Agreement**") which will be made available in the Data Room, and the Bid Process Letter and will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

Phase 2: Formal Offers and Selection of Successful Bidder

Formal Binding Offers

22. Phase 2 Qualified Bidders that wish to make a formal Sale Proposal or an Investment Proposal shall submit to the Monitor a sealed binding offer that complies with all of the following requirements at the addresses specified in **Schedule "A"** hereto (including by email or fax transmission), so as to be received by the Monitor not later than 12:00 PM (Calgary time) on or before November 30, 2024, or such other date and time as may be modified in the Bid Process Letter (the "**Phase 2 Bid Deadline**"):
 - (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified LOIs;
 - (b) cash is the preferred form of consideration, but if the bid utilizes other consideration (including a form of credit bid), a description of the material terms of the consideration shall be provided;
 - (c) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to FOUR20, in consultation with the Monitor;
 - (d) unless otherwise agreed, the bid shall take the form of the Draft Purchase/Investment Agreement (with a blackline showing any changes) and shall

include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until Court approval of a Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with such Successful Bidder;

- (e) the bid includes duly authorized and executed transaction agreements as listed in the Draft Purchase/Investment Agreement; including, but not limited to, the purchase price, investment amount, or a combination thereof and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and the name or names of the ultimate direct or indirect beneficial owner(s) of the Phase 2 Qualified Bidder including their respective percentage interests;
- (f) to the extent that a bid is conditional upon new or amended agreements being entered into with other parties, or existing agreements terminated, the interested parties shall provide the proposed terms of such terminated, amended or new agreements and identify how such agreements may differ from existing agreements to which FOUR20 may be a party. A Phase 2 Qualified Bidder's willingness to proceed without such conditions and, where such conditions are included in the bid, the likelihood of satisfying such conditions shall be an important factor in evaluating the bid;
- (g) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, including the timetable for obtaining financing and, if appropriate, the amount of senior debt, subordinated debt, equity and other source of financing contemplated in the *pro forma* capital structure that will allow the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (h) the bid should identify any threshold of assets to be acquired or liabilities to be assumed as a condition to proceeding to close a transaction;
- (i) the bid should not be conditional on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or competitively sensitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder;
- (j) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
- (k) for a Sale Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a refundable deposit in the amount of not less than 10% of the purchase price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, which shall be paid to "KSV Restructuring Inc. in trust" (the "**Deposit**"). One half of the Deposit shall be paid to "KSV Restructuring Inc. in trust" upon the submission of the Phase 2 Qualified Bidder's Phase 2 Bid. The second half of the Deposit shall be submitted upon the Phase 2 Qualified Bidder being selected as the Successful Bidder. The Successful Bidder's Deposit shall be applied as against the Purchase Price and all other Deposits submitted by Phase 2 Qualified Bidders who are not selected as the Successful Bidder shall be returned within five (5) business days of obtaining Court approval of the Successful Bid;

- (l) for an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a refundable deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, which shall be paid to "KSV Restructuring Inc. in trust". One half of the Deposit shall be paid to "KSV Restructuring Inc. in trust" upon the submission of the Phase 2 Qualified Bidder's Phase 2 Bid. The second half of the Deposit shall be submitted upon the Phase 2 Qualified Bidder being selected as the Successful Bidder. The Successful Bidder's Deposit shall be applied as against the Purchase Price and all other Deposits submitted by Phase 2 Qualified Bidders who are not selected as the Successful Bidder shall be returned within five (5) business days of obtaining Court approval for the Successful Bid;
 - (m) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and FOUR20 prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or competitively sensitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder); (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Monitor or FOUR20, whether express, implied, statutory or otherwise, regarding the Business, Property or FOUR20, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by FOUR20;
 - (n) all required corporate approvals of the Phase 2 Qualified Bidder will have been obtained prior to the submission of the bid;
 - (o) the bid shall identify any material conditions in favour of the purchaser to be resolved prior to closing the transaction;
 - (p) the bid is received by the relevant Phase 2 Bid Deadline; and
 - (q) the bid contemplates Court approval.
23. Following the Phase 2 Bid Deadline, the Monitor will assess the Phase 2 Bids received with respect to the Property or Business, in consultation with the Monitor and FOUR20. The Monitor will designate the most competitive bids that comply with the foregoing requirements to be "**Phase 2 Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).
24. The Monitor, in consultation with FOUR20, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.
25. The Monitor, in consultation with FOUR20, shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Phase 2 Qualified Bid within ten (10) business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.
26. If the Monitor is not satisfied with the number or terms of the Phase 2 Qualified Bids, the

Monitor, in consultation with FOUR20, may extend the Phase 2 Bid Deadline without Court approval.

27. The Monitor may terminate further participation in the Phase 2 Bid Process by any Qualified Phase 2 Bidder, or modify dates or procedures in this SISP as deemed appropriate or necessary, or terminate the process altogether.
28. The Monitor, in consultation with FOUR20, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more Phase 2 Qualified Bid(s).

Evaluation of Competing Bids

29. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price and the net value and form of consideration to be paid pursuant to such bid (including the extent of value available to creditors of FOUR20), the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, including any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, compliance or eligibility with respect to the applicable federal and provincial legislation requirements, the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Monitor, in consultation with FOUR20.

Selection of Successful Bids

30. The Monitor, in consultation with FOUR20, may review and evaluate any or all Phase 2 Qualified Bids with the applicable Phase 2 Qualified Bidders, and such Phase 2 Qualified Bids may be amended, modified or varied as a result of such negotiations.
31. The Monitor, in consultation with FOUR20, will identify the highest or otherwise best bid or bids, including an assessment of the bid(s) to determine whether the bids, or any combination thereof, will allow FOUR20 to achieve its objective of addressing or disposing of all of its assets and liabilities (each, a "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Monitor, in consultation with FOUR20 shall be subject to approval by the Court.
32. The Monitor shall notify the Successful Bidder or Successful Bidders, as the case may be, that their bids constituted the Successful Bid or Bids within ten (10) business days of the date they were notified that their bids constituted Phase 2 Qualified Bids, or at such later time as the Monitor deems appropriate, in consultation with FOUR20.
33. FOUR20 shall have no obligation to select a Successful Bid, and the Monitor, in consultation with FOUR20, reserves the right to reject any or all Phase 2 Qualified Bids. Further, FOUR20 shall have no obligation to enter into a definitive agreement with a Phase 2 Qualified Bidder.

Sale Approval Application

34. FOUR20 shall apply to the Court (the "**Approval Application**") for orders approving any Successful Bid(s) and authorizing FOUR20 to enter into any and all necessary agreements with respect to the Successful Bid(s).
35. The Approval Application will be held on a date to be scheduled by FOUR20 with the Court, in consultation with the Monitor. The Approval Application may be adjourned or rescheduled by FOUR20, in consultation with the Monitor, without further notice, by an announcement of the adjourned date at the Approval Application or in a notice to the service list prior to the Approval Application.
36. All the Phase 2 Qualified Bids other than the Successful Bid(s), if any, shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid(s) by the Court, but not before, and shall remain open for acceptance until that time.

Deposits

37. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Application shall be applied against the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will become non-refundable. The Deposits of Phase 2 Qualified Bidders not selected as a Successful Bidder shall be returned to such bidders within five (5) business days of the date upon which the Approval Order is granted by the Court. If there is no Successful Bid, all Deposits shall be returned to the bidders within five (5) business days of the date upon which this SISP terminates in accordance with these procedures.

Confidentiality and Access to Information

38. Unless otherwise set out herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, LOIs, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and such other bidders or Potential Bidders in connection with the SISP. The Monitor may however, with the consent of the applicable participants, disclose such information to other bidders for the purpose of seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.
39. The Monitor may consult with any other parties with a material interest in the CCAA Proceedings regarding the status of and material information and developments relating to the SISP to the extent considered appropriate by the Monitor (subject to paragraph 39 and taking into account, among other things, whether any particular party is a Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder or other participant or prospective participant in the SISP or involved in a bid), provided that such parties shall have entered into confidentiality arrangements satisfactory to the Applicants and the Monitor.

Supervision of the SISP

40. The Monitor shall oversee the conduct of the SISP in all respects. Without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP procedure and the SISP Order and is entitled to receive all information in relation to the

SISP.

41. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Monitor and, FOUR20 and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be signed with FOUR20 and approved by the Court. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.
42. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, Successful Bidder, or any other creditor or other stakeholder of FOUR20, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result of gross negligence or willful misconduct of the Monitor. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against, FOUR20 or the Monitor for any reason whatsoever, except to the extent such claim is the result of gross negligence or willful misconduct of the Monitor.
43. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
44. The Monitor shall have the right, in consultation with FOUR20, to modify the SISP and the deadlines set out herein (including, without limitation, pursuant to the Bid Process Letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP.
45. This SISP shall terminate in the event that: (a) no Phase 2 Qualified Bidder submits a Qualified Phase 2 Bid by the Phase 2 Bid Deadline, and the Phase 2 Bid Deadline is not otherwise extended by the Monitor; or (b) the Monitor, in consultation with FOUR20, determines that none of the Phase 2 Qualified Bids should be accepted as a Successful Bid.
46. The approvals required pursuant to the terms of this SISP are in addition to, and not in substitution for, any other approvals required by applicable law in order to implement a Successful Bid.
47. In order to discharge its duties in connection with the SISP, the Monitor may engage professional or business advisors or agents as the Monitor deems fit in its sole discretion.
48. At any time during the SISP, the Monitor or FOUR20 may apply to the Court for advice and directions with respect to any aspect of this SISP or the discharge of their respective powers and duties hereunder.
49. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have jurisdiction to hear and resolve such dispute.