

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SPROUTLY, INC. and TORONTO
HERBAL REMEDIES INC.

(each an “**Applicant**” and collectively, the “**Applicants**”)

**APPLICATION RECORD
(returnable on June 24, 2022 at 10:00 a.m.)**

June 22, 2022

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Lawyers for the Applicants

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

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INDEX

Tab	Description
1.	Notice of Application issued June 22, 2022
2.	Affidavit of Craig Loverock sworn on June 22, 2022
Exhibit “ A ”	Copies of the corporate registry searches with respect to Toronto Herbal Remedies Inc. (“ THR ”) and Sproutly, Inc. (“ Sproutly ”) and Sproutly Canada, Inc. (“ Sproutly Canada ”)
Exhibit “ B ”	Organizational chart for THR and Sproutly
Exhibit “ C ”	THR Cannabis License dated November 26, 2021
Exhibit “ D ”	Supply Agreement between Saskatchewan Liquor and Gaming Authority and THR
Exhibit “ E ”	Email from Saskatchewan Liquor and Gaming Authority’s Licensing Specialist regarding THR renewal date
Exhibit “ F ”	Audited Annual Financial Statements for Sproutly Canada
Exhibit “ G ”	Unaudited Quarterly Financial Statements for Sproutly Canada
Exhibit “ H ”	Release of Security by Jane Bailey
Exhibit “ I ”	Subordination Agreement between DIP Lender and Infusion Biosciences Inc. (“ Infusion ”)

Exhibit “ J ”	Certified Ontario PPSA search results for Sproutly
Exhibit “ K ”	Certified Ontario PPSA search results for THR
Exhibit “ L ”	British Columbia PPSA search results for Sproutly
Exhibit “ M ”	THR Loan Agreement with 0982244 B.C. Ltd (“098”) and Bray Limited Partnership (“Bray”) dated June 18, 2015
Exhibit “ N ”	Limited Partnership Summary for Bray Limited Partnership
Exhibit “ O ”	THR Promissory Note dated August 28, 2015
Exhibit “ P ”	Charge/Mortgage in favour of 098 registered on August 31, 2015 as Instrument No. AT3995694
Exhibit “ Q ”	Parcel abstract of the Real Property (PIN06443-0179 (LT))
Exhibit “ R ”	Notice of Assignment of Rents - General in favour of 098 registered on August 31, 2015 as Instrument No. AT3995695
Exhibit “ S ”	General Security Agreement dated August 28, 2015 in favour of 098
Exhibit “ T ”	Share Option Agreement dated August 28, 2015 between THR and 098
Exhibit “ U ”	Conversion Agreement dated February 28, 2018
Exhibit “ V ”	Promissory Note for the Conversion Loan dated February 28, 2018
Exhibit “ W ”	Notice (amending Charge AT3995694) registered on March 1, 2018 as Instrument No. AT4812828
Exhibit “ X ”	General Security Agreement dated February 28, 2018
Exhibit “ Y ”	2015 Promissory Note Amendment dated August 7, 2018
Exhibit “ Z ”	2018 Promissory Note Amendment dated August 7, 2018
Exhibit “ AA ”	Notice amending Charge registered on January 28, 2020 as Instrument No. AT5352062
Exhibit “ BB ”	Email from Lender’s counsel, dated June 22, 2022 regarding the breakdown of amounts owed
Exhibit “ CC ”	Loan Agreement dated January 21, 2020 between THR, Sproutly and Infusion

Exhibit “ DD ”	THR Guarantee in favour of Infusion dated December 23, 2019
Exhibit “ EE ”	Charge/Mortgage in favour of Infusion registered on March 6, 2020 as Instrument No. AT5382792
Exhibit “ FF ”	THR General Security Agreement in favour of Infusion dated January 21, 2020
Exhibit “ GG ”	Loan Amending Agreement between Infusion, Sproutly and THR dated August 24, 2020
Exhibit “ HH ”	Loan Agreement between Infusion THR and Sproutly dated August 24, 2020
Exhibit “ II ”	Lien registered by the Ministry of Finance on May 27, 2021 as Instrument No. AT5748147
Exhibit “ JJ ”	14 - week Cash Flow Forecast for the week ending June 26, 2022 to September 25, 2022
Exhibit “ KK ”	DIP Term Sheet
Exhibit “ LL ”	Notice from Toronto Hydro to THR regarding disconnection of power dated June 6, 2022
Exhibit “ MM ”	Consent of BDO to act as Court appointed Monitor
3.	Draft Initial Order
4.	Blackline of draft Initial Order against the Model Initial Order

TAB 1



Court File No. CV-22-_____ -00CL

**ONTARIO
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NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

before a Judge presiding over the Ontario Superior Court of Justice (Commercial List) **on June 24, 2022 at 10:00 am** and heard by judicial video conference via Zoom at Toronto, Ontario, in accordance with the Changes to Commercial List operations in light of COVID-19 and the updated Notice to the Profession updated on February 16, 2022. The conference details will be provided by the Court. Please advise if you intend to join the hearing by emailing Adrienne Ho at aho@tgf.ca.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June ____, 2022

Issued by: _____

Local Registrar

Address of court office: 330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST

APPLICATION

THE APPLICANTS make an application for:

1. An initial order (the “**Initial Order**”), which will be sought by the Applicants at the initial application hearing before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 24, 2022, among other things:
 - (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those served;
 - (b) declaring that the Applicants are parties to which the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) applies;
 - (c) authorizing the Applicants to carry on business in a manner consistent with the preservation of their business and property;
 - (d) appointing BDO Canada Limited (“**BDO**”) as monitor (in such capacity, the “**Monitor**”) to oversee the business and financial affairs of the Applicants;
 - (e) approving the DIP Term Sheet (as defined below), the DIP Financing (as defined below), and the authority to initially borrow up to \$160,000;
 - (f) granting the following charges over the Applicants’ property:
 - (i) an initial charge in favour of 0982244 B.C. Ltd., operating as Isle of Mann Property Group (the “**DIP Lender**”) of up to \$160,000 (the “**DIP Lender’s Charge**”);
 - (ii) an administration charge (the “**Administration Charge**”) in favour of counsel to the Applicants, the Monitor and counsel to the Monitor to secure

payment of their professional fees and disbursements to a maximum amount of \$150,000; and

(iii) a directors' charge (the "**Directors' Charge**" and together with the DIP Lender's Charge and the Administration Charge, the "**Priority Charges**") in favour of the directors and officers of the Applicants to a maximum amount of \$50,000;

(g) staying all proceedings taken or that might be taken in respect of the Applicants, their directors and officers, or the Proposed Monitor until July 4, 2022, subject to further Order of the Court (the "**Stay of Proceedings**");

(h) approving the Applicants' ability to borrow up to the principal amount of \$750,000 under a debtor-in-possession credit facility (the "**DIP Facility**") to finance their working capital requirements and other general corporate purposes, post-filing expenses and costs;

(i) authorizing the Applicants to pay the reasonable fees and disbursements of the Monitor and its counsel and the Applicant's counsel;

2. An amended and restated initial order (the "**ARIO**"), which will be sought by the Applicants at the "comeback hearing" to be scheduled by the Court, which will take place within ten (10) days of the date of the initial hearing, including but not limited to the following relief:

(a) confirming the relief granted pursuant to the Initial Order;

(b) extending the Stay Period by 90 days;

(c) increase the DIP Lenders' Charge;

- (d) such further and other relief as this Court may deem just and equitable; and
3. Such other relief as counsel may request and this Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

General

4. Toronto Herbal Remedies Inc. (“**THR**”, and jointly with Sproutly, Inc., the “**Applicants**”) is engaged in the production, processing and sale of cannabis products at a facility in Toronto, Ontario. Sproutly, Inc. has no assets other than 100% of the shares of THR.
5. THR was incorporated under the Ontario *Business Corporations Act*. Sproutly, Inc. was incorporated under the *Canada Business Corporations Act*.
6. THR holds the Applicants’ primary assets, which include real property located in Toronto, Ontario (the “**Real Property**”), a 15,913 square foot production facility, located on the Real Property, that was built to cultivate pharmaceutical grade cannabis (the “**THR Facility**”), a Health Canada license permitting the processing, cultivation, and sale of cannabis in accordance with the *Cannabis Act* and the *Cannabis Regulations* (collectively the “**Cannabis Regulations**”), and various equipment and inventory.
7. At this time, THR is no longer operating to grow or produce cannabis products; however, cannabis remains at the licenced facility.
8. The Applicants are debtor companies to which the CCAA applies with total claims against them in excess of \$5 million.

Immediate Need for a Stay of Proceedings

9. This Application has been commenced as a result of the Applicants' current financial circumstances.
10. Following the COVID-19 pandemic in March 2020, sales declined significantly. As well, some key financing opportunities also came to a halt.
11. Ultimately, as a result of an inability to access liquidity and the downturn in the cannabis market, THR had to cease regular operations of its cannabis facility.
12. The Applicants are insolvent, face an imminent liquidity crisis, and require urgent relief under the CCAA. The Applicants have a critical and immediate need for interim financing, and without it, the Applicants are unable to meet its working capital needs and conduct a sale, investment and solicitation process.
13. The Applicants have managed to secure interim debtor-in-possession financing ("**DIP Financing**") pursuant to the term sheet (the "**DIP Term Sheet**"), which will provide it with sufficient liquidity to support working capital requirements through the proceedings under the CCAA (the "**CCAA Proceedings**").
14. The Applicants require the protection afforded by the CCAA to facilitate the DIP Financing and complete a sales and investment solicitation process, which will allow the Applicants to preserve and maximize the value of their business for the benefit of the Applicants' secured creditors and other stakeholders.

15. It is necessary and in the best interest of the Applicants and their stakeholders that the Applicants be afforded the protection provided by the CCAA as they attempt to sell their business.

Court Ordered Charges

16. Certain priority charges are required in order to obtain the DIP Financing, ensure the continued cooperation of the Applicants' directors and officers, and secure the professional services required to complete the CCAA Proceedings. Without these charges, it is unlikely that the beneficiaries thereof would assume the risks associated with the CCAA Proceedings.

Other Grounds

17. BDO has consented to act as the Monitor in the CCAA Proceedings;
18. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
19. Rules 2.03, 3.02, 14.05(2) and 16 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
20. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

21. The Affidavit of Craig Loverock, to be sworn;

22. The Pre-Filing Report of the Proposed Monitor, BDO;
23. The Consent of BDO to act as Monitor; and
24. Such further and other evidence as counsel may advise and this Court may permit.

June 22, 2022

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