



SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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DATE: September 15, 2025

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TITLE OF PROCEEDING:

EARTH BORING CO. LIMITED, ET AL VS. THE TOWN OF LINCOLN, ET AL

BEFORE: Justice Jana Steele

**PARTICIPANT INFORMATION**

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**ENDORSEMENT OF JUSTICE STEELE:**

[1] The Applicants, Earth Boring Co. Limited (“EBCL”), Yarbridge Holdings Inc. (“Yarbridge”), Trolan Investments Ltd. (“Trolan”), and Yarfield Services Limited (“Yarfield”, together with EBCL, Yarbridge and Trolan, the “Applicants”) seek an order approving the Share Subscription Agreement dated September 3, 2025 (the “Subscription Agreement”) between certain of the Applicants (the “Vendors”) and the Purchaser, and approving the transactions (the “Transactions”) contemplated thereby. The order sought is a reverse vesting order (the “RVO”). Among other things, the Applicants seek an extension of the stay to October 31, 2025, a limited sealing order, approval of the Monitor’s Fourth Report and the activities set out therein, and approval of the professional fees (in respect of which fee affidavits have been filed).

[2] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Applicants’ factum.

[3] The Monitor supports the relief sought.

[4] Although initially Aviva Insurance Company of Canada, Metric Contracting Services Inc., Strada Aggregates Inc., Stephenson’s Rental Services Inc., and Underground Consulting Incorporated objected to certain aspects of the relief sought and filed materials, ultimately no person objected to the relief sought.

[5] On consent of the Applicants, the Bank of Montreal, Aviva and the Purchaser, no other party present opposing, the relief sought by the Applicants is granted on the terms of the revised RVO uploaded today by counsel. In view of the resolutions reached after extensive discussions amongst the parties:

- a. The approval of the RVO is strictly a commercial agreement between the parties with no precedential value; and
- b. In approving the RVO, the Court is not in any capacity making a determination of the issues raised by Aviva in opposition to the Approval Motion, including, *inter alia*, the issue of application of the trust rights under the *Construction Act* in respect of EBCL’s receivables specifically and more generally in relation to the CCAA and the scope of the release provided to the directors and officers of EBCL as it relates to the interpretation and application of s. 5.1 of the CCAA.

## **Background**

[6] The Applicants are engaged in the business of trenchless construction services, which includes microtunneling, mixed microtunneling and boring, auger boring, and directional drilling.

[7] The Applicants obtained an initial order (as amended from time to time, the “TARIO”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 from this court on April 17, 2025. At that time, the Court also granted a Lien Regularization Order.

[8] On May 28, 2025, the Court granted the SISP Approval Order that, among other things, approved the sale and investment solicitation process (“SISP”).

[9] On August 14, 2025, the Court granted a stay extension order that, among other things, extended to stay of proceedings up to and including September 12, 2025.

[10] The parties attended an urgent case conference before me on September 10, 2025, at which time I extended the stay up to and including September 15, 2025.

[11] At the Phase I bid deadline, four letters of intent were received, all of which were compliant with the criteria set out in the SISP. However, at the Phase II bid deadline of the SISP, only one binding offer was received, which was from Barrier Ridge Capital Inc., on behalf of a corporation to be incorporated (the “Purchaser”). The Monitor declared the Purchaser’s bid as the highest and best bid and now seeks approval of the proposed transaction.

[12] The Bank of Montreal is EBCL’s senior secured lender and debtor-in-possession lender (the “DIP Lender”).

[13] Aviva has issued performance bonds and labour & material payment bonds (the “Bonds”) for several of EBCL’s construction projects, eight of which remain active.

## **Analysis**

*Should the Court approve the reverse vesting Transactions and Subscription Agreement?*

[14] The Applicants seek Court approval of the Subscription Agreement and RVO.

[15] While an RVO is considered an exceptional order, the Court has jurisdiction to make such an order pursuant to section 11 of the CCAA: *Harte Gold Corp (Re)*, 2022 ONSC 653, at paras. 36-37. CCAA Courts have recognized that an RVO may be an appropriate means to achieve a going-concern outcome: *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 160, leave to appeal ref’d 2020 BCCA 364.

[16] In determining whether it is appropriate in the circumstances to grant an RVO, the Court will consider the well-known *Soundair* principles, and the factors in section 36 of the CCAA, which include:

- a. Whether the process leading to the proposed disposition was reasonable in the circumstances;
- b. Whether the monitor approved the process leading to the proposed disposition;
- c. Whether the monitor filed with the court a report stating that in their opinion the disposition would be more beneficial to the creditors than a disposition under a bankruptcy;
- d. The extent to which the creditors were consulted;

- e. The effects of the proposed disposition on the creditors and other interested parties; and
- f. Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

*Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354, at paras. 31-32.

[17] As noted by the Applicants, unless a proposed transaction plainly offends s. 36(3) of the CCAA or the *Soundair* principles, the business judgment of the parties and the court-appointed Monitor will normally be approved where the marketing and sale process was fair, reasonable, transparent and efficient: *Sanjel Corporation (Re)*, 2016 ABQB 257, para. 57.

[18] For the reasons set out at para. 31 of the Applicants' factum, I am satisfied that the Transactions and Subscription Agreement satisfy section 36(3) of the CCAA and the *Soundair* principles. Among other things, the SISP was fair, transparent, and reasonable and was conducted in accordance with the SISP Approval Order. The market was broadly canvassed. The SISP was initially planned for seven weeks, but the Monitor exercised its business judgment and extended the process by four weeks. Ultimately there was only one bid. Accordingly, the Subscription Agreement represents the only opportunity for the Business to continue as a going-concern for the benefit of the many stakeholders, including employees, suppliers, and customers.

[19] In the context of an RVO, the Court will consider the following additional questions:

- a. Why the RVO is necessary;
- b. Whether the RVO structure produces an economic result at least as favourable as any other viable alternative;
- c. Whether any stakeholder is worse off under the RVO structure than they would have been under any other viable alternative; and
- d. Whether the consideration reflects the importance and value of the licenses and permits being preserved under the RVO structure.

*Harte Gold* at para. 38.

[20] In *Just Energy*, McEwen J. noted, at para. 34, that the court has deemed RVOs appropriate where: (a) the debtor operates in a highly regulated environment in which its existing permits, licences or other rights are difficult or impossible to reassign to a purchaser; (b) the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and (c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

[21] For the reasons set out at para. 34 of the Applicants' factum, I am satisfied that the reverse vesting structure is necessary and appropriate in the circumstances. Among other things, the RVO is the only mechanism that will allow the Purchaser to retain the Vendors' legal entity structure, which is required to preserve the Vendors' critical Certifications and Tax Losses. The proposed Transactions will preserve going-concern value, employee jobs, and supply and customer relationships. The only alternative to the proposed Transactions is a liquidation, which would not yield a better outcome.

*Should the Court grant the releases?*

[22] The proposed RVO contains two types of third-party releases: the Post-Filing Releases and the Pre-Filing D&O Releases (together, the “Releases”).

[23] The Pre-Filing D&O Releases provide for a release of the current directors and officers of the Applicants (the "Released D&Os") from claims based on occurrences existing or taking place prior to the commencement of the CCAA proceedings in respect of the Applicants, provided that nothing releases gross negligence or willful misconduct or claims under s. 5.1(2) of the CCAA. The Pre-Filing D&O Release (and the Post-Filing D&O Release) also does not release Eugene Woodbridge from liabilities with respect to his agreement with BMO, Carmen Yarley and Sasha Woodbridge, dated September 15, 2025.

[24] The proposed Pre-Filing D&O Release language further provides:

Notwithstanding the foregoing, this Court Orders that the extent of the liability of the Released D&Os, if any, and the scope of the carve-out of the forgoing releases as provided for herein and whether there is a release of claims of the Released D&Os under section 13 of the *Construction Act*, RSO 1990, c C.30 is subject to further determination by the Court.

[25] The above language was added further to the discussions among the parties. Essentially, this language clarifies that to the extent that there are breach of trust claims under the *Construction Act* they will be addressed by the court hearing the proceeding.

[26] The Post Filing Releases provide for a release of the current directors and officers, legal counsel and advisors to the Applicants; the current directors, officers, shareholders and certain others of ResidualCo; the Purchaser and certain related persons; and the Monitor and its legal counsel from claims connected to the CCAA proceedings, Subscription Agreement, the Transactions or matters connected thereto. The Post-Filing Release also provides for carve out for fraud or willful misconduct or claims under 5.1(2) of the CCAA.

[27] When determining if a release is appropriate in the circumstances of a reverse vesting transaction without a plan, the Court is to consider those factors that are applicable to the approval of releases in connection with a plan: *Re Green Relief Inc.*, 2020 ONSC 6837, para. 76. As set out in *Lydian International Limited (Re)*, 2020 ONSC 4006, para 54, these factors are:

- a. whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- b. whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- c. whether the plan could succeed without the releases;
- d. whether the parties being released were contributing to the plan; and
- e. whether the release benefitted the debtors as well as the creditors generally.

[28] As noted in *Lydian*, no single factor is determinative.

[29] Here, the Released Parties each made significant contributions to the Applicants' restructuring, both prior to and throughout this CCAA proceeding. The evidence is that the Released D&Os have made significant and material contributions to the CCAA proceedings including the implementation of the SISF and the negotiation of the Subscription Agreement. The Releases are limited to and directly connected to the CCAA proceedings and the proposed Transactions. The Releases are sufficiently narrow in the circumstances, as the Releases both

preserve claims (a) arising out of any gross negligence or willful misconduct; and (b) that are not permitted to be released pursuant to section 5.1(2) of the CCAA. The Released D&Os and Released Parties have indicated that they require the Releases, given they will retain their positions through the closing of the Transactions and thereafter. The Monitor supports the granting of the Releases.

[30] In the circumstances, the proposed Releases are approved.

*Should the Court approve the extension of the stay of proceedings?*

[31] The current stay expires today. The Applicants ask that the stay be extended to October 31, 2025.

[32] Under s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.

[33] I am satisfied that the requested stay should be approved. The additional time is reasonable and appropriate to protect the *status quo* and allow the orderly implementation of the Transactions. The Applicants have acted and continue to act in good faith and with due diligence, as noted in para. 43 of the Applicants' factum.

*Should the Court grant the requested sealing order?*

[34] A limited sealing order with respect to the Confidential Materials is sought. The proposed sealing order is time limited – the Confidential Materials will be sealed until the earlier of the closing of the Transactions or further court order. The Confidential Materials contain sensitive commercial information about the value of the Applicants' assets and business.

[35] The court has jurisdiction to make the requested sealing order under s. 137(2) of the *Courts of Justice Act*.

[36] The limited sealing order being sought is necessary to preserve the Applicant's ability to maximize the value of its assets if the Transactions do not close. I agree with the Applicants that no reasonable alternative measures exist that would adequately protect the commercially sensitive information in the Confidential Materials. I am satisfied that the requested sealing order (which is limited in scope and time limited) for the Confidential Materials satisfies the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to an important public interest; enabling stakeholders of a company in insolvency proceedings to maximize the realization of assets is an important public interest. I direct counsel for the Monitor to file a hard copy of the Confidential Materials with the Commercial List Office in a sealed envelope with a copy of the Order and this endorsement.

[37] Order attached.

A handwritten signature in blue ink, appearing to be "J. P. [unclear]", is located in the lower right quadrant of the page.