

Court File No. CV-22-00689631-00CL

**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 CANNAPIECE GROUP INC., CANNAPIECE CORP.,  
CANADIAN CRAFT GROWERS CORP., 2666222 ONTARIO LTD., 2580385  
ONTARIO INC. AND 2669673 ONTARIO INC.

Applicants

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**2726398 ONTARIO INC.**

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**FACTUM OF THE RESPONDING PARTY,**  
**2726398 ONTARIO INC.**

**PART I - INTRODUCTION**

1. 2726398 Ontario Inc. ("**272**") opposes the Applicants' request for an order expanding the scope of the initial stay of proceedings to include claims against directors in respect of their guarantees of corporate obligations.
2. In opposing that relief, 272 will make the following two submissions.
3. First, section 11.03(2) of the *CCAA* says that the court's jurisdiction to grant a stay in respect of a debtor company's directors "*does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations....*". If the Applicants'

request is granted, the court will stay the precise claims contemplated by the exception in section 11.03(2).

4. Second, the Applicants have not provided the court with any authority to support their requested expanded stay of proceedings. The sole case they rely on is easily distinguishable.

5. 272 asks that the Applicants' request for an expanded stay of proceedings with respect to directors' guarantees of corporate obligations be dismissed, with costs.

## **PART II - SUMMARY OF FACTS**

6. 272 is an unsecured creditor of CannaPiece Group Inc. ("**CPG**"), having originally loaned CPG the principle sum of \$7,000,000.00.

7. As security for its loan, 272 received, among other things, mortgage security and guarantees from:

- (a) CannaPiece Corp.
- (b) Canadian Craft Growers Corp.
- (c) Greenzone Therapy Inc.
- (d) Ali Etemadi
- (e) Afshin Souzankar
- (f) Ahmad Rasouli
- (g) Reza Khadem Shahreza

8. On August 18, 2022, CPG closed its sale of the property known as 580 Lake Road, Clarington, Ontario (the "**Property**").



9. Prior to closing, CPG advised 272 that it would not have sufficient funds from the sale of the Property in order to pay the entire debt owing to 272.

10. As a result, CPG asked 272 to accept the total sum of \$7,000,000.00 in exchange for a discharge of its mortgage security, without prejudice to 272's right to claim the balance of the debt owing from CPG and the Guarantors. 272 agreed to that proposal.

11. Upon closing the sale of the Property on August 18, 2022, the sum of \$7,000,000.00 was delivered to 272. Relying on the covenants given by CPG and the Guarantors, 272 granted discharges of its mortgage security, leaving a balance owing to it of \$815,576.23.

12. On October 18, 2022, 272 issued a Statement of Claim in the Superior Court of Justice for payment of \$815,576.23 plus additional accrued interest. CPG and each of the Guarantors are named as Defendants in that proceeding.

13. The Applicants started this proceeding on November 2, 2022. In his affidavit sworn on November 2<sup>nd</sup>, CPG's Chief Executive Officer, Afshin Souzankar acknowledged the existence and validity of the guarantees given to 272:

*104. As further security for the 272 Loan, CPC, CCG, Greenzone Therapy Inc. myself, Ali Etemadi, Ahmad Rasouli and Reza Khadem-Shahreza...each guaranteed CPG's obligations to 272 under the 272 Loan Agreements<sup>1</sup>.*

14. Mr. Souzankar also acknowledged that 272 suffered a shortfall when its mortgage security was discharged, and that 272's discharged its mortgage security without prejudice to its right to claim the balance outstanding to it:

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<sup>1</sup> Motion Record, Exhibit "A", Affidavit of Afshin Souzankar sworn November 2, 2022 ("**First Souzankar Affidavit**"), para. 104

*109. At such time as the Bowmanville Property was sold in August of 2022, \$7,000,000 was paid to 272 in reduction of amounts then owing under the Second Mortgage and the Third Mortgage, leaving a shortfall of \$815,576.23...To permit the closing of the sale, the Second Mortgage and Third Mortgage were discharged without prejudice to 272's right to claim the balance of the outstanding debt under the 272 Loan Agreement.<sup>2</sup>*

15. On November 3, 2022, the Honourable Justice Penny granted an Initial Order in this proceeding which included a limited stay of proceedings against CPG's directors:

*THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.*

16. While the Initial Order imposed a stay on 272's claim against the Applicants, it specifically exempted 272's claim against CPG's directors on account of their personal guarantees of CPG's obligations to 272, in accordance section 11.03(2) of the CCAA.

17. Late on November 8<sup>th</sup>, the Applicants served their Motion Record for this Comeback Hearing. In it, they seek an order "*extending the scope of the stay of proceeding to include claims against directors and officers in respect of their potential liability under personal guarantees of corporate obligations*".

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

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<sup>2</sup> First Souzankar Affidavit, para. 109

18. The sole issue on this motion is whether the court should expand the scope of the stay of proceeding to include claims against director in respect of their personal guarantees of the debtor companies' obligations.

19. The court has broad jurisdiction to grant stays of proceedings. However, there is one place where the legislature has explicitly said that the court's authority does not extend: claims against directors in respect of their guarantees of corporate obligations.

20. Section 11.03(1) of the CCAA gives the court the power to stay proceedings against directors:

*11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.*

21. However, section 11.03(2) provides an exception, and says that the court's authority to stay proceedings against a company's directors "*does not apply*" to a guarantee given by a director in respect of a debtor company's obligations.

*(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.*

22. Put simply, the CCAA allows, on the one hand, stays against directors if their liability results from the law. The CCAA does not allow stays where, as here, the alleged personal liability of a director results from a guarantee, which is a personal commitment from the director,

made of his own volition, over and above his legal obligations in his capacity as a director of the debtor company.<sup>3</sup>

23. In support of their request for an expanded stay of proceedings, the Applicants rely solely on [McEwan Enterprises Inc.](#) However, that case, and the decisions it cites, are easily distinguishable.

24. CCAA courts have previously extended the initial stay of proceedings to non-applicants. However, prior decisions, including *McEwan*, show that the court has extended the stays of proceedings to non-applicants "*where such parties are integrally and closely interrelated to the debtor companies' business or where doing so furthers the primary purpose of the CCAA, being the successful restructuring of an insolvent company*".<sup>4</sup>

25. For example, in granting the expanded stay of proceedings in *McEwan*, which included a stay as against Mr. McEwan personally, the court cited the following grounds:

*(a) Mr. McEwan has granted certain personal guarantees, indemnities and/or security in respect of certain of MEI's obligations, and the McEwan Subsidiary holds MEI's interests in the ONE Restaurant Partnership, an important part of the overall Business of MEI;*

*(b) if any enforcement proceedings were commenced against any of the Non-Filing Parties, it would cause significant disruption to MEI, would have a detrimental effect on MEI's restructuring efforts, and there could be a significant erosion of value to the Business to the detriment of all stakeholders; and*

*(c) the obligations which Mr. McEwan has guaranteed, indemnified and/or secured are not anticipated to be impacted by the CCAA proceedings and would be assumed as part of the proposed Transaction, thus MEI believes there would be no prejudice in granting the requested extension of the Stay of Proceedings.*

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<sup>3</sup> [Magasin Laura \(PV\) inc./Laura's Shoppe \(PV\) Inc. \(Arrangement relatif à\)](#), 2015 QCCS 4716 (CanLII), at [para 31](#)

<sup>4</sup> [Laurentian University of Sudbury](#), 2021 ONSC 659 (CanLII), at [para 39](#)

26. None of these factors apply here. First, none of CPG's directors or their guarantees are integrally related to the sale of the Applicants' business. Second, claims against the Applicants' directors in respect of their guarantees will not cause "significant disruption" of the Applicants' business. Third, 272's debt will not be assumed as a part of the Applicants' proposed sale process.

27. The Applicants have not submitted a single authority where the court has expanded a stay of proceeding to apply to a debtor company's directors in respect of their guarantees of corporate obligations.<sup>5</sup>

28. In support of their request for an expanded stay of proceedings, the Applicants rely on Mr. Souzankar's November 8<sup>th</sup>, 2022 affidavit, in which he refers to 272's claim as a possible distraction and says that he, Mr. Etemadi and Mr. Khadem "must focus 100% of [their] time and energy on these reorganization proceedings...".<sup>6</sup>

29. This reasoning should be rejected for two reasons. First, the Applicants have not submitted a single authority where a court has expanded a stay of proceedings to a director's guarantee on such grounds. Second, there is no evidence that the expanded stay being requested is necessary, or that the restructuring process would be prejudiced if the expanded stay is not granted.

30. 272 submits that the Applicants seek an expanded stay of proceedings not because such a stay would benefit the restructuring process, but it would benefit CPG's directors personally.

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<sup>5</sup> The court's reasons in *McEwan* do not make any reference to Mr. McEwan having been a director of the debtor companies.

<sup>6</sup> Second Souzankar Affidavit, para. 59

31. The fact that CPG's directors view 272's claim as an inconvenience does not justify the expanded stay of proceedings they seek. It also does not justify the court granting an order that would run contrary to section 11.03(2) of the *CCAA*, and which would prejudice 272's rights as against CPG's directors.

32. Granting the expanded stay of proceedings that the Applicants request would set an undesirable precedent, both within this proceeding, and generally.

**PART IV - ORDER REQUESTED**

33. 272 asks that the Applicants' request for an expansion of the stay of proceedings to include claims against directors in respect of the guarantees of corporate obligations be dismissed, with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of November, 2022.

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**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. [McEwan Enterprises Inc.](#), 2021 ONSC 6453
2. [Magasin Laura \(PV\) inc./Laura's Shoppe \(PV\) Inc. \(Arrangement relatif à\)](#), 2015 QCCS  
4716
3. [Laurentian University of Sudbury](#), 2021 ONSC 659



## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### 1. *Companies' Creditors Arrangement Act, RSC 1985, c C-36*

##### **Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [\*Bankruptcy and Insolvency Act\*](#) or the [\*Winding-up and Restructuring Act\*](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Stays, etc. — other than initial application**

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Burden of proof on application**

**(3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

- **(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

### **Stays — directors**

**11.03 (1)** An order made under [section 11.02](#) may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

### **Exception**

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

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