



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-24-03051650-0031

DATE: May 2, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: In the Matter of Organic Garage (Canada) Ltd., 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc., AND 2581751 Ontario Inc.

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Sudhanshu Marwaha	Zeifman Partners Inc. Trustee in Bankruptcy of Oragin Foods Inc.	sma@zeifmans.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] KPMG Inc. (“KPMG”), in its capacity as the proposal trustee (in such capacity, the “Proposal Trustee”) of Organic Garage (Canada) Ltd. (“Organic Garage”), 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc., and 2581751 Ontario Inc. (collectively, the “Debtors”), brings this motion for:
- a. three orders each approving a sale transaction and authorizing the Proposal Trustee to complete the transactions;
 - b. an order approving the sealing of the confidential documents appended to the Proposal Trustee’s Third Report until completion of the transactions or further order of this Court; and
 - c. an order (the “Ancillary Order”) approving the reports of the Proposal Trustee and the actions and activities of the Proposal Trustee described in each of these reports and approving the fees and disbursements of the Proposal Trustee and its counsel.
- [2] In this endorsement, I address the Proposal Trustee’s motion for orders under para. 1 a. and b. above. The motion for these orders is unopposed.
- [3] I will address the Proposal Trustee’s motion for the Ancillary Order in a separate endorsement. This motion is not unopposed.
- [4] Organic Garages an independent, Ontario-based natural and organic grocery chain which operates four retail stores in the Greater Toronto Area. Organic Garage was formed under the laws of the Province of Ontario and is a wholly-owned subsidiary of Oragin Foods Inc.
- [5] The leases for each of Organic Garage’s stores are held by its wholly-owned subsidiaries, four of which are included in these NOI proceedings.
- [6] Following the filing date of March 5, 2024 of Notices of Intention to Make a Proposal pursuant to subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*, this Court granted an order (the “SSP Order”) approving (i) a stalking horse bid in the proposed sale and solicitation process (the “SSP”), (ii) the SSP to be carried out by the Proposal Trustee, including the bidding procedures to be used in connection therewith; (iii) the key employee retention plan extended by Organic Garage to certain senior management personnel; (iv) the

procedural consolidation of the proposal proceedings in respect of each of the Debtors; and (v) an extension of the time by which the Debtors must file a proposal pursuant to section 62(1) of the *BIA* to April 30, 2024.

- [7] The Proposal Trustee carried out the SSP in accordance with the SSP Order and the bidding procedures. Commencing on March 6, 2024, the Proposal Trustee contacted 118 potential interested parties, including 35 strategic parties, 72 financial parties, and 11 liquidators, with regards to the transaction opportunity. A total of 14 parties executed the non-disclosure agreement for the transaction opportunity. The potential bidders were required to submit qualified bids to the Proposal Trustee by April 10, 2024.
- [8] A total of four qualified bids were received by the Proposal Trustee by the bid deadline including a new qualified bid by the stalking horse bidder. Two of the qualified bids were each for separate single retail stores and the other two qualified bids were in respect of multiple stores, which contained overlapping assets. On April 11, 2024, the Proposal Trustee contacted the bidders that submitted qualified bids covering multiple stores and requested re-submissions of their bids to exclude grocery store located at 42 Hanna Avenue, Toronto (the “Liberty Store”) by April 12, 2024. The stalking horse bidder (MAAB Global Ltd.) was the only bidder that submitted a revised qualified bid to the Proposal Trustee.
- [9] After review of the qualified bids, on April 12, 2024, the Proposal Trustee declared each of 1000858769 Ontario Inc., Junction Road Nominee Inc. (the “Junction Nominee”) and MAAB Global Inc. as the successful bidders pursuant to the bidding procedures, subject to approval of the Court.
- [10] The key terms of the three transactions are set out in the motion materials and summarized in the factum of the Proposal Trustee at paragraphs 14-17. The proceeds of sale under the three transactions are, in aggregate, approximately four times higher than the stalking horse bid and approximately five times higher than the estimated liquidation value based on an appraisal by a qualified and reputable appraiser.
- [11] The Debtors obtained an additional extension to file a proposal until May 17, 2024 to permit the closing of the transactions, pending court approval.
- [12] Pursuant to subsection 65.13 (1) and (7) of the *BIA*, this Court has the authority to grant an order approving the sale of assets outside the ordinary course of business, free and clear of any security and encumbrances. Subsection 65.13(4) of the *BIA* sets out the following non-exhaustive list of factors to consider when seeking such approval:
- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - b. whether the trustee approved the process leading to the proposed sale or disposition;
 - c. whether the trustee filed with the court a report stating that, in their opinion, a sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
 - d. the extent to which the creditors were consulted;
 - e. the effects of the proposed sale or 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.

- [13] These factors are similar to the factors set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727, at para. 16: (a) whether sufficient effort has been made to obtain the best price, and that the receiver has not acted improvidently; (b) whether the interests of all parties have been considered; (c) the efficacy and integrity of the process by which offers have been obtained; and (d) whether there has been unfairness in the working out of the process.
- [14] I am satisfied that these factors support approval of the sale transactions and that these transactions represent the best outcome for all stakeholders. In this respect, I accept the submissions made on behalf of the Proposal Trustee at paragraph 23 of its factum.
- [15] The Proposal Trustee also seeks a sealing order with respect to Confidential Appendices 1 through 5 of the Third Report. These appendices are (a) a summary of qualified bids at the bid deadline; (b) an appraisal dated March 21, 2024 which contains the liquidation value of the Debtors' assets and equipment; and (c) unredacted copies of the asset purchase agreements of the transactions which contain the amount of the purchase price and deposits provided for in each of the transactions.
- [16] A party seeking a sealing order must establish that: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects. See *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 58.
- [17] This Court has granted sealing orders in respect of commercial information that could negatively impact a sales process in the event that the proposed transaction does not close and the property must undergo other marketing process. I am satisfied that the requested sealing order is proper and should be made. See *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911, at paras. 104-107.
- [18] At the hearing of this motion, I heard submissions from counsel for United Food and Commercial Workers Canada Local 1006A (the "Union") and counsel for Junction Nominee. I was advised that the Union may seek to bring a successor employer application under the *Labour Relations Act, 1995* to the Ontario Labour Relations Board in respect to any business operated at the former Junction Road location of Organic Garage. The Union and the Junction Nominee consent to my endorsement that the Union's lack of opposition to the sale approval motion in this court will not be taken as an acceptance that any of its rights under Ontario's *Labour Relations Act, 1995* have been varied or impacted by the sale approval order.
- [19] Orders to issue in forms of Orders signed by me today.