



Court File No. CV-22-00683056-00CL

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

THE HONOURABLE MR.)	MONDAY, THE 4 th
)	
JUSTICE MICHAEL A. PENNY)	DAY OF JULY, 2022
)	

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")

ORDER

(Approval of the Sale Process)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order, among others approving a sale and investment solicitation process for the Applicants' business and property ("SISP"), was heard this day by videoconference.

ON READING the affidavit of Craig Loverock sworn June 22, 2022 and the Exhibits thereto (the "**Loverock Affidavit**"), the First Report of BDO Canada Limited, in its capacity as court appointed monitor of the Applicants (the "**Monitor**") dated June 29, 2022 (the "**First Report of the Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Roxana Manea sworn June 30 2022, filed.

SERVICE & DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined in the Bidding Procedures and SISP (as defined below).

SALES PROCESS

3. **THIS COURT ORDERS** that the bidding procedures, substantially in the form attached as Appendix “A” to this order (“**Bidding Procedures**”) and the sales process described therein (“**SISP**”) be and are hereby approved.

4. **THIS COURT ORDERS** that the Monitor, on behalf of and with the assistance of the Applicants, be and is hereby authorized and directed to proceed with the SISP substantially in accordance with the Bidding Procedures and to take such steps as it considers necessary or desirable to carry out the SISP, subject to the terms of the Bidding Procedures.

5. **THIS COURT ORDERS** that the Monitor and the Applicants are authorized to take such steps and execute such documentation as are considered necessary or desirable in carrying out the terms of the SISP and the Bidding Procedures, including but not limited to engaging such brokers and agents as deemed necessary and appropriate by the Applicants and the Monitor and as are consistent with the objectives, terms and conditions of the SISP and Bidding Procedures.

6. **THIS COURT ORDERS** that the Monitor, the Applicants and their respective assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP and Bidding Procedures, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Monitor or the Applicants, as applicable, as determined by this Court.

PIPEDA

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Applicants and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to carry out the SISP and Bidding Procedures and to attempt to complete a transaction for some or all of the Assets. Each prospective purchaser or 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 for some or all of the Assets, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The purchaser of any of the Assets shall be entitled to continue to use the personal information provided to it, and related to such assets, 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 Applicants, or ensure that all other personal information is destroyed.

APPROVAL OF THE FIRST REPORT

8. **THIS COURT ORDERS** that the First Report of the Monitor and the activities described therein are hereby approved.

SEALING

9. **THIS COURT ORDERS** that Appendix “B” to the First Report of the Monitor shall be sealed and kept confidential pending further order of this Court.

GENERAL

10. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order, or for advice and directions in the discharge of their respective powers and duties under this Order or under the Sales Process, or the interpretation or application of this Order.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.



Perry J.

APPENDIX "A"

SALE AND INVESTMENT SOLICITATION PROCESS

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.

INTRODUCTION

1. On June 24, 2022, the Court granted an order (the "**Initial Order**") appointing BDO Canada Limited ("**BDO**") as Monitor of Sproutly, Inc. and Toronto Herbal Remedies Inc. (collectively, the "**Companies**") (in such capacity, the "**Monitor**").
2. Pursuant to the Initial Order, the Applicants were authorized to borrow funds under a credit facility from 0982244 B.C. Ltd. o/a Isle of Mann Property Group (the "**DIP Lender**") and together with the Monitor, the "**Consultation Parties**").
3. The assets referred to in this document (collectively, the "**Assets**") relate to the Companies' business and assets, including its cannabis license and/or its owned real estate (the "**Real Property**").
4. Pursuant to this Sale and Investment Solicitation Process ("**SISP**"), the Companies with the assistance of the Monitor are engaging sales agents, Hyde Advisory & Investments Inc. ("**Hyde**") and Avison Young, real estate broker firm (together with Hyde, the "**Sales Agents**" or each a "**Sales Agent**") to assist with the SISP.
5. The Sales Agents will develop a list of Known Potential Bidders (as defined below), communicate and meet with interested parties, prepare and distribute marketing materials, and manage the Data Room (as defined below).

SISP OVERVIEW

6. The purpose of the SISP is to solicit interest in a sale or liquidation of one or the other of:
 - (a) the Companies' business and assets, including its cannabis license and Real Property core to its license and operations; or
 - (b) the Companies' Real Property.
7. The SISP describes the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a "**Person**") may gain access to or continue to have access to due diligence materials concerning the Assets, and how bids involving the Assets will be submitted to and dealt with by the Companies, Monitor, and Sales Agents, and how Court approval will be

obtained in respect of any Transaction (as defined below).

8. As described below, the various deadlines herein may be extended by and at the discretion of the Companies, with the approval of the Consultation Parties, in the event that it is determined that such an extension will generally benefit the Companies' creditors and other stakeholders. The Companies and Monitor shall generally oversee the SISP and in particular shall oversee the Sales Agents in connection therewith. In the event that there is a disagreement as to the interpretation or application of the SISP, the Court will have jurisdiction to hear and resolve such dispute.

"AS IS, WHERE IS" BASIS

9. Any transaction involving all or any portion of the Assets (each a "**Transaction**") will be completed with Court Approval on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Companies, Sales Agents, the Monitor, or any of their respective agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant Final Agreement (as defined herein).
10. The key dates pursuant to the SISP are as follows (capitalized terms in the chart below have the meaning ascribed in the SISP):

<u>Event</u>	<u>Date (each by 5:00 p.m. EST)</u>
Sales Agents to create list of Known Potential Bidders and distribute Teaser Letter and Confidentiality Agreements to Known Potential Bidders	As soon as practical and no later than July 6, 2022
Sales Agents to prepare and have available for Potential Bidders the CIM	As soon as practical and no later than July 6, 2022
Advertisement in the national edition of the Globe and Mail and/or another national news publication	July 6, 2022
Initial (non-binding) Offer Deadline	August 5, 2022
Binding Offer Deadline	By August 19, 2022
Selection of Winning Bid and Final Agreement	By August 22, 2022
Final Agreement	By August 26, 2022
Application to the Court for Approval Order(s)	As soon as reasonably practicable after the Final Agreement
Closing of the Transaction (the "Closing Date")	September 23, 2022

11. Subject to paragraph 47 hereof, the Companies, or the Monitor on their behalf, shall provide: (a) weekly updates on the status and progress of the SISP to the DIP Lender; and (b) documents and information requested as part of the SISP to the DIP Lender in a prompt fashion, including a report from the Sales Agents. In furtherance of the foregoing, for the purposes of information sharing and transparency, provided the DIP Lender executes an NDA (as defined below), the DIP Lender and its advisors shall be granted access to the Data Room (as defined below).

THE SISP PROCESS

A. Initial Solicitation of Interest

12. The Sales Agents may contact any Persons to solicit expressions of interest in a Transaction either before or after the granting of the SISP Order.
13. As soon as reasonably practicable after the granting of the SISP Order and in any event by no later than July 6, 2022, in consultation with the Companies and Monitor, the Sales Agents will prepare a list of potential bidders (the "**Known Potential Bidders**") who may have interest in the Assets pursuant to either an asset or share transaction (an "**Asset Bid**"). Concurrently, the Sales Agents will prepare an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders and any other interested persons of the SISP and inviting them to express interest in making an Asset Bid. The Teaser Letter shall be posted on the Monitor's Website and that of the Sales Agents.
14. On or about July 6, 2022, the Monitor will place an advertisement in the national edition of the Globe and Mail advising of the sale of the Assets.
15. By no later than July 6, 2022, the Sales Agents shall distribute to the Known Potential Bidders and any other interested Persons the Teaser Letter, as well as a form of non-disclosure agreement ("**NDA**") that shall inure to the benefit of the Person or Persons who make the Winning Bid(s) (as defined herein) pursuant to this SISP. Copies of the Teaser Letter and NDA shall be provided to any appropriate Persons who becomes known to the Sales Agents after the initial distribution of such documents.
16. Any Person (a) who executes a NDA in form and substance satisfactory to the Sales Agents, the Companies, and the Monitor, and (b) provides written confirmation of the identity of the potential bidder, including its direct and indirect principals and financial disclosure or credit quality support sufficient to allow the Sales Agents, in consultation with the Companies and Monitor, to make a reasonable determination as to its capabilities to conclude a transaction, shall be deemed to be a potential bidder (each, a "**Potential Bidder**").

B. Due Diligence

17. The Sales Agents shall provide each Potential Bidder with information, including access to an electronic data room established by the Sales Agents by no later than July 8, 2022 (the "**Data Room**"), that either Sales Agent may, in its reasonable business judgment,

determine to be necessary for the Potential Bidder to evaluate a transaction involving an Asset Bid.

18. The Sales Agents will prepare a confidential information memorandum ("**CIM**") by no later than July 6, 2022, describing the opportunity to make a SISP Bid and shall deliver the CIM to each Potential Bidder as soon as practicable after such Person is deemed to be a Potential Bidder in accordance with this SISP.
19. The Companies, Monitor and the Sales Agents shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. However, access to facilities will only be granted to Qualified Bidders (as defined below) after they are selected. Neither the Companies nor Monitor nor the Sales Agents will be obliged to furnish any information relating to the Assets other than to a Potential Bidder.
20. The Sales Agents, the Companies, and the Monitor and their respective advisors make no representation or warranty as to the information made available pursuant to the SISP, including any information contained in the Data Room.

C. Initial Offer Process

21. Any Potential Bidder who wishes to submit an Asset Bid must deliver a written, non-binding offer (each, an "**Initial Offer**") to the Companies, Monitor, and Sales Agents at the address specified in and in accordance with Schedule "A" hereto so as to be received by the Companies, Monitor, and Sales Agent no later than **5:00 p.m. (Eastern Standard Time) on August 5, 2022**, or such other date or time as the Companies may, in consultation with and upon approval of the Consultation Parties, determine (the "**Bid Deadline**").
22. Following the Bid Deadline, all Initial Offers shall be reviewed by the Companies, the Monitor and Sales Agents.
23. An Initial Offer shall be a qualified Initial Offer (each, a "**Qualified Initial Offer**") provided that:
 - (a) it is submitted on or before the Bid Deadline by a Potential Bidder;
 - (b) 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 owners of the Potential Bidder and their principals;
 - (c) it identifies:
 - (i) the purchase price in Canadian Dollars, and if such Potential Bidder is a secured creditor of the Companies, any amount of the purchase price that represents a credit bid for any amount of such secured debt;
 - (ii) whether the Asset Bid is *en bloc*, the Assets included, any of the Assets expected to be excluded, and/or any additional assets desired to be included in the Transaction;

- (iii) confirmation that the Potential Bidder has sufficient funds to complete the Transaction;
 - (iv) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
 - (v) any anticipated due diligence to be completed by Potential Bidder prior to Closing Date;
 - (vi) must not be subject to any conditions other than approval by the Court and the Initial Offer must acknowledge that it is subject to Court approval;
 - (vii) contemplates a schedule for closing the Transaction set out therein which is on or before the Closing Date; and
 - (viii) contains such other information as reasonably requested by the Companies, Sale Agents, or Monitor from time to time.
24. Any Potential Bidder who submits a Qualified Initial Offer on or before the Bid Deadline shall be designated a qualified bidder (a "**Qualified Bidder**").
25. The Companies, in consultation with the Consultation Parties, may waive strict compliance of one or more of the requirements specified above and deem any Initial Offer to be a Qualified Initial Offer, notwithstanding any noncompliance with the terms and conditions of this SISP.
26. In the event that no Person submits an Initial Offer, or that no Initial Offer qualifies as or is deemed to qualify as a Qualified Initial Offer, or that no Qualified Initial Offer is deemed commercially reasonable to the Companies, and/or is not supported by the Consultation Parties, the Companies may, in consultation with the Consultation Parties, terminate the SISP. If no Qualified Initial Offers are received by the Bid Deadline or the SISP is terminated in accordance with the terms hereof, the Companies may, in consultation with the Consultation Parties, consider other forms of bids for the Assets. At any time during the SISP, the Companies may, in consultation with the Consultation Parties, determine that any offer is a Winning Bid and seek Approval Orders in respect of such Winning Bid(s) from the Court.
27. The Companies and Sales Agents may invite Qualified Bidders to conduct additional due diligence or otherwise make available to Qualified Bidders additional information not posted in the Data Room, arrange for inspections and site visits at the Companies' premises, as determined by the Companies and Sales Agent.

D. Selection of Qualified Bidders

28. The Companies and the Consultation Parties shall review all Qualified Initial Offers in consultation with the Sales Agents.
29. Following such review of Qualified Initial Offers and upon it being determined that SISP

should continue to the binding offer phase, the Companies, in consultation with the Consultation Parties, shall select Qualified Bidders to participate in a second round of bidding.

30. Qualified Bidders will be notified of their selection for the second round of bidding by 5:00 p.m. (Eastern Standard Time) August 8, 2022.
31. Parties not selected as Qualified Bidders will also be notified by 5:00 p.m. (Eastern Standard Time) August 8, 2022.

E. Binding Offer Deadline

32. Qualified Bidders will be expected to complete any remaining due diligence as required between August 8, 2022 and the Binding Offer Deadline of 5:00 p.m. (Eastern Standard Time), August 19, 2022.
33. A template asset purchase agreement (“**APA**”) and a template share purchase agreement (“**SPA**”) will be made available in the Data Room to Qualified Bidders for review and mark up.
34. Qualified Bidders will be expected to submit their final bids in the form of the APA or the SPA with a blackline to the template by the Binding Offer Deadline of 5:00 p.m. (Eastern Standard Time), August 19, 2022.
35. The APA or SPA submission must be accompanied by a 10% deposit payable to “BDO Canada Limited - in trust” (the “**Deposit**”) by way of wire transfer (to the instructions included in Schedule “A”), bank draft or certified cheque.

F. Selection of Winning Bid

36. The Companies and the Consultation Parties, with the assistance of the Sales Agents, shall review all final bids, APAs or SPAs received by the Binding Offer Deadline, provided any such APA or SPA complies with the requirements set out in section 22 above, and shall determine what APAs or SPA shall be “**Qualified Binding Offers**”.
37. The Companies, with the approval of the Consultation Parties, may, but shall have no obligation, to enter into a definitive agreement or agreements (each a “**Final Agreement**”) with the Person or Persons who submitted the highest, best or otherwise most favourable Binding Offer.
38. The highest Binding Offer may not necessarily be accepted by the Companies. The Companies reserve the right not to accept any Binding Offer or to otherwise terminate the SISP. The Companies further reserve the right to deal with one or more Qualified Bidder to the exclusion of other Persons, to accept a Binding Offer Bid for some or all of the Assets or to accept multiple Binding Offer Bids and enter into multiple Final Agreements.
39. In the event that the Companies enter into one or more Final Agreements, any Binding Offer Bids so selected shall be a “**Winning Bid**”. Any Qualified Bidder that makes a Winning Bid shall be a “**Successful Bidder**”.
40. This SISP shall be suspended in the event that: (a) no Qualified Bidder submits or is deemed to have submitted a Qualified Binding Offer; (b) the Companies, with the

approval of the Monitor and the DIP Lender, determine that none of the Qualified Binding Offer Bids should be accepted; or (c) a Final Agreement has not been entered into before the Final Agreement Deadline. In any such case, the Companies may, in consultation with the Consultation Parties, terminate the SISP and consider other forms of bids for the Assets.

G. APPROVAL ORDERS

41. In the event that the Companies enter into a Final Agreement, the Companies shall apply as soon as reasonably practicable thereafter, for order(s) (the "**Approval Order**") from the Court, in form and substance satisfactory to the Companies and the Consultation Parties, approving the transaction contemplated by the Winning Bid(s) and any necessary related relief required to consummate the Transaction contemplated by the Winning Bid(s), subject to the terms of the Final Agreement(s).
42. An Approval Order shall become a "**Final Order**" upon satisfaction of the following conditions: (a) it is in full force and effect; (b) it has not been reversed, modified or vacated and is not subject to any stay; and (c) all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving the Approval Order wholly operable.

H. CLOSING

43. Closing of the transactions contemplated in any Final Agreement shall occur by no later than **September 23, 2022** or as may be extended with the approval of the Companies, in consultation with the Consultation Parties.

I. DEPOSITS

44. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor in a non-interest bearing account. The Monitor shall hold Deposits paid by each of the Successful Bidder in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Companies elect not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Monitor shall return the Deposit to that Person.
45. In the event that a Successful Bidder defaults in the payment or performance of any obligations owed to the Companies pursuant to any Final Agreement, the Deposit paid by the Successful Bidder as applicable, shall be forfeited to such party as liquidated damages and not as a penalty.

J. CONFLICTS OF INTEREST

46. Until such time as any secured creditor of the Companies have: (i) irrevocably declared

its intention not to submit a bid; (ii) its Initial Offer has been irrevocably disqualified under the SISP; or (iii) its Qualifying Binding Offer has been irrevocably determined not to be the Winning Bid), such secured creditor:

- shall only receive information regarding the SISP in keeping with his or her capacity as a Potential Bidder in these proceedings; and
- shall receive no information whatsoever regarding other bids in the SISP.

47. If any secured creditor determines that it will submit a bid in the SISP, such secured creditor shall advise the Companies of such intent as soon as reasonably practicable, and no later than seven (7) days before the Bid Deadline.

SCHEDULE “A”

**Addresses for Deliveries
and Wire Transfer
Information**

Any notice or other delivery made to the Companies or Monitor pursuant to this SISP shall be made to:

BDO Canada Limited
20 Wellington St E, Suite 500
Toronto, ON M5E 1C5
Attention: Anna Koroneos
Tel: 647-798-1459
Email: akoroneos@bdo.ca

Any notice or delivery made to the Sales Agents pursuant to this SISP shall be made to:

Hyde Advisory & Investments
c/o David Hyde
david@hydeadvisory.com

or

Avison Young
77 City Centre Dr. Suite 301
Mississauga, ON, L5B 1M5
Attention: Ben Sykes
Ben.sykes@avisonyoung.com

Deliveries pursuant to this SISP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the relevant address, as identified above.

Wire Transfer Details for the Monitor

PLEASE CONTACT MONITOR FOR WIRE INSTRUCTIONS FOR THIS ACCOUNT.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
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Court File No.: CV-22-00683056-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(APPROVAL OF SALE PROCESS)**

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