

Court File No.:
CV-19-627308-00CL

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



B E T W E E N:

AUXLY CANNABIS GROUP INC.

Applicant

- and -

2368523 ONTARIO LIMITED D/B/A CURATIVE CANNABIS

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, SECTION
67(1)(e) OF THE PERSONAL PROPERTY SECURITY ACT, R.S.O. 1990 c. P-10, AS
AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.
C.43, AS AMENDED**

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on September 19, 2019 at 9:30 a.m., or as soon as after that time as the application may be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

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 applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, 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

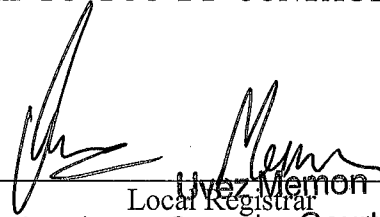
appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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 SEP 13 2019

Issued by


Vivez Memon
Local Registrar

Registrar, Superior Court of Justice

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Proposed Receiver

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APPLICATION

THE APPLICANT, Auxly Cannabis Group Inc. (the "**Applicant**"), makes an application for an Order:

1. abridging the time for service of this Notice of Application and the materials filed in support of the application and dispensing with further service thereof;
2. appointing A. Farber & Partners Inc. ("**Farber**") as the receiver (the "**Receiver**") of the property, assets and undertaking of 2368523 Ontario Limited d/b/a Curative Cannabis (the "**Debtor**") Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), section 67(1)(e) of the *Personal Property Security Act*, R.S.O. 1990 c. P-10 (the "**PPSA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"); and
3. granting such other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THIS APPLICATION ARE:

4. the Debtor is an early stage cannabis cultivation company that is in the pre-licensing and construction phase of its operations. The Debtor does not have active operations and is in the process of building a facility in Chatham, Ontario for the purpose of cultivating cannabis (the "**Chatham Facility**");
5. the Applicant is an integrated cannabis company which focuses on production, product development, branding, cultivation and financing in the legal cannabis market. The Applicant operates from a head office located in Toronto, Ontario;

6. the Applicant and the Debtor have entered into financing arrangements in connection with the construction of the Chatham Facility, most recently pursuant to an Amended and Restated Secured Promissory Note dated April 23, 2019 (the "**Amended and Restated Promissory Note**"). It is a term of the Amended and Restated Promissory Note the Applicant may appoint a receiver upon default by the Debtor of any of its obligations to the Applicant;

7. pursuant to the Amended and Restated Promissory Note, and as security for its obligations to the Applicant, the Debtor granted the Applicant security over all of its personal property pursuant to, among other things, a General Security Agreement dated April 23, 2019;

8. the Debtor also issued a Demand Debenture to the Applicant dated April 23, 2019, in the principal amount of \$18 million and a fixed specific mortgage and charge for \$18 million in favour of the Applicant against real property identified as PIN 00736-0250 (LT) and PIN 00736-0221(LT), which comprises the lands on which the Chatham Facility is being constructed;

9. in addition to the security provided by the Debtor, the principals of the Debtor, David Shpilt ("**Mr. Shpilt**") and Scott Fitzgerald ("**Mr. Fitzgerald**") entered into: (i) a Limited Recourse Guarantee dated April 23, 2019 (the "**Guarantee**"); and (ii) a Pledge Agreement dated April 23, 2019 (the "**Share Pledge**") with the Applicant. Pursuant to the Guarantee and the Share Pledge, Mr. Shpilt and Mr. Fitzgerald pledged all of their shareholdings in the Debtor (the "**Shares**") to the Applicant as security for all amounts owing by the Debtor to the Applicant;

10. the Applicant registered security interests against the Debtor, Mr. Shpilt and Mr. Fitzgerald pursuant to the PPSA;

11. all amounts owing under the Amended and Restated Promissory Note by the Debtor to the Applicant matured on August 5, 2019;

12. by letters dated August 15, 2019, the Applicant demanded repayment from each of the Debtor, Mr. Shpilt and Mr. Fitzgerald (collectively, the "**Demands**") and together therewith delivered Notices of Intention to Enforce Security (collectively, the "**BIA Notices**") pursuant to Section 244 of the BIA.

13. by letters dated on August 29, 2019, the Applicant also issued Notices for Foreclosure in respect of the Shares to Shpilt, Fitzgerald and certain other parties entitled to notice pursuant to the PPSA (collectively, the "**Notices of Foreclosure**");

14. objections to the Notices of Foreclosure were issued by the Debtor, Shpilt, Fitzgerald and certain creditors with PPSA registrations against Shpilt and Fitzgerald;

15. as of September 12, 2019, the Debtor was indebted to the Applicant in the amount of \$16,146,162.66. This is inclusive of interest, but not of all additional costs and fees owing to the Applicant. The amount owing by the Debtor continues to grow on a daily basis as a result of interests, costs and obligations the Applicant has incurred in respect of the Debtor to complete construction of the Chatham Facility.

16. Notwithstanding the Debtor's default, the Applicant has determined that it must continue to pay obligations owing to third-parties in connection with the construction of the Chatham Facility in order to preserve the value of its collateral;

17. as of September 12, 2019, the Debtor has not obtained additional financing and has not paid any of the amounts outstanding to the Applicant. The Debtor has had ample time to refinance

the obligations owing to the Applicant or propose another commercially solution that is acceptable to the Applicant;

18. the Applicant's need for the appointment of a Receiver is apparent based on the current circumstances, including the following facts:

- (a) the Demands, the BIA Notices and the Notices for Foreclosure have not been withdrawn by the Applicant and the Debtor, Shpilt and Fitzgerald have had had ample opportunity to satisfy the Demands;
- (b) construction of the Chatham Facility is 90% complete. Completion of the Chatham Facility is expected to cost an additional \$4 million in connection with amounts to be paid in respect of outstanding purchase orders and construction hold-back payments. The Applicant has direct contractual obligations to certain contractors to pay such amounts in order to complete construction of the Chatham Facility.
- (c) the Applicant has lost confidence in the Debtor's ability to manage completion of the construction of the Chatham Facility;
- (d) the Applicant intends to foreclose on the Shares and take control of the Debtor. If the objections to the foreclosure process are determined to be invalid, are withdrawn or dispensed with by the Court or otherwise, a receiver should be appointed to oversee and monitor the operations of the Debtor and ensure that the value of the Debtor's business and the Applicant's collateral does not erode while management of the Debtor's business is transitioned to the Applicant. It is also just and convenient for the Court to appoint a receiver to monitor's the Debtor's business and to ensure that the value of the Applicant's collateral is protected; and
- (e) if the objections to the foreclosure process are determined to be valid or the Applicant withdraws the Notices for Foreclosure, the Shares or the Debtor's assets must be marketed for sale pursuant to the sale and foreclosure provisions of the

PPSA. A Receiver will be well positioned and sufficiently familiar with the Debtor's business to undertake such a sales process (and provide any valuation evidence necessary in connection therewith) and return to Court to seek approval to sell Shares or the Debtor's assets.

19. Farber has consented to act as the Receiver;
20. Rules 2.03, 3.02, 14.05(2), 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, section 243(1) of the BIA, Section 101 of the CJA and section 67(1)(e) of the PPSA; and
21. Such other grounds as counsel may advise and this Honourable Court may deem just.

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

22. the Affidavit of Ronald Fichter, sworn September 12, 2019;
23. the Consent of Farber; and
24. such further and other evidence as counsel may advise and this Honourable Court may permit.

September 12, 2019

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Applicant

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PROCEEDING COMMENCED AT
TORONTO

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