Court File No. CV-21-00659187-00CL

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 DOMENICO SERAFINO AS A PERSON INTERESTED IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HYDRX FARMS LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA INC.

Applicant

FACTUM OF THE MOVING PARTY COBRA VENTURES INC.

June 23, 2021

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PART I - INTRODUCTION

1. This motion is prompted by the ill-conceived claim of Domenic Serafino ("**Serafino**") that the Moving Party Cobra Ventures Inc. ("**Cobra**"), the assignee of a first-ranking debenture (the "**Debenture**") secured against the assets of HydRx Inc. ("**HydRx**"), should be precluded from credit bidding the full amount, or any, of the debt under the Debenture. The claim is not supported by the facts or the law and these *CCAA* proceedings are not a proper forum for resolving the claim. Although couched as a claim of fiduciary breach on the part of Cobra's former director, Richard Goldstein ("**Goldstein**"), Serafino is in substance seeking a remedy of equitable subordination, which according to *U.S. Steel Canada Inc. (Re)*, this Court has no jurisdiction to make. Until this motion is adjudicated, a sale and investment solicitation process in these *CCAA* proceedings cannot proceed.

2. The gravamen of Serafino's complaint is that Goldstein increased his ownership interest in the Debenture while he was a director of HydRx, by borrowing against the Debenture. Neither of those transactions were material contracts of HydRx and no corporate opportunity of HydRx was usurped. Moreover, it is clear from the paper record that Serafino was well aware of both transactions before they were completed, and took no issue with them, until he applied *ex parte* for an initial stay under the *CCAA*.

3. Although Serafino paints Cobra and Goldstein in a predatory light, the evidence shows that Cobra, through Goldstein, in fact extended considerable funds to HydRx to try and preserve value while exploring a potential restructuring. Ultimately, a restructuring did not prove to be feasible given the positions of the players involved.

PART II - SUMMARY OF FACTS

4. Serafino is a seasoned businessperson. He is a senior executive who has been involved in taking two companies public on the NASDAQ, has extensive experience with corporate finance and acting as a director of publicly traded and private companies.[1] He has been a director of HydRx since 2017.[2]

5. Goldstein is the President of Cobra. He is also the President of First Republic Capital Corporation ("**FRC**"), an exempt market dealer in Toronto, and the CFO of Canntab Therapeutics Limited ("**Canntab**").[3] Canntab is a Canadian biopharmaceutical company which manufactures and distributes cannabinoid formulations for therapeutic application.[4]

6. HydRx is a *CBCA* company which carried on business developing and commercializing pharmaceutical grade cannabinoid derivative products.[5] It holds a license under the *Cannabis Act*.[6] Although it has never generated any significant revenue, it owns real property in Whitby, Ontario, improved with a 46,000 square foot production facility.[7]

7. In August of 2017, HydRx borrowed $11.5M from Aphria Inc. ("**Aphria**") and granted Aphria the Debenture. The Debenture is a first ranking-charge over all of the real and personal property of HydRx. The Debenture contained a conversion right in favour of the Debenture holder

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[1] Transcript of the Cross-Examination of Domenic Serafino on June 14, 2021; q. 30, p. 8 ("**Serafino Transcript**").
[2] Serafino Transcript, q. 35, p. 9.
[3] Reply Affidavit of Richard Goldstein sworn June 3, 2021 at paras. 5 and 7 ("**Goldstein Reply Affidavit**"), Reply Motion Record ("**RMR**"), pp. 4-5.
[4] Goldstein Reply Affidavit at para. 7, RMR, pp. 4-5.
[5] Affidavit of Domenic Serafino sworn March 21, 2020 (without exhibits), Exhibit A, Affidavit of Domenic Serafino sworn May 20, 2021 ("**Serafino Affidavit**"), Responding Motion Record ("**Responding MR**"), pp. 44-46.
[6] *Ibid*.
[7] *Ibid*.

to convert the debt into common shares of HydRx.[8] Accordingly, unless the Debenture holder expected to realize an upside as a shareholder, it could enforce its security to recover the debt. The original maturity date under the Debenture was August 14, 2019.[9]

8. As HydRx was unable to repay the Debenture on August 14, 2019, the maturity date was extended to November 12, 2019, and the rate of interest payable was increased from 8% to 12% *per annum*.[10]

9. As HydRx continued to be unable to repay the Debenture, on November 14, 2019, Aphria and HydRx entered into a Support Agreement pursuant to which the maturity date was further extended to the earlier of January 30, 2020, or the failure by HydRx to meet milestone events under the Support Agreement.[11] The Support Agreement also provided that HydRx would engage FTI Advisors, a turnaround and restructuring firm, to assist it with implementing a refinancing and investment solicitation process.[12]

10. In late 2019, Aphria announced publicly that it was divesting its investments in smaller businesses. In cross-examination, it emerged that Serafino was aware of Aphria's divestment plans since late 2018.[13]

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[8] Senior Secured Debenture, Exhibit C, Affidavit of Richard Goldstein sworn April 23, 2021 ("**Goldstein Affidavit**"), Moving Party's Motion Record ("**MPMR**")
[9] Goldstein Affidavit at para. 12, MPMR, p. 4.
[10] Debenture Amending Agreement, Exhibit F, Goldstein Affidavit, MPMR.
[11] Goldstein Affidavit at paras. 15-16, MPMR, p. 5; Exhibit G, Goldstein Affidavit, MPMR.
[12] Serafino Transcript at qs. 59-66, pp. 14-15.
[13] Answers to the Undertakings given at the Cross-examination of Domenic Serafino on June 14, 2021 ("**Answers to Undertakings**"), Undertaking #1.

11. On January 20, 2020, Aphria made demand under the Debenture and delivered a s. 244 *BIA* notice.[14] At no time before or after Aphria's demand, did Serafino personally, or with a group of investors, offer to inject funds into HydRx to retire the Debenture, or make an offer to Aphria to acquire the Debenture.[15]

12. Although HydRx had raised over $50M, it had run out of cash and most of its employees had been laid off by March, 2020. Its remaining board members and management were pursuing separate agendas to protect their investments and the investments in HydRx they had solicited from friends and family. HydRx had no business to speak of. It had no, and had never generated any, material revenue. Canaccord Genuity had been promoting a potential deal between RISE Life Science Corp. ("**Rise**") and HydRx since the fall of 2019, but it was clear the deal had no chance of success as there was no market for it among investors.[16] In cross-examination, Serafino acknowledged that HydRx's inability to retire the Debenture was an existential problem.[17]

13. In the spring of 2020, Phil Hemans ("**Hemans**"), the COO of HydRx, contacted Goldstein about raising funds for HydRx. At the time, there was little, if any, capital being raised in the Canadian cannabis sector. The economic climate in the sector was at a low point due to the collapse in valuations in 2019 and the associated wave of insolvencies and consolidations that was underway.[18]

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[14] Demand Letter and s. 244 *BIA* notice, Exhibit H, Goldstein Affidavit, MPMR.
[15] Serafino Transcript at qs. 69-70, p. 16.
[16] Goldstein Reply Affidavit at paras. 12, RMR, pp. 5-6.
[17] Serafino Transcript at q. 71, p. 17.
[18] Goldstein Reply Affidavit at para. 9, RMR, p. 5.

14. Initially, Goldstein's discussions with HydRx centered on a possible M&A deal involving HydRx, World Class Extractions, Inc. ("**WCE**") and another company. However, nothing came of those discussions as WCE did not want to be a part of a merger. Instead, WCE was interested in buying the Debenture. As WCE's President, Leo Chamberland ("**Chamberland**"), had only been given a mandate to spend $2.5M, Goldstein took it upon himself to raise the balance.[19]

15. Chamberland negotiated the purchase of the Debenture directly with Aphria's CFO. Originally, when Chamberland and Goldstein discussed how much to offer, they talked about $5.5M. It is uncontroverted by Serafino, that he subsequently told Chamberland that it could be bought for $5M.[20] On July 10, 2020, Aphria signed a Letter of Intent with WCE to sell the Debenture for $5M, subject to a definitive agreement being signed and WCE completing due diligence.[21]

16. On July 13, 2020, Goldstein, Chamberland, and other representatives of WCE, met with Serafino at his home. They informed him that WCE had tied up the Debenture subject to due diligence, and that Goldstein would be part of an investor group involved in funding half of the $5M. At no point during the meeting did Serafino suggest that he or anyone associated with him or HydRx preferred to buy the Debenture or participate in buying it. On the contrary, he informed them that notwithstanding HydRx's immediate liquidity needs, the shareholders of HydRx would not advance any further funds.[22]

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[19] Goldstein Reply Affidavit at para. 13, RMR, p. 6.
[20] Goldstein Reply Affidavit at para. 14, RMR, p. 6.
[21] Signed LOI, Exhibit B, Goldstein Reply Affidavit, pp. 36-39.
[22] Goldstein Reply Affidavit at para. 16, RMR, pp. 6-7.

A. The 'July Plan'

17. Although Chamberland prepared a one page spreadsheet regarding a potential restructuring of HydRx, which he gave to Serafino at the July 13, 2020 meeting, it is clear from the paper record and from Serafino's admissions on cross-examination that nothing definitive was agreed upon at any time with respect to the restructuring of HydRx.[23]

18. Serafino's affidavit evidence regarding the 'July Plan' is inconsistent with WCE's written communications to HydRx during the summer of 2020, in which WCE stated unequivocally that it could not provide any clear direction on how HydRx's capital requirements could be structured, and was undecided about whether to enforce its remedies under the Debenture, or give HydRx additional time and funding.[24]

19. In cross-examination, Serafino admitted that:

(a) the 'July Plan' was not fully baked, there were still question marks, including the extent of HydRx's severance obligations;[25]

(b) the only documentary evidence of the 'July Plan' is the one page spreadsheet;[26]

(c) Serafino did not take the 'July Plan' to HydRx's board because he wanted to wait until the plan was further matured before doing so;[27]

(d) although it was Serafino's understanding from the spreadsheet that the entire $11.5M principal under the Debenture would be converted into shares, and an

[23] Goldstein Reply Affidavit at para. 20, RMR, pp. 9-10; Serafino Transcript at q. 180, pp. 45-46.
[24] Serafino Transcript, qq. 294-295, and 312, pp. 78 and 83; Letter from Rosy Mondin, Exhibit G, Goldstein Reply Affidavit, RMR, pp. 71-72.
[25] Serafino Transcript, qs. 187, 290-291, pp. 47 and 77.
[26] Serafino Transcript, q. 177, p. 45.
[27] Serafino Transcript, q. 290, p. 77.

additional $6M of equity would be raised for working capital, he did not engage any lawyers to prepare a definitive agreement or commitment;[28]

(e) no commitment was ever obtained from FRC to raise $6M in equity on behalf of HydRx, notwithstanding the reference to $6M of additional equity capital to acquire equipment in the spreadsheet;[29]

(f) no definitive agreement was ever prepared to encapsulate the terms of the 'July Plan';[30] and,

(g) although Serafino has been involved in many deals "that never get across the finish line", he never asked Goldstein for a piece of paper, or even a soft letter of comfort, confirming that Cobra intended to carry out the 'July Plan' because he comes "from a generation of business people that a handshake on a back-of-an-envelope is good".[31]

20. Aphria and Cobra executed a Debenture Security Assignment Agreement on July 28, 2020. Cobra was a shelf company of Chamberland's.[32] Subject to the closing conditions being met, the transaction was to be completed no later than 60 days after signing.[33] At the time, the shares of Cobra were owned equally by WCE and 2775361 Ontario Inc. ("**277**"). Goldstein's family holdco, holds 40% of the shares of 277. The remaining 60% of the shares of 277 are held by personal friends of Goldstein, who are arm's length to Goldstein and his companies.[34]

[28] Serafino Transcript, qs. 182-183, 214-220, pp. 46 and 54-55.
[29] Serafino Transcript, qs. 197 and 216, pp. 49 and 54; Exhibit E, Serafino Affidavit, responding MR, p. 127.
[30] Serafino Transcript, q. 180, pp. 45-46.
[31] Serafino Transcript, qs. 256 and 283 pp. 65, 73-74.
[32] Goldstein Reply Affidavit at para. 26, RMR, p. 11.
[33] Debenture Security Assignment Agreement, Exhibit F, Goldstein Reply Affidavit, RMR, pp. 60-69.
[34] Goldstein Reply Affidavit at para. 5, RMR, p. 4.

21. In early September, 2020, three of HydRx's four member board resigned, leaving Serafino as the sole director.[35]

22. Cobra's purchase of the Debenture was completed on September 28, 2020, with Serafino's prior knowledge and approval.[36] Cobra then began to confront HydRx's liquidity crisis. On October 8, 2020, the last funds that remained in the HydRx bank account were debited to pay for D&O runoff insurance, following the resignations of the directors.[37] Serafino sent Hemans an urgent email, copying Chamberland and Goldstein, advising that money needed to be put into a separate account for payroll, insurance, and other operating expenses to keep the doors open and the licenses intact.[38]

23. Serafino and WCE did not offer to contribute any of the money required. The investors in 277, including Goldstein, were also not prepared to deploy further funds.[39] To preserve the security underlying the Debenture, Goldstein arranged for Cobra to borrow $1M from Rydan Financial Inc. ("**Rydan**"). Pursuant to Rydan's commitment, Rydan required, and received, an assignment of the Debenture as security for the $1M loan (the "**Rydan Loan**"). No assets of HydRx were pledged as security for the Rydan Loan.[40]

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[35] Notice to Shareholders, Exhibit J, Goldstein Reply Affidavit, RMR, pp. 13-14.
[36] Goldstein Affidavit at para. 21, MPMR p. 7; Text Messages between Goldstein and Serafino on September 24, 2020, Exhibit K, Goldstein Reply Affidavit, RMR, p. 92.
[37] Goldstein Reply Affidavit at paras. 42-43, RMR, pp. 14-15; Email from Serafino to Goldstein on October 8, 2020, Exhibit L, Goldstein Reply Affidavit, RMR, pp. 94-96.
[38] Email from Serafino to Goldstein on October 8, 2020, Exhibit L, Goldstein Reply Affidavit, RMR, pp. 94-96.
[39] Goldstein Reply Affidavit at para. 44, RMR, p. 15.
[40] Goldstein Reply Affidavit at para. 45, RMR, p. 15; Rydan Commitment Letter, Exhibit M, Goldstein Reply Affidavit, RMR, pp. 98-108.

24. The net proceeds of the Rydan Loan were held in Cobra's account, which Goldstein administered. A substantial portion of the funds was disbursed to pay HydRx's arrears of insurance premiums, utilities, payroll, and consulting fees in order to keep the lights on.[41]

25. During the months of October and November, 2020, while creditors were circling, Chamberland and Goldstein explored options to restructure HydRx. On November 2, 2020, they discussed with Serafino the broad outline of a restructuring under the *CCAA* using a reverse vesting order and informed him that they had been working with Cassels, Brock & Blackwell, PricewaterhouseCoopers, as the proposed monitor, and Goodmans, as proposed independent counsel to the monitor. Serafino insisted that certain members of senior management, whom he considered incompetent, should receive nothing for their unsecured severance claims, because they had sufficient shares in HydRx already.[42] In Goldstein's view, it did not appear possible to offer shareholders any consideration without also dealing with unsecured claims, which were in the millions of dollars, including severance claims of $2M.[43]

26. In November, 2020, a number of licensing concerns arose. The designated responsible person in charge of HydRx's Health Canada cannabis license withdrew his consulting services. His departure prompted the need for a replacement in order to maintain the license. Due to Goldstein's existing licensing qualifications with Health Canada through Canntab, he was asked,

[41] Goldstein Reply Affidavit at para. 46, RMR, p. 15.
[42] Serafino Transcript, qs. 210-212, p. 53.
[43] Goldstein Reply Affidavit at para. 48, RMR, p. 16; Hand-Written Notes, Exhibit N, Goldstein Reply Affidavit, RMR, pp. 110-111.

and agreed, to become the alternate responsible person in charge, with Hemans as the primary responsible person in charge.[44]

27. HydRx was also offside its regulatory obligation to have at least one director security cleared by Health Canada's Cannabis Tracking and Licensing System. As neither Serafino nor WCE's CEO, Rosy Mondin, were security cleared, Goldstein was asked, and agreed, to become a director of HydRx.[45]

B. Trevor Folk

28. Shortly following Goldstein's appointment as director, without consulting him, Chamberland and Serafino entered into discussions with Trevor Folk ("**Folk**"). Folk is a former CEO of HydRx who misappropriated $1.6M from the company for personal use and was terminated when the misappropriation was discovered. Serafino and Chamberland negotiated a deal with Folk's company, Teal Valley Health, Inc. ("**Teal Valley**"), pursuant to which joints would be rolled at the HydRx production facility using Teal Valley's equipment and cannabis. Joints would also be rolled using HydRx's existing inventory of cannabis, which was stale and of low quality. Goldstein was adamantly opposed to HydRx making any deal with Folk. He did not consider the reputational risk to HydRx to be acceptable. HydRx would not have sufficient control over the quality of the product. In Goldstein's view, these issues created too great a risk of product recall and consumer dissatisfaction.[46] Moreover, as Serafino acknowledged in cross-examination,

[44] Goldstein Reply Affidavit at para. 49, RMR, pp. 16-17.
[45] Goldstein Reply Affidavit at paras. 51, RMR, pp. 16-17.
[46] Goldstein Reply Affidavit at paras. 53-55, RMR, pp. 17-18.

the deal would not generate sufficient revenue to justify the overhead costs associated with starting production in the facility.[47]

29. By mid December, 2020, Serafino was aware that a serious rift had arisen between Chamberland and Goldstein with respect to any future business between HydRx and Folk.[48]

30. At the same time, the proceeds of the Rydan Loan were almost exhausted, and neither WCE nor Serafino were prepared to fund HydRx's immediate liquidity needs. Chamberland was nonetheless opposed to applying to court for the appointment of a receiver under the Debenture because he was concerned for the loss of HydRx's licenses. Goldstein did not share that concern because of his experience dealing with Health Canada in successfully obtaining licenses. To overcome their differences, Chamberland and Goldstein agreed that whoever was able to first buy the other out of its $2.5M investment in the Debenture could do so.[49]

C. 277 Buys Out WCE

31. By December 21, 2020, Serafino knew that Goldstein and Chamberland were unable to resolve their impasse over Folk and that Goldstein wished to sever the relationship with WCE. Despite his knowledge, Serafino did not offer to buy 277's or WCE's position in the Debenture. Nor did he suggest that the then three directors on the board of HydRx, should call a board meeting

[47] Serafino Transcript at q. 389, p. 102.
[48] Goldstein Reply Affidavit at para. 57, RMR, p. 20.
[49] Goldstein Reply Affidavit at para. 58, RMR, p. 20.

to discuss the issue.[50] In fact, during Goldstein's tenure on the board of directors, not a single board meeting was held.[51]

32. On December 22, 2020, Cobra made demand under the Debenture and issued a s. 244 *BIA* notice.[52]

33. On December 29, 2020, Goldstein obtained a financing term sheet (the "**Term Sheet**") from Windsor Private Capital Limited Partnership ("**Windsor**") to borrow $4M to facilitate buying out WCE's 50% interest in the Debenture and to pay out the Rydan Loan.[53] Serafino received a copy of the Term Sheet from Goldstein that day.[54] Pursuant to the Term Sheet, Windsor required a 10% shareholding interest in Cobra as part of the consideration for making the Loan.[55]

34. There was no fee payable to Windsor upon acceptance of the Term Sheet. It could have been replaced any time prior to closing at no expense to Cobra, had Serafino offered to do so. He never made any such offer.[56]

35. Pursuant to a definitive commitment dated January 15, 2021, Windsor advanced $4M to Cobra on the security of, among other things, an assignment of the Debenture to Windsor (the "**Windsor Loan**"). Although the Term Sheet contemplated that Windsor would receive a first charge to be registered against HydRx's manufacturing facility, that was corrected in the commitment and, in fact, Windsor received a transfer of the existing charge in favour of Cobra

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[50] Serafino Transcript, qs. 144-145, p. 37.
[51] Goldstein Reply Affidavit at para. 61, RMR, p. 21; Serafino Transcript, qs. 401 and 416, pp. 106 and 109.
[52] Email thread between Chamberland and Grover on August 17, 2020, Exhibit I, Goldstein Affidavit, MPMR.
[53] Goldstein Reply Affidavit at para. 63, RMR, pp. 21-22.
[54] Answers to Undertakings, Undertaking #2.
[55] Windsor Commitment Letter, Exhibit U, Goldstein Reply Affidavit, RMR, pp. 132-141.
[56] Goldstein Reply Affidavit at para. 63, RMR, pp. 21-22; Serafino Transcript, qs. 152-153, p. 39.

and no direct security from HydRx. No assets of HydRx were pledged as security for the Windsor Loan.[57]

36. The advance under the Windsor Loan was used to pay out the Rydan Loan and WCE's $2.5M contribution to the purchase of the Debenture. Cobra received a net amount of $384,835, a portion of which was used to meet HydRx's immediate liquidity needs.[58] Although Serafino deposes that the Windsor Loan and the buy out of WCE were designed to solely benefit Goldstein and Cobra, in cross-examination, he acknowledged there was nothing underhanded with the manner in which the Windsor Loan proceeds were used.[59]

37. On January 22, 2021, Serafino and Goldstein exchanged text messages in which Goldstein confirmed that he was not interested in any deal that involved Folk. Serafino responded by telling Goldstein to "never put pride ahead of profit", thereby illustrating a fundamental difference between Serafino's and Goldstein's approach to business.[60]

38. Although Serafino deposes that he had an undrawn personal line of credit in the amount of $5M that was available at the time WCE was bought out of the Debenture, which he would have "utilized for the benefit of HydRx", it is incontrovertible that Serafino was aware of the rift between Goldstein and Chamberland and that Serafino received the Term Sheet from Goldstein pursuant to which Goldstein intended to take out WCE and repay the Rydan Loan.[61] And yet, Serafino did not step forward with any proposal to Goldstein. In cross-examination, Serafino

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[57] Goldstein Reply Affidavit at para. 64, RMR, p. 22; Windsor Commitment Letter, Exhibit U, Goldstein Reply Affidavit, RMR, pp. 132-141.
[58] Statement of Advance, Exhibit V, Goldstein Reply Affidavit, RMR, pp. 143-144.
[59] Serafino Transcript, qs. 434-447, pp. 112-117.
[60] Goldstein Reply Affidavit at para. 67, RMR, p. 22; Text messages between Goldstein and Serafino on January 22, 2021, Exhibit X, Goldstein Reply Affidavit, RMR, pp. 150-151.
[61] Serafino Affidavit at para. 64, Responding MR, p. 24.

admitted that he never mentioned to Goldstein at any point in time, that he had access to a $5M line of credit.[62]

39. Serafino deposes that during the first weeks of February, 2021, he tried to structure a transaction with Goldstein that would salvage HydRx, but Goldstein was not serious about concluding a collaborative arrangement in the spirit of the 'July Plan'. In fact, the evidence shows that rather than work in the spirit of the 'July Plan', Serafino tried to bootstrap himself and his shareholding group into a senior debenture position over the personal property of HydRx in consideration for advancing a $2M loan, which would have required Cobra to lift (or postpone) its security over the personal property of HydRx under the Debenture, which would have altered Windsor's security and required its consent.[63] Cobra submits that Serafino's proposal was entirely inconsistent with the 'July Plan' under which he purportedly expected that the Debenture would be converted into shares.

40. In cross-examination, Serafino acknowledged that Goldstein's colleague, Hamish Sutherland, presented an alternative proposal in which Serafino's shareholding group would inject $2M into a new company that would acquire the personal property of HydRx in exchange for 25% of the equity in the new company.[64] Serafino did not consider the proposal acceptable. He nonetheless acknowledged in cross-examination that Goldstein made an effort to try and find a workable solution.[65]

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[62] Serafino Transcript, q. 475, pp. 126-127.
[63] Email thread, Exhibit 3, Serafino Transcript; Serafino Transcript, qs. 490-509, pp. 131-136.
[64] Email thread, Exhibit 3, Serafino Transcript; Serafino Transcript, qs. 490-509, pp. 131-136.
[65] Serafino Transcript, qs. 495-497, and 504, pp. 133-135.

41. Goldstein deposes that as of March 31, 2021, the indebtedness owing under the Debenture was $14,837,014.04, plus interest, fees, costs, and expenses accrued and accruing thereafter ("**Cobra Secured Indebtedness**"). The breakdown of the calculation with supporting journal entries are attached, collectively, as Exhibit "R" to his affidavit April 23, 2021.[66] Serafino elected not to cross-examine Goldstein. Goldstein's evidence regarding the quantum of the indebtedness under the Debenture is uncontroverted.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

42. The issues raised on this motion are as follows:

(a) whether this proceeding is a proper forum to address Serafino's claims;
(b) whether Goldstein breached his duty as a director of HydRx;
(c) whether Serafino's claims against Goldstein can be set off against the indebtedness owing under the Debenture; and,
(d) whether the Debenture can be equitably subordinated.

D. The Purpose of CCAA Proceedings

43. Cobra submits that this proceeding is not the proper forum to address the claims raised by Serafino. The *CCAA* is not intended to disadvantage creditors. It is intended to create a constructive solution for all stakeholders when a company becomes insolvent.[67] As Tysoe J. stated in *Pacific Coast Airlines Ltd v Air Canada*:[68]

> [The purpose of the CCAA proceeding] is not to deal with disputes between a creditor of a company and a third party, even if the company was also involved in the subject matter of the dispute. While issues between the debtor company and non-creditors are sometimes dealt with in CCAA proceedings, it is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company. [Emphasis added.]

44. This view was unanimously adopted in *Stelco Inc (Re)*, Blair, J.A. noted:

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[66] Breakdown of Debenture Indebtdness, Exhibit R, Goldstein Affidavit, MPMR.
[67] *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para. 205.
[68] 2001 BCSC 1721 at para. 24.

> First, as the supervising judge noted, the CCAA itself is more compendiously styled "An act to facilitate compromises and arrangements between companies and their creditors". There is no mention of dealing with issues that would change the nature of the relationships as between the creditors themselves.

45. In *Stelco Inc (Re)* a group of subordinate debenture holders agreed, pursuant to a trust indenture, to turn over any payments received from the debtor to the senior debenture holder, until the senior debenture was repaid in full.[69] The subordinate debenture holders objected to being placed in the same class as the senior debenture holder on the basis that their interests were different. Blair, J.A. held that this was an inter-creditor dispute and wrote: "to hold the classification and voting process hostage to the vagaries of a potentially infinite variety of disputes as between already disgruntled creditors who have been caught in the maelstrom of a CCAA restructuring runs the risk of hobbling that process unduly."[70]

46. In *US Steel Canada Inc. (Re),* Strathy, C.J.A.O., undertook a thorough review of the purpose and structure of the *CCAA* and concluded that the statute does not contemplate that inter-creditor claims would be addressed:[71]

> Section 19 identifies "claims" that may be dealt with in a compromise or arrangement. Those are claims provable in bankruptcy that relate to debts or liabilities, present or future, to which the debtor company is subject or may become subject before the compromise or arrangement is sanctioned.
>
> The significance of this definition is that the focus of the plan of arrangement is claims against the debtor company that are provable in bankruptcy … neither the Claims Process Order nor the CCAA contemplated that inter-creditor claims would be addressed by or be relevant to a plan of arrangement. [emphasis added]

47. More recently, in *Green Growth Brands Inc*., a subordinate debenture holder objected to the senior secured creditors credit bidding their debt to satisfy the purchase price under a stalking horse bid. The subordinate debenture holder argued that the senior debt was granted in bad faith.[72]

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[69] 2005 CanLII 42247 (ON CA) [*Stelco*].
[70] *Ibid* at para. 35.
[71] *US Steel Canada Inc (Re)*, 2016 ONCA 662 at paras. 58 and 59.
[72] 2020 ONSC 3565 at para. 35.

McEwen J. dismissed the objection and found that the complaints raised "are inter-creditor issues that fall outside of the context of this CCAA proceeding … Mr. Horvitz, presumably, retains his legal rights and can bring an action against those whom he believes have caused him legal harm."[73]

48. Cobra submits that the claims asserted by Serafino against the Debenture are in substance claims against Goldstein, and do not involve HydRx. Rather than bog down these proceedings, the proper forum for addressing Serafino's claim is in a civil action against Cobra and Goldstein.

E. Goldstein did not Breach his Fiduciary Duty

(i) Fiduciary Duties under the *CBCA*

49. Cobra submits that Goldstein did not breach his fiduciary duty to HydRx under the *CBCA*. Section 120(1) of the *CBCA* states:

> 120 (1) A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer
>
> a) is a party to the contract or transaction;
>
> b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or
>
> c) has a material interest in a party to the contract or transaction. [emphasis added]

50. The meaning of 'material transactions' was considered by Kevin McGuiness in his text, *Canadian Business Corporations Law (Second Edition)*:[74]

> The OBCA and the CBCA do not define either the term "material contract" or the term "material interest". Presumably, a transaction is material where it represents a significant dealing of the corporation, such as one which would have a significant effect upon the profitability, financial strength or operations of the corporation. There can be little doubt that the materiality of the transaction is determined by reference to its effect upon the corporation, rather than upon the director, officer or other corporation in which the director or officer has an interest. [emphasis added]

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[73] *Ibid* at para. 33 and 60.

[74] Kevin McGuinness, *Canadian Business Corporations Law*, 2nd ed, (Toronto: Lexis Nexis Canada Inc, 2007) at 853, Tab 1, Moving Party's Book of Authorities ("**BOA**"), p. 3.

51. Cobra submits that none of the transactions Serafino complains of were 'material':

(a) Cobra's purchase of the Debenture from Aphria was not a 'material transaction' because it did not have a material effect on HydRx. The Debenture was already in default. Aphria had delivered a s. 244 *BIA* notice. Nothing changed for HydRx when Cobra bought the Debenture. It remained in default and Cobra expressly reserved its right to enforce the security;

(b) The Rydan Loan and the Windsor Loan were not 'material transactions' either. They were secured against Cobra's interest in the Debenture only. HydRx was never a party to the loans and did not give any further security. The loans had no effect on HydRx whatsoever; and,

(c) The buy out of WCE's interest in the Debenture was also not a 'material transaction'. Irrespective of who owned the Debenture, it was in default and continued to be enforceable against HydRx.

52. To constitute a 'material contract' or 'material transaction' within the meaning of s. 120(1) of the *CBCA*, the impugned contract or transaction must also be with the corporation. In *Roppovalente v. Danis*, a husband and wife suffered a breakdown in their marriage and their relations as shareholders of a company. The husband claimed that his spouse breached her fiduciary duty as a director in failing to exercise the company's right to extend a lease. The wife subsequently incorporated a company and entered into a new lease for the same premises. The husband moved to set aside the new lease between the wife's company and the landlord. Bell J. dismissed the motion and ruled that section 120 of the *CBCA* did not apply:[75]

> Section 120(1) captures material contracts or transactions, or proposed material contracts or transactions, with the corporation — in this case, BCO Group. The s. 120 conflict of interest regime applies where a director or officer has an interest in a material contract with the corporation. Mr. Roppovalente submits that s. 120(8) provides this court with authority to set aside the New Lease because Ms. Danis did not comply with the disclosure requirements. I disagree. Read in the context of the section as a whole, it is plain that the "contract or transaction" referred to in s. 120(8) that may be set aside must be (a) material, (b) with the

[75] 2020 ONSC 5290 at para. 26.

> corporation, and (c) one in which the director or officer is, directly or indirectly, a party, or has a material interest. The New Lease is not a contract to which BCO Group is a party. [emphasis added]

53. In the case at bar, none of the impugned transactions were with HydRx. They were between Cobra and third parties. The board of HydRx had no right to approve, or consent to, any of the transactions.

54. Even if s. 120(1) of the *CBCA* applies, Goldstein made sufficient disclosure of his interest in the Debenture and of the intended buy out of WCE's interest in the Debenture. In *Reeves v Russell,* the plaintiff claimed the defendant failed to disclose a conflict of interest pursuant to s. 132 of the *OBCA* (which is a similar provision to s. 120(1) of the *CBCA*).[76] The defendant was the sole shareholder and director of the lessee and also a shareholder and director of the lessor. The plaintiff was a shareholder and director in the lessor. Although the defendant did not give specific written notice of his conflict of interest to the plaintiff, the plaintiff was aware, through his negotiations with the defendant, that the lease would be very beneficial to the defendant. Henderson J. found that the plaintiff had sufficient notice. He stated that if "there was full and frank disclosure to all interested parties and all interested parties expressed approval, there [is] no need to comply with the formal requirements of s. 132(1)."[77]

55. In the case at bar, it cannot be said that Goldstein withheld relevant information or acted in a furtive manner prior to completing the impugned transactions. By December 21, 2020, Serafino knew that Goldstein wished to sever the relationship with WCE and on the same day that Goldstein

[76] *Reeves v Russell*, 2009 CanLII 11437 (ON SC).
[77] *Ibid* at para. 90.

received the Term Sheet from Windsor, Serafino received a copy of it from Goldstein. And yet, Serafino did not present any proposal to Goldstein to avoid the buyout of WCE's shares in Cobra.

(ii) Fiduciary Duty at Common Law

56. At common law, directors have a duty to act in the company's best interests. The scope of this duty is broad and contextual but at a minimum, requires directors to satisfy their statutory obligations.[78] Such duty does not, however, preclude a director from also being a creditor of the company or from enforcing its rights as a creditor.

57. In *Photon Control Inc v. Kidder*, the defendant director deferred his salary while the plaintiff company was facing financial difficulties. The deferral was formalized in a loan agreement. The plaintiff claimed that the defendant breached his fiduciary duty when he failed to disclose certain information while negotiating the loan agreement. Savage J. disagreed:[79]

> …The fact Kidder was director, President and CEO is not determinative of the content of his duties to Coldswitch, if any, during the Loan Agreement negotiations. In my view, Kidder was not acting in his capacity as director, President or CEO when he negotiated the Loan Agreement; he was acting as creditor.
>
> ... If Kidder were to act purely in the company's interest, he would consent to writing off the loan, as he did in writing off interest on the loan. It is difficult to see how any fledgling company would get beyond the start-up phase if promoters and founders were not able to forgo salaries and fees for the benefit of the company with the promise that their hard work and sacrifice might be repaid in the future. [emphasis added]

58. In affirming the decision on appeal, Hinkson, J.A. wrote:[80]

> …Mr. Kidder's fiduciary duty to Coldswitch, as it related to the negotiation of the Loan Agreement, differed from his fiduciary duty to the company as it related to his role as President and CEO. In *Sharbern Holding*, at para. 150, Rothstein J. recognized that fiduciary duties will not necessarily constrain one who owes such duties from acting in his or her own self-interest:
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> …This is because "[n]ot every self-interested act by a fiduciary conflicts with his fiduciary duties; otherwise, he could never do anything for his own benefit" …"[t]he duty does not completely prohibit the adoption of

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[78] *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at paras. 37 and 38.
[79] 2011 BCSC 1016 at paras. 77 and 79.
[80] 2012 BCCA 327 at para. 57.

> a position or the entering into of transactions in which such a conflict might occur; it rather prohibits doing so without disclosure of all material facts to the principal so as to obtain his consent" … [emphasis added]

59. In *Liddell v. Leung*, the creditor, who was also a director of the debtor, instituted bankruptcy proceedings against the debtor. None of the other directors or shareholders were willing to extend funding to the debtor. Lax J. held that no breach of fiduciary duty was committed:[81]

> The act complained of is the institution of bankruptcy proceedings, which Liddell says places Leung in a conflict between his duty to GFX and his self-interest in collecting his debt. But, Leung's dual role as creditor and as director was evident from the outset. It is not evident that Leung, as primary creditor of GFX, is prevented, by virtue of his director's role, from exercising his debtor's [*sic*] rights in the ordinary course. [emphasis added]

60. It is clear from the above authorities that a director is not in a conflict of interest *simpliciter* merely because he is also a creditor. So long as the director properly balances his fiduciary duties against his self-interest as a creditor, there is no impropriety.

61. In the case at bar, Goldstein did not deviate from the legal duties imposed upon him as a director. Upon becoming a director of HydRx, he continued to cause Cobra to fund HydRx's liquidity needs in order to keep the 'lights on', rather than cause the Debenture to be immediately enforced. Only when the legitimate commercial dispute with Chamberland over doing business with Folk became irreconcilable did Goldstein cause the buy out of WCE. Moreover, he did so on prior notice to Serafino. Even after the buy out of WCE, as Serafino admitted on cross-examination, Goldstein made an effort to try and find a workable solution. Cobra submits there was nothing improper with Goldstein's conduct in this regard.

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[81] 1998 CarswellOnt 3960 at para. 5, Tab 2, BOA, p. 6.

F. No Set-Off

62. Serafino is seeking to set-off his claims against Goldstein against the indebtedness owing to Cobra under the Debenture. In the case at bar, Cobra submits that legal and equitable set-off cannot apply.

63. Legal set-off only applies to mutual debts. Mutual debts are debts due from either party to the other for liquidated sums or money demands which can be ascertained with certainty at the time of pleading.[82] There are no mutual debts between Cobra and HydRx. Cobra is not indebted to HydRx and there are no liquidated amounts owing by Cobra to HydRx.

64. Equitable set-off applies when a defendant makes a claim against a plaintiff in relation to the same contract or series of events that gave rise to the plaintiff's claim. The following principles are relevant to the availability of equitable set-off:[83]

(a) the party claiming set off must show that it has an equitable basis for being protected from the opposite party's claim;
(b) the equitable basis must go to the very root of the plaintiff's claim;
(c) the counterclaim must be so clearly connected with the plaintiff's demand that it would be manifestly unjust to allow the plaintiff to enforce payment without taking the counterclaim into consideration;
(d) the claim and the counterclaim do not have to arise out of the same contract; and,
(e) unliquidated claims are on the same footing as liquidated claims.

65. Equitable set-off does not apply to the facts at bar. There is no equitable basis for reducing the face amount recoverable under the Debenture. Neither Cobra nor Goldstein have engaged in any inequitable conduct. As Mongeon J. of the Quebec Superior Court noted: "our courts have

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[82] *Daly Square Inc. v 1786097 Ontario Inc. and Mikhael*, 2018 ONSC 6404 at para. 39.
[83] *Ibid* at para. 28.

always accepted the dollar value appearing on the face of the instrument as the basis for credit bidding".[84]

G. Equitable Subordination Does Not Apply

66. Equitable subordination is an American insolvency law doctrine which is now enshrined in s. 510(c) of the *US Bankruptcy Code* that permits a court to subordinate a creditor's claim. The following requirements must be met for equitable subordination to apply:[85]

1) the claimant must have engaged in some type of inequitable conduct;
2) the misconduct must have resulted in injury to creditors of the bankrupt or conferred an unfair advantage on the claimant; and
3) equitable subordination of the claim must not be inconsistent with the provisions of the bankruptcy statute.

67. In *US Steel Canada Inc (Re)*, the Court of Appeal for Ontario held that no jurisdiction exists under the *CCAA* to grant equitable subordination. In that case, the former employees of US Steel Canada Inc. claimed that the American parent pushed the debtor into insolvency to further its own interests. The American parent was the first-ranking secured creditor of the debtor. The employees argued that it would be inequitable to allow the American parent to maintain its priority over unsecured creditors (including the employees) in light of its inequitable conduct. Strathy C.J.A.O. disagreed and held that that equitable subordination did not apply under the *CCAA*:[86]

> I would not grant the relief sought because, applying the principles of statutory interpretation, nowhere in the words of the CCAA is there authority, express or implied, to apply the doctrine of equitable subordination. Nor does it fall within the scheme of the statute, which focuses on the implementation of a plan of arrangement or compromise. The CCAA does not legislate a scheme of priorities or distribution, because these are to be worked out in each plan of compromise or arrangement … [emphasis added]

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[84] *White Birch Paper Holding Company (Arrangement relative a)*, 2010 QCCS 4915 at para. 35.
[85] *US Steel Canada Inc (Re)*, 2016 ONCA 662 at para. 20.
[86] *Ibid* at para. 101.

68. Even if the doctrine of equitable subordination applied under the *CCAA*, according to US decisions involving similar facts, it would not be granted in the case at bar.

69. As a first principle, the US Seventh Circuit Court of Appeal has warned that equitable subordination should be used sparingly:[87]

> …Courts should hesitate to invoke the doctrine of equitable subordination for two primary reasons: "(1) the upsetting of a claimant's legitimate expectations, and (2) the spawning of legal uncertainty that courts will refuse to honor otherwise binding agreements on amorphous grounds of equity."

70. *In Re SGK Ventures, LLC*, members of the debtor LLC caused a related company to make loans to the debtor.[88] The debtor filed for restructuring and the trustee sought to equitably subordinate the related company's claim. The US District Court denied the trustee's relief, holding that the loans were not inequitable. The members did not breach their fiduciary duty to the debtor by simply causing the debtor to accept the loans. The proceeds from the loans were used to pay the debtor's creditors and not for any improper purposes.[89]

71. *In Re RGHGAB at Frederick, LLC*, a director guaranteed a secured loan obtained by the debtor.[90] As the lender was about to enforce its security, the director formed a separate company and acquired the secured debenture from the lender. In restructuring proceedings, the trustee sought to equitably subordinate the director's claim under the debenture. The Fourth Circuit US Bankruptcy Court denied the trustee's relief:[91]

> …The court finds that no harm was caused to the creditor body by Dorment forming a group to acquire the Note in and of itself. There could well be a cause of action in what is essentially this two-party dispute between Robert Berman and Christopher Dorment operating through their legal entities. But resolution of the potential dispute is for another day in another jurisdiction.

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[87] *In Re SGK Ventures, LLC,* 2017 WL 2683686 (N.D.Ill., June 20, 2017) at p. 8, Tab 3, BOA, p. 15 ("***SGK Ventures***").
[88] *SGK Ventures,* Tab 3, BOA.
[89] *SGK Ventures* at p. 9, Tab 3, BOA, p. 16.
[90] *In Re RGHGAB at Frederick, LLC,* 2012 WL 1424684 (Bankr. D. Md., April 24, 2012) at p. 9, Tab 4, BOA, p. 27 ("***RGHGAB***").
[91] *RGHGAB* at p. 4, Tab 4, BOA, p. 27.

> The Note was acquired for two purposes, to gain control of the subject property for the benefit of the new combine and to relieve Dorment of the weight of a $9 million plus guaranty. The court finds nothing in the nature of inequitable conduct or unfairness on Dorment's part. The creditors … were then at least $5million under water and suffered no change in position as a result of the transfer of the Note to parties friendly to Dorment.

72. Similarly, in the case at bar, none of the impugned transactions resulted in any change in position or impact on HydRx or its other creditors.

73. *In Re Mr. R's Prepared Foods, Inc*., the debtor's principal guaranteed a loan to the debtor, and after paying the amount owing by the debtor to its creditor, obtained an assignment of the creditor's rights in the debt and security. Subsequently, the principal made two more loans to the debtor. In bankruptcy proceedings, the trustee argued that the principal's claim to the assigned debt and security should be equitably subordinated. The US Bankruptcy Court of Connecticut disagreed, finding that "in order to equitably subordinate a creditor's claim, the creditor-insider must actually use its power to its own advantage or to the other creditors' detriment."[92] There was no evidence that the loans were used for anything other than to pay the debtor's expenses.[93]

74. In *re Medical Software Solutions*, the debtor's largest shareholder made a bridge loan to the debtor, which was secured by a GSA. Soon after, the debtor filed for bankruptcy and the lender used its debt to credit bid on the debtor's assets. A group of shareholders argued the lender's claim should be equitably subordinated because the bridge loan itself was evidence of inequitable conduct. The Bankruptcy Court of Utah disagreed, finding that "equitable subordination is remedial, and not penal, and should be used sparingly."[94] Further, "a loan by a majority shareholder in itself, is not inequitable … to equitably subordinate the debt, there must be more

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[92] *In Re Mr. R's Prepared Foods, Inc.*, 251 B.R. 24 (D. Conn. 2000) at p. 5, Tab 5, BOA, p. 34 ("***Mr. R's***")
[93] *Mr. R's* at p. 6, Tab 5, BOA, p. 35.
[94] *In Re Medical Software Solutions*, 286 B.R. 431 (2002) at p. 10, Tab 6, BOA, p. 48.

than just a loan from an insider to the Debtor. Inequitable conduct or bad faith … must be shown."[95]

75. All of the above US authorities confirm that even if equitable subordination were to apply under the *CCAA*, the facts at hand do not support the equitable subordination of the Debenture.

PART IV - ORDER REQUESTED

76. Cobra requests an order declaring and confirming that:

(a) The indebtedness owed by HydRx to Cobra is in the amount of the Cobra Secured Indebtedness and that it is secured by valid and enforceable security over all of HydRx's present and after-acquired real and personal property; and

(b) Cobra is entitled to credit bid up to the full amount of the Cobra Secured Indebtedness, including in any sale and investment solicitation process approved in this *CCAA* proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of June, 2021.

Per: Jacky Cheung
David Preger

[95] *In Re Medical Software Solutions*, 286 B.R. 431 (2002) at p. 11, Tab 6, BOA, p. 49.

June 23, 2021

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6.

2. *Pacific Coast Airlines Ltd v Air Canada*, 2001 BCSC 1721.

3. *US Steel Canada Inc (Re)*, 2016 ONCA 662.

4. *Stelco Inc. (Re)*, 2005 CanLII 42247 (ON CA).

5. *In the Matter of a Compromise or Arrangement of Green Growth Brands Inc.*, 2020 ONSC 3565.

6. *Kevin McGuinness*, Canadian Business Corporations Law, 2nd ed, (Toronto: Lexis Nexis Canada Inc, 2007).

7. *Roppovalente v Danis*, 2020 ONSC 5290.

8. *Reeves v Russell*, 2009 CanLII 11437 (ON SC).

9. *BCE Inc v 1976 Debentureholders*, 2008 SCC 69.

10. *Photon Control Inc v Kidder*, 2011 BCSC 1016.

11. *Photon Control Inc v Kidder*, 2012 BCCA 327.

12. *Liddell v Leung*, 1998 CarswellOnt 3960.

13. *Daly Square Inc. v 1786097 Ontario Inc. and Mikhael*, 2018 ONSC 6404.

14. *White Birch Paper Holding Company (Arrangement relative a)*, 2010 QCCS 4915.

15. *In Re SGK Ventures, LLC*, 2017 WL 2683686 (N.D.Ill., June 20, 2017).

16. *In Re RGHGAB at Frederick, LLC*, 2012 WL 1424684 (Bankr. D. Md., April 24, 2012).

17. *In Re Mr. R's Prepared Foods, Inc.*, 251 B.R. 24 (D. Conn. 2000).

18. *In Re Medical Software Solutions*, 286 B.R. 431 (2002).

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Canada Business Corporations Act*, RSC 1985 c C-44

Disclosure of interest

120 (1) A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer

a) is a party to the contract or transaction;

b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or

c) has a material interest in a party to the contract or transaction.

2. Business Corporations Act, RSO 1990, c B 16

Disclosure: conflict of interest

132 (1) A director or officer of a corporation who,

(a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or

(b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest. R.S.O. 1990, c. B.16, s. 132 (1).

by director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting at which a proposed contract or transaction is first considered;

(b) if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;

(c) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or

(d) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director. R.S.O. 1990, c. B.16, s. 132 (2)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND DOMENICO SERAFINO AS A PERSON INTERESTED IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HYDRX FARMS LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA INC.
Applicant

Court File No. CV-21-00659187-00CL

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