

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.

(the "Applicant")

FACTUM OF THE APPLICANT DOMENICO SERAFINO AS A PERSON
INTERESTED IN THE MATTER

(returnable July 26, 2021)

July 23, 2021

MINDEN GROSS LLP
Barristers and Solicitors
145 King Street West, Suite 2200
Toronto, ON M5H 4G2

Raymond M. Slattery (LSO# 20479L)
Tel: 416-369-4149
rslattery@mindengross.com

Sepideh Nassabi (LSO# 60139B)
Tel: 416-369-4323
snassabi@mindengross.com

Lawyers for the Applicant

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.

(the "Applicant")

**FACTUM OF THE APPLICANT DOMENICO SERAFINO AS A PERSON
INTERESTED IN THE MATTER**

(returnable July 26, 2021)

PART I – OVERVIEW

1. The Applicant is seeking an extension of the stay of proceedings until and including October 28, 2021. The Monitor supports the request for an extension of the stay period.

PART II – FACTS

Background

2. Hydrx is a vertically-integrated biopharmaceutical company and was incorporated under the *Canada Business Corporations Act*.¹

¹ Affidavit of Domenico Serafino sworn March 19, 2021, paras. 5 & 7.

Need for CCAA Protection and Granting of the Initial Order

3. The Applicant sought protection pursuant to the *Companies' Creditors Arrangement Act* (“CCAA”) as an “interested person” under section 11 of the CCAA due to a deadlocked board of directors of Hydrx.²

4. On March 22, 2021, the court granted the Initial Order:

a. declaring the Applicant as an “interested person” under the CCAA;

b. granted a 10 day stay period until April 1, 2021 (the “**Stay Period**”);
and,

c. appointed Schwartz Levitsky Feldman Inc. as the monitor (the “**Monitor**”).

5. On March 31, 2021, the court extended the Stay Period until May 3, 2021 pursuant to an Amended and Restated Initial Order.³

6. On April 30, 2021, the court extended the Stay Period until July 30, 2021 (the “**April 30th Stay Extension Order**”).⁴

² Affidavit of Domenico Serafino sworn March 29, 2021, para. 6.

³ Order of the Honourable Justice Hailey dated March 31, 2021, Motion Record of the Applicant, Exhibit “C”.

⁴ Order of the Honourable Justice Hailey dated April 30, 2021, Motion Record of the Applicant, Exhibit “E”.

7. The Applicant seeks a further 90-day extension of the Stay Period to October 28, 2021.⁵

8. The various orders granting the stay periods have allowed the Hydrx Re-Start Group to re-start operations. The activities of the Re-Start Group are set out in the previous affidavits of the Applicant.⁶ The remaining paragraphs describe the activities since the April 30th Stay Extension Order.

Activities Since April 30th Stay Extension Order

9. Hydrx has obtained the necessary licenses to sell on a retail basis in Saskatchewan and Manitoba.⁷

10. At the commencement of the CCAA proceedings, Hydrx no longer had any employees as it had initiated a planned shutdown. Since the April 30th Stay Extension Order, Hydrx has employed a further 8 former employees bringing the total to 12 employees.⁸

11. Hydrx continues to fulfill purchase orders totalling about \$201,000 in the next 45 days. Hydrx received a purchase order for its “Medisenol” inventory in the

⁵ Affidavit of Domenico Serafino sworn July 20, 2021, para. 7.

⁶ Affidavit of Domenico Serafino sworn March 29 and April 26, 2021.

⁷ Affidavit of Domenico Serafino sworn July 20, 2021, para. 10.

⁸ Affidavit of Domenico Serafino sworn July 20, 2021, para. 11.

amount of \$47,304. The product has been packaged for shipping next week to Saskatchewan.⁹

12. In addition, there is a new product listing which was recently awarded by the Ontario Cannabis Store. Hydrx expects that this new product listing will provide up to an additional \$341,000 in revenue during August and September of 2021.¹⁰

13. Hydrx manufactures certain beverages for its customer, Beacon Hill Brands. Hydrx has the materials on-hand to produce 300,000 units. A production of this size could be completed in as little as 90 days.¹¹

14. Hydrx is negotiating an exclusive contract to manufacture a unique product for sale to another licensed producer. If negotiations are successful and a contract is entered into, it is expected to generate a guaranteed minimum revenue of \$250,000.¹²

15. The Re-Start Group is developing a line of Hydrx branded products which will be presented in the upcoming provincial product call and submission for launch in the fall of 2021.¹³

16. The Re-Start Group currently has \$500,000 of raw material inputs and \$1.5 million of equipment at Hydrx's production facility in Whitby.¹⁴

⁹ Affidavit of Domenico Serafino sworn July 20, 2021, para. 12.

¹⁰ Affidavit of Domenico Serafino sworn July 20, 2021, para. 13.

¹¹ Affidavit of Domenico Serafino sworn July 20, 2021, para. 14.

¹² Affidavit of Domenico Serafino sworn July 20, 2021, para. 15.

¹³ Affidavit of Domenico Serafino sworn July 20, 2021, para. 16.

¹⁴ Affidavit of Domenico Serafino sworn July 20, 2021, para. 17

17. Hydrx received a \$44,000 refund from its insurer.¹⁵

The Cobra Claims Process

18. On April 30, 2021, the court granted a SISP order. The court sanctioned SISP contemplated a specific claim process to determine what, if any, secured debt is owing by Hydrx to Cobra Ventures Inc. (the “**Cobra Claims Process**”). The Cobra Claims Process proceeded by way of motion heard by the Honourable Justice Wilton-Siegel on June 30 and July 6, 2021. The Applicant is seeking leave to appeal His Honours decision.

19. The SISP order contemplates the final determination of the Cobra Claims Process before proceeding with either a conventional restructuring or a sale process.¹⁶

20. At least 3 more months are required to complete the SISP, deal with the leave to appeal, and the balance of Hydrx’s restructuring. The Monitor is of the view that an extension of less than 3 months will only serve to increase costs.¹⁷

Cashflow

21. As is demonstrated in the Cash Flow Forecast appended to the Third Report of the Monitor, Hydrx is forecast to have sufficient liquidity to fund its obligations

¹⁵ Affidavit of Domenico Serafino sworn July 20, 2021, para. 18.

¹⁶ Affidavit of Domenico Serafino sworn July 20, 2021, para. 19-20.

¹⁷ Third Report of the Monitor, para. 26.

and the costs of the CCAA proceedings through the end of the extended Stay Period.¹⁸

Personal Indemnity

22. The Applicant has provided a personal indemnity to cover any operating losses and repairs that may be required to Hydrx equipment and is prepared to permit the personal indemnity to continue in support of the request for a further extension of the stay period.¹⁹

23. The Applicant is acting in good faith.²⁰

24. The Monitor supports the proposed further extension of the Stay Period.²¹

PART III – ISSUES AND LAW

25. The issue to be considered on this motion is whether an extension of the Stay Period should be granted. Yes, an extension of the Stay Period should be granted

26. The Stay Period expires on July 30, 2021.

27. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the stay for any period it “considers necessary”. To do so, this Court

¹⁸ Third Report of the Monitor, Appendix 1.

¹⁹ Affidavit of Domenico Serafino sworn July 20, 2021, para. 22.

²⁰ Third Report of the Monitor, para. 26. Affidavit of Domenico Serafino sworn July 20, 2021, para. 23.

²¹ Third Report of the Monitor, para. 26.

must be satisfied that the circumstances exist that make the order appropriate and the Applicant has acted, and is acting, in good faith and with due diligence.

28. A stay of proceedings is appropriate where it provides the debtors with breathing room while the debtors seek their solvency and emerge from their restructuring on a going concern basis.²² Further, a stay of proceedings will be appropriate where it advances the purposes of the CCAA.²³

29. As detailed in affidavit of the Applicant and the Third Report of the Monitor, an extension of the Stay Period is required to continue the re-start operations, complete the court sanctioned SISP, deal with the appeal and the balance of Hydrx's restructuring.

30. Hydrx has sufficient liquidity to funds it operations through to the end of the proposed extension of the Stay Period.

31. The Applicant is acting in good faith. The Monitor supports the request for an extension of the Stay Period. Absent a stay, the preservation of enterprise value will be unnecessarily jeopardized, to the detriment of stakeholders.

²² *Target Canada Co.*, [2015] O.J. No. 247 (Ont. Sup. Ct. J.), at para. 8.

²³ *Century Services Inc. v. Attorney General (Canada)*, 2010 SCC 60, at para 70.

PART IV – ORDER REQUESTED

32. For the reasons above, the Applicant respectfully submits that it is appropriate for this Honourable Court to grant the relief as set out in the draft Order.

July 23, 2021

**ALL OF WHICH IS RESPECTFULLY
SUBMITTED**

Sepideh Nassabi

Sepideh Nassabi
Minden Gross LLP
Lawyers for the Applicant

SCHEDULE “A”

Statutes Referred To

1. *Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36*

Stays, etc. — other than initial application:

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

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

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

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

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

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

11.52 (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

SCHEDULE “B”

Authorities Referred To

1. [*Century Services Inc. v. Attorney General \(Canada\)*, 2010 SCC 60.](#)
2. [*Target Canada Co.*, \[2015\] O.J. No. 247 \(Ont. Sup. Ct. J.\).](#)

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

FACTUM OF THE APPLICANT

MINDEN GROSS LLP
145 King Street West, Suite 2200
Toronto, ON M5H 4G2

Raymond M. Slattery (LSO# 20479L)
Tel: 416-369-4149
rslattery@mindengross.com

Sepideh Nassabi (LSO# 60139B)
Tel: 416-369-4323
snassabi@mindengross.com

Lawyers for the Applicant