



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: BK-22-02802344-0035

DATE: August 25 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: PROPOSAL AYANDA CANNABIS CORP

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Mitchell Grossel	Proposal Trustee, Richter Inc	mgrossell@tgf.ca
Adam Zeldin		asherman@richter.ca
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**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Ian Aversa	Ayanda Cannabis Corporation	iaversa@airdberlis.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Natalie Cain	Self-Represented	Nataliecain0@gmail.com
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## **ENDORSEMENT OF JUSTICE CONWAY:**

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Proposal Trustee dated August 11, 2023.
- [2] The Proposal Trustee's motion returned to me today. On August 14, 2023, I adjourned it to today to provide the Proposal Trustee and Ayanda to address concerns raised by Mr. Couwenberg (a Class B shareholder) and Ms. Cain, a former employee of Ayanda, at that hearing.
- [3] The Proposal Trustee issued a Supplementary Report dated August 23, 2023 in which it outlined the discussions it had with Mr. Couwenberg and Ms. Cain. Nonetheless, their concerns remain and they made submissions to the court today.
- [4] Essentially, they are concerned with the way Ayanda was operated and managed and in particular, the circumstances in which Ayanda purchased a large quantity of cannabis that was ultimately destroyed rather than sold.
- [5] The motion before me is to deal with the existing state of Ayanda. The Proposal Trustee seeks an order to annul the Proposal, which will result in a deemed bankruptcy of Ayanda.
- [6] The situation is that the Share Transaction, upon which the Proposal was based and approved, has not closed. Despite numerous extensions to the Purchaser, it has not closed the Share Transaction for almost one and a half years. The evidence before me is that the Purchaser does not have the funding required to close the Share Transaction.
- [7] The Purchaser has ceased funding Ayanda's operating costs pursuant to the Services Agreement. As a result, all of the employees of Ayanda have resigned, the company has ceased operating, its cannabis licenses have expired, it has no insurance in place, and it has virtually no cash or source of liquidity to fund ongoing operations or remarket the assets.
- [8] Under s. 63 of the BIA, where it appears to the court that the proposal cannot continue without injustice or undue delay, the court may on notice to the debtor and if applicable the trustee and the creditors, annul the proposal. In that event, the debtor will be deemed to have made an assignment into bankruptcy (s. 63(4)).
- [9] It is clear, under the circumstances, that Ayanda will not be able to perform the Proposal now that the Share Transaction is not closing. I accept the Proposal Trustee's view that the Proposal cannot continue without injustice or undue delay to the creditors of Ayanda. The only viable course of action is to annul the Proposal, assign Ayanda into bankruptcy, and liquidate its assets for the benefit of stakeholders through the bankruptcy process. I am granting the annulment of the Proposal.

- [10] In its Supplementary Report, the Proposal Trustee states “the property that vests in the bankruptcy trustee includes “things in action”, and that the assignment of Ayanda into bankruptcy does not preclude pursuing a potential claim against the Purchaser should any estate inspectors appointed request that the bankruptcy trustee take such steps.” This may or may not provide a means of recovery to stakeholders.
- [11] I told Mr. Couwenberg and Ms. Cain that they should seek legal advice on moving forward. As Mr. Grossell and Mr. Aversa confirmed in court today, there are means within the bankruptcy structure for legal claims to be investigated and pursued within the bankruptcy regime. Counsel have confirmed that they will tell Mr. Couwenberg and Ms. Cain what the next steps are in the process.
- [12] The remainder of the relief in the order is satisfactory to me, including the amendment to the DIP Financing and Stay Extension Order, the Termination of Charges, the Approval of the Third Report, and the Approval of Professional Fees.
- [13] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located below the text of paragraph [13]. The signature is written in a cursive style.