

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-062636-234
500-11-063060-236

DATE: February 13, 2024

BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF: the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 of :

BRUNSWICK HEALTH GROUP INC.
BRUNSWICK MEDICAL CENTER INC.
DMSC REAL ESTATE INC.
THE CHILDREN'S CLINIC @ POINTE-CLAIRE INC.
SANOMED SOLUTIONS INC.
BRUNSWICK MEDICAL CENTRE @ GLEN INC.
BRUNSWICK RESEARCH INC.
BRUNSWICK MINOR SURGERY CENTER INC.
BRUNSWICK ENDOSCOPY INC.
6892094 CANADA INC.

Debtors

BRUNSWICK LABS & TESTS INC.

Debtor

RAYMOND CHABOT INC.

Monitor / Applicant

MNP LTD.

BLT NOI Trustee

C.S. ADJAMI INC.

Trustee of 8981515 Canada Inc.

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (QUÉBEC)
Mis-en-cause

Reasons for rendering the
Amended and Restated Approval and Vesting Order
on February 9, 2024

[1] On February 9, 2024, the Court granted the Monitor's *Application for the Issuance of an Amended and Restated Approval and Vesting Order* ("**Application**"). The Court issued an *Amended and Restated Approval and Vesting Order* ("**A&R AVO**").

[2] Counsel for the Secured Creditors, the purchaser and the Canadian and Quebec government, the Representative Counsel of the physicians, and the debtors via the president of the Brunswick Group, Vince Trevisonno, were all present at the hearing. They did not oppose the Application and the order that was sought.

[3] The Court heard the testimony of the Monitor's representative, Ayman Chaaban, and of Vince Trevisonno. It read Mr. Chaaban's second Monitor's report as well as that of BLT's trustee.

[4] Before signing the A&R AVO, the Court rendered certain oral reasons at the hearing indicating that written reasons would follow. These are the written reasons.

Background

[5] The background to the present proceedings has been set out in previous reasons, which the Court will not repeat.¹ Suffice it to say, that the Debtors form the Brunswick Group. The Brunswick Group's assets can be divided in two lots: (1) the medical clinics operating either out of a building owned by the Debtor DMSC Real Estate Inc. situated in Pointe-Claire, Québec (the "**Building**"), or out of the McGill University Health Center ("**MUHC**") and (2) the Building.

[6] A notice of proposal under the *Bankruptcy and Insolvency Act*² on July 14, 2023. A divestiture of the clinics was envisaged, which would allow the medical operations to continue under new ownership and the Building to be sold. Numerous stakeholders would be disastrously impacted if all the operations would cease including: patients, physicians, employees, governmental agencies and health service professionals.

¹ *Proposition de Brunswick Health Group Inc.*, 2023 QCCS 3224.

² R.S.C. 1985, c. B-3.

[7] The Group was indebted to two secured lenders, the Toronto-Dominion Bank and the Export Development Bank, to the tune of \$40 million.

[8] It was determined that to maximize the value of the assets, the medical clinics would first be sold. This would then provide a steady stream of rental revenue which, along with the revenues of other third-party tenants, would increase the Building's market value.

[9] A purchaser was found for all the clinics operating out of the Building. Given regulatory, contractual and confidentiality issues, it was determined that a reverse vesting order (RVO) needed to be carried out. The RVO was authorized by the undersigned on November 28, 2023. Detailed reasons were provided to explain on what basis, both legally and factually, such an order could and needed to be rendered.³

[10] Unexpectedly, the buyer experienced difficulties in securing its financing. The transaction could not go forward in the maximum six-month period in which a proposal needed to be filed under the *BIA*.

[11] The secured creditors therefore applied for a stay of proceedings under the *Companies Creditors Arrangement Act*⁴. The Court granted this order in an initial Transition Order dated January 12, 2024.⁵ It ordered and declared that the Interim Lender Charge, the NOI Administrative Charge, the Financial Advisor Charge and the Representative Counsel Charge which had been constituted in the context of the *BIA* proceedings, be continued and restated under the CCAA Proceedings. It further constituted a \$300,000 CCAA Administration Charge to guarantee payment of the Monitor's and its advisors fees. The Court sought further clarifications from the parties before augmenting the Monitor's powers as requested and constituting a charge for the Applicants' fees.

[12] On January 22, 2024, such further information was provided to the Court's satisfaction and the Court issued an *Amended and Restated Transition Order*. It granted certain augmented powers to the Monitor and created a \$250,000 Applicants Counsel Charge for the costs incurred in filing the CCAA proceedings.

[13] Fortunately, shortly thereafter, an agreement was found with the purchaser which allowed the transaction to go forward. A Second Amended and Restated Share Purchase Agreement ("**SARSPA**") was signed on January 31, 2024.

³ *Proposition de Brunswick Health Group Inc.*, 2023 QCCS 4643.

⁴ R.S.C. 1985, c. C-36.

⁵ *Arrangement relatif à Brunswick Health Group Inc.*, 2024 QCCS 59

[14] The consideration⁶ to be paid by the purchaser remains the same, but will not be fully paid out at closing. Only \$3 million, the Initial Consideration, will. The balance, the Final Consideration, will be paid in four or six months.

[15] The Monitor applied to the Court for the Issuance of the A&R AVO. It sought:

(a) an order, inter alia:

(i) approving (a) the purchase and sale and other transactions (the Purchase and Sale Transactions) contemplated in the Second Amended and Restated Share Purchase Agreement [...] and (b) the pre-closing reorganization steps contemplated in Schedule A to the Re-Amended Purchase Agreement (such transactions being collectively referred to as the Reorganization) [...];

(ii) authorizing the Monitor to pay certain amounts owing to the beneficiaries of certain court-ordered charges;

(iii) granting certain expanded powers to the Monitor further to the closing of the Proposed Transaction; and

(iv) authorizing Mr. Vince Trevisonno to execute certain documents for and on behalf of certain holders of Brunswick Health Group Class B shares.

(b) an ordonnance de radiation, similar to the Proposed A&R AVO, in accordance with the terms of the proposed Ordonnance de radiation amendée et reformulée communicated herewith as Exhibit P-4, which is intended to satisfy certain language requirements in connection with the registration of the Proposed A&R AVO, if rendered, at the various public registries and the discharge and reduction of the security contemplated by the Proposed A&R AVO.

[16] The Court granted each of these requests. Here is why.

[17] The RVO: As explained in the reasons rendered in support of the RVO in November 2023, the Court clearly has the powers to grant a RVO under the CCAA. The reasons for ordering the RVO are just as, if not more convincing today, then when the Court rendered its decision on November 28, 2023, under the *BIA*. The transaction and the reorganization remain the same as those which were authorized by the Court and the application of the criteria set out in the November 28, 2023 reasons lead to exactly the same result for the same reasons.

[18] The first difference in the transaction which the Court is asked to approve today as opposed to that which it approved in November 2023 is the payment terms of the consideration. As indicated, the consideration is now to be paid via an Initial and Final

⁶ For the reasons set out in the minutes of the hearing, the Court allowed the Monitor to file a redacted version of the SARSPA P-1, in which the consideration is redacted.

Consideration. Rents will also be prepaid. This has no impact on the Court's findings of November 2023.

[19] Contrarily to what was contemplated in November 2023, the physicians will only be paid the #28 cycle from the Initial Consideration. All other pre-BIA filing amounts due to them will be made following receipt of the Final Consideration. The physicians and the secured creditors agree with this deferred payment. The Court therefore finds that this also does not warrant setting aside its November 2023 decision.

[20] Payment of the charges: the Initial Consideration of \$3 million has already been deposited in the purchaser's attorney's trust account.

[21] IN his second report, the Monitor asked that upon receipt, aside from the #28 cycle payment, \$2,104,925 million be distributed to pay for sums owing which are guaranteed by the charges and which are more fully set out in Schedule B to its second report. The balance will not for the moment be distributed.

[22] The Monitor has advised the Court that if, pursuant to this Transaction and any further transaction related to the Building, and upon paying secured lenders and priority claims, there are funds left to distribute to the ordinary creditors of the CCAA Debtors, then the Monitor will envisage to set up a claims treatment process and to file a plan or plans of arrangement to distribute such sums. Alternate scenarios to a sale will also be examined by the secured lenders and the Monitor, which could also lead to plans or arrangement.

[23] The secured creditors agree with these distributions.

[24] The Court found these payments to be appropriate save for the Financial Advisor Charge.

[25] Once the Group's medical operations are sold, the revenues and costs will essentially relate to the Building. The ARSPA provides that rent payments will be advanced upon closing by the purchaser and in April 2024. The cashflow prepared by the Monitor evidences that these advances and the payment of rent by third parties will generate a positive cashflow, excluding payments of capital, interest or taxes.

[26] Hence, it is appropriate that the Initial Consideration be distributed, so as to pay for the outstanding amounts which are guaranteed by the prior charges, some of which are owing since many months.

[27] The Court therefore authorized the payments set out at paragraph 23 of the A&R AVO, the detail of which is more fully explained in Annex B to the Monitor's second report.

[28] In its report, the Monitor had estimated that the Representative Counsel's fees would total approximately \$10,000. The Representative Counsel's billing has not been

completed but it will be greater than that amount. The Monitor will determine if the fees are reasonable and upon such determination, is authorized to pay them, up to the maximum amount provided for in the Representative Counsel's Charge.

[29] The Court also believes that it is fair that the amounts guaranteed by the Financial Charge be paid to PwC. However, given that the Consideration set out in the ARSPA will be paid by way of an Initial and Final Consideration, the Court is of the view that the PwC payment must also be paid in two instalments, the second being subject to the receipt of the Final Consideration. For this reason, the proposed A&R AVO was modified to provide at paragraph 24 that PwC will be paid (i) an amount of \$189,480.00 plus applicable taxes from the BHG Initial Consideration and (ii) upon payment by the Purchaser to the Monitor of the BHG Final Consideration, an amount of \$110,520.00 plus applicable taxes, from the BHG Final Consideration.

[30] Upon payment of all sums guaranteed by the Interim Lenders Charge, the NOI Administration Charge, the Financial Advisor Charge and the Representative Counsel charge will no longer serve a useful purpose. They will be lifted once the Monitor signs the Charge Termination Certificate annexed as Schedule I to the A&R AVO.

[31] The expanded powers of the Monitor. The management and operations team of the Brunswick Group will continue working for the clinics' new owners.

[32] Up to now, they were also managing the Building.

[33] Now that the clinic's have been sold off, a inherent conflict of interest will result if the actual management team continues to operate the Building.

[34] Securing the leases and ensuring continued payment of rents will contribute to bolster the Building's market value.

[35] The Monitor therefore sought and the Court agreed that the Monitor, or a manager hired by the Monitor should manage, from now on, the Building and interact with the clinics for all matters relating to the Building.

[36] The Court therefore granted the extended management powers to the Monitor set out at par. 53 o the A&R AVO and, in particular, subpar. 53(o).

[37] It goes without saying that the directors and officers of DMSC are free to petition the Court for appropriate relief if they believe these powers to the misused. Furthermore, any eventual sale of the Building will be subject to the Court's authorization.

[38] Transfer of shares. Brunswick Health Group Inc.'s has two categories of issued shares. In order to ensure a tax efficient treatment of the reorganization, all these shares must be rolled over. Signatures are required to complete the necessary filings with the authorities. Despite the efforts of the Debtors and the Monitor, it was not possible to obtain

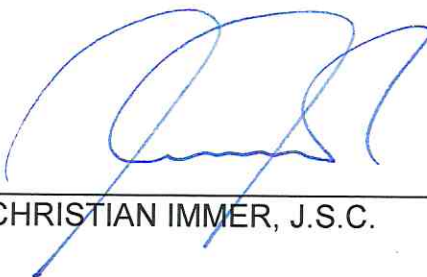
the signature of four shareholders of the Class B non-voting shares who hold a small number of shares.

[39] Two of these shareholders appear to live in Texas. When Mr. Trevisonno joined the Brunswick group in the mid 2000s, these two shareholders had already moved away. Since then, he has had no contact with either of them. Despite their efforts, the Debtors and the Monitor could not locate them. The two other shareholders live in the Montreal area. One has not responded despite Mr. Trevisonno's efforts. The other has indicated his intention to sign the relevant documents, but still has not done so.

[40] The Monitor asks that Mr. Trevisonno be authorized to sign the necessary documents and file them with the appropriate authorities to ensure that the shares be transferred and the reorganization completed. The reorganization has been authorized by the Court and must be carried out. From a tax perspective, it is clearly in these shareholders best interest for such roll-over to occur. Their rights will be preserved and transferred. This is why the Court, at par. 32 of the A&R AVO, authorized and directed Mr. Trevisonno, « without any personal liability, to execute and/or file, for and on behalf of any of the holders of BHG Class B Shares, any document and/or form required in order to give effect to the Transactions ».

[41] Conclusion: It is for these reasons that the Court signed the A&R AVO on February 9, 2024.

[42] Finally, in order to register the A&R AVO and the discharge and reduction of the security with the appropriate Québec public registries, an order must be rendered in the French language. It is for this reason that the Court rendered the order P-4.



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