ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.: CV-25-00743485-00CL** **DATE: October 30, 2025**

**NO. ON LIST: 3**

**TITLE OF PROCEEDING: ARBAT CAPITAL GROUP LTD v. THE SECOND CUP COFFEE COMPANY INC. *et al***

**BEFORE: JUSTICE MYERS**

## PARTICIPANT INFORMATION

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

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**For Defendant, Respondent, Responding Party:**

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**For Other, Self-Represented:**

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**ENDORSEMENT OF JUSTICE MYERS:**

1) Grant Thornton Limited, as Monitor, moves for approval of the sale of the debtor's business by way of a reverse vesting order structure. The *CCAA* debtor is The Second Cup Coffee Company Inc.[1]

2) After the reverse vesting order transaction is implemented, the buyer will own the Second Cup with new shares to be issued to it. The old shares will be cancelled. Second Cup will keep only the liabilities it agrees to keep. Other liabilities will be left in a new company that will replace Second Cup as the *CCAA* debtor. Those liabilities, once proven as valid claims and quantified, will share the remaining proceeds of sale of Second Cup that are left in the new *CCAA* debtor after payment of secured and priority claims.

3) It is less than clear to me why this sale cannot be structured under a *CCAA* plan. The share replacement can occur by a corporate reorganization under the *OBCA*. The debtor could then exit the *CCAA* stranding debt to share in the proceeds of sale that stand in the place and stead of Second Cup after plan implementation.

4) The difference between the two structures is that under the *CCAA* affected creditors would be entitled to vote on the plan. While that has a cost to be sure, part of the legitimacy of the *CCAA* process comes from transparency and voting by affected creditors. The *CCAA* process is a consensual one with creditors technically agreeing to replace their pre-existing debts with new contracts under the *CCAA* plan. To be effective, the CCAA plan must obtain the approval of a super-majority of affected creditors and the court. Creditors have both a vote and, even if they are outvoted,

[1] The debtor owns numerous outlets outside of Canada. It is not related to the very popular Second Cup Café - the largest Canadian specialty coffee retailer.

they still have the opportunity to make submissions about the fairness of the plan and other relevant matters to a judge.

5) As a result of tried-and-true democracy and legitimacy of the *CCAA* plan process, people who buy into a consensual plan will feel more fairly treated than perhaps some who have an outcome foist on them. I do not want to overstate the case as the CCAA expressly allows for asset sales that can result in liquidation rather than a restructuring plan. But a reverse vesting order is not exactly an asset sale in the traditional sense nor just a corporate reorganization. It is a hybrid process designed to address specific concerns.

6) While I approve the reverse vesting order structure in this case, I agree with Penny J. in *Harte Gold Corp. (Re),* 2022 ONSC 653, at para. 38 that the reverse vesting order structure should not be regarded as routine or the norm. Rather, its appropriateness should be subject to close scrutiny under s. 11 of the *CCAA* to ensure that the proposed transaction, "is fair and reasonable to all parties having regard to the objectives and statutory constraints of the *CCAA*."

7) Second Cup would be seriously prejudiced by an asset sale. It has outlets all over the world. It has intellectual property associated with its international operations. Uncertainty as to whether an asset buyer could readily ensure that foreign contracts is not breached, foreign licenses remain in place, and foreign IP remains valid and enforceable when transferred to a buyer is a major impediment. It also add substantial costs to secure foreign assets in an asset sale. That means a buyer would likely pay less to buy assets if willing to do so at all.

8) But, as I noted above, no one was able to tell me today why the same outcome - with the debtor surviving with its contracts and property intact and some debt stranded in the *CCAA* - could not occur under a *CCAA* plan.

9) Mr. Finlayson notes that the stalking horse bid approved by the court already contemplated a reverse takeover structure. So too did the one competing bid that participated in the auction. But neither of those event means that the court will find the final agreements brought for approval to meet the fairness standards in s. 11 of the *CCAA* as discussed by Penny J. in *Harte Lake.*

10) Two things stand out in this case however. First there was a real auction. The stalking horse bidder ultimately won the auction. But to do so, it had to increase the purchase price by a good amount.

11) The purchase price will be used first to pay secured debt and priority claims (including court-ordered charges and the CRA). But the Monitor says that after reserving to complete the claims process there will still be funds available for the

unsecured creditors. I am not saying how much to avoid anyone reverse engineering the sale price in case another auction is required. Suffice it to say that there is enough being left on the table for the unsecured creditors that one can predict that they would support the proposed transaction as compared to bankruptcy.

12) But I do not need to speculate. The successful bidder is also an unsecured creditor in several different entities. Mr. Finlayson submits that it has well more than 66 2/3% of the value of unsecured claims and a majority in number of unsecured creditors. The Monitor did not disabuse me of that submission.

13) As a result of the voting power of the bidder, even if a plan were to be required, its outcome would be assured. The test for fairness would be less stringent than the standards I impose in this case with a reverse vesting order under consideration. As I find the outcome very satisfactory, fair, and reasonable on the reverse vesting order proposed, there is really no point to take the time and money to draft, negotiate, and then implement a plan of compromise or arrangement under the *CCAA*.

14) The Monitor's report and factum set out in full particulars the efforts it made to ensure the broad dissemination of the sale information in the brief time available to it. I will not set out the numbers. Suffice it to say that there were sufficient teasers and emails sent, confidentiality agreements signed, data room visits made, and communications to allow the Monitor to opine that the process was robust.

15) Ultimately there were two bidders recognized under the auction process and an auction ensued.

16) There is a shareholder fight looming behind this proceeding. Before the *CCAA* process began, Levelen had sued its co-shareholders and directors associated with the successful bidder. That lawsuit was stayed by the *CCAA* proceeding.

17) Mr. Bakos was clear and frank that Levelen claims that it was deprived of its shares and the value of its investment due to the actions of the other directors and shareholders. Levelen advanced its claim as a D&O Claim in the claim process. The Monitor has denied it on the basis that it is an equity claim.

18) As Second Cup has been held to be insolvent to obtain CCAA protection, its equity presumptively has no value. Mr. Bakos submits that Second Cup was asset rich and cash poor. The problem with that is that when the *CCAA* process was undertaken, his client did not come forward to fund the debtor's payroll and its ongoing needs. Second Cup was days from missing payroll when it obtained *CCAA* protection.

19) Moreover, if Mr. Bakos's client believes there is asset value available, it could have bid in the auction. It was involved in the proceeding throughout.

20) Mr. Bakos criticizes the auction because his client has not been told the final price to be paid by the successful bidder. But prices are generally kept confidential to protect the fairness and integrity of the process. In addition, as alluded to above, in the untoward event that the current deal does not close as proposed, a renewed sale process or auction may be required. It would prejudice Second Cup and all creditors if the price that was previously agreed were known to bidders in a new bidding process.

21) Confidentiality until the time a successful transaction closes is a near-universal feature of insolvency proceeding sale processes. The public interest in briefly protecting the value-maximization goal of the *CCAA* by sealing confidential bidding and sales information outweighs the open court principle in these cases generally speaking. This is not about protecting the successful bidder. The court recognizes a public interest in protecting the integrity of the sale process under the *CCAA*. In this case, for example, most of the jobs at the head office will be saved. Money will be available to senior and unsecured creditors. The purposes of the statute to protect the public from the devastation of bankruptcy, to protect going concern enterprises, and to maximize creditor recovery, are protected and enhanced by a brief period of confidentiality.

22) Levelen then only has itself to blame if it decided to decline to sign a confidentiality agreement.

23) Second Cup and the successful bidder have agreed that the D&O Claim advanced on behalf of Levelen will **not** be stranded in the newco remaining under *CCAA* protection. That means that as soon as the stay of proceedings is lifted, Levelen will be able to renew its litigation.

24) Nevertheless, Levelen requests significant disclosure of information by the Monitor and Second Cup to allow its expert valuator to comment on the efficacy of the sale process and the value obtained. Mr. Bakos says that this disclosure is needed in his clients' litigation in any event He asks the court to order broad disclosure now or to set an early schedule for the litigation.

25) I am not prepared to adjourn the sale approval motion based on a last-minute fishing expedition. The Monitor served the motion record on October 20, 2025. I see no reason to delay the motion to allow a valuator to review the proposed sale for shareholders advancing what appears on its face to be an equity claim. I would not delay a motion that has been set for 10 days with a closing scheduled for the near future absent evidence of a non-speculative lack of integrity in the Monitor's conduct

of the sale process or an unconditional competing offer that is so much higher than the proposed bid as to undermine the normal inference that broad marketing has produced a price reflecting fair market value.

26) Levelen is not offering to fund Second Cup, to pay costs to be incurred by so many lawyers, or to pay interest to secured and priority creditors while it roots about. In my view, it is not in the interests of justice to adjourn this motion pending disclosure by the Monitor and the possible delivery of a report on behalf of Levelen.

27) Nor is now the time to order disclosure for the ongoing litigation. Counsel for the successful bidder, Second Cup, and Levelen should discuss how they each wish to schedule the litigation going forward. A case conference can be convened shortly for that purpose if counsel cannot cooperate enough to even agree on a schedule.

28) The facts set out in s. 36 (3) of the CCAA are all met. The process leading to the sale was conducted in accordance with the claims process order. The proposed proceeds remaining for creditors are more beneficial than a bankruptcy. All affected creditors benefit from a sale to the highest bidder. So too do employees, customers, suppliers, and others who will deal with Second Cup going forward. I am satisfied that Second Cup has acted in good faith.

29) The transaction proposed includes third-party releases for directors of Second Cup associated with the successful bidder. But, the releases proposed exempt D&O Claims like the ongoing claim of Levelen. I accept that evidence of the contributions by third parties is often less than precise. Our law does not require proof of a quantified value pf contribution to justify a release under an insolvency transaction such as this. It is perfectly obvious that the people associated with the successful bidder will not readily participate if they cannot clear their litigation slate. As everyone benefits from acceptance of the highest bid as discussed previously, and given the exception for D&O Claims, this is a good case for the third-party releases as requested.

30) Demetrios Ragas asks to receive a release as well. He is a shareholder and director of Second Cup. From 2015 until just a few weeks ago, he served as its Chief Executive Officer. The Monitor and the successful bidder are content with Mr. Ragas being added. Mr. Bakos is concerned that his clients not lose their claims against Mr. Ragas. But since the D&O Claim they advanced is exempted from the release (whether it goes ahead as a D&O Claim or as the initial litigation being resumed) there is no prejudice to Levelen. In my view Mr. Ragas's contribution was respected by the Monitor and he ought to be entitled to the same release as the directors associated with the successful bidder.

31) I am satisfied that this proposed transaction meets the three-part test in *Soundair*, supplemented by the extra factors in s. 36 (3) of the CCAA, and the factors discussed by Penny J. in *Harte Gold*.

32) I approve the vesting order as sought with Mr. Ragas added to para. 41. I also grant the ancillary order as sought. The debtor is proceeding in good faith and reasonably. I therefore extend the stay to January 31, 2026 as sought. There is no objection to the content of the Monitor's report (and supplemental report) or the fees claims. I am satisfied that the rates charged are within market and the hours claimed are reasonable. The Monitor needs supplementary powers to get the transaction closed and then to deal with the claims process for the new *CCAA* debtor. I am also granting the sealing order as discussed above.

Date: Oct 30, 2025

F.L. Myers J.

Justice FL Myers Digitally signed by Justice FL Myers
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