



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-25-00750817-00CL DATE: October 3, 2025

NO. ON LIST: 3

TITLE OF
PROCEEDING: RI FLOW LLC *et al* v. FLOW BEVERAGE CORP *et al*

BEFORE: Justice Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Court-appointed Receiver moves for orders:

- a. approving the Transaction in respect of:
 - i. the shares of OpCo by way of a reverse vesting transaction; and
 - ii. the personal property of USCo by way of a partial strict foreclosure under US law;
- b. approving a Subscription Agreement between the Receiver and the Purchaser;
- c. adding ResidualCo as a Respondent;
- d. transferring all right, title and interest in the Purchased Shares to the Purchaser;
- e. transferring all right, title and interest to the Excluded Assets, and Excluded Liabilities to ResidualCo;
- f. releasing the Independent Directors except for claims arising out of gross negligence, wilful misconduct or claims not permitted to be compromised, pursuant to ss. 50(14) of the *Bankruptcy and Insolvency Act*;
- g. approving the First Report and the activities of the Receiver described therein;
- h. approving the fees and disbursements of the Receiver and its counsel; and
- i. sealing the Confidential Appendices 1, 2 and 3 to the First Report.

[2] The Service List has been served. For greater certainty, counsel confirm that creditors (secured and unsecured), whether on the Service List or not, have also received notice of this motion. For further greater certainty, the Service List includes counsel for the Attorney General of Canada (the Canada Revenue Agency) and the Attorney General of Ontario (the Ministry of Finance, , the Ministry of the Environment and the Ministry of Natural Resources). The CRA issues the licences for the sale of alcohol products in Canada. The Ministry of the Environment issues water permits and licences for the extraction of the water in Ontario.

[3] The relief sought today is unopposed, and it is supported by the Applicants, the Respondents, and Beatbox Beverages.

[4] The facts are fully set out in the First Report and the Supplement thereto dated October 1, 2025. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

[5] The Debtors develop and sell Flow-branded water extracted from a spring in Bruce Co. which is boxed for sale. ParentCo is a public company, the shares which are listed on the TSX, although they are subject to a cease trade order. The primary assets of the Debtors consist of intellectual property in a facility located in Aurora, Ontario. The Debtors employ approximately 137 people.

[6] Critical to the Debtors' operations are certain licences, permits, and registrations, including from the U.S. Food and Drug Administration, a Water Permit issued by the Ministry of the Environment, Conservation and Parks, and certain licences related to alcohol production activities issued by the Canada Revenue Agency. These licences are either very difficult or impossible to transfer.

[7] The Debtors have historically suffered operating losses. On a consolidated basis, the Debtors have an accumulated shareholder deficit of over \$50 million. According to the latest financial statements, the Debtors have limited cash and materially negative working capital. When the Receiver was appointed, the Debtors had approximately \$8,000 in their bank account. For months before the receivership and since the Receiver's appointment, Flow has relied on repeated emergency cash injections from its Senior Secured Lenders.

[8] NFS and RI Flow are the Debtors' Senior Secured Lenders, who were owed by the Debtors over \$71 million as of September 15, 2025. They have valid, perfected security against all of the Debtors' personal property.

[9] As fully set out in the materials, significant and successive efforts were undertaken prior to this proceeding to attempt to sell the assets of the Debtors. Those began in the spring of 2023 and culminated in the engagement by the Special Committee of Origin Merchant Partners in May, 2025 to market the business and/or assets. Origin launched a formal process in July, 2025.

[10] Of 182 parties contacted (135 financial, 47 strategic), 58 executed confidentiality agreements and accessed the data room. Notwithstanding active discussions with approximately 22 parties, however, not a single indication of interest was received by the Phase I bid deadline.

[11] Moreover, negotiations with the potential strategic buyer who had previously delivered a non-binding letter of intent in March, 2025 failed to generate any renewed LOI. The proposed purchase price remained at an amount that was less than the amount outstanding to the Senior Secured Lenders.

[12] The Senior Secured Lenders delivered *BIA* Notices on August 22, 2025, following which the Special Committee attempted to secure DIP financing in support of a potential *CCAA* filing. 20 prospective lenders were canvassed by KSV Advisory, who was retained to assist. This never materialized.

[13] Ultimately, a Support Agreement was entered into between the Debtors and the Senior Secured Lenders on September 1, 2025, given the complete lack of liquidity or interim financing.

[14] The Senior Secured Lenders then sought the appointment of a non-possessory receiver for limited purposes, including to provide a mechanism to fund operations, by way of a receiver's borrowing charge, while the anticipated structured foreclosure under the *PPSA* was implemented.

[15] Given the resignation of officers and directors, that would have left no one running the business and ultimately, on the consent of the parties, a full possessory Receiver was appointed. The Receiver then took possession and control of all of the property.

[16] Following its appointment, the Receiver stabilized the business and borrowed an additional \$1 million from the Senior Secured Lenders under a receiver's borrowing certificate. The Receiver has now borrowed a total of \$2,500,000.

[17] Efforts in renewing the pre-appointment sales solicitation were undertaken, without success.

[18] Pre-filing Appraisals prepared in 2025 reflect that the value of the property of the Debtors is significantly lower than the amount of the Senior Secured Indebtedness. The Receiver's own liquidation analysis confirms that a liquidation would likely result in realizations materially below that amount. Ultimately, the Receiver concluded that there was no funding for, or value in, another sale process. The only practical path forward is a transition of the business to the Senior Secured Lenders.

- [19] The Receiver then turned to understanding the mechanics of the Foreclosure and its impact on the Debtors' ongoing operations. The Receiver's aim was to ensure that, post-closing, the business could operate in the ordinary course without disruption.
- [20] Regulatory advice made clear that key operating licences are non-transferable (or could take months to replace) and "work-around" options (e.g., transition services) were complex, costly and uncertain. In the circumstances, the Receiver concluded the only practical way to preserve the Debtors' operations, licences, and 137 employees was a transaction by way of a reverse vesting order in Canada paired with a partial strict foreclosure for the U.S. assets under U.S. law. This is the structure of the Transaction for which the Receiver now seeks approval.
- [21] The Receiver does not believe other stakeholders are materially prejudiced by the change in transaction structure from foreclosure to reverse vesting order.
- [22] Having determined a reverse vesting order is necessary, the Receiver and RI WaterCo ULC (i.e., the Purchaser), as the assignee of the Senior Secured Lenders' debt and security, entered into the Subscription Agreement. The terms of the Subscription Agreement are summarized in the First Report.
- [23] Having considered all of the materials and heard submissions from all parties present in Court, I am satisfied that the proposed Transaction should be approved. The *Soundair Principles* have been met here. The Receiver has made a sufficient effort to get the best price and has not acted improvidently; the interests of all parties have been considered; the efficacy and integrity of the process has been maintained; and there has been no unfairness in the working out of the process.
- [24] Moreover, a rapidly accelerated transaction such as this (colloquially referred to as a "quick flip transaction"), may be appropriate where represents the best, or only, commercial, alternative to a liquidation. See, for example, *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009 at para 33; *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, 2013 ONSC 6905 at para 10 & 11; *Romspen Investment Corporation v Tung Kee Investment Canada Ltd et al*, 2023 ONSC 5911 at para 50; and *Tool-Plas Systems Inc. (Re)*, 2008 CanLII 54791 (ON SC).
- [25] Such quick flip transactions involve circumstances where the court should also consider the economic realities of the business and the specific transactions in question; the impact on various parties in order to assess whether their respective positions have been considered, and in particular whether the proposed treatment they would receive pursuant to the transaction would realistically be any different if an extended sales process were followed.
- [26] The reality here is that the Debtors have relied on emergency cash injections from the Senior Secured Lenders for months only to incur significant operating losses. Previous attempts to sell the Debtors' assets highlighted the challenges inherent in valuing those assets and have left the Senior Secured Lenders suffering a shortfall. The Senior Secured Lenders determined a transition of the business was the best outcome in the circumstances, to which the Debtors consented, and the Receiver agrees.
- [27] The Debtors have no resources to conduct a further marketing or sales process, and rely on cash injections from the Senior Secured Lenders to fund shortfalls and operations. Those parties are not prepared to fund a further marketing process.
- [28] Importantly, the proposed Transaction preserves the employment of 137 employees and provides for a beneficial economic outcome for stakeholders.

[29] The assets of the Debtors have been comprehensively marketed on at least three formal and separate occasions since 2023, and none has generated a possible transaction that would yield proceeds sufficient to repay the Senior Secured Indebtedness. There is no reasonable basis upon which to expect that a further sales process would produce a more favourable outcome. For these reasons, the Receiver is satisfied that the potential benefit of running another sales process to attempt to identify a superior transaction is outweighed by the risk of lower recovery for stakeholders.

[30] The Subscription Agreement gives appropriate treatment to claims in priority to those of the Senior Secured Lenders. The Special Committee, advised by professional advisors, has consented to the transition of the business of the Debtors to the Senior Secured Lenders and the Receiver agrees that this is the most appropriate path forward. The Receiver submits that, in its best judgment, and no stakeholder is worse off seeking approval of the Transaction at this time.

[31] Moreover, the Receiver submits that a reverse vesting structure should be approved here and that the *Harte Gold* factors have been satisfied. An RVO is necessary, it produces an economic result at least as favourable as any other viable alternative, no stakeholder is worse off, and the consideration being paid for the business of the Debtors reflects the importance and value of the licences and permits being preserved.

[32] I agree. For those reasons, the proposed RVO structure is approved. I am not, however, prepared to grant the third party releases in favour of the Independent Directors as sought. They resigned at or before the filing. Moreover, the form of relief sought would release all claims in respect of all matters of to the date of filing. There is no evidence before the Court upon which I can determine whether that is appropriate or not. In the circumstances, I declined to grant releases.

[33] With respect to what is now proposed to be a partial strict foreclosure, regulatory advice to the Receiver, which the Receiver has accepted, is to the effect that key operating licences are non-transferable and will take months or longer to replace. The Receiver therefore concluded that the only practical way to preserve operations, licences and employment for the 137 employees was to proceed by way of an RVO in Canada, but paired with a partial strict foreclosure for the US assets under US law.

[34] To be clear, and as confirmed by counsel to all parties, no foreclosure is being sought pursuant to Ontario law, or in particular, the *PPSA*. Accordingly, I need not consider whether such relief would be appropriate, the application of section 17.1 or Part V of the *PPSA*, or the considerations set out by the Court of Appeal for Ontario in *Atlas Brampton, LP v. Grace Park*, 2021 ONCA 221.

[35] Moreover, this Court is not being asked to approve, nor is it approving, any partial strict foreclosure under US law. Rather, it is approving the RVO structure and the Transaction, recognizing that the Receiver will seek partial strict foreclosure in the US pursuant to section 9-620 of the *Uniform Commercial Code* in respect of the personal property of USCo. Whether such partial strict foreclosure is appropriate or will be granted in the US is not an issue determined today. USCo is a Delaware company, the material asset of which is the Canadian trademark.

[36] Finally, I am satisfied that the sealing order requested is appropriate and should be granted. It has effect until the closing of the Transaction or subject sales process should such turn out to be necessary. I am satisfied the disclosure of the Confidential Appendices now would irreparably undermine the integrity and success of any such process. The factors set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* have been met.

[37] For all of these reasons, the requested relief, save and except for the releases, is granted.

[38] Orders to go in the form signed by me which have immediate effect.

A handwritten signature in green ink, appearing to read "Oliver J.", is located at the bottom right of the page.