

**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 IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC AND 1000101532
ONTARIO INC.

**MOTION RECORD
(Re: Stay Extension)**

May 17, 2022

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1000101532 Ontario Inc.**

TO: THE SERVICE LIST

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TAB 1

Court File No. CV-21-00669781-00CL

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**NOTICE OF MOTION
(Re: Stay Extension)**

MEDIFOCUS INC. (“**Medifocus**”) and 1000101532 Ontario Inc. (together with Medifocus, the “**Applicants**”) will make a motion to a Judge presiding over the Commercial List on **May 19, 2022 at 12:30 p.m.**, or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. If you intend to join the motion by emailing Levi Rivers at lrivers@wfkllaw.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ in writing under subrule 37.12.1 (1);
- ☐ in writing as an opposed motion under subrule 37.12.1 (4);
- ☐ in person;
- ☐ By telephone conference;
- ☒ **By video conference.**

Schedule “A”

Zoom information provided on Caselines.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3, of the motion record that, among other things:
 - a) abridges the time for service of this Motion, validating the manner of service, and declaring that this Motion is properly returnable on this day;
 - b) extends the Stay Period (as defined below) up to and including August 15, 2022; and
2. Such further and other relief as may be requested and this Honorable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:*Overview*

3. Medifocus is engaged in the research, development and sale of medical device systems that deliver focused microwave-generated heat to diseased tissue, thereby shrinking or destroying the targeted tissue.
4. Medifocus' common shares were previously traded on the Toronto Stock Exchange under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". On September 4, 2020, the Ontario Securities Commission (the "**OSC**") issued a cease trade order (the "**Cease Trade Order**") for the shares of Medifocus due to the failure to file required public disclosure.
5. Medifocus filed a Notice of Intention to Make a Proposal ("**NOI**") on September 8, 2021, and msi Spergel Inc. ("**MSI**") was appointed as the proposal trustee.

6. On October 7, 2021, the Honourable Justice Cavanagh granted an Order (the “**Initial Order**”) converting the NOI proceedings into a proceeding under the CCAA and MSI was appointed as the Monitor.
7. The Initial Order provided for, among other things, a stay of all proceedings against Medifocus (the “**Stay Period**”). The Stay Period was most recently extended until and including May 20, 2022, by the Order of the Honourable Justice Cavanagh dated March 14, 2022.
8. The Initial Order also established a stalking horse sale process to solicit bids for the purchase of the business and assets of Medifocus that were superior to a stalking horse bid submitted by Asset Profits Limited (the “**Purchaser**”). No bids were received other than the bid submitted by the Purchaser and the Purchaser was deemed to be the successful bidder.
9. On February 8, 2022, Justice Conway granted an order that, among other things, approved a reverse vesting transaction under which the Purchaser would obtain control of Medifocus free and clear of its liabilities (the “**Transaction**”).
10. On March 14, 2022, Justice Cavanagh granted an order extending the Stay Period until May 20, 2022.
11. The Transaction is in the process of being implemented.
12. The Transaction structure requires that the Purchaser, or its permitted assignee, subscribe for shares of Medifocus. Due to the Cease Trade Order, Medifocus is required to submit

an application to the OSC setting out the steps of the proposed Transaction (including post-closing steps) to partially lift the Cease Trade Order.

13. On or around March 17, 2022, the Purchaser requested that Medifocus be re-domiciled as a United States corporation following closing of the Transaction. This request affected Medifocus' application to the OSC to lift the Cease Trade Order because re-domiciling could affect the post-closing transaction steps.
14. Between late March and May 9, 2022, Medifocus and the Purchaser, with the assistance of counsel, solidified the terms of certain post-closing/re-domicile matters (mostly taxation related) required before completing the OSC application.
15. On May 9, 2022, Medifocus applied to the OSC to lift the Cease Trade Order to facilitate the Purchaser's subscription for Medifocus shares. Medifocus has not yet received a response and does not expect one before the expiry of the current Stay Period on May 20, 2022.
16. Medifocus can close the Transaction after receiving approval from the OSC. No other regulatory approvals are required prior to closing.

Extension of the Stay Period

17. The Transaction cannot close without the Purchaser subscribing in the shares of Medifocus, which cannot happen until the Cease Trade Order is partially lifted.
18. The Applicants will therefore not be able to complete the Transaction before the expiry of the current Stay Period.

19. The Applicants expect that the OSC will lift the Cease Trade Order as requested before the expiry of the proposed extended Stay Period (being August 15, 2022).
20. The Monitor supports the extension of the Stay Period.
21. The projected cash flow forecast, as prepared by the Applicant, with the assistance of the Monitor, demonstrates that the Applicant has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.
22. The test for an extension of time under CCAA s. 11.02(3) is met where:
 - a) the order sought is appropriate in the circumstances; and
 - b) the Applicants have acted and continues to act in good faith and with due diligence.
23. For the reasons described above, the test under CCAA s. 11.02(3) is met. Since the Applicants were last before this Court, they have acted in good faith and with due diligence to execute the going-concern restructuring approved by Justice Conway.

Further Grounds

24. The provisions of the CCAA, including sections 3, 11 and 11.02;
25. Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended;
26. The inherent and equitable jurisdiction of this Honourable Court; and
27. Such further and other grounds as counsel may advise and this Honorable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING
OF THE MOTION:**

28. The Affidavit of Raymond Tong, to be sworn, and the exhibits attached thereto;
29. The Fifth Report of the Monitor, to be filed; and
30. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 17, 2022

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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

NOTICE OF MOTION

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**Lawyers for Medifocus Inc. and 1000101532
Ontario Inc.**

TAB 2

Court File No. CV-21-00669781-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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AFFIDAVIT OF RAYMOND TONG

(Sworn May 17, 2022)

I, **RAYMOND TONG**, of the City of Hong Kong, **MAKE OATH AND SAY:**

1. I am a director of the Applicants, Medifocus Inc. (“**Medifocus**”) and 1000101532 Ontario Inc. Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and believe it to be true.
2. Medifocus is engaged in the research, development and sale of medical devices that deliver focused microwave-generated heat to diseased tissue, thereby shrinking or destroying the targeted tissue.
3. Medifocus’ common shares were previously traded on the Toronto Stock Exchange (“**TSX**”) under the trading symbol “MFS” and the OTC Markets under the trading symbol “MDFZF”. On September 4, 2020, the Ontario Securities Commission (the “**OSC**”) issued a cease trade order (the “**Cease Trade Order**”) for the shares of Medifocus due to certain failures in periodic disclosure caused by cash flow restrictions.

4. On September 8, 2021, Medifocus filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), and msi Spergel Inc. (“**MSI**”) was appointed as the proposal trustee (in such capacity, the “**Proposal Trustee**” and, following continuation under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), in such capacity, the “**Monitor**”).

5. On October 7, 2021, Justice Cavanagh granted an Initial Order continuing Medifocus’ NOI proceedings under the CCAA (the “**Initial Order**”).

6. In addition, the Court approved a stalking horse sale process in order to solicit bids for the purchase of the business and assets of Medifocus that were superior to the bid submitted by Asset Profits Limited (the “**Purchaser**”) pursuant to the stalking horse asset purchase agreement executed between the Purchaser and Medifocus.

7. No bids were received other than the bid submitted by the Purchaser and the Purchaser was deemed to be the successful bidder.

8. On February 8, 2022, Justice Conway granted an order that, among other things, approved a corporate restructuring pursuant to which the Purchaser would obtain control of Medifocus free and clear of liabilities (the “**Transaction**”).

9. This affidavit is sworn in support of the Applicants’ motion for an order, *inter alia*, extending the stay of proceedings up to and including August 15, 2022.

10. Further background to this CCAA proceeding can be found in my affidavit sworn October 4, 2021, in support of Medifocus’ application for the Initial Order under the CCAA (the “**October Affidavit**”).

A. Extension of the Stay of Proceedings

11. The Applicants require an extension of the Stay of Proceedings to close the Transaction.

12. To close the Transaction, the Purchaser (or its assignee) must subscribe for shares in Medifocus. To do that, the Cease Trade Order must be temporarily lifted – which is done through an application to the OSC.

13. Following approval of the Transaction by Justice Conway, the Purchaser requested that, post-closing, Medifocus be re-domiciled as a United States corporation. This request affected Medifocus' application to the OSC to lift the Cease Trade Order.

14. As part of an application to lift a Cease Trade Order, such as the application being made by Medifocus, the OSC requires a description of transaction steps – including post-closing steps. Therefore, the terms of the re-domicile had to be finalized prior to applying to the OSC to lift the Cease Trade Order.

15. Over the past few months, I have been working with counsel to determine the most efficient and advantageous process to re-domicile Medifocus.

16. Between late March and May 9, 2022, Medifocus and the Purchaser, with the assistance of counsel, finalized the terms of certain post-closing/re-domicile matters (mostly related to taxation issues) to complete the application to the OSC.

17. On May 9, 2022, Medifocus applied to the OSC to lift the Cease Trade Order. Medifocus is awaiting a response.

18. Medifocus can proceed with closing the Transaction after receiving approval from the OSC and no other regulatory approvals are required prior to closing.

19. The cash flow projections, reviewed and prepared with the Monitor, and attached as an appendix to the Fifth Report of the Monitor, to be filed, project that the Applicants will have sufficient funding to continue operating until and including August 15, 2022.

20. I am not aware of any creditors who will be materially prejudiced by an extension of the stay of proceedings.

21. I believe the foregoing illustrates that the Applicants have been acting in good faith and with due diligence and will continue to do so throughout the proposed extended Stay Period.

SWORN, before me, remotely by Raymond Tong stated as being located in the City of Hong Kong, *by continuous video conference* to the City of Toronto, in the Province of Ontario on this 17th day of May, 2022.

DocuSigned by:

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A Commissioner for Taking Affidavits

DocuSigned by:

CAC380E55FDA4F5...

RAYMOND TONG

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TAB 3

Court File No. CV-21-00669781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	TUESDAY, THE 19TH DAY OF
)	
JUSTICE GILMORE)	MAY, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF MEDIFOCUS INC AND 1000101532
 ONTARIO INC.

(RE: STAY EXTENSION)

THIS MOTION, made by the Applicants, Medifocus Inc. and 1000101532 Ontario Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order *inter alia* extending the Stay Period (as defined below) until and including July 31, 2022; was heard this day by judicial videoconference over Zoom.

ON READING the motion record of the Applicants, including the affidavit of Raymond Tong, sworn May 1, 2022, and the exhibits thereto (the "**Tong Affidavit**"), and the Fifth Report (the "**Fifth Report**") of msi Spergel Inc. ("**MSI**") in its capacity as monitor of the Applicants (the "**Monitor**"), dated May 1, 2022, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and all persons present as stated on the counsel slip, no one appearing for any other person although properly served as appears from the affidavit of Shaun Parsons sworn May 1, 2022.

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the stay period (the “**Stay Period**”) referred to in the Initial Order granted by the Honourable Justice Cavanagh, dated October 7, 2021, is extended until and including August 15, 2022.

GENERAL

3. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from 12:01 a.m. Eastern Standard/Daylight Time on the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Applicants, the Monitor, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.

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STAY EXTENSION ORDER

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