

2016



Hfx. No. 454744

Supreme Court of Nova Scotia

Application by Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") for relief under the *Companies' Creditors Arrangement Act*

Initial Order

Sgd. Before the Honourable Justice

Justice Joshua M. Arnold

in chambers

JMA, J.

The Applicants propose to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA") and they applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

The following parties received notice of this application:

1. American Legend Cooperative
2. Nova Scotia Farm Loan Board
3. Farm Credit Canada
4. CNH Industrial Capital Canada Ltd.
5. North American Fur Auctions Inc.
6. The Bank of Nova Scotia
7. Workers' Compensation Board of Nova Scotia

The following parties, represented by the following counsel, made submissions:

The Applicants represented by Tim Hill, Q.C..

On motion of the Applicants the following is ordered and declared:

Service

1. The service of the notice of application in chambers, and the supporting documents, as set out in the affidavit of service is hereby deemed adequate notice so that the motion is properly returnable today and further service thereof is hereby dispensed with.

Application

2. The Applicants are “affiliated debtor companies” within the meaning of the CCAA, and companies to which the CCAA applies.

Plan of Arrangement

3. The Applicants, in consultation with the Monitor, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "Plan").

Possession of Property and Operations

4. The Applicants shall remain in possession and control of their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel, and such other persons (collectively "Assistants") and the employees currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. The Applicants may pay the following expenses whether incurred prior to or after this Order:
 - a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order (“Active Employees”), in each case incurred in the ordinary

course of business and consistent with existing compensation policies and arrangements; and

- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "Group Benefits") payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;
 - c. with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicants in respect of these proceedings, at their reasonable standard rates and charges.
6. Except as otherwise provided to the contrary herein, the Applicants may pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance including directors and officers insurance, maintenance, and security services; and
 - b. payment for goods or services actually supplied to the Applicant following the date of this Order.
7. The Applicants shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicants and the applicable authority:
 - a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;

- b. all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - c. any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Applicants; and iii) payable in respect of the period commencing on or after the date of this Order.
8. Except as specifically permitted herein or by further order of this Court, the Applicants are hereby directed, until further order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of this date without prior written consent of the Monitor; ii) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of their Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

Restructuring

9. The Applicants shall, subject to such requirements as are imposed by the Monitor and under any agreements for debtor in possession financing which may be granted, have the right to:
- a. permanently or temporarily cease, downsize or shut down any of their business or operations,
 - b. terminate the employment of such of its employees or temporarily lay off such of their employees as they deem appropriate and, as applicable, in accordance with the terms of any collective agreement;

- c. pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any refinancing; and
- d. in accordance with their ordinary course of business, dispose of redundant or nonmaterial assets not exceeding \$10,000 in value.

No Proceedings Against the Applicants or the Property

- 10. Until and including the 30th day of September, 2016, or such later date as this Court may order (the "Stay Period"), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association (each, a "Proceeding") shall be commenced, continued, or enforced against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

- 11. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; iii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety, or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicants shall not be required to file a defence during the stay period.

No Interference with Rights

12. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Applicants, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicants and the Monitor, or leave of this Court.

Continuation of Services

13. During the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicants, are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Applicants, and the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

Non-Derogation of Rights

14. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

Proceedings Against Directors and Officers

15. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

Appointment of Monitor

16. Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicants, the Property, and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicants and their shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations, and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
17. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
 - a. monitor the Applicants' receipts and disbursements;
 - b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the Applicants, and such other matters as may be relevant to the proceedings herein;
 - c. advise the Applicants in their development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in their negotiations with creditors, customers, vendors, and other interested Persons;

- d. assist the Applicants, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicants, to the extent that is necessary to adequately assess the Applicants' Business and financial affairs or to perform its duties arising under this Order;
 - f. be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of, or person related to the Monitor;
 - g. develop a claims process to ascertain the quantum of the claims of all creditors; and
 - h. be at liberty to perform such other duties as are required by this Order or by this Court from time to time.
18. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.
19. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.
20. The Monitor shall provide any creditor of the Applicants or a potential Debtor In Possession lender ("DIP Lender") with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor or a DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor

shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

21. The Monitor, counsel to the Monitor, and all counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$25,000, \$10,000, and \$15,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
22. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

Administrative Charge

23. The Monitor, the Monitor's counsel, and the Applicants' counsel (collectively, the "Chargees") shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings.
24. The filing, registration or perfection of the Administration Charge shall not be required and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
25. The Administration Charge shall constitute a charge on the Property and shall rank in priority to claims of the following secured creditors: American Legend Cooperative, Nova Scotia Farm Loan Board, Farm Credit Canada, and North American Fur Auctions Inc., and in

priority to any other interests, trusts, liens, charges, and encumbrances and claims, statutory or otherwise, in favour of any Person.

26. The Applicants and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Administration Charge or providing that the Administrative Charge shall rank in priority to secured creditors not named in paragraph 25.
27. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any encumbrance over any Property that ranks in priority to, or *pari passu* with the Administration Charge unless the Applicants also obtain the prior written consent of the Chargees, or further order of this Court.
28. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - a. the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
 - b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants seeking the creation of the Administration Charge; and
 - c. the payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

Service and Notice

30. The Monitor shall: i) without delay, publish in a notice containing the information prescribed under the CCAA, ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
31. The Applicants and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and any such notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
32. The Applicants and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at www.insolvencies.Deloitte.ca.

General

33. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
34. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicants, the Business or the Property.

35. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
36. Each of the Applicants and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
37. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order.
38. This Order and all of its provisions are effective as of 12 a.m. Atlantic Standard Time on the 31st day of August, 2016.

Issued August 31, 2016



Prothonotary
JESSICA BOUTILIER
Deputy Prothonotary

