

COURT FILE QB No. 1200 of 2018
COURT QUEEN'S BENCH FOR SASKATCHEWAN
 IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE SASKATOON
APPLICANT CANADIAN EXOTIC GRAINS LTD.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
UNDER SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED, OF CANADIAN EXOTIC GRAINS LTD.

AFFIDAVIT OF JOCELYN HARTSOOK

I, Jocelyn Harstook, of the Town of Eston, Saskatchewan, in the Province of Saskatchewan, MAKE OATH AND SAY THAT:

1. I am a director and the president of the applicant, Canadian Exotic Grains Ltd. ("CEG"), such that I have personal knowledge of the facts and matters hereinafter deposed, except where stated to be on information and belief and, where so stated, I believe the same to be true.

2. Except where otherwise defined, capitalized terms utilized in this Affidavit will have the meanings given to them in my Affidavit sworn August 3, 2018 (the "**First Hartsook Affidavit**").

I. OVERVIEW

3. CEG's NOI was filed with the Office of the Superintendent in Bankruptcy on July 18, 2018. As discussed in the First Hartsook Affidavit, the underlying rationale for the filing was to provide CEG the breathing space necessary to:

- (a) complete a sale of substantially all of CEG's business assets to an entity called Section 12 (the "**Transaction**");

- (b) effect an orderly distribution of the sale proceeds to CEG's secured creditors; and
 - (c) utilize the anticipated surplus proceeds to fund a proposal to CEG's unsecured creditors.
- 4. CEG's APA with Section 12 was ultimately approved by the Sale Approval, Vesting, and Extension Order dated August 8, 2018 (the "SAVO"), and in accordance with the terms of the APA, the Transaction was scheduled 15 days later on August 23, 2018 (the "Closing Date").
- 5. The purpose of this Affidavit is to detail CEG's good faith efforts to:
 - (a) close the Transaction;
 - (b) explore alternative options following Section 12's confirmation that it was unable to complete the Transaction as contemplated by the APA and approved by the SAVO; and
 - (c) initiate discussions with CEG's primary secured creditor, FCC, in order to determine what courses of action that entity was prepared to support given Section 12's unanticipated inability to close the Transaction.
- 6. As discussed in more detail below, an extension of the stay of proceedings and September 28, 2018 deadline for CEG to file a proposal is necessary in order to provide CEG additional time to determine whether some iteration of the Transaction can be salvaged for the benefit of CEG's creditors and stakeholders. In the event that it cannot, the additional time will nevertheless be required so that CEG can exhaust all other available options to maximize the realizable value of its assets.

II. UPDATE

- 7. Article 5.1(1)(a) of the APA provided that Section 12's obligation to complete the Transaction was conditional on Section 12 having received satisfactory financing by the closing date. Although not a term of the APA, CEG's understanding at the time of the

application for the SAVO was that Section 12 had already received financing approval for the full amount of the purchase price, and accordingly, the condition was not of a concern to CEG at that time.

8. From August 8 to August 20, 2018, the Transaction appeared to proceeding in the ordinary course. For example:

- (a) the parties' legal counsel:
 - (i) confirmed the Closing Date and balance of documents required to complete the Transaction; and
 - (ii) discussed a potential amendment to the APA to accommodate the inclusion of a newly secured sales contract, as well as the logistics of the closing itself;
- (b) CEG's legal counsel prepared drafts of the specific closing documents for which CEG was responsible, including the director and shareholder resolutions and Affidavit of Value for the real property; and
- (c) I met with Section 12 in my personal capacity to conclude a rental agreement for the Office which is attached to my family's personal residence.

9. On August 21, 2018, however, Section 12 advised through its legal counsel that it may have an issue with its financing. Based on CEG's subsequent discussions with Section 12, I understand that Section 12's pre-existing offer of financing was subject to a condition that Section 12 subsequently discovered it could not satisfy. Accordingly, Section 12 was exploring its available options with alternative lenders.

10. With the matter unresolved as of the Closing Date, the parties agreed to extend the same to September 6, 2018 by way of a formal amending agreement.

11. On September 5, 2018, Section 12 advised through legal counsel that it would be unable to close the Transaction on September 6, 2018, and requested an additional extension until either September 19 or 20, 2018.

12. On September 10, 2018, Section 12 advised CEG directly that its financing was not available such that the Transaction would not be able to close, which was followed by MLT Aikins LLP's letter of September 11, 2018, a copy of which is attached as **Exhibit "A,"** advising that the Transaction would not close as contemplated by the APA, but that Section 12 nevertheless remained open to further discussions regarding a potential purchase of the CEG assets in some form.

13. Since receiving this letter:

- (a) CEG and Section 12 have informally discussed potential short-term leasing options that would:
 - (i) allow Section 12 additional time to secure new financing for the purchase of the CEG assets;
 - (ii) provide CEG with incoming revenue in the interim; and
 - (iii) preserve CEG's goodwill through the fulfillment of the supply and purchase agreements that were to be assigned to Section 12 pursuant to the APA;
- (b) CEG has engaged in discussions with FCC to determine whether FCC was prepared to support further efforts to obtain a new agreement for the sale of the CEG assets in the context of the NOI proceedings.


14. To date, nothing further has been concluded with Section 12; however, the overall discussions with both Section 12 and FCC have been positive, which has encouraged CEG to make the within application to extend the deadline for filing a proposal.

III. POTENTIAL VIABLE PROPOSAL IF THE EXTENSION IS GRANTED

15. While the loss of the purchase price contemplated by the APA was a setback, there remains the potential that Section 12 may be able to obtain the additional investment and/or additional third party security necessary to conclude some iteration of the transaction contemplated by the APA for the benefit of CEG's creditors.

16. The potential for an alternative arrangement with Section 12 aside, the fact remains that CEG has substantial assets. The impetus for the NOI proceedings was the need to conclude the Transaction, which was the best possible option to fund a proposal at that time. With the landscape now changed due to factors outside of CEG's control, CEG requires additional time to exhaust all available options to maximize the realizable value of its assets for the sake of not just its creditors, but also its employees and other non-financial stakeholders, before resigning itself to a bankruptcy.

17. CEG understands that FCC is supportive of the extension sought, and CEG is unaware of any creditor that would be materially prejudiced if the extension being requested is granted. I therefore swear this affidavit in support of the relief sought in the within application that is presently before this Honourable Court.

SWORN (OR AFFIRMED) BEFORE ME)
at the Town of Eston, in the Province of)
Saskatchewan, this 20th day of September,)
2018.)
)



JOCELYN HARTSOOK

A COMMISSIONER FOR OATHS for
Saskatchewan – My Commission expires: *Sept 30, 2018*

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

Name of firm:	McDougall Gauley LLP
Name of lawyer in charge of file:	Ian A. Sutherland / Craig Frith
Address of legal firm:	500-616 Main Street Saskatoon, SK S7H 0J6
Telephone / Fax number:	(306) 665-5417 / (306) 652-1323
Email address:	isutherland@mcdougallgauley.com cfrith@mcdougallgauley.com

MLT AIKINS

WESTERN CANADA'S LAW FIRM

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF JOCELYN HARTSOOK
SWORN BEFORE ME AT THE TOWN OF ESTON,
IN THE PROVINCE OF SASKATCHEWAN
THIS 30th DAY OF SEPTEMBER, 2018.

John Sifer
A Commissioner for Oaths
in and for the Province of Saskatchewan
my commission expires: Sept 30, 2018
OR being a solicitor.

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Carmen R. Balzer
Legal Assistant
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September 11, 2018

Via E-mail: isutherland@mcdougallgauley.com

McDougall Gauley LLP
Barristers & Solicitors
500 – 616 Main Street
Saskatoon, SK S7H 0J6

Attention: Mr. Ian Sutherland

Dear Sir:

Re: **In the Matter of the Notice of Intention to Make a Proposal Under Section 50.4 of the *Bankruptcy and Insolvency Act* of Canadian Exotic Grains Ltd. ("CEGL")**

We are solicitors for Section 12 Foods Inc., the entity that has been considering a purchase of assets from CEGL in regard to the above-noted matter.

This letter will confirm that the proposed transaction for the sale of the assets of CEGL to Section 12 Foods Inc. will not be proceeding to close in the format originally contemplated by all parties.

Notwithstanding that the transaction will not close as originally contemplated, we are informed that CEGL wishes to seek an extension of the Court protection provided to it by the Court of Queen's Bench for Saskatchewan in Bankruptcy and Insolvency under section 50.4(9) of the BIA from September 28, 2018 to a date that is thirty to forty-five days later.

In the circumstances, Section 12 Foods Inc. is prepared to continue discussions with CEGL in regard to a proposed sale transaction. While there can be no guarantee that any such sale transaction will be concluded, Section 12 Foods Inc. is prepared to continue those discussions with a view to identifying common ground and attempting to facilitate some form of transaction mutually satisfactory to our respective clients.

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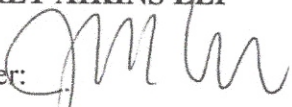
WESTERN CANADA'S LAW FIRM

We trust that this is satisfactory.

Yours truly,

MLT AIKINS LLP

Per:



Jeffrey M. Lee, Q.C.

JML:crb

cc: Section 12 Foods Inc.
Attn: Andrea Oliphant

cc: MLT Aikins LLP – Saskatoon
Attn: Justin Wood