

London Court File No. 07-6820-OT
Toronto Court File No. 06-CL-6820

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

TEXTRON FINANCIAL CANADA LIMITED

Applicant

- and -

BETA LIMITEE/BETA BRANDS LIMITED

Respondent

**MOTION RECORD
(Returnable November 26, 2008 in London, Ontario)**

Date: November 21, 2008

GOWLING LAFLEUR HENDERSON LLP
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Solicitors for the Receiver

TO: SERVICE LIST

SERVICE LIST

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**ONTARIO
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Applicant

- and -

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Respondent

**NOTICE OF MOTION
(Returnable November 26, 2008 in London, Ontario)**

MINTZ & PARTNERS LIMITED (the “Receiver”) will make a motion to the court on November 26, 2008 at 10:00 a.m., or as soon after that time as the motion can be heard at 80 Dundas Street, London, Ontario.

PROPOSED METHOD OF HEARING the Motion will be heard orally.

THE MOTION IS FOR:

1. An order:
 - (a) authorizing the Receiver to make an interim distribution of \$600,000 to Sun Beta LLC (“**Sun Beta**”); and
 - (b) approving the Receiver’s actions to date.
2. Such further and other relief as may be just or equitable.

THE GROUNDS FOR THE MOTION ARE:

3. Pursuant to an Order dated January 3, 2007, the Receiver was appointed as interim receiver and receiver of all of the assets, undertakings and property of the Respondent.
4. The Applicant, as agent for Sun Beta holds a valid, enforceable first ranking secured interest in the Respondent's assets and property.
5. The Receiver holds funds from the sale of the Respondent's assets and property and wishes to make an interim distribution to Sun Beta.
6. The grounds set forth in the Eighth Report of the Receiver dated 21 November 2008.
7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

1. Eighth Report of the Receiver dated November 21, 2008; and
2. Such further and other evidence as this Honourable Court may permit.

Date: November 21, 2008

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Solicitors for the Receiver

TO: SERVICE LIST

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London Court File No. 07-6820-OT
Toronto Court File No. 06-CL-6820

TEXTRON FINANCIAL CANADA LIMITED
– Applicant –

v.

BETA LIMITEE/BETA BRANDS LIMITED
– Respondent –

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(Returnable November 26, 2008)

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

TEXTRON FINANCIAL CANADA LIMITED

Applicant

- and -

BETA LIMITEE/BETA BRANDS LIMITED

Respondent

**EIGHTH REPORT OF MINTZ & PARTNERS LIMITED
IN ITS CAPACITY AS INTERIM RECEIVER AND RECEIVER OF
BETA LIMITEE/BETA BRANDS LIMITED
(As of November 21, 2008)**

1. Mintz & Partners Limited the (“Receiver”), the interim receiver and receiver of Beta Limitee/Beta Brands Limited (“Beta Brands”), is delivering this Report in support of a motion seeking an Order, *inter alia*, authorizing and directing that, subject to, among other things, the Receiver obtaining the consent of Bremner Food Group, Inc. (“Bremner”), the Receiver effect an interim distribution to Sun Beta LLC (“Sun Beta”) of \$600,000.

2. This report summarizes the activities of the Receiver during the period up to November 21, 2008.

Beta Brands

3. The Receiver was appointed pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated January 3, 2007.

4. Certain of Beta Brands' employees are represented by The Bakery, Confectionary, Tobacco and Grain Millers International Union Local 2426 (the "**Union**").
5. Prior to the Receiver being appointed, Beta Brands carried on three distinct manufacturing, marketing and sales businesses: (a) baked goods, (b) confectionary goods; and (c) panned chocolate products. Beta Brands' assets consist of: (a) a plant and real property located in London, Ontario (the "**Real Property**"); (b) intellectual property consisting, essentially, of various trademarks and formulas; (c) accounts receivable; and (d) inventory and equipment.
6. Textron Financial Canada Limited ("**Textron Canada**") and Beta Brands entered into certain financing arrangements pursuant to which Textron Canada agreed to provide Beta Brands with a revolving loan facility and two term loans (the "**Loan Facilities**").
7. As security for the obligations owing to Textron Canada by Beta Brands under the Loan Facilities, Beta Brands provided Textron Canada with security interests in all of its present and after acquired assets, property and undertaking, including the Real Property. The Receiver has obtained an independent opinion as to the validity and enforceability of Textron Canada's security.
8. Pursuant to a Participation Agreement made as of August 29, 2005, which was amended by a First Amendment dated as of June 20, 2006 (together, the "**Participation Agreement**"), Sun Beta purchased from Textron Canada an interest in certain of the advances made by Textron Canada to Beta Brands (the "**Participation**"). Pursuant to the Participation Agreement, Textron Canada holds all of the obligations of Beta Brands to Textron, to the extent of Sun Beta's participation, arising out of the relevant loan and security agreements – including the security granted to Textron Canada by Beta Brands – as trustee for Sun Beta.
9. While, as described further below, Textron Canada has been paid in full, Sun Beta is currently owed in excess of \$3.5 million in respect of the Participation in the Loan Facilities. Sun Beta is the beneficiary of the security held by Textron Canada.

The Bremner Transaction

10. Pursuant to an Order dated January 5, 2007, the Court approved the sale of substantially all of the assets of the Company's bakery division and certain finished goods inventory to Bremner (the "**Bremner Transaction**") and vested the Acquired Assets in Bremner free and clear.

11. The Bremner Transaction was completed on the basis that the Receiver retain reserves totalling US\$500,000 (the "**Bremner Reserves**") as follows:

- (a) a US\$200,000 reserve in respect of claims that might arise with respect to the finished goods inventory included in the Bremner Transactions (the "**Finished Goods Reserve**"); and
- (b) a US\$300,000 reserve in respect of costs incurred by Bremner in dealing with successor liability or other employee-related claims (the "**Successor Claim Reserve**").

12. The Finished Goods Reserve was to be held by the Receiver until 12 months after the completion of the Bremner Transaction. The Bremner Transaction closed on January 10, 2007 and the Finished Goods Reserve has been released by the Receiver.

13. The Successor Claim Reserve is being maintained by the Receiver. Bremner has made one claim of US\$10,661.00 against the Successor Claim Reserve, which claim was paid by the Receiver.

Marketing and Sale of Beta Brands' Remaining Property

14. Pursuant to an Order dated February 20, 2007, the Court authorized and directed that the Receiver engage in a process to locate a purchaser or purchasers for Beta Brands' assets that were not included in the Bremner Transaction.

A. Crescent Transaction

15. Pursuant to an Order dated April 12, 2007, the Court approved the sale of Beta Brands' remaining tangible personal property to Crescent Commercial Corporation (the "**Crescent Transaction**"). The Crescent Transaction closed on April 16, 2007.

B. Regal Transaction

16. Pursuant to an Order dated April 12, 2007, the Court approved the sale of Beta Brands' intellectual property and related assets to 3651410 Canada Inc. o/a Regal Confections (the "**Regal Transaction**"). On April 16, 2007, an Amended Order approving the Regal Transaction was made. The Amended Order included a list of the intellectual property being transferred to Regal as a schedule. The Regal Transaction closed on April 20, 2007.

C. Marketing of Real Property

17. None of the offers received by the Receiver included the Real Property.

18. Pursuant to an Order dated April 12, 2007 (the "**April 12th Order**"), the Court, *inter alia*, authorized and directed the Receiver to enter into a listing agreement with CB Richard Ellis Limited ("**CBRE**") to market and sell the Real Property. The Receiver entered into a listing agreement with CBRE.

19. The Receiver ultimately entered into an agreement of purchase and sale dated April 23, 2008 (the "**Real Property APA**") with Decade Group Inc. ("**Decade**") in respect of the Real Property pursuant to which Decade agreed to purchase the Real Property for \$1.8 million.

20. The Real Property APA provided Decade until July 31, 2008 to conduct due diligence with respect to the Real Property. The Receiver agreed, at Decade's request, to extend the due diligence period until September 30, 2008. Prior to September 30, 2008, Decade requested a further six-month extension of the conditional period under the Real Property APA. The Receiver requested, as a condition of granting the extension, that

Decade agree to fund a portion of the operating costs associated with the Real Property during the requested extension. Decade refused and terminated the Real Property APA.

21. The listing agreement with CBRE expired on September 30, 2008 and the Receiver has not, at this point in time, entered into a new listing agreement with respect to the Real Property.

22. The Receiver is maintaining the Real Property and there is a monitored security system in place at the Real Property.

23. The Receiver is in the process of evaluating the options available with respect to the Real Property and, in particular, whether it will be possible to decommission the building in order to minimize the costs being expended to maintain the Real Property while the Receiver engages in further efforts to locate a purchaser. The Receiver believes that if a buyer cannot be found for the Real Property or if the ongoing operating costs cannot be significantly reduced, the Receiver will likely be forced to seek an Order authorizing the Receiver to abandon the Real Property.

Designation of the Real Property

24. On February 11, 2008, the Receiver received a letter from The Corporation of the City of London, advising that steps were being taken to designate the Real Property and, in particular, the building, for cultural heritage value.

Use of Real Property by London Police

25. The Receiver permitted the London Police to use the building, free of charge, to conduct training of its canine unit. The Receiver offered the use of the building to train the London Police's tactical unit, but the offer was declined due to the Receiver's inability to confirm that the building would be available during the appropriate period in the tactical unit's training calendar.

Removal of Flammable Materials

26. The London Fire Department conducted a tour of the building and identified a fire hazard associated with certain flammable materials located in the building. It also identified certain access points that raised concern about the potential for illegal entry into the building. The Receiver arranged for the removal and disposal of the flammable material and took appropriate steps to secure the access points. The London Fire Department has indicated that it was satisfied with the Receiver's measures.

PCB Storage Room

27. The Ontario Ministry of the Environment (the "MoE") conducted an inspection of the building in May, 2008 and raised concerns with an authorized PCB storage facility in the building. The Receiver has taken steps to address the MoE's concerns by arranging for the removal and disposal of the contaminated materials and has properly decommissioned the storage facility.

Destruction of Certain Business Records

28. Pursuant to the April 12th Order, the Court authorized the destruction of certain of Beta Brands' business records.

Leave Application

29. On March 29, 2007, the Union brought a motion (the "**Leave Motion**") seeking, *inter alia*, leave as against the Receiver in connection with certain applications the Union wished to commence seeking, *inter alia*, a declaration that the Receiver was a successor employer.

30. Pursuant to reasons released on July 31, 2007, the Leave Motion was dismissed.

Vacation Pay Application

31. On July 19, 2007, the Union brought a motion (the "**Vacation Pay Motion**") seeking, *inter alia*, a declaration that the claims of its members for vacation pay ranked in

priority to the claims of Beta Brands' secured creditors and an order that the Receiver pay the vacation pay asserted to be owing by Beta Brands to the Union's members.

32. Pursuant to reasons released on October 18, 2007, the Vacation Pay Motion was dismissed.

Interim Distributions

A. Distribution to Textron

33. Pursuant to an Order dated March 1, 2007 (the "**March 1st Order**"), the Court authorized and directed the Receiver to make a distribution to Textron Canada in the amount of \$2.7 million. As a result of the making of this interim distribution to Textron Canada, Textron Canada's direct advances to Beta Brands were paid in full.

B. Proposed Distributions to Capitalink and Key Employees

34. On July 19, 2007, the Receiver brought a motion seeking advice and directions from the Court as to whether it could pay a fee being claimed by Capitalink in connection with the Bremner Transaction and bonuses being claimed by three of Beta Brands' senior management employees, Robert Neable, Gary Musick and Anita Varallo (together, the "**Key Employees**").

35. Pursuant to reasons released on August 1, 2007, the Court determined that the claims of both Capitalink and the Key Employees were unsecured claims against Beta Brands that should not be paid by the Receiver.

36. On or about August 10, 2007, Capitalink and the Key Employees each delivered a Notice of Appeal seeking to appeal the August 1, 2007 decision.

37. While the appeals initiated by Capitalink and the Key Employees were pending, a settlement in principle was reached amongst Capitalink, the Key Employees and the Union. The proposed settlement was conditional upon the Ontario Court of Appeal granting an order allowing the appeals to the extent necessary such that the Receiver could make the payments to Capitalink and the Key Employees.

38. Subsequent to a teleconference, Textron Canada and Sun Beta agreed that they would consent to the payments to Capitalink and the Key Employees being applied in reduction of Textron Canada's secured claim, which, as a result of the Participation, was owed to Sun Beta, so that there would be no impact of the payments on any subordinate claims should any excess proceeds be available for distribution after Textron Canada's remaining secured claim had been satisfied.

39. Capitalink agreed to abandon its appeal and the Key Employees allowed their appeal to be dismissed.

40. On January 25, 2008, the Receiver brought a motion on the Ontario Superior Court (Commercial List) seeking, *inter alia*, an order authorizing and directing the Receiver to effect distributions to Capitalink and the Key Employees with the amount of such distributions being applied against the obligations owing to Textron Canada. All of the parties consented to the order sought by the Receiver.

41. Pursuant to reasons released on May 19, 2008, Mr. Justice Morawetz denied the Receiver's motion. A copy of Mr. Justice Morawetz's reasons are attached hereto and marked as **Appendix "A"**.

CAFO Motion

42. Pursuant to an agreement dated June 23, 2006 (the "**CAFO Agreement**"), funds were advanced by CAFO Inc. ("**CAFO**") to Beta Brands in connection with premiums for an insurance policy with American Home Assurance Company (the "**Insurer**"). The policy was purchased through the CG&B Group Inc., Beta Brands' insurance broker (the "**Broker**").

43. The payment remitted by Beta Brands to CAFO in respect of the payment due by Beta Brands on January 29, 2007 under the CAFO Agreement was not honoured by Beta Brands' bank.

44. The policy of insurance underlying the CAFO Agreement was terminated by the Receiver. The Insurer forwarded the amount of \$28,941.21 (the “**Refunded Premium**”) to the Broker as unearned premiums.

45. CAFO asserted a security interest over the Refunded Premium.

46. CAFO brought a motion, on notice to the Receiver and Sun Beta, returnable on June 23, 2008, seeking, *inter alia*, an order directing that the Refunded Premium be paid to CAFO. The Receiver did not take a position.

47. Pursuant to an Order dated June 23, 2008 (the “**CAFO Order**”), Mr. Justice Morawetz ordered that the Refunded Premium be paid to CAFO.

Statement of Receipts and Disbursements

48. Attached as **Appendix ”B”** is the Receiver’s interim statement of receipts and disbursements for the period January 3, 2007 to November 20, 2008 (the “**R&D**”).

49. The R&D references a Vacation Pay Reserve of \$529,102. The Vacation Pay Reserve was created by the Receiver pursuant to the March 1st Order authorizing the \$2.7 million interim distribution to Textron. The Vacation Pay Reserve was to be maintained until the priority of vacation pay *vis a vis* Textron was determined. As referenced above, in reasons released on October 18, 2007 in the Vacation Pay Motion, the Court determined that vacation pay claims do not rank in priority to the claims of Textron’s secured creditors either in or outside of a bankruptcy and the Union has abandoned its appeal of the October 18, 2007 decision.

Requested Interim Distribution to Sun Beta

50. Sun Beta is currently owed in excess of \$3.5 million in connection with its participation in Textron’s loan to Beta Brands. This obligation is secured by Textron’s security over Beta Brands’ assets, property and undertaking and, as set forth above, the Receiver has obtained an opinion with respect to the validity and enforceability of Textron’s security.

51. Assuming that Bremner will agree to the release of the Successor Claim Reserve, and assuming the Vacation Pay Reserve is released, the Receiver would like to effect an interim distribution of \$600,000 to Sun Beta in partial satisfaction of Sun Beta's participation in Textron's loan to Beta Brands.

52. After giving effect to the requested interim distribution, the Receiver will have approximately \$640,000 cash remaining on hand.

Receiver's Request of the Court

53. The Receiver respectfully requests that the Court make an Order:

- (a) approving the activities of the Receiver for the period up to November 21, 2008;
- (b) releasing the Vacation Pay Reserve; and
- (c) approving an interim distribution to Sun Beta in the amount of \$600,000 in partial satisfaction of Sun Beta's Participation in Textron Canada's loans to Beta Brands.

DATED this 21st day of November, 2008

Mintz & Partners Limited

MINTZ & PARTNERS LIMITED, solely in its capacity as Interim Receiver and Receiver of Beta Limitee/Beta Brands Limited and not in its personal capacity

Daniel R. Weisz, CA•CIRP, CIRP
Senior Vice President

Court File No.: 06-CL-6820

BETA LIMITEE/BETA BRANDS LIMITED
- Respondent -

TEXTRON FINANCIAL CANADA LIMITED
- Applicant -

v.

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Released May 19/08

~~May 19/08~~

Mr D. N. Haak for ~~Textron~~ Textron
Mr J. Simpson for Trinity + Partners.
Mr M. Saxe for Capital Ltd. LLC in person

with joint submissions in writing from
Sun Beta + Beta Brands, Bakery Confectionery,
Tobacco Workers ad Grain Millers Int.
Union local 242 ad Neerle, Musick ad Varello

In a previous motion Capital R.S.
was declared that the claims of both
Capital ad the key employees
related with all other interested
parties. She requested the agreement

ONTARIO
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(PROCEEDING COMMENCED AT TORONTO)

JOINT WRITTEN SUBMISSIONS

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SOLICITORS FOR THE Applicant

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that exceptional circumstances were present that merited the Receiver making payments to Capitaltek and the ^{three} key employees, or that they were obligations of the Receiver.

Subsequent to the disposition of the previous matter a settlement was reached amongst Capitaltek, the key employees and the Union. Pursuant to the terms of the settlement, payments would be made to Capitaltek and the key employees. The Receiver would make the payments in satisfaction of a portion of the secured claim owed to Intron (in which In Beta is a participant), at Intron's direction, to Capitaltek and to the three key employees. It was submitted that there would be no impact on

the payments on any subordinate claim should any excess proceeds be available after Jostrom's secured claim (in which Sun Beta 2 is a participant) had been satisfied. The Receiver advised that it would bring a motion to implement this proposed settlement.

The issue is whether an order can be made to giving effect to the settlement reached by the parties. In my view the effect of the proposed settlement is that the Receiver would make payments to Capitolink and the three key employees.

This is, in substance, the same relief that was sought in the previous motion and which was denied by Judge RSV. There is a difference, in form, in that the previous motion was brought by the

Receiver for advice and directions and
this motion is brought by Section.

Another difference is that ^{on} the previous motion
there would have been no reduction in
the secured debt and on this motion
there would be a reduction in the secured
debt. However, given the projected shortfall,
there is no practical difference to the secured
creditors.

In substance, the result is that Capitalink and
the three key employees would be paid - with
such payments being made by the Receiver -
notwithstanding the conclusion of Leitch ASJ
that Capitalink and the three key employees
rank with all unsecured creditors.

It seems to me that, in view of the
decision of Leitch ASJ, there is no basis
for the Receiver to make such payments.

As I have said and San Beta wish to

make the payments - that is a decision ⁵¹⁷
for those secured creditors to make.
It would appear that such a payment
could be made outside of the receivership
proceedings and no authorization of the
Court would be required or necessary.

The question of whether the Receiver can
make the payments to Capitalia and
the three key employees in the context of
the receivership proceedings has been addressed
by Jitch RST. Advice and directions
on the issue were sought and provided.
Jitch RST found that these claims ranked
with other unsecured ~~claims~~ creditors.
Even though the parties may now be
consenting to this relief, in my
view it is not appropriate to make
such an order. The issue of whether

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The Receiver can make such ~~arrangement~~ payments
has already been determined in these
proceedings.

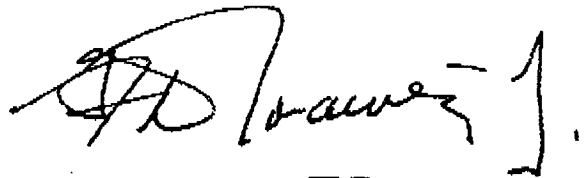
On the result, I have not been
satisfied that this motion seeks fresh
relief. The requested relief has been
structured in a different form but
in substance it seeks a result that
has ~~not~~ already been denied by
Seitch RST.

In my view it would not be appropriate
to grant the requested relief and I
decline to do so.

Finally, I acknowledge the joint submission
on the third issue with respect to
the state of the record and

I accept the explanation provided.

[subject to
edit if typed]


NORAWETZ

**MINTZ & PARTNERS LIMITED
INTERIM RECEIVER AND RECEIVER OF
BETA LIMITEE/BETA BRANDS LIMITED ("Receiver")**

**Receiver's Interim Statement of Receipts and Disbursements
for the period January 3, 2007 to November 20, 2008
(US\$1.00 = CAN\$1.20)**

Receipts

1. Cash in bank	\$ 77,141.34
2. Petty cash	708.41
3. Accounts receivable collections	705,811.64
4. Sale of assets	5,212,187.40
5. Reserve Funds	625,379.51
6. Other income	25,213.00
7. Miscellaneous refunds	176,004.71
8. GST collected	90,161.78
9. Interest	70,468.69
10. Total Receipts	<u>\$ 6,983,076.48</u>

Disbursements

11. Fees paid to Official Receiver	\$ 70.00
12. Security and possession	321,722.00
13. Stock taking	3,000.00
14. Consulting fees	46,152.40
15. Salary payroll arrears, source deductions and payroll service costs	6,629.90
16. Shipping costs	11,389.00
17. Advertising	6,301.08
18. Utilities (including deposits)	699,802.80
19. Property taxes	410,256.12
20. Repairs and maintenance	242,206.67
21. Insurance	273,823.68
22. Travel and parking	20,464.47
23. Transportation, courier, postage and storage	3,664.47
24. Bank charges	506.28
25. Photocopies	25.00
26. Telephone & Internet	10,121.88
27. Legal fees	257,595.48
28. Interim Receiver and Receiver fees	617,314.00
29. GST paid	110,744.21
30. Total Disbursements	<u>\$ 3,041,789.44</u>
31. Excess of Receipts over Disbursements	\$ 3,941,287.04
32. Less: Distribution to Secured Creditor	<u>(2,700,000.00)</u>
33. Cash On Hand Prior to Vacation Pay Reserve	\$ 1,241,287.04
34. Less: Vacation Pay Reserve (including accrued interest)	<u>(529,102.77)</u>
35. Net Cash On Hand	<u>\$ 712,184.27</u>

Note: This Interim Statement of Receipts and Disbursements includes a Reserve Fund provided for in the Adjustment and Reserve Agreement entered into between the Receiver and Bremner Food Group, Inc. on January 10, 2007. The Reserve Fund initially was US\$500,000, of which US\$200,000 relating to finished goods was released on January 10, 2008. To date, the Receiver has approved and paid claims totalling US\$10,861.58 from the Reserve Fund. Interest earned on the Reserve Fund is US\$31,811.26.

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