

**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 EASTERN MEAT SOLUTIONS INC.,  
SIERRA CUSTOM FOODS INC., SIERRA SUPPLY CHAIN  
SERVICES INC., SIERRA REALTY CORPORATION, RVB  
HOLDINGS INC., VANDEN BROEK HOLDINGS (2008)  
INC., SIERRA REALTY CALGARY CORPORATION AND  
EASTERN MEAT SOLUTIONS (USA) CORP.**

Applicants

**FACTUM OF THE APPLICANTS  
(Motion returnable May 31, 2024)**

May 29, 2024

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## PART I - OVERVIEW

1. On May 21, 2024, the Applicants sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") pursuant to the initial order (the "**Initial Order**") of the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Pursuant to the Initial Order, among other things, Deloitte Restructuring Inc. was appointed as the monitor of the Applicants (in such capacity, the "**Monitor**").<sup>1</sup>
2. As part of the Comeback Hearing, the Applicants seek the following additional relief:
  - (a) an amended and restated initial order (the "**ARIO**") that, among other things: (i) extends the stay of proceedings until September 30, 2024; (ii) approves the DIP Credit Agreement pursuant to which the Bank of Montreal (the "**DIP Lender**") will make available to the Applicants a revolving credit facility in the principal amount of \$3,350,000 (the "**DIP Facility**") and approves the corresponding charge in favour of the DIP Lender (the "**DIP Lender's Charge**"); (iii) increases the Administration Charge from \$500,000 to \$750,000; and (iv) increases the Directors' Charge from \$600,000 to \$750,000; and
  - (b) an order (the "**SISP Approval Order**") approving the proposed sale and investment solicitation process in respect of the business and/or the assets of Sierra Foods (the "**SISP**").<sup>2</sup>

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<sup>1</sup> All capitalized terms not expressly defined herein are defined, and have the meanings set forth, in the Affidavit of Robert Vanden Broek sworn May 28, 2024 (the "**Second Vanden Broek Affidavit**").

<sup>2</sup> The only Applicant that is subject to the SISP is Sierra Foods. None of the businesses or assets of the other Applicants will form part of the SISP.

3. This factum solely addresses the following issues: (i) whether the stay extension should be granted; (ii) whether the DIP Facility and DIP Lender's Charge should be approved; and (iii) whether the SISP should be approved. The other relief sought pursuant to the proposed ARIO is largely consistent with the model order and was previously addressed in the First Affidavit of Robert Vanden Broek sworn May 21, 2024, the factum of the Applicants dated May 21, 2024, and the Pre-Filing Report of the Monitor dated May 21, 2024.

## **PART II - THE FACTS**

4. The facts relevant to the additional relief sought by the Applicants at the Comeback Hearing are set out in detail in the Second Vanden Broek Affidavit and certain key facts (including an overview of the DIP Credit Agreement and the SISP) are set out in the following sections for reference.

## **PART III - LAW & ANALYSIS**

### **A. THE STAY EXTENSION SHOULD BE APPROVED**

5. The Applicants seek to extend the Stay Period up to and including September 30, 2024.<sup>3</sup>
6. Section 11.02(2) of the CCAA provides that the Court may extend the stay of proceedings for any period it considers necessary provided the Court is satisfied that: (i) circumstances exist to make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.<sup>4</sup>

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<sup>3</sup> Second Vanden Broek Affidavit at para 18.

<sup>4</sup> CCAA, s. [11.02\(2\)](#).

7. Since the granting of the Initial Order, the Applicants, with the assistance of the Monitor, have been working in good faith and with due diligence to maintain their businesses and operations in the ordinary course, while also undergoing extensive communications with suppliers, customers, and other stakeholders as to the commencement of this proceeding.<sup>5</sup>
8. The stay extension is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants' business and enable the Applicants and the Monitor to carry out the SISP and pursue a restructuring of the Cold Storage Business. The proposed stay extension date aligns with the maturity date of the DIP Facility and the outside date for Court approval of a transaction in the SISP.<sup>6</sup>
9. The Cash Flow Forecast demonstrates that, subject to Court approval of the DIP Facility and the DIP Lender's Charge, the Applicants will have sufficient liquidity to fund their business operations during the proposed extension to the Stay Period. No party will be materially prejudiced by the stay extension. The Monitor supports the proposed extension to the Stay Period.<sup>7</sup>

**B. THE DIP FACILITY & DIP LENDER'S CHARGE SHOULD BE APPROVED**

**(i) *Overview of DIP Facility & DIP Lender's Charge***

10. As set out in the Second Vanden Broek Affidavit, the Applicants require DIP financing in order to continue operations and carry out a successful restructuring.<sup>8</sup>

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<sup>5</sup> Second Vanden Broek Affidavit at para 7.

<sup>6</sup> Second Vanden Broek Affidavit at paras 18, 23, and Exhibit "C".

<sup>7</sup> Second Vanden Broek Affidavit at paras 19-20.

<sup>8</sup> Second Vanden Broek Affidavit at para 12.

11. Pursuant to the DIP Credit Agreement dated as of May 28, 2024, the DIP Lender (the Bank of Montreal) has agreed to make available to the Applicants a revolving DIP Facility in the maximum principal amount of \$3,350,000. The DIP Facility and the DIP Credit Agreement are conditional upon, among other things, the granting of a DIP Lender's Charge that ranks in priority to all other security interests and charges, save and except for the Administration Charge. The key terms of the DIP Credit Agreement are set out below:<sup>9</sup>

<b>Summary of Key Terms of the DIP Financing</b>	
Maximum Principal Amount	\$3,350,000, excluding accrued interest and fees that are added to principal (with minimum advances of \$200,000)
Interest	12% per annum
DIP Lender Fees	2% commitment fee (to be added to the principal) 2% standby fee (to be added to the principal) The Applicants shall pay the DIP Lender's reasonable fees and expenses arising in connection with the DIP Credit Agreement and the DIP Facility, and the expenses of the financial advisor appointed by the DIP Lender, up to an agreed cap of \$75,000.
Use of Funds	The proceeds of the DIP Facility shall be used by the Applicants solely in accordance with the applicable DIP Budget and any orders of the Court, to fund the ordinary course working capital and other general corporate purposes of the Applicants, including the reasonable fees and expenses of counsel to the Applicants, the Monitor and counsel to the Monitor incurred in connection with the CCAA proceeding.
Maturity Date	September 30, 2024, subject to certain other triggers for an earlier Maturity Date upon the occurrence of certain events.
Key Condition Precedent	The issuance of an order granting the DIP Lender's Charge in form and substance satisfactory to the DIP Lender (subordinate only to the Administration Charge).
Certain Key Events of Default	Failure to pay when due any interest or principal amount owing under the DIP Facility and the failure to otherwise comply with the terms and conditions of the DIP Credit Agreement, subject to applicable grace periods.
Security and DIP Lender's Charge	Super-priority DIP Lender's Charge over all of the Property of the applicable Applicants (subject only to the Administration Charge)

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<sup>9</sup> Second Vanden Broek Affidavit at paras 13-15.

**(ii) *Jurisdiction and Legal Principles***

12. Section 11.2(1) of the CCAA provides the Court with the express statutory authority to approve the DIP Credit Agreement and the DIP Lender's Charge.<sup>10</sup> Section 11.2(2) further provides the Court with the express statutory authority to order that the DIP Lender's Charge rank in priority to the claim of any secured creditor of the debtor company.<sup>11</sup>
13. Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a DIP charge: (i) the period during which the company is expected to be subject to proceedings under this Act; (ii) how the company's business and financial affairs are to be managed during the proceedings; (iii) whether the company's management has the confidence of its major creditors; (iv) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company; (v) the nature and value of the company's property; (vi) whether any creditor would be materially prejudiced as a result of the security or charge; and (vii) the monitor's report.<sup>12</sup>

**(iii) *The DIP Facility & DIP Lender's Charge should be Approved***

14. The Applicants submit that the DIP Facility and DIP Lender's Charge satisfy the applicable factors set out in section 11.2(4) of the CCAA and should therefore be approved for the following reasons:

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<sup>10</sup> CCAA, s. [11.2\(1\)](#).

<sup>11</sup> CCAA, s. [11.2\(2\)](#).

<sup>12</sup> CCAA, s. [11.2\(4\)](#).

- (a) the Applicants are in a liquidity crisis and require the DIP Facility in order to carry out a successful restructuring and continue operating in the ordinary course;<sup>13</sup>
- (b) the quantum of the DIP Facility and the DIP Lender's Charge are reasonable and appropriate having regard to the Cash Flow Forecast as well as the total assets and liabilities of the Applicants;<sup>14</sup>
- (c) the DIP Credit Agreement was negotiated by sophisticated arm's length parties with counsel under the supervision of the Monitor and contains terms and conditions that are reasonable and competitive having regard to the terms and conditions of DIP financing approved in other recent CCAA proceedings;<sup>15</sup>
- (d) the secured creditors who are likely to be impacted by the DIP Lender's Charge were served with the Initial Order and the Application Record of the Applicants on May 22, 2024 (together with notice of the Comeback Hearing).<sup>16</sup> All registered secured creditors were served with the Motion Record of the Applicants in connection with the Comeback Hearing on May 28, 2024.<sup>17</sup> As at the date hereof, the Applicants are unaware of any opposition to any of the charges contemplated under the Initial Order or the proposed ARIO (including the DIP Lender's Charge). In any event, the primary secured creditor of the Applicants that is likely to be impacted by the DIP Lender's Charge is the Bank of Montreal, who is providing

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<sup>13</sup> Affidavit of Robert Vanden Broek sworn May 20, 2024 ("**First Vanden Broek Affidavit**") at para 9; Second Vanden Broek Affidavit at para 12.

<sup>14</sup> Second Vanden Broek Affidavit at paras 16, 17, and 19.

<sup>15</sup> Second Vanden Broek Affidavit at para 16.

<sup>16</sup> Affidavit of Service of Roxana G. Manea sworn May 28, 2024.

<sup>17</sup> Affidavit of Service of Natalie Longmore sworn May 28, 2024.



the DIP financing and supports the priority and quantum of the proposed DIP Lender's Charge; and

- (e) the Monitor participated in, and supervised, the negotiation of the DIP Credit Agreement. The Monitor supports and recommends that Court approves the DIP Facility and the DIP Lender's Charge.<sup>18</sup>

## **C. THE SISP SHOULD BE APPROVED**

### **(i) *Overview of the SISP***

15. The Applicants and the Monitor have developed and seek Court approval of the SISP as the next step in their broader restructuring strategy. The SISP is solely in respect of the business and/or assets of Sierra Foods. The Applicants are of the view that the timing of the SISP is critical to maximizing value and seek Court approval at this stage for a specific reason. It was particularly important for the Applicants to launch the SISP and bring Sierra Foods' business and assets to market as soon as possible in June 2024 to avoid any slowdown in business activity during the peak summer months. The key terms of the SISP are set out below:<sup>19</sup>

- (a) **Notice and Solicitation of Interest.** Following Court approval of the SISP, the Applicants and the Monitor will commence a broad marketing plan that will include print and digital ads in such publications in Canada and the U.S. as the Applicants and the Monitor consider appropriate, as well as Canadian and U.S. press releases

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<sup>18</sup> Second Vanden Broek Affidavit at para 17.

<sup>19</sup> Second Vanden Broek Affidavit at paras 21-37. All capitalized terms not expressly defined in this section are defined, and have the meanings set forth, in the SISP located at Schedule "A" of the draft SISP Approval Order.

in an effort to reach as many interested parties as possible. In addition, notice of the Opportunity will be provided to all Known Potential Bidders along with the Teaser and the template NDA.

- (b) **Phase 1 Process.** Each Phase 1 Qualified Bidder will be provided with access to the Data Room, which will include certain due diligence information for participants. Phase 1 Qualified Bidders who wish to have an opportunity to submit a Qualified Bid as part of Phase 2 must deliver a non-binding letter of intent (a “**LOI**”) to the Applicants and the Monitor by 5:00 p.m. (EST) on the date that is four weeks following the first Business Day after the issuance of the SISP Order (the “**Phase 1 Bid Deadline**”), subject to any extension by the Applicants and the Monitor in accordance with the terms of the SISP.
- (c) **Phase 1 LOI Requirements.** In order to be considered a Qualified LOI, a LOI must be delivered to the Applicants and the Monitor by the Phase 1 Deadline and include all required information regarding the Phase 1 Qualified Bidder, the proposed Transaction terms and other related information applicable to a Sale Proposal, Investment Proposal, or Hybrid Proposal as referenced in the SISP. If one or more Qualified LOIs are received or designated, and the Applicants and the Monitor, in consultation with the DIP Lender, determine that there is a reasonable prospect of a Qualified LOI becoming a Qualified Bid, the Applicants and the Monitor will continue the SISP into a second phase (“**Phase 2**”).
- (d) **Phase 2 Process.** If the Applicants and the Monitor proceed with Phase 2, the Monitor will deliver to each Phase 2 Qualified Bidder a bid process letter that establishes the procedures and specific deadline dates under Phase 2 (the “**Bid**

**Process Letter**”). The Phase 2 Bid Deadline is expected to be approximately six weeks after the Phase 1 Bid Deadline, with the specific date(s) and time(s) to be specified in the Bid Process Letter. A Phase 2 Qualified Bidder that wishes to enter into a Transaction must deliver to the Applicants and the Monitor a final binding Sale Proposal, Investment Proposal, or Hybrid Proposal (a “**Final Bid**”) by the Phase 2 Bid Deadline.

- (e) **Stalking Horse & Auction Options.** The SISP is flexible and allows for the Monitor and the Applicants, in consultation with the DIP Lender, to enter into a stalking horse agreement with any party identified through the SISP or otherwise, subject to Court approval. The SISP also allows for the Monitor and the Applicants, in consultation with the DIP Lender, to carry out an auction process at the end of Phase 2 if an auction is determined to be necessary or desirable to maximize the value of Sierra Foods’ business and/or assets for the benefit of stakeholders.
- (f) **Qualified Bid Evaluation and Selection.** In order to be considered a Qualified Bid, a Final Bid must be delivered to the Applicants and the Monitor by the Phase 2 Deadline and include all required information regarding the Phase 2 Qualified Bidder, the proposed Transaction terms and other related information applicable to a Sale Proposal, Investment Proposal, or Hybrid Proposal as referenced in the SISP. The Monitor and the Applicants, in consultation with the DIP Lender, will assess the Final Bids in accordance with the terms of the SISP to determine if any Final Bids constitute Qualified Bids. If one or more Qualified Bids are received or so designated, the Monitor and the Applicants, in exercising their reasonable business judgment, may select the most favourable Qualified Bid(s) as the Successful Bid(s),

subject to Court approval. The outside date for Court approval of any Transaction(s) is currently September 30, 2024.

(ii) ***Jurisdiction and Legal Principles***

16. It is well-established that a CCAA court has jurisdiction to approve a sale process in relation to a CCAA debtor’s business or assets prior to the development, or in the absence, of a plan of compromise or arrangement.<sup>20</sup> Morawetz J. (as he then was) in *Nortel* set out the following key factors to be considered in determining whether to authorize a sale process in the context of a CCAA proceeding:
  - (a) whether a sale transaction is warranted at this time;
  - (b) whether a sale will benefit the whole “economic community”;
  - (c) whether any creditors have a *bona fide* reason to object to the sale; and
  - (d) whether there is a better viable alternative.<sup>21</sup>
17. It has also been recognized that, although the factors set out in section 36 of the CCAA for the Court to consider in determining whether to approve a debtor’s sale or disposition of assets outside of the ordinary course apply at the sale approval stage and not the sale process approval stage, the *Nortel* criteria should nonetheless be assessed through the lens of the considerations that may ultimately apply when seeking approval of a sale under

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<sup>20</sup> *Nortel Networks Corp. (Re)* (2009), 55 CBR (5<sup>th</sup>) 229 (ONSC – Commercial List).

<sup>21</sup> *Ibid* at [paras 48-49](#).

section 36 of the CCAA.<sup>22</sup> Accordingly, courts may also consider the following factors from section 36 of the CCAA in determining whether to approve a sale process:

- (a) whether the proposed SISP is likely to satisfy the requirements that the sale process is fair and provides a platform in which the highest and best offer can be obtained;
- (b) whether the Monitor supports the SISP; and
- (c) the extent to which creditors were consulted.<sup>23</sup>

**(iii) *The SISP should be Approved***

18. The Applicants submit that the proposed SISP satisfies the legal test set out in *Nortel* and section 36 of the CCAA and should therefore be approved for the following reasons:

- (a) **The Sale Process is Warranted.** The robust marketing process contemplated in the SISP was specifically designed to reach as many interested parties as possible across North America who may be interested in evaluating and completing a Transaction. The two-phase process will allow the Monitor and the Applicants to gauge market interest in Phase 1 and then, if necessary, focus their efforts on detailed due diligence and negotiations with any parties who demonstrate significant interest and potential to complete a transaction in Phase 2. The SISP is highly flexible and will allow interested parties to propose, and the Monitor and the Applicants to consider, a wide variety of different Transaction structures to maximize value for stakeholders. The competitive tension between participants will

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<sup>22</sup> *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC – Commercial List) at [paras 13-17](#); *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc.*, 2020 ONSC 3565 at [para 61](#).

<sup>23</sup> CCAA, [s. 36\(3\)](#).

optimize the ability of the Applicants and the Monitor to secure the highest and best value for the benefit of stakeholders.

- (b) **Benefit to the Whole Economic Community.** The SISP represents the best path forward in the circumstances to maximize the value of Sierra Foods for the benefit of its stakeholders. There will be no restructuring or emergence of Sierra Foods in this proceeding. However, any going concern transaction resulting from the SISP will benefit the whole “economic community”. A going concern transaction (as opposed to a liquidation or bankruptcy) will maximize value for the creditors of Sierra Foods (including the Bank of Montreal). It will also preserve the business of Sierra Foods for the benefit of many employees, suppliers, and other parties with whom the business transacts on a go-forward basis.
- (c) **No Creditors Object.** The Applicants are unaware of any opposition to the SISP. The DIP Lender (who is the primary economic stakeholder of Sierra Foods) supports the SISP and was consulted by the Applicants and the Monitor during the development of the SISP. Given that the proposed SISP will maximize value for the broader economic community, the Applicants submit that no creditor will have a *bona fide* reason to object to the SISP.
- (d) **No Viable Alternative.** As described above, a going concern sale through the SISP represents the best option to preserve the business of Sierra Foods and maximize value for its stakeholders and the economic community. There is no viable alternative in the circumstances.
- (e) **Satisfaction of Fairness Requirements.** The proposed SISP is consistent with other sale processes that have been approved by this Court, including the sale

process in the receivership proceeding of *Bridging Finance Inc. et al*, which was approved by the Honourable Chief Justice Morawetz.<sup>24</sup> The SISP will be carried out by the Monitor and the Applicants under the supervision of this Court and any Transaction(s) will be subject to Court approval. As such, the SISP will likely satisfy all fairness requirements at the sale approval stage of this proceeding.

- (f) **Monitor Approval.** The Monitor actively participated in the development of the SISP. The Monitor supports and recommends that the Court approve the SISP.
- (g) **Creditor Consultation.** The Monitor and the Applicants consulted with the DIP Lender in the development of the SISP and have included meaningful consultation rights in favour of the DIP Lender throughout the SISP. The DIP Lender is the most significant economic stakeholder in this proceeding and supports the proposed SISP. Although no other creditors were consulted, the Applicants are unaware of any opposition to the SISP and are of the view that no creditors will have a *bona fide* reason to object to the relief sought.

#### **PART IV - RELIEF REQUESTED**

- 19. For all of the foregoing reasons, the Applicants request that this Honourable Court grant the ARIO substantially in the form located at Tab 3 of the Motion Record and the SISP Approval Order substantially in the form located at Tab 6 of the Motion Record.

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<sup>24</sup> See for example: *Ontario Securities Commission v. Bridging Finance Inc. et al*, [2021 ONSC 5338](#) and the [Order](#) (Re: Approval of Sale and Investment Solicitation Process) of the Honourable Chief Justice Morawetz dated August 6, 2021 (Court File No. CV-21-00661458-00CL).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of May, 2024.**

May 29, 2024



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**SCHEDULE “A”  
LIST OF AUTHORITIES**

No.	Case Law / Orders
1	<a href="#"><i>Nortel Networks Corp. (Re)</i></a> (2009), 55 CBR (5 <sup>th</sup> ) 229 (ONSC – Commercial List)
2	<a href="#"><i>Brainhunter Inc. (Re)</i></a> , 2009 CanLII 72333 (ONSC – Commercial List)
3	<a href="#"><i>Green Growth Brands Inc., Re</i></a> , 2020 ONSC 3565
4	<a href="#"><i>Ontario Securities Commission v. Bridging Finance Inc. et al.</i></a> , 2021 ONSC 5338
5	<a href="#"><i>Order (Re: Approval of Sale and Investment Solicitation Process)</i></a> of the Honourable Chief Justice Morawetz dated August 6, 2021 (Court File No. CV-21-00661458-00CL) in <i>Ontario Securities Commission v. Bridging Finance Inc. et al.</i>

**SCHEDULE “B”  
RELEVANT STATUTES**

**Companies’ Creditors Arrangement Act, RSC 1985, c C-36**

**Section 11**

**General power of court**

Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**Section 11.02**

**Stays, etc. – initial application**

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

**Section 11.2****Interim financing**

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

**Priority — secured creditors**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

### **Additional factor — initial application**

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

## **Section 36**

### **Restriction on disposition of business assets**

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

### **Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**Additional factors — related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

**Related persons**

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

**Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**Restriction — employers**

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

**Restriction — intellectual property**

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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 EASTERN MEAT SOLUTIONS INC., SIERRA CUSTOM FOODS INC., SIERRA SUPPLY CHAIN SERVICES INC., SIERRA REALTY CORPORATION, RVB HOLDINGS INC., VANDEN BROEK HOLDINGS (2008) INC., SIERRA REALTY CALGARY CORPORATION AND EASTERN MEAT SOLUTIONS (USA) CORP.**

Applicants

Court File No.: CV-24-00720622-00CL

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

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