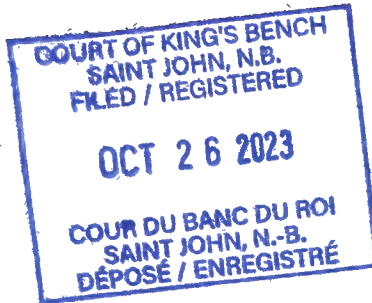


IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

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 SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART INC. (each a "Company" and collectively the "Companies")

BETWEEN :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART INC.

RESPONDENTS

SECOND AMENDED AND RESTATED CHARGING ORDER

THE INITIAL APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard in person and the Court granted an Order (the "Initial Order") on the 21st day of September, 2023.

WHEREAS the Applicant also requested in its initial application the granting of certain Charges, as defined below, in priority to the interests of the Companies' existing secured creditors.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 and the Exhibits thereto (the "Jamnisek Affidavit"), the report of Deloitte Restructuring Inc. ("Deloitte")



dated September 15, 2023 (the "**Pre-Filing Report**"), in its capacity as proposed Monitor of the Companies, the report of Deloitte dated September 25, 2023 (the "**First Report**"), in its capacity as Monitor of the Companies (the "**Monitor**"), the Supplemental to the First Report of the Monitor dated September 27, 2023 (the "**Supplemental Report**") and the Fourth Report of the Monitor dated October 23, 2023 (the "**Fourth Report**") and on being satisfied that, Canada Revenue Agency, BDC Capital Inc., Business Development Bank of Canada, Robert Arsenault, Thunder Cove Investments Inc., Maplewood Trust, by its trustee, the secured creditors who are likely to be affected by the Charges, as defined below, created herein were given notice as set out in the affidavits of service of Katie Parent sworn September 18, 2023, September 25, 2023 and October 24, 2023 and the Exhibits thereto (the "**Affidavits of Service**"), and on hearing the submissions of counsel for the Applicant, the Monitor, the Companies and those other parties present, and no one appearing on the Service List, although duly served as appears from the Affidavits of Service.

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The service of the Notice of Application, the Application Record and the Pre-Filing Report and the Notice of Motion, the Record on Motion, the First Report, the Supplemental Report and the Fourth Report, as set out in the Affidavits of Service is deemed adequate so that this Application is properly returnable today and further service thereof is hereby dispensed with.

INTERPRETATION

2. All Capitalized words used in this Order that are not otherwise defined in this Order have the meanings ascribed to them in the Initial Order.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

3. The Companies shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Companies after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or actionable misconduct.
4. The directors and officers of the Companies shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not

exceed an aggregate amount of \$375,000, as security for the indemnity provided in this Order. The Directors' Charge shall have the priority set out herein.

5. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Companies' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.

ADMINISTRATIVE CHARGE

6. The Monitor, counsel to the Monitor, counsel to the Applicant, the Chief Restructuring Officer and, subject to Paragraph 7, the Companies' counsel 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 \$500,000, 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. The Administration Charge shall have the priority set out herein.

7. Subject to further order of this Court, the Companies' counsel shall be entitled to the benefit of the Administration Charge on the Property up to an aggregate maximum amount of \$25,000.

DIP FINANCING

8. The Companies are hereby authorized and empowered to obtain and borrow under a credit facility from The Toronto-Dominion Bank (the "**DIP Lender**") in order to finance the Companies' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$7,000,000 (the "**DIP Facility**") unless permitted by further order of this Court.

9. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the Dip Facility Agreement between the Companies and the DIP Lender dated as of September 18, 2023 (the "**DIP Facility Agreement**") annexed to the Jamnisek Affidavit as Exhibit "JJ" as same may be amended from time to time with the Monitor's written consent provided any amendment may not affect a secured creditor's rights without further order of this Court.

10. The Companies are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Companies are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations including, on account of any pre-filing obligations, to the DIP Lender under and pursuant to the DIP Facility Agreement as and when the same become due and are to be performed, from funds on hand or from funds generated by ordinary course post-filing sales, notwithstanding any other provision of this Order or the Initial Order. For certainty, no advance under the DIP Facility shall be used to pay any pre-filing obligations of the Companies, with the exception of the pre-filing payments specifically authorized pursuant to the Initial Order.

11. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all obligations of the Companies under or pursuant to the DIP Facility and the DIP Facility Agreement, which charge shall not exceed the aggregate amount owed to the DIP Lender under or pursuant to the DIP Facility and the DIP Facility Agreement. The DIP Lender's Charge shall have the priority set out herein.

12. Notwithstanding any other provision of this Order or the Initial Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Facility Agreement or any of the DIP Documents;
- b. upon the occurrence of an event of default under the DIP Facility Agreement or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days notice to the Companies and the Monitor, may with leave of the Court exercise any and all of its rights and remedies against the Companies or the Property under or

895

pursuant to the DIP Facility Agreement, DIP Documents and the DIP Lender's Charge; and

- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Companies or the Property.

13. The DIP Lender shall be treated as unaffected in any plan under the CCAA, or any proposal filed by the Companies under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Facility Agreement or the DIP Documents and with respect to any claims and rights the DIP Lender may have under or pursuant to any agreements related to the DIP Facility.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. The priorities of the Directors' Charge, the Administration Charge, and the DIP Lender's Charge as among them, and as against the existing security held by any secured creditor prior to the issuance of this Order (the "Existing Security") subject to Paragraph 17, shall be as follows:

- a. First – Administration Charge;
- b. Second – Directors' Charge;
- c. Third – DIP Lender's Charge; and
- d. Fourth - Existing Security in such priority as they currently have.

15. The filing, registration or perfection of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, other than any secured creditors under the Existing Security who have not been served with this Application prior to this hearing including the providers of vehicle financing

referenced in the Pre-Filing Report, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Companies in favour of the Business Development Bank of Canada in respect of any BDC Priority Loans and BDC Priority Collateral (as both terms are defined in the Jamnisek Affidavit) or in respect of any Crown claims which have priority in bankruptcy. Notwithstanding the foregoing:

- a. Notwithstanding any provision in the Amended and Restated Initial Order (as it may be amended), the Companies (or any of them) shall make all monthly instalments as they become due to Imperial PFS Payments Canada, ULC ("**Imperial**") pursuant to the terms of a Payment Agreement dated August 17, 2021 as renewed by Renewal Payment Agreement dated September 18, 2023 (the "**Payment Agreement**") pursuant to which five policies of insurance issued to the Companies were financed (the "**Financed Policies**");
- b. In the event of a payment default under the Payment Agreement by any applicable Company, Imperial is granted leave without further order of the Court to cancel the Financed Policies and to collect the unearned premiums refunded as a result of said cancellation provided Imperial first provides South Shore and the Monitor with five (5) business days written notice of its intent to cancel the Financed Premiums; and
- c. The Charges shall not apply to the unearned premiums under the Financed Policies.

17. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing Security or any of the Charges unless the Companies also obtain the prior written consent of the Monitor, their existing secured creditors and the beneficiaries of the Charges (the "**Chargees**"), or further Order of this Court.

18. The Charges, the DIP Facility Agreement and the DIP Documents 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 i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; iv) the provisions of any federal or

provincial statutes; or v) 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 Companies. Notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Facility Agreement or the DIP Documents shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is 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 Companies entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- c. the payments made by the Companies pursuant to this Order, the DIP Facility Agreement or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

19. Any Charge created by this Order over leases of real property in Canada shall only be a Charge on the Companies' interest in such real property leases.

20. The Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to:

- a. assist the Companies, to the extent required by the Companies, in their dissemination to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Companies and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and
- b. advise and/or assist the Companies in their preparation of the Companies' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP

Lender.

21. Any amounts actually advanced or expended pursuant to any of the Charges shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put.

SERVICE AND NOTICE

22. The Applicant and the Monitor shall serve a copy of this Order on all secured creditors of the Companies and shall be at liberty to serve this Order on such other Persons as either determines is appropriate. All such service shall be made in accordance with the provisions of the Initial Order.

GENERAL

23. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

24. Each of the Applicant and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days before the date on which the motion is to be heard (the "**Return Date**").

26. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the "**Objection Deadline**"). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a "**Notice of Objection**").

895

27. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

28. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the "**Presiding Judge**") and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the "**Hearing Details**"). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

29. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard/Daylight Time on the 21st day of September, 2023.

Dated at Saint John, New Brunswick, this 21st day of September, 2023.


Justice of the Court of King's Bench
of New Brunswick