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May 17, 2017
Honourable Justice Glen G. McDougall
Supreme Court of Nova Scotia (Halifax)
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord:

Court Administration

MAY 19 2017

Halifax, N.S.

Re: Motion of Victory Farms Inc. ("VFI") and Jonathan Mullen Mink Ranch Limited ("JMMR") for Stay Extension pursuant to section 11.02(2) of the Companies' Creditors Arrangement Act ("CCAA")

A motion is to be heard by your Lordship on May 31, 2017, at 2 p.m. VFI and JMMR ("the Applicants") seek an order extending the stay of proceedings granted on August 31, 2016, up to and including August 31, 2017. The present stay expires on May 31, 2017.

Filed on this motion are:

1. The Affidavit of Tim Hill;
2. A Report of the Deloitte Restructuring Inc. ("the Monitor")¹;
3. Three draft orders; and
4. This brief.

An affidavit of service will be filed when the matter comes before the court.

¹ The Monitor will file prior to the hearing

The Facts

The Court granted a Sale Approval & Vesting Order (“Sale Approval Order”) and Claims Procedure Order (“Claims Order”) on April 10, 2017.

On May 5, 2017, the sale of the assets approved by the Sale Approval Order was completed. The Monitor issued and filed the Monitor’s Certificate required by the Sale Approval Order on May 8, 2017.

Paragraph 1.1(bb)(iv) of the Stalking Horse Asset Purchase Agreement (“APA”)² includes in the definition of Purchased Assets “Any rights to AgriStability payments”.

The pending AgriStability payment was not being received prior to closing on May 5, 2017. The AgriStability payment may not be received until August, 2017.

On closing the Applicants executed a Declaration of Trust for the purpose of ensuring the transfer of the AgriStability payment to the purchaser upon receipt by the Applicants.

The Applicants seek to continue the stay so that the AgriStability payments may be transferred to the purchaser upon receipt by the Applicants.

With respect to other matters, the Monitor continues to follow the steps set out in the Claims Order, but the process will not be completed prior to the expiry of the present stay of proceedings which will occur on May 31, 2017. Subsequent to the claims procedure being completed it will be necessary to obtain from the Court a Distribution Order.

² Sale Approval Order, Schedule “A”, page 3

Extension of the Stay

The applicants seek a stay extension to allow the claims process to run its course, and to avoid any interference with the ability of the Applicants to collect the AgriStability payments and disburse them to the purchaser.

In previous submissions we drew the attention of the court to the following points. We have not attached the cases cited again, as they remain in the court file.

Section 11.02(2) of the CCAA, reads:

11.02(2) Stays, etc. — other than initial application

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.

The prerequisites for the making of such an order are set out in section 11.02(3):



11.02(3) Burden of proof on application

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.

The Court's attention is respectfully drawn to the following extracts from *Re San Francisco Gifts Ltd.*³, which summarize the approach taken to the issues raised in section 11.02(3) (although it is noted that the sections are renumbered as a result of the 2009 amendments):

Fundamentals

11 The well established remedial purpose of the *CCAA* is to facilitate the making of a compromise or arrangement by an insolvent company with its creditors to the end that the company is able to stay in business. The premise is that this will result in a benefit to the company, its creditors and employees. The Act is to be given a large and liberal interpretation.

12 The court's jurisdiction under s. 11(6) to extend a stay of proceedings (beyond the initial 30 days of a *CCAA* order) is preconditioned on the applicant satisfying it that

(a) circumstances exist that make such an order appropriate; and

(b) the applicant has acted, and is acting, in good faith and with due diligence.

13 Whether it is "appropriate" to make the order is not dependent on finding "due diligence" and "good faith." Indeed,

³ 2005 ABQB 91



refusal on that basis can be the result of an independent or interconnected finding. Stays of proceedings have been refused where the company is hopelessly insolvent; has acted in bad faith; or where the plan of arrangement is unworkable, impractical or essentially doomed to failure.

Meaning of "Good Faith"

14 The term "good faith" is not defined in the *CCAA* and there is a paucity of judicial consideration about its meaning in the context of stay extension applications. The opposing landlords on this application rely on the following definition of "good faith" found in *Black's Law Dictionary* to support the proposition that good faith encompasses general commercial fairness and honesty:

A state of mind consisting of: (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealings in a given trade or business, or (4) absence of intent to defraud or seek unconscionable advantage. [Emphasis added]

15 "Good faith" is defined as "honesty of intention" in the *Concise Oxford Dictionary*.

16 Regardless of which definition is used, honesty is at the core.

Supervising Court's Role

28 The court's role during the stay period has been described as a supervisory one, meant to: "...preserve the *status quo* and to move the process along to the point where an arrangement or compromise is approved or it is evident that the attempt is doomed to failure." That is not to say that the supervising judge is limited to a myopic view of balance sheets, scheduling of creditors' meetings and the like. On the contrary, this role requires attention to changing circumstances and vigilance in ensuring that a delicate balance of interests is maintained.

29 Although the supervising judge's main concern centres on actions affecting stakeholders in the proceeding, she is also responsible for protecting the institutional integrity of the *CCAA* courts, preserving their public esteem, and doing equity. She cannot turn a blind eye to corporate conduct that could affect the public's confidence in the *CCAA* process but must be alive to concerns of offensive business practices that are of such gravity that the interests of stakeholders in the proceeding must yield to those of the public at large.

To summarize, the Court is vested with a great deal of discretion on a motion such as this. Throughout its inquiry the Court will bear in mind the "well established remedial purpose of the *CCAA*", which is "to facilitate the making of a compromise or arrangement by an insolvent company with its creditors to the end that the company is able to stay in business".

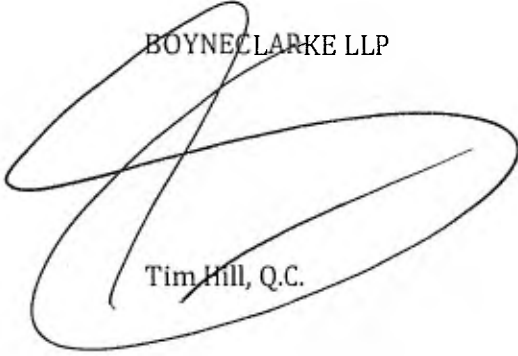
In reaching a decision on the motion the Court is informed by its appreciation of the honesty of the intentions of the debtor, the effect of an extension on the stakeholders in the business (which may include equity owners, employees and creditors, amongst others), and the integrity of the *CCAA* process.

In the case at bar, there has been no suggestion that the Applicants lack integrity in their operations or approach to the *CCAA* process. There was a patently honest attempt to save the business by reaching a realistic compromise with the creditors. That failed. The Applicants now need to complete the sale and the distribution processes.

This extension will allow the sale process to proceed to conclusion, and will also "preserve the status quo" until the distribution process culminates.

All of which is respectfully submitted

BOYNECLARKE LLP

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

Tim Hill, Q.C.