

Supreme Court of Nova Scotia

Application by Victory Farms Incorporated and Jonathan Mullen Mink
Ranch Limited (the "Applicants") for relief under the *Companies' Creditors
Arrangement Act*

Charging Order**RECEIVED**

SEP 27 2016

Before the Honorable Justice Glen G. McDougall in chambers:

COURT ADMINISTRATION 

The Applicants applied for relief under the *Companies' Creditors Arrangement Act* including an initial order, which has been granted, and further orders on further motion;

The initial order was granted on the 31st day of August, 2016 (the "Initial Order") and the Applicants now move for an order providing certain Charges in priority to existing security;

The Applicants moved for a charging order along with supporting documents including the affidavit of service of Tim Hill, Q.C. (the "Affidavit of Service"), the affidavit of Jonathan Mullen, and a report of the Monitor.

The following parties appeared and made submissions on the motion: Tim Hill, Q.C., on behalf of the Applicants, Maurice P. Chaisson, Q.C., on behalf of American Legend Cooperative ("ALC"), Pamela J. Branton, on behalf of North American Fur Auctions Inc., Gavin D.F. MacDonald on behalf of Farm Credit Canada, and Benjamin Durnford on behalf of the Monitor, Deloitte Restructuring Inc.

On motion of the Applicants the following is ordered and declared:

Service

1. The service of notice of motion and the supporting documents as set out in the Affidavit of Service is deemed adequate so that motion 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.

DIP Financing and Charge

3. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from North American Fur Auctions Inc. (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$1,500,000.00 (the "DIP Facility") unless permitted by further order of this Court.
4. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the Interim Financing Term Sheet between the Applicants and the DIP Lender dated September 7, 2016 (the "DIP Term Sheet") annexed hereto as Schedule "A", 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.
5. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and other security documents, guarantees, and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lender under the DIP Term Sheet as and when the same become due and are to be performed, notwithstanding any other provision of this Order or the Initial Order.
6. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the property of the Applicants limited to a charge over the livestock (mink) of the Applicants, including breeding stock, the pelts derived therefrom ("the DIP Charged Property"), and the proceeds thereof, as security for any and all obligations of the Applicants under or pursuant to the DIP Facility and the DIP Term Sheet, which charge shall not

exceed the aggregate amount owed to the DIP Lender under the DIP Facility and the DIP Term Sheet. The DIP Lender's Charge shall have the priority set out herein.

7. 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 Term Sheet or any of the DIP Documents;
 - b. upon the occurrence of an event of default under the DIP Term Sheet or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon 10 days' notice to the Applicants and the Monitor, may with leave of the Court exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, 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 Applicants or the Property.
8. The Applicants are enjoined from making a proposal under the *Bankruptcy and Insolvency Act* by which any advance made under the DIP Term Sheet or the DIP Documents could be repaid at less than one hundred cents on the dollar, or by which any claims or other rights of the DIP Lender under any agreement related to the DIP Facility could be compromised, unless the DIP Lender agrees otherwise in writing.

Validity and Priority of Charges Created by this Order and the Initial Order

9. The priority of the, 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"), shall be as follows:
 - a. First - Administration Charge;
 - b. Second - DIP Lender's Charge, limited to a charge on the DIP Charged Property;

c. Third – Existing Security in such priority as they currently have.

10. The filing, registration, or perfection of 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.

11. 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.

12. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants 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 Applicants also obtains the prior written consent of the Monitor, its existing secured creditors, and the beneficiaries of the Charges (the "Chargees"), or further order of this Court.

13. The Charges, the DIP Term Sheet, 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 for a bankruptcy order issued pursuant to 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; or iv) 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 Applicants, and 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 Term Sheet or the DIP Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are 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 Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
 - c. the payments made by the Applicants pursuant to this Order, the DIP Term Sheet 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.
14. 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 Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender and its counsel on a monthly basis of financial and other information as agreed to between the Applicants 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 or assist the Applicants in their preparation of the Applicants' 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 monthly, or as otherwise agreed to by the DIP Lender.
15. 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

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

General

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

18. Each of the Applicants and the Monitor be at liberty and 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.

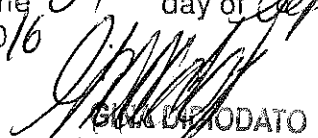
19. Any interested party, including the Applicants and the Monitor, may apply to this Court to vary or amend this Order on such notice provided for under the *Civil Procedure Rules* or on such notice as this Court may order.

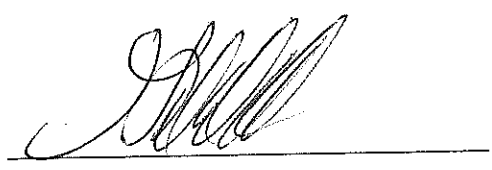
20. This Order and all of its provisions are effective as of 12 a.m. Atlantic Standard Time on the 27th day of September, 2016.

Issued September 27, 2016
**IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.**

I hereby certify that the foregoing is a true copy of the original order on file herein.

Dated the 27 day of September
A.D., 2016


GINA DIDIODATO
Deputy Prothonotary



Deputy
Prothonotary
GINA DIDIODATO
Deputy Prothonotary

SCHEDULE "A"

Interim Financing Term Sheet

Dated as of September 7, 2016

WHEREAS the Borrower (as defined below) has requested that the Interim Lender (as defined below) provide financing to fund certain of the Borrower's obligations during the Borrower's proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), before the Nova Scotia Supreme Court (the "**Court**") and in accordance with the terms and conditions set out herein;

AND WHEREAS, the Interim Lender has agreed to provide financing in order to fund certain obligations of the Borrower in the context of its CCAA Proceedings in accordance with the terms set out herein;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Borrower: Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited ("Borrower")

Interim Lender: North American Fur Auctions Inc. (the "Interim Lender")

Facility: **Demand Revolving Loan** ("DRL") Facility in the maximum amount of \$1,500,000.00 (or US\$ equivalent). The DRL will be drawn and advanced in tranches for amounts requested by the Borrower and approved by the Monitor. Amounts outstanding under the DRL shall bear interest at twelve per cent (12%) per annum payable monthly on the last day of each month during which any portion of the DRL remains outstanding.

Purpose: To provide Debtor in Possession funding ("DIP Financing") and provide working capital financing, as evidenced in Borrower's cash flow projections provided to the Interim Lender.

Term: Twelve (12) months, creditor approval of a plan of arrangement, date of bankruptcy, or date of abandonment of CCRA proceedings, whichever shall be the sooner.

The DRL Facility herein can be repaid in full, without penalty at any time, provided that a 30-day prior written notice is given to the Interim Lender.

Repayment: Expiry of the term.

Fees:

Work fee and due diligence fee of \$25,000.00 non-refundable, payable on granting of the Order approving the DIP Loan and the DIP Charge.

Covenants:

Borrower agrees:

1. To pay all sums of money due under this agreement on demand;
2. Not to change its name or merge, amalgamate or consolidate with any other corporation without the prior written consent of the Interim Lender;
3. Not to make any capital expenditures, acquisitions or incur any debt outside of Court approved cash flows, without prior written consent of the Interim Lender;
4. To give the Interim Lender prompt notice of any Event of Default or any event which with notice or lapse of time or both would constitute an Event of Default;
5. Not to make any payments to any shareholder or director of the Borrower without the prior consent of the Interim Lender; and
6. Not to seek or support the granting of any Order which provides for a security interest in any of the assets of the Borrower ranking in priority to that in favour of the Interim Lender, other than the Admin Charge described below.

Conditions:

The obligation of the Interim Lender to make the Facility available shall be subject to and conditional upon each of the following:

- Borrower shall have obtained an Order (the "DIP Order") of the Supreme Court that provides for *inter alia*:
 - The creation of an Interim Lender DIP Charge on terms satisfactory to the Interim Lender;
 - A stay of proceedings pursuant to the provision of the CCAA (the "Initial Order");
 - The ongoing communication, regarding the Borrower and the CCAA process, of information by the Monitor to the Interim Lender;
 - The Initial Order and the DIP Order shall not have been stayed, vacated or otherwise caused to be ineffective or amended, restated or modified in a way that adversely impacts the rights and interests of the Interim Lender;
 - The Interim Lender and its advisors shall be provided with and the Interim Lender shall be satisfied with Borrower's proposed and future cash flow projections (as the same may be amended in form and substance satisfactory to the Interim Lender (the "Cash Flow"));
 - Borrower shall be in compliance with the Initial Order, the DIP Order and any amendments thereto and the

Borrower's operating results shall substantially comply with the Cash Flow;

The Interim Lender's security interest under the Order ranking first over the livestock (mink) of the debtor, including breeding stock, the pelts derived therefrom, and the proceeds thereof, but subject to an Admin charge as provided in the Initial Order not exceeding \$150,000;

- Borrower agrees to furnish all assistance and information, to perform such acts as the Interim Lender reasonably requests, and to grant to the Interim Lender or its authorized agents, not acting unreasonably, access to Borrower's premises and to all places where assets may be located, during normal business hours, to verify the accounts receivable, inventory and fixed assets and the general condition of the business of the Borrower; and
- The Interim Lender to be provided with any other reporting reasonably requested.

Reporting:

Monthly within 30 days of month end

The Borrower shall provide to the Interim Lender, on a monthly basis, within 15 days of the end of each month:

1. Bank statements of Borrower;
2. Summary Report on health of mink crop;
3. Evidence of payment of government remittances (i.e.: employee source deductions, HST, etc.);
4. Internally prepared financial statements comprising balance sheet and income statement for Borrower.

Annually within 60 days of fiscal year

The Borrower shall provide to the Interim Lender, within 60 days of the Borrower's fiscal year accountant prepared financial statements of the Borrower.

Expenses:

All reasonable costs incurred by the Interim Lender including legal fees, professional fees, search and registration fees, etc in implementing or attempting to implement this Facility, any ongoing charges incurred in maintaining or reviewing this Facility or the security requirements of the Interim Lender, plus any costs of collection, enforcement, realization and / or subsequent discharges, are for the account of Borrower. Such costs shall bear interest at the rate set out above, from the date on which they are incurred by the Interim Lender.

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and all of which counterparts taken together shall constitute one and the same agreement.

Copies of this Agreement provided by facsimile transmission or email transmission shall be conclusively deemed to have been executed and delivered and shall be binding on the party delivering such copy.

In witness whereof the parties hereto have executed these presents all as at the ____ day of September, 2016.

North American Fur Auctions Inc.,
Interim Lender
Per:

Name: Douglas Lawson, Senior Vice
President & CFO

Victory Farms Incorporated, Borrower
Per:

Name: Jonathan Mullen, President

Jonathan Mullen Mink Ranch Limited,
Borrower
Per:

Name: Jonathan Mullen, President