

August 16, 2017

Honourable Justice Glen G. McDougall
Supreme Court of Nova Scotia (Halifax)
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My Lord:

Re: **Motion of Victory Farms Inc. (“VFI”) and Jonathan Mullen Mink Ranch Limited (“JMMR”) for a Stay Extension pursuant to Section 11.02 (2) of the *Companies’ Creditors Arrangement Act* (“CCAA”)**

- and -

**Victory Farms Inc. and Jonathan Mullen Mink Ranch Limited:
Motion by the Monitor for a Distribution Order**

We are the solicitors for North American Fur Auctions Inc. (“NAFA”).

Victory Farms Inc. and Jonathan Mullen Mink Ranch Limited (the “Applicants”) have scheduled a Motion to be heard on Friday, August 18, 2017 at 11:00 a.m. seeking an Order to extend the stay of proceedings first granted by this Honourable Court on August 31, 2016 to December 1, 2017.

Deloitte Restructuring Inc. (the “Monitor”), in its capacity as monitor of the Applicants pursuant to the *Companies’ Creditors Arrangement Act* will also be presenting a motion at the same time to seek orders:

- (a) authorizing an interim distribution out of funds held by the Monitor to certain Designated Creditors of the Applicants, one of which is NAFA;
- (b) approving certain payments made by Victory Farms Inc. to Royal Bank of Canada; and
- (c) approving the reports, conduct and activities of the Monitor.

Please accept the following as NAFA's pre-hearing memorandum with respect to those matters.

MOTION TO EXTEND THE STAY

NAFA supports the Applicants' motion to extend the stay of proceedings to December 1, 2017.

MOTION TO APPROVE AN INTERIM DISTRIBUTION

NAFA supports the Monitor's motion to make an interim distribution in the amounts and to the parties as requested by the Monitor. Being an interim distribution, it is not necessary to determine the correctness or accuracy of the Monitor's calculations or methodology at this stage. That determination can await the Monitor's Final Report.

MOTION TO APPROVE PAYMENT TO RBC

NAFA takes no position with respect to this issue.

MOTION TO APPROVE REPORTS, ETC.

With respect, it is our submission that the approval of the Monitor's reports, activities and conduct should be deferred until the conclusion of its administration, the taxation of its fees and disbursements and those of its counsel, and the hearing of its discharge motion. There is no compelling reason for those matters to be dealt with now. The Monitor is near the end of its administration and, presumably, all of its fees and those of its counsel that have been invoiced have been paid as permitted by paragraph 21 of the Initial Order. Indeed, the Applicants, the Designated Creditors and the Court will be in a better position to assess the Monitor's conduct and activities if, in addition to the reports, they have specific details of those activities as itemized in its accounts when brought forward for taxation.

There are two concerns.

One is evidenced by section 2.3 of the Monitors Ninth Report and similar provisions in its earlier reports. Section 2.3 states:

"2.3 The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of the Ninth Report. Any use which any party makes of the Ninth Report, or any reliance or decisions to be made on the Ninth Report, is the sole responsibility of such party".

The Monitor, in effect, is saying that any reliance by anyone on what the Monitor has to say in the report is at that person's risk. It is difficult, indeed, on the face of it, unwise, for anyone to agree to the approval of the Monitor's conduct when the Monitor, in its reports on those activities, states that one cannot rely on what the reports say.

The second concern is not unrelated to the first. If, for example, an issue arose as to the appropriateness of the amount of time expended by an individual in the Monitor's employ and the amount charged by the Monitor for the time spent, the Monitor's response to the issue when it is raised might be to assert that the matter is *res judicata* and everyone is estopped from raising it because the Court had already approved everything the Monitor had done up to and beyond the time the employee was engaged in the activity.

The Monitor's counsel refers to the case of *Target Canada Co.* 2015 ONSC 7574, a copy of which is attached at Tab 3 of the Monitor's Book of Authorities. In that case, Morawetz J. stated at paragraph 21:

"21. In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of *res judicata* and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the applicant or other third parties".

Morawetz J. did approve the reports of the monitor in that case but the benefit of the approval was limited. The order granting the approval was qualified by the words set out in paragraph 7 of his decisions as follows:

"7. provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval".

In the circumstances, there appears to be no particular reason why even such qualified approval should be granted when, most likely, there will be only one more report from the Monitor.

Nothing objectionable may be known about the Monitor's conduct at the moment but, at the moment, not everything is known. Therefore, the Monitor's reports, conduct and activities should not be approved so to preclude any interested party or the Court from inquiring into that conduct and those reports by reason of estoppel or otherwise.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

BURCHELL MACDOUGALL LLP

Brian W. Stilwell

