

CV-19-00630241-00CL
Court File No.

**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 NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the "Applicants")



NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claims made by the Applicants appear on the following page.

THIS APPLICATION will come on for a hearing on October 31, 2019, at 10:00 a.m., at the Court House, 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date October 30, 2019
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Issued by *Ray Williams* Ray Williams, Registrar
Local registrar

Address of 330 University Avenue
court office Toronto, Ontario M5G 1R7

TO: SERVICE LIST

APPLICATION

1. The Applicants make this application for an Order substantially in the form attached at Tab 3 of the Application Record, *inter alia*:
 - (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those served;
 - (b) declaring that the Applicants are parties to which *the Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") applies;
 - (c) appointing Deloitte Restructuring Inc. ("**Deloitte**") as an officer of this Court to monitor the assets, businesses and affairs of the Applicants (in such capacity, the "**Monitor**");
 - (d) staying all proceedings taken or that might be taken in respect of the Applicants, their directors and officers, or the Monitor (the "**Stay of Proceedings**");
 - (e) authorizing the Applicants to obtain and borrow under a debtor-in-possession credit facility (the "**DIP Facility**") to finance the harvesting of the current mink crop and other general corporate purposes and post-filing expenses and costs;
 - (f) approving a key employment retention plan (the "**KERP**") for the benefit of certain key executives and employees of the Applicants;
 - (g) granting the following charges over the property of the Applicants, listed in order of priorities:
 - (i) a charge in favour of counsel to the Applicants, the Monitor, counsel to the Monitor, the Financial Advisor (as defined below), and counsel to the directors and officers, if any (the "**Administration Charge**");

- (ii) a charge in favour of certain key employees to secure amounts owing to them under the KERP (the “**KERP Charge**”);
 - (iii) a charge in favour of the DIP Lender (as defined below) (the “**DIP Lender’s Charge**”); and
 - (iv) a charge in favour of the directors and officers of the Applicants, (the “**Directors’ Charge**”);
- (h) sealing certain Confidential Exhibits; and
- (i) such further and other relief as this Honourable Court may deem just.

2. The grounds for this application are:

Background

- (a) The Applicants are, collectively, in the business of farming, financing, preparing, grading and auctioning fur products, such as pelts and skins, for use in the garment industry. It is one of essentially three such companies in the world. The other two are based in Finland and Denmark.
- (b) The Applicants include foreign incorporated companies which facilitate the funding and collection of fur products in Europe and the United States for use at the auctions held in Canada. These entities are controlled from the Toronto head office of North American Fur Auctions Inc. (“**NAFA**”) and operate, along with the Canadian entities, as a cohesive unit whose main purpose is to provide furs to NAFA’s annual auctions held in Toronto.
- (c) The operational control for the Applicants occurs in Canada at the Company’s principal auction location and grading facility located in Toronto (the “**Head Office**”).

- (d) The Head Office (through Buyer Services and Logistics) is the shipping point for all buyer purchases acquired at auction and Head Office staff also pack, stage and co-ordinate shipments.
- (e) NAFA sells in excess of \$200,000,000 USD worth of fur products annually at the auctions it conducts. The Applicants employ in excess of 100 people worldwide at their Canadian and satellite offices, as well as a 300 seasonal workers worldwide from December to June.
- (f) NAFA also lends funds to farmers/ranchers who use those funds to fund the development of mink. Those farmers are then contractually bound to deliver those mink to NAFA for auction. These loans are referred to herein as “**Kit Loans.**”¹
- (g) The Head Office also controls and administers all Kit Loans finance, oversees all consignor accounts, and administers related consignor marketing activities for all the entities in the corporate structure.
- (h) The farmers who contract with NAFA for the Kit Loans are, once the loans are in place, completely dependent on NAFA for these funds to purchase necessities such as feed in order to grow the mink.
- (i) NAFA’s lending cycle ends around the end of November. Thereafter, the mink are harvested and turned into pelts for auction. The 2019 mink crop is nearing harvest, but it requires substantial funding for the next 3 to 6 weeks to complete the process.
- (j) The kits have little to no value to the Applicants or their creditors until the kits that are being funded are mature and can be converted into pelts. Once converted, the pelts are an

¹ Infant mink are called “Kits”.

internationally recognized and traded commodity with a high value, and the Kit Loans are almost 100% collectable.

- (k) The Applicants have historically bridged the gap between lending and harvest with bank financing. Its main lender, which is a syndicated lender led by the Canadian Imperial Bank of Commerce (collectively, the “**Syndicate**”), has provided credit facilities ranging between \$40,000,000 and \$60,000,000 depending on the time of year.
- (l) The Syndicate made demand in the summer of 2019 and ultimately stopped funding in late September.
- (m) The Applicants are facing a looming liquidity crisis and will be unable to meet their obligations, in particular their obligation to complete the funding of the Kit Loans, as they become due without protection under the CCAA.
- (n) The Applicants have determined that, in its business judgement and in consultation with its advisors, it is in the best interest of their business and stakeholders to file for CCAA protection.
- (o) The Applicants believe that the inherent flexibility of the CCAA and the oversight of the Monitor, is the only practical method to ensure that all stakeholders are treated as fairly as possible and that recoveries are maximized.
- (p) Deloitte has consented to act as the Monitor.

DIP Facility

- (q) The cash flow put forward by the Applicants, in consultation with the Monitor and the Company’s financial advisor, demonstrates that the Applicants likely require DIP financing to ensure that they are able to meet their obligations during the Stay of

Proceedings. Accordingly, the Applicants have sought and Waygar Capital Inc. (the “**DIP Lender**”) has advised it will provide the Applicants with a DIP Facility up to \$5 million (subject to certain conditions).

- (r) The DIP Lender requires an Initial Order of this Honourable Court under the CCAA providing for a super-priority charge on all of the assets and property of the Applicants (subject only to certain court-ordered charges) as security for the DIP Facility.
- (s) Without the DIP Facility, the Company will likely be unable to meet its immediate cash flow requirements and its advisors concur that it is prudent to have this DIP Facility available.
- (t) It is contemplated that the DIP Facility will be repayable within 90 days and is a short term arrangement as the Applicants do not anticipate a long term need for DIP financing once the immediate liquidity crises in relation to the Kit Loans has been managed.
- (u) The Company is negotiating in real time with the Syndicate and the DIP Lender the terms under which the funding can be provided.

SAGA Furs Transaction

- (v) To address their liquidity needs, the Applicants have sought and received from SAGA Furs (one of their principal competitors) an LOI to allow SAGA Furs to acquire certain of the Kit Loans in October and November on certain terms (the “**SAGA Furs Transaction**”).
- (w) If completed, the SAGA Furs Transaction will provide immediate liquidity which, assuming the Syndicate allows the Applicants to access those proceeds and the Applicants receive DIP funding, will allow the Applicants to harvest the current mink crop and thereafter to reconsider their business operations.

- (x) The Applicants have determined, in consultation with the Syndicate and their advisors, that in their business judgement, it is in the best interest of the business and the stakeholders to pursue the SAGA Furs Transaction.
- (y) The Applicants have, on notice to the Syndicate, already undertaken and begun processing the Kit Loans in accordance with the SAGA Furs Transaction and funding from the first of these purchased loans are expected this week in the amount of several million dollars USD.

KERP

- (z) The Applicants, along with their advisors, have developed a KERP to facilitate and encourage the continued participation of senior management and other key employees of the Applicants in the business and the restructuring.
- (aa) The KERP provides appropriate incentives for the Applicants' key employees to remain in their current positions and ensures that they are properly compensated for their assistance in the restructuring process as has been reviewed by the proposed Monitor.

Financial Advisor

- (bb) The Applicants are seeking the Court's approval for the continued engagement of KPMG Inc. and KPMG Corporate Finance as financial advisor to the Applicants (the "**Financial Advisor**").
- (cc) The Financial Advisor's expertise and experience has benefited the Applicants in their restructuring efforts to date, and the Applicants will require the Financial Advisor's assistance in connection with upcoming steps in these proceedings.

Stay of Proceedings

- (dd) The Applicants require the Stay of Proceedings and the other relief sought to permit the Applicants to continue operating as they pursue restructuring options including reorganization and a potential sale of some of the Kit Loans in order to maximize enterprise value.
- (ee) It is necessary and in the best interests of the Applicants that the Applicants be afforded the “breathing space” provided by the CCAA as they attempt to restructure their business.

Other Grounds

- (ff) The Applicants are insolvent.
- (gg) The Applicants are all debtor companies and/or affiliated companies to which the CCAA applies.
- (hh) The claims against the Applicants exceed \$5 million; the Applicants are indebted to the Syndicate, led by CIBC, in excess of \$30,000,000. All of the Applicants (other than 2) are either borrowers or guarantors of that debt.
- (ii) The Applicants have material unsecured creditors beyond the amounts owing to the Syndicate, and several real properties with real property mortgages. These amounts are in likely in excess of \$25,000,000.
- (jj) The cash flows and economic analysis provided in the confidential appendices are confidential in nature and contain confidential business information, the public disclosure of which would materially and negatively impact the ability of the Applicants to restructure.

- (kk) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
 - (ll) Rules 2.03, 3.02, 14.05(2) and 16 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
 - (mm) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.
 - (nn) Section 10 and 11 of the CCAA.
 - (oo) Such further and other grounds as are set out in the Application Record and as counsel may advise and this Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Doug Lawson sworn October 29, 2019 and the exhibits attached thereto;
 - (b) consent of the proposed Monitor; and
 - (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: October 30, 2019

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Proceeding commenced at Toronto

Notice of

APPLICATION

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