

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:**

**HSBC BANK CANADA**

Applicant

- and -

**BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS**

Respondent

**THIRD REPORT OF THE RECEIVER  
DATED JUNE 19, 2019**

**INTRODUCTION**

1. This matter concerns the Receiver's request that claim CV-18-00610576-000 commenced by the Receiver against the defendant Blue Good Foods Ltd. be transferred to the Commercial List for hearing and administration.
2. By Order of the Ontario Superior Court of Justice (the "**Court**") dated December 21, 2017 (the "**Appointment Order**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods ("**Blue Goose**" or the "**Debtor**") acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the "**Property**").
3. The Debtor is a corporation formed pursuant to the *Canada Business Corporations Act* that processed turkey, chicken and fowl, among other carcasses, for sale to its customers in the food industry. The Debtor operated out of leased premises containing office space and a manufacturing facility comprising an area of approximately 225,000 square feet located at

4480 Paletta Court, Burlington, Ontario (the “**Leased Premises**”). The Debtor’s principal assets were machinery and equipment used in the processing of animal carcasses, inventory and accounts receivable. Blue Goose, a private company, is indirectly owned by Dundee Corporation (“**Dundee**”), a publicly traded entity with offices in Toronto, Ontario.

4. On December 14, 2017, prior to the date of the Appointment Order, the Debtor was subject to an interim receivership proceeding. Deloitte was appointed as interim receiver (the “**Interim Receiver**”) with such appointment being terminated upon Deloitte’s appointment as Receiver in accordance with the Appointment Order appointing Deloitte as Interim Receiver.
5. The Appointment Order, together with related Court documents, the Notice to Creditors issued pursuant to sections 245 and 246 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) are posted on the Receiver’s website at [www.insolvencies.deloitte.ca/en-ca/BlueGooseTenderChoice](http://www.insolvencies.deloitte.ca/en-ca/BlueGooseTenderChoice).
6. On May 25, 2018 the Receiver was authorized pursuant to the order of Mr. Justice McEwen to file an assignment in bankruptcy on behalf of the Debtor which was effected in accordance with such order.
7. The purpose of this Third Report of the Receiver is to provide the background to the Court in connection with the Receiver’s request to have matter CV-18-00610576-000 transferred to the Commercial List to be managed alongside the balance of the receivership administration.

#### **TERMS OF REFERENCE**

7. In preparing this Third Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtor’s books and records, discussions with former management of the Debtor (“**Management**”), and information from third-party sources (collectively, the “**Information**”). Except as described in this Third Report:

- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
- (b) the Receiver has prepared this Third Report in its capacity as a Court-appointed officer to support the Court’s approval of the relief being sought by the Receiver. Parties using the Third Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
8. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.
9. Unless otherwise provided, all other capitalized terms not otherwise defined in this Third Report are as defined in the Appointment Order.

**COLLECTION OF ACCOUNT RECEIVABLE DUE FROM BLUE GOOSE FOODS LTD.**

10. Following its appointment, the Receiver identified certain accounts in the records of the Debtor which established that a balance was owing to the Debtor in the amount of \$1,686,864.21 as at December 31, 2017 by Blue Goose Foods Ltd. (“BGFL”), an affiliate corporation of Blue Goose. For the purpose of realizing on all of the assets and undertaking of Blue Goose for the benefit of creditors, the Receiver engaged in a dialogue with representatives of BGFL/Dundee to confirm the nature and amount of the account receivable and to request payment.
11. From the Receiver’s investigation, the balance owing arose in connection with an intercompany transfer of working capital from Blue Goose to BGFL. The Blue Goose

ledger account reflecting the balance was open and active throughout all relevant periods up to the date of the Receiver's appointment and showed activity indicating to the Receiver that the amount receivable remained owing by BGFL to Blue Goose.

12. On June 20, 2018, the Receiver, in its capacity as Licensed Insolvency Trustee, wrote to Richard McIntyre, who was then Executive Vice-President and Chief Operating Officer of Dundee Corporation, demanding payment of the amount of \$1,686,864.21 in satisfaction of BGFL's liability to Blue Goose. Annexed as Appendix "A" is a copy of this letter.
13. The assets of Blue Goose are subject to comprehensive and valid security in favour of HSBC Bank Canada ("HSBC"), the applicant in these receivership proceedings. The recoveries from the liquidation of the assets of Blue Goose, including insurance proceeds, will result in HSBC suffering a substantial shortfall on its secured indebtedness. Bearing in mind the economic exigencies of this matter and in order to encourage the efficient administration of disputes, the Receiver encouraged the parties to commence discussions to see if a resolution of the claim might be achieved without recourse to litigation. Despite such negotiations, the parties were unable to agree on terms. Consequently, on December 11, 2018, the Receiver issued its statement of claim seeking recovery of the amount owing to Blue Goose by BGFL.
14. On February 5, 2019, BGFL served its statement of defence, simply denying any amounts owing.
15. Subsequently, on May 2, 2019, the Receiver made a Rule 49 offer to settle pursuant to the Rules of Civil Procedure. Annexed as Appendices "B", "C" and "D" are the statement of claim, statement of defence, and Rule 49 Offer to Settle. BGFL has not responded to the Rule 49 Offer to Settle.
16. At this point, the Receiver believes it will be in the best interest of the efficient management and administration of the receivership that this matter be placed on the Commercial List and be managed together with the receivership administration to ensure that efforts to either achieve a negotiated settlement or judgment be accomplished in a timely fashion.

17. It is the Receiver's view that BGFL will not suffer any prejudice by placing the matter on the Commercial List, and all parties may well achieve a benefit from timely administration of the proceeding.

**RECOMMENDATION**


18. For the reasons set out above, the Receiver respectfully requests that the Court approve the Receiver's request to transfer matter CV-18-00610576-0000 to the Commercial List.

All of which is respectfully submitted this 19<sup>th</sup> day of June, 2019.

**Deloitte Restructuring Inc.**

Solely in its capacity as the Court-appointed receiver of the assets, undertakings and properties of Blue Goose Pure Foods Ltd., and without personal or corporate liability

Per:

  
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Paul Casey, CPA, CA, FCIRP, LIT  
Senior Vice-President