

**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 EASTERN MEAT SOLUTIONS INC., 2298442
ONTARIO LIMITED, COLDTERRA SUPPLY CHAIN LTD.,
COLDTERRA REALTY CORPORATION, RVB HOLDINGS INC.,
VANDEN BROEK HOLDINGS (2008) INC., COLDTERRA REALTY
CALGARY CORPORATION AND EASTERN MEAT SOLUTIONS (USA)
CORP.

Applicants

AIDE MEMOIRE

1. This Aide Memoire is filed in connection with the case conference to be heard on Thursday, June 5, 2025 (the “**Case Conference**”) regarding the urgency of the motion (the “**Motion**”) to be brought by the PB Parties, seeking the relief described in the Notice of Motion of the PB Parties filed on June 2, 2025 (the “**Notice of Motion**”).¹

2. The parties are *ad idem* that resolution of the Dispute requires a full adjudication to determine what amounts, if any, are owed to either Party under the CSMA. The hearing of the Motion is urgent as the CSMA provides for a 180-Day Cure Period to cure defaults. The Applicants allege that the Purported Manager Defaults have occurred and issued the Purported Termination (each as defined below). The PB Parties dispute the Purported Manager Defaults and the Purported Termination. If the PB Parties are in default, the 180-Day Cure Period will lapse on June 28, 2025.

¹ Defined terms used in this Aide Memoire have the meanings ascribed to them in the Notice of Motion.

3. Instead of disclaiming the CSMA as permitted under the CCAA and dealing with the consequences thereof in their restructuring, the Applicants now claim to have terminated the CSMA and entitlement to payment of significant amounts from the Manager, while relying on the Stay of Proceedings to prevent the Manager from asserting its own claims relating to the CSMA.

4. The Parties and their respective counsel have, since June of 2024, exchanged correspondence regarding alleged breaches of the CSMA. At a high level:

- a. June 4, 2024, Manager Notice of Default to the Applicants: noted the Applicants in default under the CSMA for: (i) commencing the CCAA Proceedings; (ii) EMS' failure to repay the Manager the Security Deposit Loan on maturity; (iii) Coldterra's failure to pay the Management Fee for the months of February – June, 2024 (collectively, the “**Applicant Defaults**”). Counsel to the Applicants (Thornton Grout Finnigan LLP (“**TGF**”)) rejected the default notice given the Stay of Proceedings, and claimed the PB Parties were in default.
- b. December 30, 2024, Applicants' purported Termination Notice: Noted the PB Parties in default under the CSMA for: (i) failing to deliver certain Monthly Statements and the Annual Statement for 2024; (ii) failing to make distributions related to Guaranteed Distributable Cash for 2024; (iii) failing to make distributions related to the Income Tax Expense for 2024; (iv) failing to prepare the Annual Budget for 2024-2025; and (v) failing to manage the Cold Storage Business in accordance with the Mandate (collectively, the “**Purported Manager Defaults**”). The Applicants demanded payment from the Manager of \$3,704,000. Counsel to the PB Parties (Gowling WLG (Canada) LLP (“**Gowling**”)) responded, disputing that any of the Purported Manager Defaults had occurred;

- c. May 21, 2025, Applicants' Purported Termination Letter: claimed the CSMA was terminated as the 120-day Cure Period under the CSMA had lapsed and the Purported Manager Defaults remained uncured (the "**Purported Termination**").
- d. May 22 & 26, 2025, Gowling rejects the Purported Termination: various correspondence maintaining that (i) Purported Manager Defaults have not occurred; (ii) the Applicants were not entitled to terminate the CSMA; (iii) the Purported Manager Defaults were caused by the Applicants' conduct; (iv) the Applicants have prevented the Manager from curing the Purported Manager Defaults; and (v) the Purported Termination was premature, as the 180-Day Cure Period has not lapsed.

5. Central to the Applicants' position in the Dispute is their entitlement to certain amounts under the CSMA, including a termination payment that relies primarily on the existence of the following Purported Manager Defaults. The Manager's position is that the Purported Manager Defaults do not exist, but if they do, they are a result of the Applicants' breaches of the CSMA.

6. Failure to deliver Monthly and Annual Statements: The Applicants allege that the Manager has failed to prepare various financial statements as required under the CSMA. This is because at the request of EMS, the Applicants advised the PB Parties that they would retain control of the accounting system ("**Navision**") housing the General Ledger Documents and other key financial reporting respecting the Cold Storage Business. Thus, the Manager was never given access to Navision (due to privacy concerns stemming from EMS' ancillary businesses utilizing Navision) and instead received extracts of information from this system to (i) be Audited by EMS in accordance with the CSMA, and (ii) used by the Manager as a basis for the preparation of Monthly and Annual Statements. As a result of not having access to Navision (and despite repeated requests

for further information, including the General Ledger Documents, or access to Navision), the Manager has not been able to accurately prepare the statements required by the CSMA.

7. Guaranteed Distributable Cash: generally speaking, the CSMA prescribes both a performance obligation (the “**Guaranteed Distributable Cash**”) and payment obligation (the “**Distributable Cash Shortfall**”) to be met by the Manager. The payment obligation is triggered where the performance obligation is not satisfied. Audited Annual Statements (or in the alternative, access to the General Ledger Documents) are critical to the determination of whether the payment obligation is triggered, and the quantum of any Distributable Cash Shortfall. The Applicants rely on the CCAA Monitor’s review of consolidated financial statements for EMS and its affiliates in lieu of Annual Statements for the Cold Storage Business as a basis for their monetary demands under the CSMA. These statements fall short of the Annual Statements required under the CSMA and cannot be relied upon as they lack specificity regarding, among other things, the classification of Operating Expenses in accordance with the CSMA. These particular details must be accounted for to determine whether a Distributable Cash Shortfall is payable for any Fiscal Year.

8. The relief sought in connection with the Motion is both urgent and necessary.

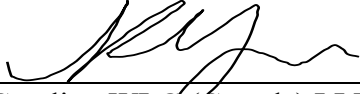
9. The Lift Stay Order: to date, the Stay of Proceedings has restricted the Manager from exercising any of its rights and remedies pursuant to the CSMA. The PB Parties assert that the Applicant Defaults, amongst other events of default under the CSMA have occurred, which to date have not been cured by the Applicants. The Lift Stay Order is required for the Manager to issue a Termination Notice to the Applicants in connection with these defaults. Doing so may potentially establish the Manager’s entitlement to certain material termination payments owing to the Manager by the Applicants. Furthermore, the parties agree that there must be a full adjudication

of the Dispute in order to assess and determine the various events of default claimed by each of the Parties, the validity of any Termination Notice issued as a result of such alleged defaults, and the quantum of any resulting claim by either party against the other under the CSMA.

10. Alternatively, the Status Quo Order: The Applicants maintain that the Purported Termination is effective. Pursuant to the CSMA, to be valid a unilateral Termination Notice requires that an event of default by the counter party first be established. The Manager vigorously disputes each of the Purported Manager Defaults pending an adjudication of the Dispute on the merits. Nonetheless, the 180-Day Cure Period running from the date of the EMS Purported Termination Notice will lapse on June 28, 2025. Absent the Status Quo Order declaring that the passage of the 180-Day Cure Period is held in abeyance pending an adjudication of the Dispute, the Manager may be liable to pay material termination payments to the Applicants. This pre-judgement of the Dispute will be materially prejudicial to the Manager's claims against the Applicants.

11. The Ancillary Relief Order: The CSMA provides that a Termination Notice will be deemed to be of no effect if the defaults relied upon in connection therewith are cured within the 180-Day Cure Period. In light of EMS' failure to complete the Audit, it is essential that the Manager obtain access to the General Ledger Documents to verify the financial information relied upon by the Applicants in support of their claims. Absent access to the General Ledger Documents, it is impossible for the Manager to even attempt to cure the Purported Manager Defaults.

RESPECTFULLY SUBMITTED this 4th day of June, 2025



 Gowling WLG (Canada) LLP
 Lawyers for the PB Parties
 Per: Katherine Yurkovich

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-24-00720622-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EASTERN MEAT SOLUTIONS INC., ET. AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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