

**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., SIERRA CUSTOM FOODS INC., SIERRA SUPPLY CHAIN SERVICES INC., SIERRA REALTY CORPORATION, RVB HOLDINGS INC., VANDEN BROEK HOLDINGS (2008) INC., SIERRA REALTY CALGARY CORPORATION AND EASTERN MEAT SOLUTIONS (USA) CORP.**

Applicants/Moving Party

- and -

**BANK OF MONTREAL**

Respondent/Responding Party

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**BACKGROUND BRIEFING MEMORANDUM OF BANK OF MONTREAL**  
**(Motion returnable November 21, 2024)**

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November 21, 2024

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## BACKGROUND BRIEFING MEMORANDUM OF THE BANK OF MONTREAL

1. On October 2, 2023, Eastern Meat Solutions Inc. (“**EMS**”) executed, as applicant, an Application for Standby Letter of Credit / Demand Guarantee (“**LC Application**”) in a form provided by Bank of Montreal (“**BMO**”), together with a Standby Letter of Credit / Demand Guarantee Indemnity Agreement. The LC Application was for a letter of credit in the amount of CAD \$1,500,000 listing Sierra Winds Business Park Inc. (“**SWBP**”) as the beneficiary and with a term of one year. The term was to include annual automatic extensions unless 30 days’ notice of non-renewal was provided. The LC Application stipulated that it was to be governed by the “current International Standby Practices (‘ISP’)”.
2. On November 20, 2023, BMO issued standby letter of credit no. BMTO697221OS in the amount of \$1,500,000 with SWBP as the listed beneficiary (the “**Letter of Credit**”). The Letter of Credit included the above noted renewal terms, expiring on November 19, 2024, and stipulated it is subject to the ISP 1998.
3. The Letter of Credit authorized a draw upon presentation of the following two documents:
  1. BENEFICIARY’S CERTIFICATE ON ITS LETTERHEAD, COMPLETED, DATED AND PURPORTEDLY SIGNED BY AN AUTHORIZED INDIVIDUAL STATING: “THE TENANT SIERRA REALTY CALGARY CORPORATION HAS FAILED TO FULFILL ITS OBLIGATIONS PURSUANT TO THE LEASE AGREEMENT ENTERED INTO BETWEEN SIERRA REALTY CALGARY CORPORATION AS TENANT AND SIERRA WINDS BUSINESS PARK INC., AS LANDLORD FOR THE LEASE PREMISES DESCRIBED AS PLAN 1910413 BLOCK 1 LOT 1 DATED MARCH 10, 2023, AS MAY BE AMENDED, SUPPLEMENTED OR RESTATED FROM TIME TO TIME. THEREFORE, WE ARE DRAWING FOR CAD....., UNDER LETTER OF CREDIT NO BMTO697221OS. PLEASE WIRE PROCEEDS TO: .....”

2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT FOR OUR ENDORSEMENT AND WILL BE RETURNED TO YOU UNLESS FULLY EXHAUSTED.

4. The Letter of Credit further stipulated:

DRAWINGS BY FACSIMILE ARE PERMITTED. SUCH DRAWINGS (S) SHALL BE MADE TO FACSIMILE NUMBER 416-598-6075 (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER 416-598-6112. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIV ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL AND FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

5. On October 3, 2024, counsel for BMO advised counsel for EMS during a phone call that BMO would be sending SWBP a notice of non-renewal of the Letter of Credit in accordance with its terms.

6. On October 9, 2024, BMO sent a notice of non-renewal of the Letter of Credit to EMS and SWBP.

7. On October 10, 2024, counsel for EMS emailed counsel for BMO, advising that SWBP was never made aware of the Letter of Credit and requesting that BMO accept a return of the original Letter of Credit for immediate cancellation.

8. On October 12, 2024, counsel for BMO advised counsel for EMS that it was of the view that it was contractually obligated to issue the notice of non-renewal to SWBP as beneficiary of the Letter of Credit.

9. On November 12, 2024, counsel for BMO advised the Monitor and counsel for EMS that SWBP had reached out to BMO and indicated it would be making a partial draw on the Letter of Credit in accordance with its terms via facsimile.

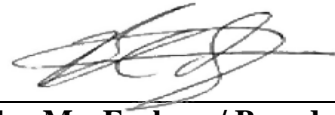
10. On November 15, 2024, counsel for EMS wrote to counsel for BMO, to “reiterate our request that BMO not permit SWBP to draw upon the LC” and requesting BMO’s position by November 19, 2024.

11. On November 18, 2024, counsel for BMO responded to counsel for EMS, indicating that BMO would assess SWBP’s draw request in the ordinary course. The letter further indicated that while counsel for EMS had verbally suggested that SWBP’s draw request could be “implied” as being fraudulent during a call on November 15, 2024, this suggestion would be disregarded by BMO given the lack of evidence and specifics. Lastly, the letter informed counsel for EMS that BMO had received a draw request for \$1.495 million from SWBP on November 13, 2024, but that BMO had not yet determined that there existed a request compliant with the terms and conditions of the Letter of Credit.

12. On November 19, 2024, counsel for EMS wrote to counsel for BMO, asserting that SWBP’s request was fraudulent, setting out its expectation the SWBP’s draw request would be denied, providing notice to BMO that it may be liable if it honours any draw by SWBP, and demanding a copy of SWBP’s draw request. Later that day, BMO sent counsel to EMS a copy of SWBP’s draw request received on November 13, 2024.

13. In light of BMO’s notice of non-renewal, the Letter of Credit expired at the end of the business day on November 19, 2024.

14. On November 20, 2024, counsel for BMO advised counsel for EMS that a further draw request had been received from SWBP the prior afternoon and that BMO determined that this draw request was compliant with the terms of the Letter of Credit. At the request of counsel for EMS, a copy of this further draw request was provided that morning.



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**- and - BANK OF MONTREAL**

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

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

Proceedings commenced at Toronto, Ontario

**BACKGROUND BRIEFING MEMORANDUM OF THE  
RESPONDING PARTY, BANK OF MONTREAL  
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