



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-24-00720622-00CL DATE: May 28, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: 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

BEFORE: Justice Kimmel

PARTICIPANT INFORMATION

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For Other:

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ENDORSEMENT OF JUSTICE KIMMEL:

[1] On May 21, 2024, the Applicants sought and obtained protection under *the Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") under an initial order (the "Initial Order") of the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the "Court"). This has been an active CCAA proceeding and there have been a number of motions since the Initial Order was made. The last order dated January 24, 2025 extended the Stay Period up to and including May 31, 2025.

[2] On this motion, the Applicants seek an Order, inter alia:

- a. extending the Stay Period until and including August 29, 2025;
- b. approving the Fourth Report of the Monitor, Deloitte Restructuring Inc., dated May 23, 2025 (the "Fourth Report") and the Monitor's activities set out therein;
- c. approving the fees and disbursements of the Monitor and its legal counsel, Dentons Canada LLP ("Dentons");
- d. authorizing and approving the Third DIP Amendment (as defined below); and
- e. authorizing and directing the Monitor and 2298442 Ontario Limited to make future distributions to certain creditors of Sierra Foods holding a valid and enforceable purchase money security interest ("PMSI") in the amounts as provided in the Fourth Report.

[3] The Monitor supports all of the relief sought and no stakeholder appeared to oppose or raised any opposition or concerns in advance of the hearing.

[4] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Applicants' factum filed in support of this motion with corresponding definitions from the Affidavit of Robert Vanden Broek sworn May 21, 2025 (the "Seventh Vanden Broek Affidavit"), and the Monitor's Fourth Report.

[5] I am satisfied that the requested extension of the Stay Period is necessary and appropriate in the circumstances and am prepared to exercise my discretion under s.11.02 of the CCAA to grant it. The Applicants have acted, and are acting, in good faith and with due diligence.

[6] The stay extension will enable the Applicants to continue operating the Applicants' Cold Storage Business while the Applicants, with the assistance of the Monitor, explore various options in respect of the Cold Storage Business and the manner in which the claims of creditors may be addressed. These objectives are consistent with the purpose of CCAA stays generally, providing the Applicants with the time necessary to attempt an acceptable restructuring plan or sale of assets to maximize recovery for stakeholders.

[7] Further, the Cash Flow Forecast appended to the Fourth Report (that the Monitor has reviewed and approved) demonstrates that, subject to the approval of the Third DIP Amendment (described below) the

Applicants will have sufficient liquidity to fund their business operations during the proposed extension to the Stay Period.

[8] The material changes in the Third DIP Amendment are to extend the maturity date until August 29, 2025, and to update the DIP Budget (as defined therein). Having considered the factors set out in section 11.2(4) of the CCAA governing court sanctioned interim financing generally, I am satisfied that the Third DIP Amendment should be approved. The ongoing availability of the DIP Loan is consistent with the forecast liquidity needs of the Applicants and will allow the Applicants to continue operating the Cold Storage Business in the ordinary course while exploring their restructuring options in consultation with the Monitor. The Monitor supports the Third DIP Amendment.

[9] The PMSI Distributions will be made from proceeds of the Transaction which were previously set aside to address the potential priority claims of creditors of Sierra Foods arising out of valid and enforceable PMSIs (the "PMSI Holdback"). The Monitor's independent counsel has confirmed that, subject to the customary assumptions and qualifications, the equipment lessors listed in Appendix "B" to the Fourth Report have valid and enforceable PMSIs in Ontario in relation to Sierra Foods. The proposed order contemplates that the PMSI Distributions in respect of these leases may be made by 2298442 Ontario Limited or the Monitor.

[10] It is now well established that section 11 of the CCAA permits courts to approve interim distributions to creditors absent a plan of compromise or arrangement and this court regularly approves distributions to creditors during CCAA proceedings following Court-approved transactions: see for example, *Re Nortel Networks Corporation et al*, 2014 ONSC 4777, at paras 54-58, aff'd 2015 ONCA 681, leave to appeal to SCC ref'd, 42 C.B.R. (6th) 3, and the other cases cited in paragraph 26 of the Applicants' factum, including *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, at para. 44.

[11] Having regard to the validity and enforceability of the payee's security, and with the assurance that the estate will have sufficient liquidity following the distributions (with the approved Third DIP Amendment), and it having been noted that the proposed interim distributions will result in interest savings, I consider the proposed PMSI Distributions to be appropriate and they are approved: see *Re AbitibiBowater Inc.*, 2009 QCCS 6461, at para 75; *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, at para 45.

[12] The operative language of the requested order approving these distributions is consistent with the approval of distributions from the same sale proceeds to BMO (the DIP lender and first secured creditor) in the court's previous order of September 25, 2024. The PMSI Distribution deals with the distribution of the remaining sale proceeds, now that the validity and enforceability of certain PMSI's has been determined by the Monitor, all as detailed in the Monitor's Fourth Report.

[13] None of the potential PMSI claim holders whose claims were determined by the Monitor to be deficient and that are not being paid under the PMSI Distribution have raised any objection to the order requested. They were all served with this motion and are aware of the deficiencies noted by the Monitor that have led to them not being included in the PMSI Distribution.

[14] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner, and it is within the court's inherent jurisdiction to do so: see *Target Canada Co. (Re)*, 2015 ONSC 7574, at paras. 13-14 and 23. The approval of the Fourth Report and the activities of the Monitor described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders.

[15] The professional fees claimed for the Monitor and its counsel are supported by fee affidavits and reflect the work that has been done during the applicable period see the last fee approval. The fees are commensurate with the tasks performed and are based on market rates. The Monitor considers the fees and hourly rates to be

reasonable, and I find them to be fair, reasonable and justified in the circumstances: see *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45.

[16] For these reasons, and those more specifically set out in the Fourth Report of the Monitor and the Applicants' factum and supporting affidavit, the requested order is granted and has been signed by me today.

[17] A one-hour case conference has been scheduled before me on June 5, 2025 commencing at 9:00 a.m. by zoom. This will be for the court to consider the urgency of the request by GoCold et al for a motion they wish to bring regarding the termination of the Cold Storage Management Agreement and any related issues. Counsel for those parties has been directed to deliver a Notice of Motion by Monday June 2, 2025 so that all interested stakeholders can consider their positions and deliver Aide Memoires in advance of the case conference. All material for this case conference shall have been served, filed and uploaded into the appropriate case center bundle for this case conference by no later than 4:30 p.m. on June 4, 2025.

[18] A further case conference will be requested, either by the Monitor or the Applicants, to address scheduling of other upcoming and anticipated matters, when they are ready to do so.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.