



SUPERIOR COURT OF JUSTICE

## **COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00720622-00CL

DATE: September 25, 2024

NO. ON LIST: 2

**TITLE OF PROCEEDING: EASTERN MEAT SOLUTIONS INC. et al v PNC VENDOR FINANCE CORPORATION CANADA et al**  
**BEFORE: JUSTICE PENNY**

### **PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Adam Driedger Shurabi Srikaruna	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 EASTERN MEAT SOLUTIONS (USA) CORP.	<a href="mailto:adriedger@tgf.ca">adriedger@tgf.ca</a> <a href="mailto:ssrikaruna@tgf.ca">ssrikaruna@tgf.ca</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
	PNC VENDOR FINANCE CORPORATION CANADA MANULIFE ONTARIO PROPERTY PORTFOLIO INC	

	EXCELDOR COOPERATIVE WEST EXCELDOR COOPERATIVE	
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**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
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Alex Macfarlane	BMO's Counsel (DIP Lender)	<a href="mailto:AMacfarlane@blg.com">AMacfarlane@blg.com</a>

**ENDORSEMENT OF JUSTICE PENNY:**

[1] The Applicants bring this motion seeking the following relief:

(a) an approving the sale transaction contemplated by the asset purchase agreement between Sierra Foods and the Purchaser dated September 19, 2024 and vesting in the Purchaser all of the right, title, and interest of Sierra Foods in and to the Purchased Assets;

(b) an order extending the Stay Period until and including January 31, 2025;

(c) an order authorizing the Applicants to execute the DIP Amendment to align the maturity date under the DIP Facility with the proposed extension to the Stay Period;

(d) an order approving the proposed key employee retention plan for certain employees of the Applicants and granting a related KERP charge on the Property in the maximum aggregate amount of \$285,600;

(e) an order approving the Pre-Filing Report of the Monitor dated May 21, 2024, the First Report of the Monitor dated May 30, 2024, and the Second Report and the conduct and activities of the Monitor;

(f) an order approving the fees and disbursements of the Monitor and its counsel for the period from May 5, 2024 to August 31, 2024, as set out in the Second Report;

(g) an order approving certain distributions to BMO in its capacity as DIP Lender and senior secured creditor; and

(h) an order that, pursuant to subsection 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 (the "WEPP Regulations") and the Applicants' former employees are individuals to whom WEPPA applies.

- [2] The SISP and the Transaction relate solely to the processing business. The Court has jurisdiction under s. 36 of the CCAA to approve a sale of assets. The factors listed more or less coincide with the factors identified in *Sound Air*. I am satisfied that the SISP was fair and reasonable. There was a robust process. The Transaction likely represents the highest and best offer reasonably available. There are no objections to the process or to the Transaction. The Monitor approved and carried out the SISP. The Monitor supports the Transaction and has opined that it is unlikely that a liquidation would produce a better outcome. The Transaction is approved.
- [3] The requested sealing order is appropriate in light of the *Sherman Estate* test. It is necessary to preserve the ability of the Applicants and the Monitor to maximize value in the unlikely event the Transaction does not close.
- [4] The stay extension to January 31, 2025 is appropriate. More time is needed to close the Transaction and to pursue options for the cold storage business. The Applicants are acting in good faith and with due diligence. There is no opposition. The Monitor supports the extension and indicates that cash flows appear to be sufficient to cover the extended time frame.
- [5] The DIP maturity date of September 30, 2024 aligned with the stay period at the time. It is appropriate to extend the DIP maturity date until January 31, 2025.
- [6] The potential for a KERP was raised earlier. The proposal is to provide 26 key employees with retention bonuses in the aggregate amount of \$285,600 and to establish a KERP Charge on the Property in the maximum amount of \$285,600 as security for the obligations of the Applicants under the KERP, which will rank subordinate to the Administration Charge, the DIP Lender's Charge, the Directors' Charge, the BMO Security, and the Intercompany Charges, but in priority to all other security interests, trusts, liens, charges, and encumbrances upon the Applicants' Property.
- [7] The approval of a KERP and a KERP Charge are matters within the discretion of the Court, grounded in the Court's statutory jurisdiction to make any order it sees fit. The discretion of the Court to approve a KERP in the context of a restructuring is exercised on a case-by-case basis.
- [8] I am satisfied that the KERP and related Charge are appropriate. The Applicants designed the KERP and set the quantum of the KERP Charge in consultation with the Monitor. The Monitor and the DIP Lender both approve of the proposed KERP and KERP Charge. The Applicants compared the KERP to similar key employee retention plans approved in other proceedings and conclude that the structure of the KERP and the quantum of the KERP Charge are reasonable and appropriate in the circumstances. The Key Employees provide the critical operational support required to maintain Sierra Foods' licenses, which is necessary for the closing of the Transaction. None of the Key Employees could be readily or easily replaced internally and the process to find appropriately qualified replacements for the Key Employees externally would be lengthy, difficult, costly and an impediment to the Transaction. Without the benefit of the KERP, the Key Employees may consider other employment options. The departure of Key Employees would be costly, disruptive, and detrimental to the restructuring efforts. I find that the amounts payable under the KERP are reasonable and justified in the circumstances. The Monitor supports the granting of the KERP and the amounts of the individual payouts. The KERP is also supported by the DIP Lender and senior secured creditor, BMO.
- [9] The KERP sealing order is appropriate in the circumstances. The aggregate amount of the KERP and the KERP Charge have been disclosed. However, it would be detrimental to the operations of a company to disclose the identities of the individual beneficiaries of a KERP and the quantum of any individual

payments. The beneficiaries of a KERP have a reasonable expectation that their personal information will be kept confidential.

- [10] I accept the Monitor's reports and approve the activities described in those reports. The Fees of the Monitor, and those of its counsel, appear reasonable in the circumstances. There is no opposition, in particular no opposition from BMO.
- [11] The request for the approval of distributions to BMO is somewhat unusual in that it does not contemplate a specific number but does require the consent of the Monitor. The Monitor has independently assessed and confirmed the validity of the BMO security. BMO is the fulcrum creditor. The Monitor is appointed by the Court on the basis of expertise and experience. The Monitor is ultimately answerable to the Court. The Monitor has detailed knowledge of the Applicants' cash flows and the ongoing cost of operations. Distributions will only be made if the Applicants have sufficient liquidity. Distributions to BMO will benefit stakeholders at large because they will reduce total obligations owed to BMO and ongoing interest costs. Cost and efficiency are important considerations because each Court attendance takes time and monetary resources. The confidentiality of the Transaction purchase price could be compromised by disclosure of particular distribution amounts at this stage of the proceedings.
- [12] In all the circumstances, I am prepared to approve the requested distributions subject to the consent of the Monitor. If at any time there is controversy or uncertainty about a particular distribution, the Monitor (or any other affected stakeholder, for that matter) can return to Court for further directions.
- [13] Section 3.2 of the WEPP Regulations provides that the court "may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations." This appears to be the case. The Applicants agree that this is ultimately subject to the Labour Program Employment and Social Development Canada.
- [14] Orders to issue in the form signed by me this day.

  
Penny J.