



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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

HEARING DATE: December 11, 2025

NO. ON LIST: 4

**TITLE OF PROCEEDING: EASTERN MEAT SOLUTIONS INC.; RVB HOLDINGS INC.; VANDEN BROEK HOLDINGS (2008) INC.; EASTERN MEAT SOLUTIONS (USA) CORP.; 2298442 ONTARIO LIMITED; COLDTERRA SUPPLY CHAIN LTD.; COLDTERRA REALTY CORPORATION; COLDTERRA REALTY CALGARY CORPORATION; EASTERN MEAT SOLUTIONS (USA) CORP v. PNC VENDOR FINANCE CORPORATION CANADA; MANULIFE ONTARIO PROPERTY PORTFOLIO INC; EXCELDOR COOPERATIVE WEST; EXCELDOR COOPERATIVE; SIERRA WINDS BUSINESS PARK INC; WOOLSEY EQUITIES INC; GOCOLD SOLUTIONS INC.; PREMIUM BRANDS HOLDINGS CORPORATION**

**BEFORE: JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
Derek Harland	EASTERN MEAT SOLUTIONS INC.	dharland@tgf.ca

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

Name of Person Appearing	Name of Party	Contact Info
Alex MacFarlane	Counsel for BMO	AMacFarlane@blg.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Sarah Lam Valerie Cross	Counsel for the Monitor Deloitte Restructuring Inc.	<a href="mailto:sarah.lam@dentons.com">sarah.lam@dentons.com</a> <a href="mailto:Valerie.cross@dentons.com">Valerie.cross@dentons.com</a>
Adam Slavens Mike Noel	Counsel for the Purchaser	<a href="mailto:aslavens@torys.com">aslavens@torys.com</a> <a href="mailto:mnoel@torys.com">mnoel@torys.com</a>

**ENDORSEMENT OF JUSTICE KIMMEL:**

**The Motion**

- [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"). Pursuant to that Initial Order, among other things, Deloitte Restructuring Inc. was appointed as the monitor of the Applicants (in such capacity, the "Monitor").
- [2] The Applicants now seek approval of the only viable going-concern solution for the Applicants' final business line, by a reverse vesting order ("RVO"). The Applicants also seek the Stay Extension and Termination Order, which deals with ancillary relief necessary for the wind-down of the remaining Applicants and ResidualCo, sealing of a confidential exhibit, and approval of the Monitor's activities and fees. This relief is necessary and appropriate in the circumstances.
- [3] The Monitor supports the relief sought by the Applicants. No stakeholder has raised any objection to the court granting the relief sought. Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the factum of the Applicants filed in support of this motion.

**Background to the Transaction**

- [4] The background to the Transaction for the sale of the Coldterra business is set out in the Applicants' factum and the Seventh Report of the Monitor dated December 9, 2025 (the "Seventh Report") and in the Affidavit of Robert Vanden Broek sworn December 9, 2025 (the "Twelfth Vanden Broek Affidavit"). Some particulars include that:
- (a) The Applicants had three distinct business lines, each of which was carried out by a separate entity within the corporate group. There was a meat trading and market services business, which was conducted by Eastern Meat Services Inc, and has been wound down. There was a food processing business, which was conducted by Sierra Custom Foods Inc. and has now been sold, with the transaction closing on October 25, 2024. Lastly, Coldterra Supply Chain Ltd. ("Coldterra Services", formerly known as Sierra Supply Chain Services Inc.) continues to operate a cold storage and transportation business.
  - (b) On August 19, 2025, the Court granted an order (the "Coldterra SISP Approval Order") which, among other things, approved a sale and investment solicitation process in respect of the business and/or the assets of Coldterra Services (the "Coldterra SISP"). The Coldterra SISP produced zero offers, leading the Applicants to negotiate a Transaction Agreement in respect of Coldterra Services with an affiliate of their landlord, 1001435623 Ontario Inc. (the "Purchaser").

- (c) On November 28, 2025, the court extended the Stay Period up to and including December 12, 2025 to permit the parties to finalize the Transaction Agreement.
- (d) The parties have now executed the Transaction Agreement, pursuant to which the Purchaser will acquire, among other things, all of the issued and outstanding shares of Coldterra Services. The Monitor and the DIP Lender both support this transaction.
- (e) The Applicants now ask this Court to approve the only viable going-concern solution for the Applicants' final business line.
- (f) The Transaction Agreement is the only option that will allow the Coldterra Services business line to continue as a going concern, benefitting stakeholders that include customers, suppliers and the majority of Coldterra Services' employees.

### **Approval of the Transaction and the RVO Structure**

- [5] When determining whether to approve a sale transaction, including an RVO transaction, the court must consider the six factors set out in section 36(3) of the CCAA, which have considerable overlap with the principles laid down in *Royal Bank v. Soundair Corp.* 1991 CarswellOnt 205, at para. 16, 1991 CanLII 2722 (CA). They are as follows:
  - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the monitor approved the process leading to the proposed sale or disposition;
  - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
  - (d) the extent to which the creditors were consulted;
  - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
  - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
- [6] The considerations under s. 36(3) of the CCAA and the *Soundair* factors support the approval of the Transaction, for the reasons summarized in paragraph 10 of the applicants' factum. The Coldterra SISF canvassed the market and produced no offers. The Transaction is the best offer arising out of the sale process and as noted, the business will continue as a going concern. The Monitor supported the process leading to the proposed Transaction and supports the Transaction, as do the largest stakeholders, including the DIP Lender.
- [7] The Transaction is structured as an RVO. RVO's are an unusual or extraordinary measure. In appropriate cases, RVOs enable stakeholders to avoid the expense, delay and uncertainty of an asset sale where there are valuable assets, but some that might be difficult or impossible to transfer to a purchaser: see *Tacora Resources Inc (Re)*, 2024 ONSC 4436, at para. 7. Considering the factors adopted by this Court in *Harte Gold Corp (Re)*, 2022 ONSC 653, at paras. 38 and 71, the requested approval and reverse vesting order ("ARVO") represents the best available option for the Applicants to maximize value for their stakeholders and is appropriate in the circumstances.
- [8] The reverse vesting structure is necessary to ensure that Coldterra Services' business can be transferred on a going-concern basis without requiring the costly and uncertain process of renegotiating or reassigning numerous operational and contractual elements that are essential to the business, and without requiring the Purchaser to re-obtain critical operating permits and regulatory approvals. The cold storage business is

heavily regulated and requires licensing with the Canadian Food Inspection Agency. The purchaser is not already in this line of business. The RVO structure is necessary to give effect to the only going-concern solution available for Coldterra Services' business.

- [9] The proposed Transaction produces an economic result that is superior to the only available alternative, a bankruptcy. The Coldterra SISP produced no offers, and the DIP Lender is not prepared to advance further liquidity to facilitate an asset-based transaction. Accordingly, the only realistic alternative to the Transaction is Coldterra Services' bankruptcy. The Transaction's reverse vesting structure will not leave any stakeholder worse than under any other viable alternative-because there is no viable alternative. The bankruptcy alternative will result in the termination of all Coldterra's employees and the loss of those jobs, whereas the Transaction contemplates a going concern sale that will preserve jobs for the employees and provide for the continuity of contracts with suppliers, and an ongoing business for customers: see *Fresh City Farms and Mama Earth Organics*, 2024 ONSC 2016, at para. 38.
- [10] Where the proposed transaction emerges out of an extensive marketing process, it is appropriate to infer that the consideration to be paid reflects the fair market value of the subject property: see *Séquestre de 9408-7129 Québec inc.*, 2025 QCCS 2180 at paras 43-44; *Harte Gold*, at para. 66.
- [11] I am satisfied that both the Transaction and the reverse vesting structure should be approved. The *Harte Gold* considerations are met in this case.

## Releases

- [12] I reviewed the proposed Releases with counsel during the hearing. Some concerns were identified with the breadth of the releases, which counsel were able to satisfy me were appropriately limited having regard to recent decisions of this court in: *Synaptive Medical Inc. v. BDC Capital Inc. et al*, CV-25-00739279-00CL, June 18, 2025 Endorsement [Commercial List] and *Re Ignite Services* CV-23-00708635-00CL, November 9, 2023 Endorsement [Commercial List]. They are restricted to apply only to matters that have arisen during the CCAA proceedings that the released parties were involved in, the Transaction Agreement, and the completion of the Transaction, as the case may. The Releases do not release claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA, claims for gross negligence or wilful misconduct or any obligation of any Released Party outside of the CCAA proceedings .
- [13] The prospective releases for conduct after this hearing but prior to the termination of these CCAA proceedings (in favour of the Monitor, its counsel and the First Director of ResidualCo) have been addressed through language incorporated into the Ancillary Order requiring notice to be given before the Monitor files the Discharge Certificate that will give effect to certain future releases. When I considered this issue in *HSBC Bank Canada v. DMI EXIM Limited*, CV-23-00703534-00CL, May 16, 2025 Endorsement [Commercial List] I observed that:
- (a) The proposed Discharge Order provides a mechanism to facilitate objections to the Receiver's conduct that arise after the Discharge Order is granted. Specifically, the proposed Discharge Order provides that the Receiver shall, at least seven calendar days prior to filing the Discharge Certificate, give notice to the service list of the date on which it intends to file the Discharge Certificate, providing an opportunity for any party of interest to object to the Subsequent Releases. If the Receiver receives any objection within the prescribed notice period, the Subsequent Releases shall only become effective if the objection is resolved consensually or upon further Order of the Court.
  - (b) This "sequential mechanism" preserves transparency and procedural fairness for parties of interest, while allowing the Receiver to move forward on sure footing if no objections arise. The Court has

previously approved release terms that are substantially identical to those the Receiver proposes and should do so again in this case: see Order of Justice Osborne dated May 30, 2023, *Victoria Avenue North Holdings Inc. et al*, Court File No. CV-21- 00665375-00CL at paras 8-13; Order of Chief Justice Morawetz dated September 14, 2020, *Urbancorp (Leslieville) Developments Inc. et al*, Court File No. CV-16-11409-00CL at paras 16-21; Endorsement of Justice Steele dated July 5, 2023, *Southmont Healthcare Centre Inc, et al*, Court File No. CV-21- 00664273-00CL, at para. 21.

- [14] When determining if a release is appropriate in the circumstances of a sale transaction, the court is to consider those factors that are applicable to the approval of releases in connection with a plan see *Re Green Relief Inc.*, 2020 ONSC 6837. As set out in *Lydian International Limited (Re)*, 2020 ONSC 4006, para. 54 these factors are (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor; b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it; c) whether the plan could succeed without the releases; d) whether the parties being released were contributing to the plan; and e) whether the release benefitted the debtors as well as the creditors generally.
- [15] Here, the Released Parties each made significant contributions to this restructuring. In particular, the applicants, the Purchaser, the Monitor, the DIP Lender and the parties' counsel and their respective officers, directors and employees who were involved in these CCAA proceedings and the Transaction each provided substantial time, energy, expertise and, in the case of the DIP Lender, funding in this CCAA proceeding. The Purchaser, in particular, is relatively new to the table (at least in this capacity) and has worked to conclude this transaction to acquire a new business within a very short time because of the applicants' limited cash flow to continue operating the Coldterra business that is being sold.
- [16] This Court has jurisdiction under section 11 of the CCAA to approve the Releases even in the absence of a plan. It has now also become accepted to grant third-party releases in favour of professional advisors, directors, officers and others to be approved outside of a plan as part of an RVO transaction: see *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at para 128, leave to appeal ref'd, 2022 QCCA 1073, leave to appeal to SCC ref'd, 2023 CanLII 36969.
- [17] With the amendments made to the release language in both orders, I find the releases are appropriate and approve their inclusion in the orders.

### **Sealing Order**

- [18] A limited sealing order is sought with respect to the unredacted copy of the December 9, 2025 Transaction Agreement attached as a confidential appendix to the Affidavit of Robert Vanden Broek. The limited sealing order being sought is necessary to preserve the Applicant's ability to maximize the value of its assets in the event of the Transaction does not close.
- [19] The redaction of the purchase price under the Transaction Agreement is appropriate. The court was not satisfied that the redaction of the bank accounts is appropriate. An updated version of the redacted Transaction Agreement to remove the redactions of the bank accounts shall be filed. The court also requested that the duration of the sealing order be limited to the earlier of the closing of the Transaction or further order of the court.
- [20] With these changes made, I am satisfied that the requested sealing order over the purchase price under the Transaction Agreement meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest of enabling stakeholders of a company in insolvency proceedings to maximize the realization of assets. The order protects the public interest in

preserving value for stakeholders of an insolvent company should the business have to be remarketed. I direct counsel for the Monitor to file a hard copy of the unreacted and sealed Confidential Transaction Agreement with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement. Counsel for the Monitor shall also be responsible for arranging for the “unsealing of this Confidential Exhibit once the sealing order lapses.

### **Stay Extension**

- [21] Section 11.02(2) of the CCAA provides this court the authority to grant an extension of the Stay Period for any period it considers necessary. The court must be satisfied that appropriate circumstances exist for the extension and that the applicants have acted, and are acting, in good faith and with due diligence. Here, the requested extension of the Stay Period will permit the closing of the Transaction and for all post-closing matters, including ResidualCo's anticipated assignment in bankruptcy, to be completed. The Monitor is supportive of the proposed extension of the Stay Period. I am satisfied that the Applicants are acting in good faith and with due diligence.
- [22] It is appropriate to extend the Stay Period to ensure that ResidualCo is able to file an assignment into bankruptcy following closing of the Transaction.
- [23] Extending the Stay Period until the Termination Certificate is filed will avoid the costs associated with another court appearance. As has been observed, tying the end of the stay period to the time of termination rather than any specific date provides the monitor and the debtor(s) with flexibility, permitting the parties to close an RVO transaction and attend to administrative matters without the risk of spending further time and money returning to court for another stay extension: see Endorsement of Justice Kimmel dated April 3, 2023, *Mjardin Group, Inc.*, Court File No CV-22-00682101-00CL, at para. 24; see also Endorsement of Justice Steele dated October 29, 2024, *Atlas Global Brands Inc.*, Court File No CV-24-00722386-00CL, at paras. 43-45.
- [24] In the circumstances, the extension of the Stay Period is granted.

### **Other Relief**

- [25] The applicants also seek approval of the Seventh Report and the activities of the Monitor as set out therein. The request to approve a monitor's report is not unusual and there are good policy and practical reasons for doing so: see *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras. 13-14, citing *Target Canada Co. (Re)*, 2015 ONSC 7574, at paras. 2, 12, 22.
- [26] No opposition to the approval of the Seventh Report has been raised and the approval is appropriate in the circumstances, as the Monitor has acted reasonably and in good faith. The draft order provided contains the typical language that only the Monitor is entitled to rely on the approval.
- [27] Fee approvals are also sought for the fees and disbursements of the Monitor and its legal counsel, including the fees to complete the Transaction and up to the filing of the Discharge Certificate. The detailed work carried out by the Monitor and its counsel is described in the factum filed in support of this motion and in the supporting fee affidavits.
- [28] 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.

[29] In this respect, as the Court of Appeal for Ontario held in *Diemer*, at paras. 33 and 45, this court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Applicants' assets and liabilities, as well as the complexity of the Applicants' business and the proceeding. In considering these guiding principles, the fees of the Monitor and its counsel as set out in the supporting fee affidavits are appropriate and are approved.

[30] The Monitor and its counsel have retainers and the Monitor has some cash on hand, which is expected to be sufficient to cover past and continuing fees. Any excess will be distributed to the DIP Lender in accordance with prior authority granted to the Monitor regarding distributions.

[31] Canada Revenue Agency has requested the inclusion of specific language in paragraph 20 of the ARVO, which none of the participating parties object to.

### **Orders**

[32] I have signed the two orders today, both dated December 11, 2025. These orders are effective without the need for entry and filing<sup>2</sup>

Date: Dec 12, 2025



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Jessica Kimmel