

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

NOTICE OF MOTION

Premium Brands Holdings Corporation (“**PBHC**”) and GoCold Solutions Inc. (the “**Manager**” and together with PBHC, the “**PB Parties**”) will make a Motion to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on a date to be scheduled by the Court at a Case Conference scheduled for Thursday, June 5, 2025 at 9:00 a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- ☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☒ In person;
- ☐ By telephone conference;
- ☐ By video conference.

at the following location: 330 University Avenue, Toronto, Ontario.

**THE MOTION IS FOR:**

1. An Order (the “**Lift Stay Order**”) lifting the stay of proceedings (the “**Stay of Proceedings**”) granted in these proceedings (the “**CCAA Proceedings**”) to:

- a. allow the Manager to rely on its notice of default delivered on June 5, 2024 or issue a new notice of default (the “**Manager Notice of Default**”) indicating the Manager’s intention to terminate the cold storage management agreement dated December 17, 2021 (the “**CSMA**”)<sup>1</sup> between the PB Parties and Eastern Meat Solutions Inc. (“**EMS**”) and Coldterra Supply Chain Ltd. (together, the “**Applicants**” and collectively with the PB Parties, the “**Parties**”); and
- b. adjudicate the Dispute (as defined below);

2. In the alternative to the Lift Stay Order, an Order (the “**Status Quo Order**”) declaring that the 180-day cure period under the CSMA (the “**180-Day Cure Period**”) triggered by Applicants’ purported Termination Notice (as defined below), if valid, ceases to run from the date of the delivery of this Notice of Motion until the final determination of the Dispute (as defined below);

3. An Order (the “**Ancillary Relief Order**”) requiring the Applicants to provide the Manager with (i) copies of the general ledger detailed report of Coldterra showing the detailed entries for each income statement account for the 2023 and 2024 Fiscal Years; (ii) copies of all invoices for transactions between Coldterra and EMS or any EMS related entity; and (iii) copies of the capital

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<sup>1</sup> Capitalized terms used in this Notice of Motion are as defined in the CSMA

cost allowance and asset continuity schedules from the 2022, 2023 and 2024 tax returns of Coldterra (collectively, the “**General Ledger Documents**”);

4. Such further and other relief as counsel may advise and this Honourable Court may permit;

**THE GROUNDS FOR THE MOTION ARE:**

***Overview***

5. There is an ongoing dispute between the Parties, which is briefly described below (the “**Dispute**”):

- a. The Applicants allege that the Manager failed to comply with key contractual obligations under the CSMA, including the provision of certain financial statements and accounting reports relating solely to the Cold Storage Business (as defined below) necessary to calculate if any amounts are owing between the Parties under the CSMA, including amounts as a result of the Purported Termination (as defined below);
- b. The Manager alleges that the Applicants have breached the CSMA by, among other things, interfering with the Manager’s ability to perform the Management Services, including by failing to provide the Manager with access to the financial information necessary to prepare the financial statements and accounting reports it is required to prepare under the CSMA;

6. The Parties assert claims against the other that may amount to tens of millions of dollars.

These amounts are disputed on several grounds, including:

- a. the calculation of the Distributable Cash Shortfall is at issue with each party's interpretation of the CSMA, leading to vastly different conclusions;
- b. the Applicants purported to terminate the CSMA on May 21, 2025 (the “**Purported Termination**”) by a letter from the Applicants' counsel (the “**Purported Termination Letter**”). Under the CSMA, a valid Termination Notice (as defined below) triggers termination payments in favour of the terminating party, which could significantly exceed all other amounts payable under the CSMA. The Manager denies that the Applicants were entitled to issue the Purported Termination Letter and disputes the existence of the defaults alleged by the Applicants. In the alternative, if default by the Manager is established, the Manager maintains that its inability to cure such default(s) is the result of the Applicants' own conduct—specifically, their failure to provide the Manager with access to the financial information required to prepare the necessary financial statements and accounting reports. Finally, even assuming the alleged defaults are established, the Manager is still contractually empowered to cure any such default, as the 180-Day Cure Period does not expire until June 28, 2025;
- c. the CSMA implicitly contemplates that the Manager will have access to the financial information necessary to prepare the financial statements and accounting reports necessary to calculate payments owing under the CSMA. The Manager never received such access;
- d. The CSMA contemplates the Manager receiving Audited Annual Statements from EMS. EMS did not conduct any Audits for the Fiscal Years relevant to the Dispute;

7. Given the 180-Day Cure Period, any delay may materially prejudice the PB Parties' position under the CSMA;

8. The Manager requires the General Ledger Documents to calculate the amounts owed under the CSMA and, if it is found to be in default, to cure such defaults;

***The CCAA Proceedings and the Stay of Proceedings***

9. On May 21, 2024, the Applicants and others obtained an initial order which included the Stay of Proceedings;

10. The Stay of Proceedings has prevented, and continues to prevent the Manager from asserting its rights and remedies under the CSMA, including delivering a Termination Notice (as defined below);

11. Since the Dispute arose, the Manager has continued to provide Management Services under the CSMA and engaged in good faith negotiations with the Applicants to try to settle the Dispute;

***The CSMA***

12. Pursuant to the CSMA, the Applicants engaged the Manager to operate a business specializing in cold storage and related logistics services for the food industry (the "**Cold Storage Business**");

13. The CSMA provides for an initial term of January 1, 2022 – September 30, 2033 (the "**Initial Term**");

14. The CSMA aligns the Manager's interests with the financial performance of the Cold Storage Business by providing incentives for meeting or exceeding certain projected targets. If those targets are not met, the Manager must cover the shortfall (the Distributable Cash Shortfall). If targets are exceeded, the Manager is entitled to a Performance Fee. The CSMA includes detailed formulas and mechanisms for adjusting targets, assessing performance and determining whether the targets were met, as well as calculating resulting amounts payable;

15. In addition, the CSMA provides for certain loans made, and fees payable, by the Manager to the Applicants;

16. The CSMA provides that either party can terminate the agreement following an event of default by the other. Specifically, either party may provide notice of its intention to terminate the agreement after the expiration of 120 days from the date of such notice (a "**Termination Notice**"). The CSMA further provides that, in respect of certain defaults (including the alleged defaults at issue in the circumstances on this present Motion), a Termination Notice will be deemed to be of no effect if either defaulting party proceeds to cure such default(s) within the 120 day period or 180 days if either party determines in their own discretion that such default is not capable of being cured within 120 days;

17. The CSMA provides for significant termination payments payable by the defaulting party;

***The Relief Requested***

18. The relief being sought by the PB Parties on this Motion is time sensitive. The Applicants sent the Purported Termination Letter relying on a notice of default and Termination Notice they issued on December 30, 2024;

19. To date, the PB Parties have vigorously denied the existence of the defaults alleged by the Applicants and their entitlement to terminate the CSMA. If these defaults are established, the PB Parties assert that they were caused by the Applicants' own failure to perform their obligations under the CSMA;

20. The Applicants have an obligation under the CSMA to refrain from taking any action that interferes with the Manager's ability to satisfy its obligations under the CSMA. They have breached this obligation by denying the Manager access to the financial information necessary to prepare the financial statements and accounting reports the Manager is required to produce under the CSMA;

21. The Applicants were obligated under the CSMA to provide the Manager with Audited Annual Statements which form the basis of the calculation of amounts owing between the Parties. Despite assurances to the contrary, the Applicants failed to deliver Audited Annual Statements;

22. If the PB Parties are in default, the PB Parties must be permitted to exercise their contractual right to cure the defaults prior to the expiry of the 180-Day Cure Period and be granted access to the General Ledger Documents in order to do so;

23. The lapsing of the 180-day Cure Period will trigger material financial consequences for the Manager. It is therefore critical that either the Dispute be heard by this Court prior to the expiry of the 180-Day Cure Period or that the status quo be preserved to enable a hearing on the merits;

24. The Ancillary Relief Order is required whether this Court issues the Lift Stay Order or the Status Quo Order, as the information sought for disclosure is necessary to both cure the defaults

alleged by the Applicants and to calculate amounts due under the CSMA. Any adjudication of the Dispute will require that the Applicants provide this information to the PB Parties;

25. Such other grounds as further set out in the affidavit of Daniel Baynes, to be sworn;

26. The provisions of the CCAA, including section 11, and this Court's equitable and statutory jurisdiction thereunder;

27. Such further and other grounds as counsel may advise and this Court may permit;

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

28. The affidavit of Daniel Baynes, to be sworn, and the exhibits thereto;

29. Such further and other materials as counsel may advise and this Court may permit.

June 2, 2025

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**TO: THE SERVICE LIST**



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

**NOTICE OF MOTION**

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