Court File No.: CL-26-00000265-0000

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 AND ARRANGEMENT OF FRESHSTONE BRANDS INC.

AIDE MEMOIRE OF THE DIP LENDER and MOVING PARTY, GARRINGTON FINANCIAL SERVICES INC.

November 6, 2026

DLA PIPER (CANADA) LLP
Suite 5100, Bay Adelaide – West Tower
333 Bay Street
Toronto, ON M5H 2R2

Edmond Lamek (LSO #33338U)
Tel: 416-365-3444
edmond.lamek@dlapiper.com

Counsel to Garrington Financial Services Inc.

TO: SERVICE LIST

OVERVIEW

1. This is a motion by Garrington Financial Services Inc. ("**Garrington**") in its capacity as debtor in possession lender (the "**DIP Lender**") and beneficiary of the DIP Lender's Charge as provided for in paragraph 36 of the Amended and Restated Initial Order of the Honourable Justice Black dated June 18, 2029 (the "**ARIO**") in these *Companies' Creditors Arrangement Act* (the "**CCAA**") proceedings (the "**CCAA Proceedings**") for the appointment of Deloitte Restructuring Inc. ("**Deloitte**"), the current CCAA monitor (the "**Monitor**") as receiver of the property, assets and undertaking of Freshstone Brands Inc. ("**Freshstone**") in accordance with Section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**").

2. The requested Receivership Order has been consented to by Freshstone, and Deloitte has consented to act as receiver ("**Receiver**") in accordance with its terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Affidavit of Tammy Kemp sworn November 5, 2026, filed in respect of this motion.

3. The principal purpose of the Freshstone CCAA Proceedings was to undertake a Court approved sale and investor solicitation process ("**SISP**") for the Property comprising the Freshstone business, which SISP included a stalking horse Subscription Agreement (the "**Stalking Horse Agreement**"), between Freshstone and Frank Burdzy (Freshstone's CEO and a director). Following the conduct of the SISP, on October 14, 2026, the Court approved the transaction contemplated by the Stalking Horse Agreement (the "**Transaction**") and issued the "reverse vesting order" requested by Freshstone and recommended by the Monitor.

4. As of October 21, 2026 Freshstone was indebted to the DIP Lender in the amount $1,206,622.35 plus accrued and accruing interest, fees and reimbursable costs in accordance with the Amended DIP Loan Agreement. On October 21, 2026, Freshstone confirmed to Garrington that an Event of Default had occurred under the Amended DIP Loan Agreement as a result of Freshstone exceeding the Permitted Variance for two consecutive weeks as shown on the Cash Flow Variance Reports submitted to Garrington on October 10, 2026, and October 17, 2026.

5. On October 22, 2026 the Monitor issued its Fifth Report which reported that: (i) Freshstone had suffered a material reduction in actual and projected sales as a result of lost customers, and reductions in order volumes from certain customers; (ii) Freshstone's was unable to fulfil orders due to the inability to source sufficient raw materials as a result of cash constraints; and (iii) Freshstone had been unable to pay certain post-filing liabilities totalling $2,050,958. The Fifth Report also indicated that the Monitor had asked Mr. Burdzy if he intended to close the Transaction in light of the aforesaid developments, and that Mr. Burdzy declined to confirm his intention to do so. Based on the foregoing information the Monitor declared a Material Adverse Change in respect of Freshstone.

6. On October 23, 2026 the DIP Lender issued a Default Notice in accordance with the Amended DIP Loan Agreement, *inter alia*, terminating its commitment to make further advances to the Freshstone, declaring all amounts due and payable, and reserving the right to make protective advances to protect and preserve the value of the Property and the realizable value thereof. Later on October 23, the Monitor issued its Sixth Report which advised readers of: (i) the delivery of the Default Notice by the DIP Lender, (ii) Mr. Burdzy having advised the Monitor that he will NOT be proceeding to close the Transaction or advancing funds into Freshstone to address its liquidity issues; and (iii) Freshstone's steps to lay-off 134 of its 159 employees.

7. In light of the foregoing circumstances, the DIP Lender, in consultation with the Monitor and Mr. Burdzy, is of view that the appointment of a Receiver over the Property will best serve to maximize recoveries and realizations on the Property for the benefit of Freshstone's stakeholders.

8. The DIP Lender in consultation with the Monitor has agreed to make certain Protective Advances to the Monitor's Trust account (to be transferred to the control of Receiver upon its appointment) in amounts required to fund approved disbursements until November 28, 2026, including an accrual for the proposed Receiver's statutory duties between November 28, 2026 and its discharge. In consideration for, and as a condition of such Protective Advances, all accounts receivable collections from customers received by Freshstone will be remitted to the DIP Lender until the DIP Obligations are paid in full.

ISSUE AND LAW

9. The issue before this Court is whether it is just or convenient to appoint the proposed Receiver.

This Court has the Jurisdiction to Appoint the Proposed Receiver:

10. The making of a Receivership Order under the BIA within the context of a CCAA proceeding is not new to the Commercial List, and is consistent with the harmonious and purposive application of the Canadian insolvency statutes to preserve value for stakeholders. The considerations before the Court on this motion are analogous to those set out in the July 19, 2024

endorsement of the Honourable Justice Osborne in the CCAA proceedings of *2039882 Ontario Limited (o/a Shelter Cove)*[1].

11. Each of the technical requirements enumerated under the BIA for the appointment of the proposed Receiver are satisfied, accordingly this Court has the jurisdiction to appoint the proposed Receiver.[2] In particular:

(a) the DIP Lender is a senior secured creditor of the Debtor pursuant to the DIP Lender's Charge;

(b) the DIP Lender has declared the DIP Loan indebtedness due and payable in full, which remains outstanding as of the date hereof;

(c) the DIP Lender has delivered a NITES to Freshstone in accordance with section 244 of the BIA and the 10-day notice period prescribed thereunder has been waived by Freshstone; and

(d) Deloitte, is a trustee as defined in the BIA, and has consented to act as receiver;

(e) Toronto is the appropriate and convenient forum for these proceedings given that Freshstone's registered and head office is located in Toronto, Ontario; and

(f) this Court is well-versed in Freshstone and its stakeholders, as a result of the Freshstone CCAA Proceedings.

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[1] In the matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited o/a Shelter Cove, 2024 ONSC 5153; https://www.canlii.org/en/on/onsc/doc/2024/2024onsc5153/2024onsc5153.html

[2] *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 s 243-244.

The Proposed Receiver's Appointment is Just and Convenient

12. Subsection 243(1) of the BIA provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "just or convenient" to do so.[3] Similarly, the CJA enables the court to appoint a receiver where such appointment is "just or convenient."

13. In determining whether it is "just or convenient" to appoint a receiver under the BIA, courts have applied the considerations detailed in *Bank of Nova Scotia v. Freure Village on Clair Creek.*[4] In that case, the Honourable Justice Blair (as he then was) held that the Court must have regard to all of the circumstances, and in particular the nature of the property and the rights and interests of all parties in relation thereto, including the rights of the secured creditor under its security.

14. Neither the BIA nor the CJA set out a list of factors to be considered when determining whether it is just and convenient to appoint a receiver. Nevertheless, in evaluating whether the appointment of a receiver is appropriate, this Court has considered a range of non-exhaustive factors, including the following:

(a) whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

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[3] BIA, *supra* at s 243(1).

[4] *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC) at para 10

(b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

(c) the nature of the property;

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) fact that the creditor has a right to appointment under the loan documentation;

(h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;

(i) the principle that the appointment of a receiver should be granted cautiously;

(j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

(k) the effect of the order upon the parties;

(l) the conduct of the parties;

(m) the length of time that a receiver may be in place;

(n) the cost to the parties;

(o) the likelihood of maximizing return to the parties; and

(p) the goal of facilitating the duties of the receiver.[5]

15. Having regard to the foregoing considerations, the DIP Lender submits that the appointment of the proposed Receiver is just and convenient in the circumstances and submits that a court-supervised receivership will provide a centralized, orderly and transparent process to efficiently manage the realization of Freshstone's Property, coordinate stakeholder interests, and maximize stakeholder recoveries.

The Terms of the Proposed Receivership Order are Appropriate

16. The proposed Receivership Order, is substantially similar to the terms of the Commercial List model order and is appropriate in the circumstances.[6]

17. The proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the complexity of the proposed Receivership proceedings, and have been ranked in the draft Receivership Order to take into account the existing CCAA Charges set out in the ARIO.

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[5] *iSpan Systems LP*, 2023 ONSC 6212 at para 32 [*iSpan*]. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25.

[6] Blackline of the proposed Receivership Order against the Model Receivership Order (Ontario), Application Record at Tab 5.

ORDER REQUESTED

18. Garrington respectfully requests that this Honourable Court grant an order substantially in the form of the draft Receivership Order located at Tab 4 of its Motion Record and such further and other relief as counsel may advise and this Honourable Court may deem just.

November 6, 2026

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PROCEEDING COMMENCED AT TORONTO

AIDE MEMOIRE OF GARRINGTON FINANCIAL SERVICES INC.

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Suite 5100, Bay Adelaide – West Tower
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