

**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 NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC.,
3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS
INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC,
NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN
LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU
SP.Z OO and NAFA POLSKA SP. Z OO

(the “Applicants”)

NOTICE OF MOTION

**(Re: Stay Extension and Adjusting Allocation of Administration Charge - Returnable May
1, 2020)**

The Applicants will make a motion for an Order seeking the relief set out herein to a Judge of the Ontario Superior Court of Justice (Commercial List), on Friday, May 1, 2020, at 10:00 a.m. or as soon after that time as the motion can be heard, by telephone conference or other electronic means at the courthouse located at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at **Tab 2** hereto (the “**Extension Order**”):

- (a) if necessary, abridging the time for service of this Notice of Motion and the corresponding Motion Record and dispensing with service on any person other than those served;
- (b) extending the stay of proceedings (“**Stay Period**”) from May 4, 2020 to and including July 31, 2020 (the “**Extension Period**”);
- (c) adjusting the allocation of the priority of the Administration Charge to permit \$900,000 to rank in first priority, an adjustment of \$200,000; and
- (d) sealing the Confidential Appendices “A”, “B” and “C” filed under seal with the Court in support of this motion; and

2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

- (a) Capitalized terms not defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of Justice McEwen dated October 31, 2019 (as amended and restated, the “**Initial Order**”);
- (b) All of the relief sought by the Applicants has been reviewed with the Agent and Business Development Bank of Canada (the “**BDC**”) prior to issuing this Notice of Motion and the Applicants are hopeful that the relief will be able to proceed on consent or an unopposed basis;

- (c) The Applicants are, collectively, in the business of farming, financing, preparing, grading and auctioning fur products, such as pelts and skins, for use in the garment industry;
- (d) On October 31, 2019, the Applicants commenced proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to the Initial Order;
- (e) On November 28, 2019, (the "**November Motion**"), the Court granted the Applicants various orders including an Order extending the Applicants' Stay Period until January 31, 2020;
- (f) On January 31, 2020, the Applicants sought and were granted an Order extending the Stay Period in these proceedings to and until April 3, 2020;
- (g) On April 1, 2020, the Applicants sought a short stay extension of 30 days to allow it to more fully consider its operations during the period of the pandemic before returning to this court to seek a longer extension. The court granted that extension to May 4, 2020.
- (h) Since the date of the Initial Order, the Applicants, in close consultation with the Monitor have focused on stabilizing their business and operations as part of these CCAA proceedings and proceeding to, among other things, collect pelt advances and other proceeds to repay the DIP Facility and commence repaying the indebtedness owing to the Agent;

- (i) The business of the Applicants is an international business, with its main product, being interests in farmed mink pelts, being grown, harvested, processed and sold at locations around the world, mainly in Europe and North America;
- (j) As set out in the Applicants' motion to seek an extension in April (the "**March Motion Record**"), the Applicants had previously advised the Court that it would liquidate a material portion of its product this year through three venues:
 - (i) an auction of wild fur product to be sold at a joint auction conducted by a Canadian wild fur auction house Fur Harvesters Auctions Inc. ("**FHA**") and the Applicants from the Applicant's premises in Toronto;
 - (ii) several auctions, traditionally held in March, June and September by Saga Furs Inc. ("**Saga**") the second largest fur auction house in the world to be held in Helsinki, Finland, and
 - (iii) several auctions, traditionally held in February, May and July by Kopenhagen Fur a.m.b.a ("**KF**"), the largest fur auction house in the world, to be held in Kopenhagen, Denmark;
- (k) The business of the Applicants has been impacted by the worldwide pandemic related to the virus known as COVID-19;
- (l) Ontario is now operating in a declared state of emergency as a result of concerns related to COVID-19;

- (m) Among other issues, COVID-19 has resulted in severe travel restrictions and the total or partial closing of borders around the world, including in Canada and in the countries where pelts in which NAFA has an interest are to be auctioned;
- (n) As a result of the COVID-19 pandemic, the live auction to be conducted by FHA has been cancelled and will now likely not proceed until the late summer, the auction originally to be conducted by KF in February had been postponed to late April and the live auction originally to be conducted by Saga in early March was postponed to the beginning of April where it took place in an unprecedented manner online to allow for some furs to be sold;
- (o) While Saga has announced that the April Auction was a success given the new online auction format, Saga sold substantially less fur pelts than would have been the case at a traditional auction. In addition, it had difficulty selling North American pelts, which generally are known to require in person inspection by buyers in order to assess value;
- (p) To the extent goods secured to NAFA were sold in that auction, the proceeds will first be applied to advances made by SAGA to NAFA previously in accordance with the Saga Transaction and then to NAFA thereafter. NAFA was advised by Saga on April 27, 2020 that it will be provided with an estimate of proceeds payable to NAFA prior to May 1, 2020, however, based on discussions with Saga NAFA does not expect to receive material proceeds from this auction given the previous advances to NAFA and the limited sales of North American pelts;

- (q) As a result of the cancellation and delay of the various auctions NAFA is relying on to monetize the goods secured to it and other economic disruption caused by COVID-19, including the direction provided by the Province of Ontario to close all non-essential businesses, NAFA has not been able to meet the financial projections set out in the Third Report of the Monitor dated January 29, 2020 filed in support of the extension of the Stay Period to April 3, 2020;
- (r) The Applicants reviewed their economic situation with the Agent and BDC prior to the last hearing. In particular, the Applicants developed and forecast, with the assistance of the Monitor, an “Emergency Liquidity Plan”, a copy of which was provided to the Court in the March Motion Record, which is provided again herein as **Confidential Appendix “A”**;
- (s) The Monitor, with the assistance of the Applicants, has prepared a variance report which is provided herein as **Confidential Appendix “B”** for the period against the ELA to date that shows that the Applicants’ actual receipts have exceeded the ELA projections. As a result, the Company is ahead of where it projected it would have been had there been no receipts.
- (t) The Applicants, with the assistance of the Monitor have prepared a cash flow forecast to July 31, 2020, which is attached as **Confidential Appendix “C”** (the “**Cash Flow Forecast**”).
- (u) Unlike the ELA, which was prepared on the basis that the Applicants received virtually no receipts during the period, the Cash Flow Forecast projects certain

receipts, although given the current situation, the projection of receipts only accounts for receipts that the Applicants feel are reliable even in the crisis.

- (v) The Applicants, the Monitor and Saga had a call on April 24, 2020 during which, Saga confirmed its current intention is to conduct a live auction in June 2020 as scheduled and to do whatever is possible to ensure a robust auction process in the event the live auction is limited by the continued COVID-19 pandemic. As a result, the Cash Flow Forecast does forecast receipts in July anticipated to be received as a result of the Saga June auction;
- (w) The Cash Flow Forecast demonstrates that the Applicants will have sufficient liquidity to operate, subject to certain restrictions and assumptions set out therein;
- (x) The Applicants have requested accommodations from the landlord of the Skyway head office/auction premises to further ease liquidity, which remain under review and could provide additional liquidity to further ease the cash concerns;
- (y) The Applicants have also discussed possible accommodations with the Agent and BDC should they become necessary, which are currently not forecast in the Cash Flow Forecast;
- (z) The Applicants have taken significant cash conserving measures, which include undertaking certain lay-offs, deferral of a portion of certain employees' salaries until the end of the Cash Flow Period with the agreement of the impacted employees, deferral of the payment of any KERP amounts to at least the end of the Cash Flow Period with the agreement of the impacted employees, and the deferred

payment of outstanding professional fees such that these amounts are paid 60 days in arrears;

- (aa) Given the delay of the FHA auction from May until the summer, NAFA engaged in further cutbacks and laid off an additional 10 employees. The remaining employees are the core group of NAFA executives and employees. They are engaged in:
- (i) conducting private treaty sales of the substantial goods still on hand at NAFA to produce revenue from goods which might otherwise have been sold at the FHA auction;
 - (ii) collecting the outstanding buyer receipts from the last NAFA auctions in September;
 - (iii) communicating with parties who owe money to NAFA in an attempt to obtain payment in respect of same;
 - (iv) resolving remaining disputes with the outstanding delivery of pelts for this year's auctions, whether pursuant to the SAGA Transaction as previously described to this Court, or otherwise;
 - (v) attending to the shipping and receiving of goods, which are subject to private treaties or storage arrangements;
 - (vi) assisting with HR matters relating to the laying-off or terminating employees, not only in Canada, but also in Poland;

- (vii) reviewing Government programs to determine whether NAFA is eligible for any relief during the COVID-19 pandemic;
 - (viii) liaising with real estate agents regarding the Applicants' real estate assets that are currently listed for sale and attending to questions related to same and, as and when possible, showing the properties;
 - (ix) attending to the shutdown of the Applicants' Daikoku operations in accordance with the advice of Polish counsel to minimize employee and other liabilities to NAFA;
 - (x) assisting with legal matters related to the CCAA process generally and answering stakeholder questions and concerns related to same, and
 - (xi) assisting with preparing proofs of loss and processing what may prove to be material insurance claims being filed by the Applicants related to the failure of certain farmers to make deliveries when due this year, including those in Latvia and Lithuania as previously reported to this Court;
- (bb) The Applicants have suspended finalizing and thereafter commencing its SISP program to avoid those costs until there is more stability in the market place and the Applicants can consider the state of the market for the items which would be for sale under the SISP;
- (cc) The Applicants currently owe professional fees of approximately US \$810,000 million not including April, 2020 work in progress, which are secured by the Administration Charge. This amount includes amounts owing to the counsel for

the Applicants (including amounts owing for Applicants' counsel in Lithuania, Latvia and Poland), the Monitor and its counsel and the Agent's counsel and financial advisor;

- (dd) The Administration Charge currently provides for a first ranking super priority charge in the amount of U.S.\$700,000 in priority to all other charges (now that the DIP is repaid), and a fourth ranking charge in the amount of U.S.\$800,000 behind the KERP Charge and the Syndicate Debt and the Syndicate Security;
- (ee) The Applicants are seeking to adjust the priority of the Administration Charge to allow for the amount of the first ranking super priority charge to be increased from U.S.\$700,000 to U.S.\$900,000;
- (ff) By adjusting the Administration Charge, certain pressure on the Applicants' liquidity can be eased until receipts are received by the Applicants to pay these professional fees;
- (gg) With a view to reducing ongoing professional fees, the Applicants, the Monitor and the Agent are in discussions regarding ways to streamline certain processes, which have proven expensive to date in these proceedings. Those steps include:
 - (i) seeking a 3 month extension of the Stay Period in this Motion to reduce the necessity to return to Court as often as has occurred in the past;
 - (ii) agreeing to streamline the process of collecting outstanding accounts, such that the collection of accounts can now be made with Monitor approval

subject to certain mutually agreed to thresholds being met, rather than requiring Agent approval; and

- (iii) extending weekly reporting to the Agent to by-weekly;
- (hh) In addition to reducing professional fees, the Applicants are expecting the additional flexibility being agreed to by the Agent will allow the Applicants to complete more settlements which will allow for liquidity to come in faster, which is in the interest of all parties;
- (ii) The Applicants have acted in good faith and with due diligence under the supervision of the Monitor through the Stay Period;
- (jj) Additional time is required to continue the Applicants' restructuring efforts, including with respect to the sale of their pelts, the collection of their accounts receivables in Europe and North America and the sale of their real estate holdings in Canada, the United States and Poland;
- (kk) The Applicants require the continued stability provided by the stay of proceedings in order to pursue the proposed path forward;
- (ll) The Applicants have sufficient liquidity to fund these proceedings during the extension of the Stay Period;
- (mm) The Monitor has confirmed it supports the Applicants' extension of the Stay Period to and including July 31, 2020;

Process in Light of COVID-19

- (nn) As a result of the changes to the Commercial List operations in light of COVID-19, the following procedures will be applied with respect of the hearing for the Applicants' motion:
- (i) Parties on the Service List who intend to oppose the Applicants' requested stay extension or other relief being sought on this motion shall provide written notice to counsel for the Applicants (dullmann@blaney.com), the Monitor (jsleeth@deloitte.ca; kmahar@millertomson.com) and the Commercial List Office (Toronto.commercialist@jus.gov.on.ca) by no later than 5:00 p.m. (Toronto time) on April 29, 2020 (an "**Objection Notice**");
 - (ii) If no party delivers an Objection Notice in accordance with the procedure and deadlines set out above, the Monitor shall advise the Court accordingly and request the motion be heard by telephone conference on the materials filed;
 - (iii) If a party delivers an Objection Notice, the Monitor shall advise the Court, and the Court will direct the parties with respect to the conduct of a hearing; and
 - (iv) In the event the court finds the objection to be material, and if the hearing cannot be heard on May 1, 2020 as a result of an Objection Notice, the Applicants will request that the Court issue a short stay extension to

maintain the status quo pending a final determination of the Applicants' stay extension request;

- (oo) the Monitor and Applicants will take such other procedural steps as may be directed by the Court and as set out in the procedures suggested by the Commercial List Users Committee at < <https://commercialist.com/pdf/changes-to-commercial-list-operations-in-light-of-covid-19.pdf>>;

Other Grounds

- (pp) The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Honourable Court;
- (qq) Rules 2.03, 3.02, 16, and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (rr) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (ss) 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:

- (a) the Affidavit of Doug Lawson affirmed January 28, 2020 and the exhibits attached thereto (previously filed);
- (b) the Third Report of the Monitor, (previously filed);
- (c) Confidential Appendices “A”, “B” and “C”; and
- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: April 27, 2020

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Fax: (416) 594-2437
Email: DUllmann@blaney.com

Counsel for the Applicants