

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF SAINT JOHN

**IN THE MATTER OF THE RECEIVERSHIP OF IFOODEQUIPMENT.COM INC., D&P GOODER
HOLDING LTD. and IBC FOOD EQUIPMENT INC.**

**PURSUANT TO SECTION 33 OF THE *JUDICATURE ACT*, R.S.N.B. 1973, CH. J-2, RULE 41 OF
THE RULES OF COURT, N.B. REG 82-73 and SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3**

BETWEEN:

ROYAL BANK OF CANADA,

APPLICANT

- and -

IFOODEQUIPMENT.COM INC.,
D&P GOODER HOLDING LTD., and
IBC FOOD EQUIPMENT INC.

RESPONDENTS

BRIEF ON MOTION

On behalf of the Receiver , Deloitte Restructuring Inc. for
the motion to be heard on March 25, 2025, at 10:00 a.m.

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Solicitors for the Receiver,
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Solicitors for the Applicant,
Royal Bank of Canada

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PART I - BACKGROUND

1. Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of D&P Gooder Holding Ltd., ifoodEquipment.com Inc., and IBC Food Equipment, Inc. (collectively, the “**Debtors**”), is bringing this motion to seek relief pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). Specifically, the Receiver is requesting:

- (a) if necessary, an Order abridging the time for service of this Notice of Motion, the second report of the Receiver dated March 11, 2025 (the “**Second Report**”), the confidential supplement to the Second Report (the “**Confidential Supplement**”) and/or the Record on Motion, or excusing the lack of service of this Notice of Motion and/or the Record on Motion;
- (b) Orders (the “**Approval and Vesting Orders**”) approving the sale (collectively, the “**Transactions**”) of all or substantially all of the property, assets and undertaking of the Debtors, as more specifically set out in three asset purchase agreements (collectively, the “**Sale Agreements**”) by and among the Debtors, by the Receiver (in such capacity, the “**Vendors**”), and each of 713860 NB Ltd., McDougall Auctioneers Ltd., and Edge Food Equipment Inc. (collectively, the “**Purchasers**”) executed on or about February 5, 2025;
- (c) An Order (the “**Ancillary Order**”):
 - (i) Approving the fees and disbursements of the Receiver for the period up to and including December 31, 2024, and those of its legal counsel, Cox & Palmer, for the period up to and including January 31, 2025;

- (ii) authorizing, but not directing, the Receiver to assign any or all of the Debtors into bankruptcy and authorizing Deloitte to act as Licensed Insolvency Trustee in any such bankruptcies;
- (iii) approving the activities of the Receiver, as set out both in the Second Report and the Confidential Supplement; and
- (iv) sealing the Confidential Supplement until the earlier of the filing of the Receiver's Certificate or further order of this Court;

PART II - FACTS

2. On November 28, 2024, upon an application by the Royal Bank of Canada, the Court of King's Bench of New Brunswick (the "**Court**") granted an order (the "**Receivership Order**") appointing Deloitte as the receiver and manager without security, of all the assets and properties of the Debtors acquired for, or used in relation to a business carried on by the Ifood Group (the "**Property**").
3. In addition to the Receivership Order, the Court granted an order (the "**Sale Process Order**") authorizing and approving the Receiver to proceed with the sale and investment solicitation process (the "**SISP**") as outlined in the First Report.
4. Upon issuance of the Sale Process Order, the marketing materials (the "**Teaser**") and non-disclosure agreement (the "**NDA**") were promptly circulated to Interested Parties, previously identified potential purchasers (the "**Identified Parties**"), and any additional parties that contacted the Receiver expressing interest.
5. Within four (4) business days after the issuance of the Sale Process Order, the Receiver published a notice in local newspapers, online mediums, and widely read insolvency publications to further broaden market awareness of the opportunity.
6. Prospective bidders who executed the NDA received access to a virtual data room containing the sale and information package and were offered site visits to the Property.
7. By Day 45 of the SISP, prospective bidders were required to submit legally binding offers (the "**Final Bids**").

8. The Receiver reviewed the Final Bids received and declared the bids submitted by the Purchasers the successful bids.
9. The Receiver executed the Sale Agreements on February 5, 2025.

PART III - ISSUES

10. The primary legal questions at issue on this motion relate to:

- (a) The approval of the Transactions;
- (b) The approval of the Receiver's activities as set out in the Second Report and the Confidential Supplement;
- (c) The authorization of the Receiver to assign any or all of the Debtors into bankruptcy; and
- (d) The approval of the Receiver and Receiver's Counsel's Fees;

PART IV - LAW & ARGUMENT

Approval of the Transaction

11. In determining whether to approve the Transaction, it is respectfully submitted that this Court should be guided by the criteria set out by the Ontario Court of Appeal in **Royal Bank v. Soundair Corp.** [\(1991\), 4 OR \(3d\) 1 \(CA\) \(CanLII\)](#). In *Soundair*, *ibid*, the Ontario Court of Appeal held that Courts, in determining whether to approve a sale by a receiver, should take into account the following considerations:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
2. It should consider the interests of all parties.
3. It should consider the efficacy and integrity of the process by which offers are obtained.
4. It should consider whether there has been unfairness in the working out of the process.

12. It is respectfully submitted that the Receiver herein has complied with the test set out in *Soundair*, *supra*, and the Transaction and the Sale Agreements also satisfy the above test. Among other things:

- (a) The SISP was approved by the Court and conducted by the Receiver in accordance with its terms;
- (b) The Receiver is of the opinion that the marketing activities contained within the SISP were robust and exposed the Debtors' assets to the market for a reasonable period of time and, as such, the Sale Agreements are commercially reasonable and should be approved;

- (c) The Receiver does not believe that further marketing would lead to any greater recovery; and
- (d) The Royal Bank of Canada, as senior secured lender, is supportive of the Transactions.

Approval of Receiver's Activities

13. The Receiver submits that a request to approve a receiver's report is not unusual and there are good policy and practical reasons for the Court to approve a receiver's activities, in particular, court approval:

- (a) allows the Receiver to move forward with the next steps in the Receivership proceedings;
- (b) brings the Receiver's activities before the Court;
- (c) allows and opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Receiver's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Receiver not otherwise provided by the *BIA*; and
- (f) protects the creditors from possible delays in the distribution of proceeds that would be caused by:
 - (i) Re-litigation of steps taken to date; and
 - (ii) Potential indemnity claims by the Receiver.

See: [Re Target Canada Co., 2015 ONSC 7574](#) ("**Target**")

14. Recently, in *Ontario Securities Commission v. Bridging Income Fund LLP et al.*, [2025 ONSC 951 \(CanLII\)](#), Justice Osborne of the Ontario Superior Court of Justice (Commercial List) considered the criteria outlined in *Target*, supra, and its application to receivership proceedings at paragraph 131:

131. This Court has previously observed that periodic requests to approve reports of a monitor in a CCAA proceeding or a receiver appointed pursuant to the *Bankruptcy and Insolvency Act* or the *Courts of Justice Act* are appropriate and that there are good policy and practical reasons to grant such approvals which include allowing the Court officer to move forward with the next steps in the proceeding. See, for example, *Target Canada Co, (Re)*, 2015 ONSC 7574, at paras. 2 and 23. **In my view, there is no reason why the same principles ought not to apply to a receivership proceeding commenced pursuant to the *Securities Act*.**

[Emphasis added]

15. The Receiver has acted responsibly and carried out its activities in a manner consistent with the provisions of the *BIA* and in compliance with the Receivership Order and the SISP.
16. The Receiver submits that the activities outlined in the Second Report and the Confidential Supplement filed for this motion should be approved.

Approval of the Fees

17. The Receiver submits that, pursuant to Section 243(6) of the *BIA* “the Court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper [...]”. The purpose and procedure for the passing of a receiver’s account were discussed in *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851 \(CanLII\)](#) (“*Diemer*”) at paras 32 and 33:

[32] In *Bakemates*, this court described the purpose of the passing of a receiver’s accounts and also discussed the applicable procedure. Borins J.A. stated, at para. 31, that there is an onus on the receiver to prove that the compensation for which it seeks approval is fair and reasonable. This includes the compensation claimed on behalf of its counsel. At para. 37, he observed that the accounts must disclose the total charges for each of the categories of services rendered. In addition:

The accounts should be in a form that can be easily understood by those affected by the receivership (or by

the judicial officer required to assess the accounts) so that such person can determine the amount of time spent by the receiver's employees (and others that the receiver may have hired) in respect to the various discrete aspects of the receivership.

[33] The court endorsed the factors applicable to receiver's compensation described by the New Brunswick Court of Appeal in *Belyea: Bakemates*, at para. 51. In *Belyea*, at para. 9, Stratton J.A. listed the following factors:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and
- the cost of comparable services when performed in a prudent and economical manner.

These factors constitute a useful guideline but are not exhaustive: *Bakemates*, at para. 51.

18. Accordingly, the Receiver seeks the approval of the following fees and disbursements of itself and of its counsel, Cox & Palmer:

- (a) Fees and Disbursements of the Receiver from September 26, 2024 to December 31, 2024 in the amount of \$286,586.00 (inclusive of HST), charged at an average billing rate of approximately \$428.74 per hour; and
- (b) Fees and disbursements of the Receiver's counsel, Cox & Palmer, for the period of September 26, 2024 to January 31, 2025 in the amount of \$7,485.67 (inclusive of HST), charged at an average billing rate of approximately \$477.71 per hour.

19. The Receiver submits that the role of the Court in approving the fees and disbursements incurred by the Receiver and its counsel is to ensure that fees are fair and reasonable in the circumstances (see *Deimer*, supra at para 45). The Receiver is of the view that the fees incurred are reasonable and directly related to the steps necessarily undertaken to complete the Transaction and are consistent with the mandate of the Receiver and appropriate in the circumstances and should therefore be approved.

Bankruptcy Order

20. The Receiver seeks an order authorizing it to proceed with the assignment into bankruptcy of any or all of the Debtors and authorizing Deloitte to act as Licensed Insolvency Trustee in any such bankruptcies.
21. The Receivers submits that Debtors have property tax arrears owing and are indebted to the Canada Revenue Agency for excise tax amounts. The Debtors are in receivership and are considered “insolvent persons” within the meaning of the *BIA*. The Debtors have failed to meet their obligations generally as they become due and are indebted to various secured, preferred and unsecured creditors in an aggregate amount exceeding \$7,000,000.
22. The assignment into bankruptcy of any or all of the Debtors will allow for the alignment of priority claims, the crystallization of various other creditor’s claim and the efficient wind-down of the restructuring process.
23. Further, granting leave for the Receiver to assign the Debtors into bankruptcy will eliminate the necessity for a concurrent Bankruptcy Application to be filed which may result in further delays in the adjudication of claims and distribution of proceeds, resulting

in additional costs being charged to the Debtors' estate, including increased legal fees and disbursements.

Sealing Order

24. The Receiver seeks an order sealing the Confidential Supplement, because it attaches unredacted copies of the Sale Agreements, including purchase price and contains copies of the Receiver's liquidation analysis, bid summary and property appraisals. Public disclosure of any or all of these amounts may affect the ability of the Receiver to obtain appropriate value for the assets in the event that the Transaction do not materialize and a sale of all of the Debtors' assets is necessary in the future.
25. The test for determining whether a sealing order should be granted is set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) ("**Sierra Club**") at para 53 as contemplated by *Sherman Estate v. Donovan*, [2021 SCC 25](#) ("**Sherman Estate**") at para 38:
- (a) court openness poses a serious risk to an important public interest;
 - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
 - (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.
26. The Supreme Court of Canada, in *Sierra Club* and *Sherman Estate*, explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are "important public interests" for the purposes of this test (see *Sherman Estate*, *supra* at paras 46-85).

27. The Sealing Order is appropriate and adheres to the principles of *Sherman Estate*, in that:

- (a) The content of the Confidential Supplement are limited to the commercial terms of the Transaction (price, deposit, appraisals);
- (b) disclosure of such terms in advance of closing the Transaction could materially impair the Receiver's ability to re-market the assets if the Transaction did not close; and
- (c) the Receiver has provided the information to the key interested stakeholders, including the Royal Bank of Canada.

PART V - RELIEF SOUGHT

28. For the reasons set out above, the Receiver's requests the orders substantially in the forms attached to the Receiver's Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of March, 2025.



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LIST OF AUTHORITIES

Cases

1. *Royal Bank v. Soundair Corp.* [\(1991\), 4 OR \(3d\) 1 \(CA\) \(CanLII\)](#)
2. *Re Target Canada Co.*, [2015 ONSC 7574](#)
3. *Ontario Securities Commission v. Bridging Income Fund LLP et al.*, [2025 ONSC 951 \(CanLII\)](#),
4. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
5. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#)
6. *Sherman Estate v. Donovan*, [2021 SCC 25](#)

Statutes

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3