

Cv 14-10628-0001

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BULK SALES ACT*,
R.S.O. 1990, c.B.14, AS AMENDED**

**AND IN THE MATTER OF A TRANSFER OF ASSETS FROM
ELLEN'S FOOD GROUP INC. TO TFI FOODS LTD.**

BETWEEN:

**DELOITTE RESTRUCTURING INC., IN ITS CAPACITY AS TRUSTEE
IN BANKRUPTCY OF ELLEN'S FOOD GROUP INC.**

Applicant

and

TFI FOODS LTD.

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The Claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be fixed by the Commercial List Office, at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve

a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date July 14, 2014 Issued by _____
Local Registrar **A. Anissimova**
Address of Registrar
court office: **330 University Avenue, 7th Floor**
 Toronto, Ontario
 M5G 1R7

TO: TFI FOODS LTD.
 44 Milner Avenue
 Scarborough, ON M1S 3P8

APPLICATION

1. The applicant (the "Trustee") makes this Application for an order:
 - (a) declaring that the transaction (the "Transaction") contemplated by the sale agreement (the "Sale Agreement") dated June 7, 2012 and sales invoice (the "Invoice") dated July 5, 2012 between Ellen's Food Group Inc. ("Ellen's") and the Respondent ("TFI") constitutes a sale in bulk under the *Bulk Sales Act*, R.S.O. 1990, c. B.14 (the "BSA").
 - (b) Declaring that the Transaction is void for failure to comply with the terms of the BSA;
 - (c) Declaring that, in accordance with the BSA, TFI is personally liable to account to the Trustee for the value of the property purchased by TFI pursuant to the Sale Agreement and the Invoice (the "Purchased Assets");
 - (d) Requiring TFI to pay to the Trustee the sum of \$1,078,020.00, being the amount paid by TFI to Ellen's in respect of the Purchased Assets; and,
 - (e) Such further and other relief as counsel may advise and to this Court may seem just.

2. The grounds for the application are:

- (a) Ellen's was engaged in the manufacturing and distribution of quick frozen, ready-to-eat meals and leased a manufacturing facility located at 30 Sims Crescent, Richmond Hill, Ontario (the "Facility");
- (b) Pursuant to the Order of the Honourable Justice Morawetz, dated February 25, 2013, Deloitte & Touche Inc. (which subsequently changed its name to Deloitte Restructuring Inc., hereinafter referred to as "Deloitte") was appointed as Receiver of Ellen's, pursuant to Section 243 of the *Bankruptcy and Insolvency Act* and Section 101 of the *Courts of Justice Act*;
- (c) Upon its appointment, the Receiver attended at the Facility and was advised by certain individuals working there that Ellen's no longer operated out of the premises and that Ellen's had sold its business to TFI, including the Purchased Assets;
- (d) Shortly thereafter, the Receiver was advised by David Lam, TFI's president, and Ellen Pun, the principal of Ellen's, that TFI had acquired the Purchased Assets and assumed the lease for the Facility back in July 2012;
- (e) In or around the same time, Ms. Pun provided the Receiver with a copy of the Sale Agreement and the Invoice;

- (f) According to the Sale Agreement, TFI agreed to pay Ellen's the amount of \$954,000.00 for the Purchased Assets and the estimated closing date of the transaction was August 30, 2012;
- (g) The Invoice provided for a total purchase price of \$1,078,020.00, including HST, which was to be paid in four (4) installments;
- (h) On July 3, 2012, TFI paid the final installment to Ellen's for the Purchased Assets;
- (i) As of July 3, 2012, Ellen's was, and continues to be, indebted to numerous creditors, both secured and unsecured, including HSBC Bank Canada, Canada Revenue Agency, Dr. Sai-Kui Lee, numerous former employees of Ellen's, as well as numerous trade creditors;
- (j) On November 5, 2013, Ellen's filed an assignment in bankruptcy and Deloitte was appointed Trustee in Bankruptcy for the estate of Ellen's;
- (k) It appears that Ellen's improperly diverted the proceeds from the sale of the Purchased Assets, in contravention of the BSA;
- (l) As the purchaser of the Purchased Assets, TFI failed to comply with the provisions of the BSA and therefore ought to be held liable to account to Ellen's creditors for the value of the Purchased Assets;
- (m) The Trustee has requested that TFI provide evidence of its compliance with the BSA, but TFI has failed to provide any such evidence;
- (n) Sections 16(1), (2) and 17(1) of the BSA;

- (o) Rules 1.04 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and,
- (p) Such further and other grounds as counsel may advise and this Court deem just.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The First Report of the Trustee; and,
- (b) Such further and other evidence as counsel may advise and this Court permit.

14
July 2, 2014



**KRONIS, ROTSZTAIN,
MARGLES, CAPPEL LLP**
Barristers and Solicitors
8 King Street East, Suite 1000
Toronto ON M5C 1B5

Mervyn D. Abramowitz (LSUC # 28325R)
mabramowitz@krmc-law.com
Tel: (416) 218-5620
Fax: (416) 306-9874

Stephen Wolpert (LSUC # 57609Q)
swolpert@krmc-law.com
Tel: (416) 218-5763
Fax: (416) 306-9874

Lawyers for the Applicant

**DELOITTE RESTRUCTURING INC. IN ITS CAPACITY AS
TRUSTEE IN BANKRUPTCY OF ELLEN'S FOOD GROUP
INC.**
Applicant

-and- **TFI FOODS INC.**

Respondent

Cr 14-10628-00A

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

**KRONIS, ROTSZTAIN,
MARGLES, CAPPEL LLP**
Barristers and Solicitors
8 King Street East, Suite 1000
Toronto ON M5C 1B5

Mervyn D. Abramowitz (LSUC #28325R)
mabramowitz@krmc-law.com
Tel: (416) 218-5620
Fax: (416) 306-9874

Stephen Wolpert (LSUC # 57609Q)
swolpert@krmc-law.com
Tel: (416) 218-5763
Fax: (416) 306-9874

Lawyers for the Applicant