Court File No.: CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Applicant

and

2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
2131413 ONTARIO LIMITED O/A LORETTA FOODS,
787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE
AND O/A SKYWAY WHOLESALE
AND TARBRAC HOLDINGS INC.

Respondents

MOTION RECORD
(Returnable: December 19, 2011)

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Barristers and Solicitors
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Toronto, Ontario, M5J 2T9
Tel: 416.863.1500
Fax: 416.863.1515

Steven L. Graff – LSUC No 31871B
Aaron T. Collins - LSUC No. 55490T

Lawyers for the Applicant

INDEX

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ONTARIO
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BANK OF MONTREAL

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TAB 1

Court File No.: CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

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2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
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787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE
AND O/A SKYWAY WHOLESALE
AND TARBRAC HOLDINGS INC.

Respondents

NOTICE OF MOTION

BANK OF MONTREAL ("**BMO**"), a secured creditor of 2110458 Ontario Limited o/a Loretta Flour ("**211**"), 2131413 Ontario Limited o/a Loretta Foods ("**213**"), 787755 Ontario Limited o/a New Durham Trading, NDT Food Service and Skyway Wholesale (collectively, "**787**") and Tarbrac Holdings Inc. ("**Tarbrac**", and, together with 211, 213 and 787, the "**Debtors**") will make a motion to a Judge presiding over the Commercial List, on December 19, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse located at 330 University Avenue, Toronto, Ontario.

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

1. **THE MOTION IS FOR AN ORDER:**

(a) abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with service of same;

(b) granting leave to allow for the hearing of the Application for a Bankruptcy Order in respect of 787 (the "**787 Bankruptcy Application**"), which application was filed by BMO on November 30, 2010, under Court File No. 31-OR-207788-T (the "**Bankruptcy Court File**");

(c) in the Bankruptcy Court File, adjudging 787 a bankrupt and appointing Ernst & Young Inc. ("**E&Y**") as the trustee in bankruptcy of the property, assets and undertaking of 787, in accordance with the relief requested in 787 Bankruptcy Application (in such capacity, the "**Trustee**");

(d) granting BMO its costs of this motion on a full indemnity basis; and

(e) such further and other relief as counsel may advise and this Honourable Court may permit.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

(a) pursuant to an order of the Honourable Justice Wilton-Siegel dated November 26, 2010 (the "**Receivership Order**"), E&Y was appointed as receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (in such capacity, the "**Receiver**");

(b) at the time the Receivership Order was granted, Justice Wilton-Siegel also issued an endorsement (the "**November 26 Endorsement**") stating that the stay of proceedings contained in the Receivership Order would not prevent any creditor from filing a bankruptcy application in respect of any of the Debtors provided, however, that leave of this Honourable Court would be required to take any further action in respect of any such application;

(c) on November 30, 2010, BMO issued applications for bankruptcy orders in respect of each of the Debtors, including the 787 Bankruptcy Application;

(d) in accordance with the November 26 Endorsement, no further action has been taken in respect of the 787 Bankruptcy Application, or any other bankruptcy application in respect of any of the other Debtors;

(e) the receivership proceedings in respect of the Debtor are largely completed;

(f) certain litigation proceedings brought by BMO against the Debtors, their principals and other parties are ongoing and BMO wishes to gain certain of the investigatory powers provided for in the BIA;

(g) 787 owes certain amounts to Canada Revenue Agency in respect of unremitted source deductions;

(h) 787 has committed an act of bankruptcy in that it has ceased to meet its liabilities generally as they become due, in that it has failed to pay its obligations to BMO and other creditors;

(i) E&Y is a licensed trustee in bankruptcy, is familiar with the circumstances set out above and has consented to acting as Trustee in Bankruptcy of 787;

(j) E&Y, in its capacity as the Receiver, has advised that it does not opposed the relief sought herein;

(k) the provisions of the BIA;

(l) the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(m) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the affidavit of Robert Kiefer, sworn November 25, 2011, filed;

(b) the consent of E&Y to act as the Trustee, dated November 30, 2010; and

(c) such other material as counsel may submit and this Honourable Court may permit.

Dated at Toronto, this 1st day of December, 2011

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SERVICE LIST

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AND TO: **DCFS Canada Corp.**
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AND TO: **GMAC Leaseco Corporation**
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AND TO: **Hawley Pontiac Buick Cadillac (1983) Ltd.**
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AND TO: **Key Equipment Finance Canada Ltd.**
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AND TO: **MCAP Leasing Inc.**
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AND TO: **Travelers Financial (Alberta) Corporation**
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AND TO: **447111 Ontario Limited**
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AND TO: **Concordian Realty Management Inc.**
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AND TO: **Weatta Holdings Inc.**
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AND TO: **Jevco Insurance**
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Attention: Diane Wilder

TAB 2

Court File No.: CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Applicant

and

2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
2131413 ONTARIO LIMITED O/A LORETTA FOODS,
787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE
AND TARBRAC HOLDINGS INC.

Respondents

AFFIDAVIT OF ROBERT KIEFER
(sworn November 25, 2011)

I, Robert Kiefer, of the Town of Goodwood, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Senior Account Manager of the applicant, Bank of Montreal ("**BMO**"). I am responsible for the administration of BMO's loans and credit facilities made available to the Respondents. As such, I have knowledge of the matters to which I hereinafter depose, save and except where I refer to information obtained from others, in which case I identify the source of that information and believe such information to be true.

THE PURPOSE OF THE MOTION

2. BMO is seeking an order of the Ontario Court Superior Court of Justice (Commercial List) (the "**Court**"):

(a) granting leave to allow for the application for a bankruptcy order filed in Court File No. 31-OR-207788-T in respect of 787755 Ontario Limited o/a New Durham Trading, NDT Food Service and Skyway Wholesale ("**787**"), pursuant to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") to proceed; and

(b) granting the bankruptcy order requested in the bankruptcy application brought in respect of 787 (the "**787 Bankruptcy Application**"), and appointing Ernst & Young Inc. ("**E&Y**"), a licensed bankruptcy trustee, as trustee in bankruptcy (in such capacity, the "**Trustee**") of all of the assets, undertakings and properties of 787.

THE PARTIES, THE RECEIVERSHIP AND THE BANKRUPTCY APPLICATIONS

3. 787, 2110458 Ontario Limited o/a Loretta Flour ("**211**"), 2131413 Ontario Limited o/a Loretta Foods ("**213**"), and Tarbrac Holdings Inc. ("**Tarbrac**", and, together with 787, 211 and 213, the "**Debtors**") are each Ontario corporations.

4. BMO is a Canadian chartered bank and a secured creditor of the Debtors.

5. Pursuant to an order of the Honourable Justice Wilton-Siegel dated November 26, 2010 (the "**Receivership Order**"), E&Y was appointed as receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (in

such capacity, the "**Receiver**"). A copy of the Receivership Order is attached to this Affidavit as **Exhibit A**.

6. At the time the Receivership Order was granted, Justice Wilton-Siegel also issued an endorsement (the "**November 26 Endorsement**") stating that the stay of proceedings contained in the Receivership Order would not prevent any creditor from filing a bankruptcy application in respect of any of the Debtors, provided, however, that leave of this Honourable Court would be required to take any further action in respect of any such application. A copy of the November 26 Endorsement is attached to this Affidavit as **Exhibit B**.

7. On November 30, 2010, BMO issued applications for bankruptcy orders in respect of each of the Debtors, including the 787 Bankruptcy Application, copies of which are attached to this Affidavit as **Exhibit C**.

8. The applications for the bankruptcy orders in respect of each of the Debtors were issued early in the receivership proceedings in respect of the Debtors (the "**Receivership Proceedings**") in order to set the date of the "Initial Bankruptcy Event" and provide certainty as to the dates for any reviewable transactions which may have been entered into by the Debtors. At the time of the initiation of the Receivership Proceedings, there were several allegations of improper conduct of by the Debtors and BMO wanted to ensure that any transactions the Debtors had entered into in the period prior to the Receivership Proceedings could be reviewed pursuant to the provisions of the BIA.

9. In accordance with the November 26 Endorsement, to the best of my knowledge, no creditor of the Debtors has taken any further action in respect of the 787 Bankruptcy Application, or any other bankruptcy application in respect of any of the other Debtors.

10. The Receivership Proceedings have been carried out by the Receiver over the course of the year since the granting of the Receivership Order. The latest summary of the activities of the Receiver is included in the Fourth Report of the Receiver dated July 14, 2011 (the "**Fourth Report**"), a copy of which is attached to this Affidavit as **Exhibit D** (without Exhibits).

11. Further, I am advised by the Receiver that the need for the Receivership Proceedings has come to an end, given that all of the assets of the Debtors have been sold and the "Remaining Activities" of the Receiver, set out in paragraphs 29 to 31 of the Fourth Report, have been largely completed.

12. I am also advised by the Receiver that, subject to the hearing of the 787 Bankruptcy Application and the issuance of the order requested in the 787 Bankruptcy Application, the Receiver will issue a final report in the Receivership Proceedings, pass its final accounts, provide a final listing of receipts and disbursements and request that the Receiver be discharged.

THE NEED FOR THE BANKRUPTCY ORDER

13. Despite the imminent completion of the Receivership Proceedings and the required steps therein being completed, BMO wishes to obtain a bankruptcy order in respect of 787. BMO does not wish to obtain a bankruptcy order in respect of any of the other Debtors.

14. In addition to the Receivership Proceedings, BMO has initiated civil proceedings against certain of the directors and officers of the Debtors (the "**Civil Proceedings**"). It is alleged by BMO in the Civil Proceedings that certain officers and directors of the Debtors participated in a sophisticated cheque-kiting scheme, misstated the value and collectability of the Debtors' accounts receivable and generally tried to defraud BMO of

the funds advanced to the Debtors, which were to be used by the Debtors for legitimate business purposes. A copy of BMO's Amended Statement of Claim in the Civil Proceedings are attached to this Affidavit as **Exhibit E**.

15. BMO wishes to ensure that the investigatory powers provided under the BIA are available in light of the ongoing Civil Proceedings.

16. 787 also owes approximately $47,208.90, plus penalties and interest thereon, to Canada Revenue Agency ("**CRA**") for unremitted source deductions. BMO has been advised by the Receiver that of this amount, $22,737.13 (plus penalties and interest thereon) represents the employee portion of source deductions and $24,471.77 13 (plus penalties and interest thereon) represents the employer portion of source deductions. A copy of the Notice of Assessment from CRA (including handwritten notes thereon by a representative of the Receiver) is attached as **Exhibit F**.

17. As of the commencement of the Receivership Proceedings, the principal balance of the indebtedness of the Debtors to BMO was US$17,483,987.40 and CDN$50,142.55 (together, with accrued and accruing interest, fees, expenses and costs, the "**Indebtedness**"), after taking into account all amounts paid to BMO by the Receiver to such date. As stated in the Fourth Report, net realizations from the assets of the Debtors have been insufficient to pay the costs of administration of the receivership. Accordingly, not only will there be no amount paid to BMO in respect of the Indebtedness, but in addition to the Indebtedness BMO has also advanced the net amount of $950,000 under Receiver's Certificates to fund the administration of the receivership. The Receiver has told BMO that the assets remaining in the receivership will be insufficient to repay the remaining Receiver's Certificate balance.

18. As noted in the affidavit I have sworn in support of the 787 Bankruptcy Application (which is included in **Exhibit C**), :

(a) BMO has made written demand on 787 for repayment of the Indebtedness;

(b) 787 has committed an act of bankruptcy in that it has ceased to meet its liabilities generally as they become due, in that it has failed to pay its obligations to BMO and other creditors; and

(c) E&Y has consented to act as the Trustee, a copy of which consent is attached to this Affidavit as **Exhibit G**.

19. Given the need to retain investigatory powers under the BIA, BMO wishes to proceed with the 787 Bankruptcy Application. However, leave of the Court is required to do so as a result of the November 26 Endorsement. As the Receivership Proceedings are coming to a conclusion, there no party will be prejudiced by the hearing of the 787 Bankruptcy Application.

20. This Affidavit is sworn in support of the within motion and the 787 Bankruptcy Application and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, this 25th day of November, 2011.	)
	)
	)
	)
A Commissioner, etc. Name: Aaron Collins	) ROBERT KIEFER

TAB A

Attached is Exhibit A

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

Court File No.: CV-10-8991-00CL

THE HONOURABLE MR.	)	FRIDAY, THE 26th
	)	
JUSTICE H.J. WILTON-SIEGEL	)	DAY OF NOVEMBER, 2010

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Applicant

and

2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
2131413 ONTARIO LIMITED O/A LORETTA FOODS,
787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE
AND O/A SKYWAY WHOLESAE
AND TARBRAC HOLDINGS INC.

Respondents

ORDER

THIS MOTION made by the Applicant for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Ernst & Young Inc. ("**E&Y**") as receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2110458 Ontario Limited o/a Loretta Flour ("**211**"), 2131413 Ontario Limited o/a Loretta Foods ("**213**"), 787755 Ontario Limited o/a New Durham Trading, NDT Food Service and Skyway Wholesale ("**787**") and Tarbrac Holdings Inc. ("**Tarbrac**", and, together with 211, 213 and 787, the "**Debtors**") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Kiefer, sworn November 10, 2010, and the Exhibits thereto, and the first report of E&Y, dated November 25, 2010 (the "**First Report**"), prepared in its capacity as interim receiver of the Debtors (in such capacity, the "**Interim Receiver**"), and on hearing the submissions of counsel for Bank of Montreal, ~~counsel for Signature Bank, both secured creditors of the Debtors,~~ counsel for the Interim Receiver and proposed Receiver and counsel for the Debtors, no one else appearing although duly served as appears from the affidavit of service of Stella Kostopoulos sworn November 25, 2010, and on reading the consent of E&Y to act as the Receiver, #h.S

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

TITLE OF PROCEEDINGS

2. THIS COURT ORDERS that the title of the within proceedings is hereby amended to such that the Respondents shall be hereafter identified as "**2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE AND TARBRAC HOLDINGS INC.**".

APPOINTMENT

3. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, E&Y is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of, and exercise control over, the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to settle, extend or compromise any indebtedness owing to the Debtors;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $250,000, provided that the aggregate consideration for all such transactions does not exceed $1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;

(s) to conduct examinations of any Person as the Receiver considers necessary or appropriate, including, without limitation, examinations of Guiseppe Gatti, Peter Nelipa, Taragh Bracken, Terry Mak, Michael Falcone or any other current or former director, officer, employee or independent contractor of the Debtors;

(t) to undertake any investigations deemed necessary by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, property of the Debtors, including, without limitation, investigating the transactions entered into between one or more of the Debtors and North Dakota Holdings Ltd. ("**NDHL**"); and

(u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons

acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that NDHL, its current and former directors, officers, employees and independent contractors shall provide such access to books records and documents. information, documents and assistance to the Receiver as the Receiver may request in connection with the dealings between NDHL and any of the Debtors and in connection with the business and affairs of NDHL as they relate to the business and affairs of the Debtors.

7. THIS COURT ORDERS that all Persons, including, without limitation, the current and former officers, directors and employees of any of the Debtors and NDHL shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, any transfer of Property outside of the ordinary course of business or obligation incurred by the Debtors outside of the ordinary course of business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver

due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. THIS COURT ORDERS any and all Persons shall render any necessary assistance to the Receiver to locate, decode, access, and decrypt the Records and any and all information or electronic data to which the Receiver may not have ready and immediate access, including the provisions of all keys, information codes, passwords, pass phrases, or any other such information or knowledge necessary to achieve access thereto, and for the purpose of accessing electronic mail or other data operated or maintained by, or accessible to, the Debtors which may contain any of the Records, including, but not limited to, any electronic mail or other data stored on or pertaining to any email addresses used by the Debtors or their directors, officers and employees.

10. THIS COURT ORDERS that no Person shall destroy or alter any books, records, documents, information, material or Records related to or touching upon the Property, the Debtors, NDHL, or the business, affairs or dealings of the Debtors or NDHL.

11. THIS COURT ORDERS that, notwithstanding the generality of paragraphs 5 to 10 hereof, upon the Receiver's request:

(a) NDHL shall provide copies of all Records in its possession relating to any transactions with one or more of the Debtors;

(b) any financial institution which holds or has held accounts for one or more of the Debtors shall confirm the existence of such account(s) and shall provide copies of all statements relating to such account(s); and

(c) Bell Sympatico, or any other provider of information technology services to the Debtors shall provide copies of any information related to the business of the Debtors requested by the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

12. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

13. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "**eligible financial contract**" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

15. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the

date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

17. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

18. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

19. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

20. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in

Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

21. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act.* Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

22. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

24. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates

and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

25. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

26. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

27. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

28. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SALE PROCESS FOR THE "FOOD SERVICE AND CATERING DIVISION"

29. THIS COURT ORDERS that the sale process developed by E&Y, in its capacity as the Interim Receiver, as outlined in the First Report, shall be carried out by the Receiver substantially in accordance with the timeline annexed as **Schedule "B"** hereto, with such changes as the Receiver deems appropriate in its sole discretion, acting reasonably.

GENERAL

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the

within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. THIS COURT ORDERS that the Applicant shall have its costs of this Motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

35. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 2 6 2010

PER / PAR:

SCHEDULE "A"

RECEIVER'S CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $____________________

1. THIS IS TO CERTIFY that Ernst & Young Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties 2110458 Ontario Limited o/a Loretta Flour ("**211**"), 2131413 Ontario Limited o/a Loretta Foods ("**213**"), 787755 Ontario Limited o/a New Durham Trading and NDT Food Service ("**787**") and Tarbrac Holdings Inc. ("**Tarbrac**", and, together with 211, 213 and 787, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of November, 2010 (the "**Order**") made in an action having Court file number __-CL-_______, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $__________, being part of the total principal sum of $__________ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _______ day of each month] after the date hereof at a notional rate per annum equal to the rate of ______ per cent above the prime commercial lending rate of Bank of _________ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____________, 20__.

ERNST & YOUNG INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: ______________________________

Name:

Title:

SCHEDULE "B"

TIMELINE FOR MARKETING AND SALE OF FRESH FOODS AND CATERING DIVISION

November 29 to December 11, 2010	• Prepare brief Confidential Information Memorandum (CIM), including required terms of sale and timeline for submission of purchase offers, and brief Investment Overview e-mail for distribution to prospective purchasers. • Compile list of industry participants that are most likely to be prospective purchasers. • Accumulate available due diligence information and populate electronic data room.
December 14, 2010 to January 7, 2011	• Contact prospective purchasers by phone and e-mail. • Circulate Confidentiality Agreements to interested parties. • Parties executing a Confidentiality Agreement will receive the CIM and access to the electronic data room. • Provide facility tours, as requested.
January 14, 2011	• Deadline for submission of purchaser offers, including required terms of sale.
January 15, 2011 to January 28, 2011	• Analysis and negotiation of purchaser offers. • Selection of successful purchaser. • Application to Court for approval of sale agreement and vesting order. • Closing of sale transaction.

BANK OF MONTREAL - and - 2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESAE AND TARBRAC HOLDINGS INC.

Applicant Respondents

Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

RECEIVERSHIP ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9
Tel: 416.863.1500
Fax: 416.863.1515

Steven L. Graff – LSUC No. 31871B
Aaron T. Collins – LSUC No. 55490T

Lawyers for the Applicant

TAB B

Attached is Exhibit B

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

BANK OF MONTREAL - and - 2110458 ONTARIO LIMITED, 2131413 ONTARIO LIMITED, 787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC

Applicant Respondents

Court File No. CV-10-8991-00CL

Nov 26/10

A. Collins } for BMO
S. Graaf }

M. MacNaughton for the Interim Receiver

B. Lui for the Respondents, who consent to the order

Counsel for Signature Bank have advised by e-mail that they do not oppose the order.

Order to go in accordance with the attached form of order. It is understood that the stay of proceedings in paragraph 13 shall not prevent any creditor from filing a bankruptcy application in respect of any of the debtors provided, however, that leave of the Court shall be required to take any further action in respect of any such application.

Campbell J.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

MOTION RECORD

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9
Tel: 416.863.1500
Fax: 416.863.1515

Steven L. Graff – LSUC No. 31871B
Aaron T. Collins – LSUC No. 55490

Lawyers for the Applicant

TAB C

Attached is Exhibit C

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

District of Ontario
Division No. 09

Court No.________
Estate No. 31-OR-207788-T

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
787755 ONTARIO LIMITED O/A NDT FOOD SERVICE
AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE
of the City of Mississauga,
in the Province of Ontario

APPLICATION FOR BANKRUPTCY ORDER

BANK OF MONTREAL ("**BMO**"), hereby applies to the Court to have 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale (the "**Debtor**") adjudged bankrupt and have a bankruptcy order made in respect of the property, assets and undertaking of the Debtor (the "**Property**"), of the City of Mississauga, in the Province of Ontario, lately carrying on business at 6815 Davand Drive, in the City of Mississauga, in the Province of Ontario, and BMO say:

1. THAT the Debtor has at some time during the six months next preceding the filing of this application carried on business at 6815 Davand Drive, in the City of Mississauga, in the Province of Ontario (the "**Davand Premises**"), within the jurisdiction of this Court.

2. THAT the greater portion of the property of the Debtor is situated at the Davand Premises, within the jurisdiction of this Court.

3. THAT the Debtor is justly and truly indebted to BMO in the sum of US$17,483,987.40 and CDN$50,142.55 as at November 4, 2010 exclusive of accruing interest, legal fees and costs from November 4, 2010 to the date of this application.

4. THAT BMO holds security from the Debtor for the payment of part of the aforementioned sums in the form of, *inter alia*, a general security agreement (collectively, the "**Security**"), and BMO estimates the value of the Security to be US$17,483,987.40 and CDN$47,642.55.

5. THAT the unsecured portion of BMO's claim is estimated to be approximately CDN$2,500.

6. THAT BMO made written demand on the Debtor for repayment of the Debtor's indebtedness to BMO and issued a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) to the Debtor on November 5, 2010. Pursuant to the Security, BMO brought application to the Court to appoint Ernst

& Young Inc. ("**E&Y**") as interim receiver in respect of all of the assets, undertaking and property of the Debtor, pursuant to which such appointment was made by Order of the Court dated November 10, 2010, following which, BMO brought application to the Court to appoint E&Y as receiver and receiver and manager of the Debtor on November 26, 2010 pursuant to which such appointment was made by Order of the Court dated November 26, 2010.

7. THAT the Debtor, within the six months next preceding the date of the filing of this application, has committed the following act of bankruptcy, namely:

> it has ceased to meet its liabilities generally as they become due, in that it has failed to pay its obligations to the applicant creditor and to other creditors.

8. THAT E&Y of the City of Toronto, in the Province of Ontario, is a person qualified to act as trustee of the Property, has agreed to act as such, and is acceptable to the undermentioned creditor:

Creditor	**Address**	**Amount of Debt**
Bank of Montreal	First Canadian Place 100 King Street West, 11th Floor Toronto, Ontario M5X 1A1	US$17,483,987.40 CDN$50,142.55

DATED at Toronto, this 30th day of November, 2010.

Signed by the applicant creditor in the presence of

Witness

BANK OF MONTREAL

Name: Robert Kiefer
Title: Senior Account Manager

ISSUED at the City of Toronto, in the Province of Ontario, this 1st day of December, 2010.

S.W. NETTIE
REGISTRAR IN BANKRUPTCY

Registrar in Bankruptcy

District of Ontario
Division No. 09

Court No.
Estate No. 31-OR-207788-T

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE of the City of Mississauga, in the Province of Ontario

AFFIDAVIT OF TRUTH OF STATEMENTS IN THE APPLICATION

I, ROBERT KIEFER, of the Town of Goodwood, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am a Senior Account Manager of Bank of Montreal ("**BMO**"), the applicant creditor herein, and, as such, have knowledge of the facts hereinafter deposed to.

2. THAT BMO made written demand on 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale (the "**Debtor**") for repayment of the Debtor's indebtedness to BMO and issued a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) to the Debtor on November 5, 2010. Pursuant to the Security, BMO brought application to the Court to appoint Ernst & Young Inc. ("**E&Y**") as interim receiver in respect of all of the assets, undertaking and property of the Debtor, pursuant to which such appointment was made by Order of the Court dated November 10, 2010, following which, BMO brought application to the Court to appoint E&Y as receiver and receiver and manager of the Debtor on November 26, 2010 pursuant to which such appointment was made by Order of the Court dated November 26, 2010.

3. THAT the Debtor is justly and truly indebted to BMO in the sum of US$17,483,987.40 and CDN$50,142.55 as at November 4, 2010 exclusive of accruing interest, legal fees and costs from November 4, 2010 to the date of this application, as stated in the said application.

4. THAT the facts alleged in the said application are within my own knowledge true.

SWORN BEFORE ME at the City of Toronto, this 30th day of November, 2010.	
Commissioner for taking affidavits	ROBERT KIEFER

TO: 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale

TAKE NOTICE that a application that a bankruptcy order be made in respect of your property will be heard before the presiding Judge in Chambers (or if unopposed, before the Registrar in Chambers), at 330 University Avenue, 7th Floor, in the City of Toronto, on _________, the ______ day of _______________, _____ at the hour of 10:00 o'clock in the forenoon, or so soon thereafter as the application can be heard.

AND FURTHER TAKE NOTICE that if notice of cause against the application is not filed in Court and a copy thereof served on the solicitor for the applicant creditor at least two days before the hearing and if you do not appear at the hearing the Court may make a bankruptcy order on such proof of the statements in the application as the Court shall think sufficient.

DATED at Toronto, Ontario on this ___ day of _______________, ________.

TO: 787755 Ontario Ltd. o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale
6815 Davand Drive
Mississauga, Ontario
L5T 1L4,

Attention: Guiseppe Gatti, Chief Operating Officer

____
Official Receiver

District of Toronto
Division No. 09
Court No.______________
Estate No.______________

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE, of the City of Mississauga, in the Province of Ontario

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APPLICATION FOR BANKRUPTCY ORDER

AIRD & BERLIS LLP

Barristers and Solicitors
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Steven L. Graff – LSUC No 31871B
Aaron T. Collins – LSUC No. 55490T

Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for Bank of Montreal, the applicant creditor

TO: 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale

TAKE NOTICE that a application that a bankruptcy order be made in respect of your property will be heard before the presiding Judge in Chambers (or if unopposed, before the Registrar in Chambers), at 330 University Avenue, 7th Floor, in the City of Toronto, on ________, the ______ day of ______________, _____ at the hour of 10:00 o'clock in the forenoon, or so soon thereafter as the application can be heard.

AND FURTHER TAKE NOTICE that if notice of cause against the application is not filed in Court and a copy thereof served on the solicitor for the applicant creditor at least two days before the hearing and if you do not appear at the hearing the Court may make a bankruptcy order on such proof of the statements in the application as the Court shall think sufficient.

DATED at Toronto, Ontario on this ___ day of ________________, ________.

TO: 787755 Ontario Ltd. o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale
6815 Davand Drive
Mississauga, Ontario
L5T 1L4,

Attention: Guiseppe Gatti, Chief Operating Officer

____
Official Receiver

District of Toronto
Division No. 09
Court No.____________
Estate No.____________

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE, of the City of Mississauga, in the Province of Ontario

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APPLICATION FOR BANKRUPTCY ORDER

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Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for Bank of Montreal, the applicant creditor

TAB D

Attached is Exhibit D

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS,787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALEAND TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCYAND INSOLVENCYACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

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FOURTH REPORT TO THE COURT OF ERNST & YOUNG INC., AS RECEIVER

14 July 2011

BACKGROUND

1. On November 10, 2010, Bank of Montreal ("**BMO**") made an application to the Ontario Superior Court of Justice (Commercial List) for an order, and the Court made an order (the "**Interim Receivership Order**"), appointing Ernst & Young Inc. ("**EYI**") as interim receiver (in such capacity, the "**Interim Receiver**") pursuant to section 47(1) of the *Bankruptcy & Insolvency Act* ("**BIA**") and pursuant to section 101 of the *Courts of Justice Act* ("**CJA**") of the assets, undertakings and properties (the "**Property**") of 2110458 Ontario Limited ("**211**") o/a Loretta Flour, 2131413 Ontario Limited ("**213**") o/a Loretta Foods, 787755 Ontario Limited ("**787**") o/a New Durham Trading and o/a NDT Food Service and o/a Skyway Wholesale, and Tarbrac Holdings Inc. ("**Tarbrac**") (collectively, the "**Debtors**" or the "**Loretta Group**").

2. On November 26, 2010, EYI was appointed as receiver and receiver and manager (the "**Receiver**") of the Debtors pursuant to section 243 of the BIA and section 101 of the CJA. A copy of the order appointing EYI as the Receiver (the "**Receivership Order**") is attached as Appendix "**A**" to this Fourth Report.

3. The Receivership Order authorized the Receiver to, among other things, deal with the Property of the Loretta Group. Prior to the receivership the Loretta Group included the following operations:

   (a) the "Loretta Flour Division", operated by 211, which produced various types of hard wheat flour that was sold to retail, food service and industrial customers (the "**Flour Business**");

   (b) the "Loretta Spice Division", operated by 213, which sourced spices and food mixes for redistribution globally, as well as blending and repackaging spices for use in various packs and sizes for sale to retail and institutional customers (the "**Spice Business**");

   (c) the "Food Service and Catering Division", operated by 787, which prepared, on a daily basis, fresh food items such as sandwiches, grab and go meals, soups, fresh salads, desserts and pastries for sale by or in mobile caterers, vending machines, contract caterers and convenience stores (the "**Food Services Business**"). 787 also engaged in trading bulk sugar, flour, spices and other items; and

   (d) a business (the "**Trading Business**") trading bulk sugar, flour, spices and other items under the registered trade names "New Durham Trading" and/or "Skyway Wholesale." This business was carried on through 787 and was directed by Mr. Giuseppe Gatti, the individual responsible for overall direction of the Loretta Group. The Receiver understands that 787 ceased to carry on the Trading Business prior to the interim receivership, although certain of the related accounts receivable remained on its balance sheet, and therefore the Receiver did not attempt to operate the Trading Business or to market it for sale.

4. On January 17, 2011, the Court made an order approving a marketing and sale process for the Flour and Spice Businesses of the Debtors (the "**Flour and Spice Sale Process Order**"). The Flour and Spice Sale Process Order is attached as Appendix "**B**" to this Fourth Report.

5. On February 16, 2011, the Court made an order (the "**Food Services Approval and Vesting Order**"), *inter alia*, approving the sale of the Food Services Business of the Debtors to Rosedale Food Company Inc. ("**Rosedale**"). The Food Services Approval and Vesting Order is attached as Appendix "**C**" to this Fourth Report.

6. On May 16, 2011, the Court made an order (the "**Flour Approval and Vesting Order**"), *inter alia*, approving the sale of the "Loretta Flour Division" (the "**Flour Business**") of the Debtors to JE Fininvest Ltd. ("**JEF**") and vesting title to the assets of the Flour business to JEF, free and clear of all security interests, mortgages, claims, charges, and encumbrances, subject only to the filing by the Receiver with the Court of a completion of sale certificate. A copy of the Flour Approval and Vesting Order is attached as Appendix "**D**" to this Fourth Report.

PURPOSE

7. This is the fourth report of the Receiver. The purpose of this Fourth Report is to:

   (a) report to the Court on the completion of the sale of the Flour Business;

   (b) report to the Court on the status of the realization of the remaining assets of the Spice Business and the Food Services Business;

   (c) report to the Court on certain developments in connection with the Chapter 7 filing of Quality Food Brands, Inc. ("**Quality**") that were initially described in the Third Report of the Receiver dated May 9, 2011 (the "**Third Report**");

(d) report to the Court on the receipts and disbursements to date in this proceeding, the expected remaining activities of the Receiver and the expected future receipts and disbursements;

(e) explain to the Court the basis for the motion made by the Receiver, with the agreement of BMO, for an order increasing the maximum principal amount that the Receiver is permitted to borrow under the Receivership Order in order to fund the remaining administration of the Loretta Group receivership and to pay the fees and disbursements of the Receiver and its counsel; and

(f) request that the Court grant an Order:

  (i) increasing the Receiver's Certificate limit to $1,950,000; and

  (ii) approving the activities of the Receiver as described in this Fourth Report.

Terms of Reference

8. In preparing this Fourth Report, the Receiver has relied upon the books and records of the Debtors, conversations with operating management and employees of the Debtors, and other information from various sources. The Receiver has assumed that the information with which it has been provided is accurate and complete. The Receiver has not audited, reviewed or otherwise verified such information.

FLOUR BUSINESS SALE

9. The sale of the Flour Business to JEF closed, and the Receiver filed the applicable completion of sale certificate with the Court on May 18, 2011. A copy of the completion of sale certificate is attached hereto as Appendix "E" to this Fourth Report.

10. The sale included all inventory and accounts receivable of the Flour Business, and accordingly there are no further assets of the Flour Business to be realized by the Receiver.

REALIZATION OF REMAINING SPICE AND FOOD SERVICES ASSETS

Food Services

11. As mentioned in the Second Report of the Receiver dated February 9, 2011, the sale of the Food Services business to Rosedale excluded certain past-due Food Services business accounts receivable to allow the Receiver to pursue these accounts itself.

12. Four accounts with a combined balance of approximately $660,000 were excluded from the sale to Rosedale. The Receiver retained Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**"), a law firm specializing in collection actions, to assist in pursuing these accounts on a cost-effective basis, and has commenced collection actions against all four customers. One of the customers has filed a statement of defense in its litigation, and the Receiver has learned that one of the customers is bankrupt. The Receiver has obtained default judgments against the other two customers and, with the assistance of KRMC, is taking steps to enforce those judgments.

Spice Business

13. As described in the Third Report, after comparing the purchase offers received for the Spice Business to the estimated realizations in liquidation, the Receiver decided to liquidate the Spice Business.

14. The fixed assets and inventory of the Spice Business were sold by auction at the Sismet Premises on April 6, 2011 under an agreement with Danbury Industrial ("**Danbury**"). The Receiver has reviewed Danbury's final accounting for the auction, which indicate net proceeds of $106,668.95 (net of the costs to dispose of certain expired inventory, as described in the Third Report) owing to the Receiver under the agreement with Danbury, which net proceeds have been received from Danbury.

15. At the time the Receiver made the decision to liquidate the Spice Business, the outstanding accounts receivable of the Spice Business were approximately $209,000. To date, the Receiver has collected approximately $109,000 of those accounts receivable.

One employee of the Loretta Group remains employed by the Debtors to pursue collection of the remaining balances in the aggregate amount of approximately $100,000, and is being compensated based on a percentage of collections.

QUALITY FOODS DEVELOPMENTS

16. As described in the Third Report:

(a) on January 28, 2011, Synergy Brands, Inc. ("**Synergy**"), a Delaware corporation, and two of its subsidiaries, PHS and SYBR.com Inc. (a New Jersey corporation), filed voluntary petitions for bankruptcy under Chapter 7 of Title 11 of the *United States Bankruptcy Code* ("**Chapter 7**") in the United States Bankruptcy Court for the Eastern District of New York (the "**EDNY Court**"); and

(b) the Chapter 7 filings did not initially involve Quality, Synergy's subsidiary based in Monroe, Michigan, which continued to operate as a going concern. On March 22, 2011, however, Quality filed an assignment for the benefit of creditors, a Michigan state-law insolvency proceeding, in the Monroe County Circuit Court in Monroe, Michigan. On April 5, 2011, certain creditors of PHS, including Signature Bank (the second secured lender of the Loretta Group), filed an involuntary bankruptcy petition against Quality in the EDNY Court. The filing of the involuntary petition had the effect of staying the Michigan assignment for the benefit of creditors. At the moving parties' request, the EDNY Court appointed PHS's Chapter 7 trustee as the interim Chapter 7 trustee in the Quality case (the "**Quality Trustee**"). On June 6, 2011, the EDNY Court entered an order for relief granting the involuntary petition.

17. A copy of the First Report of the Interim Receiver dated November 25, 2010 (without appendices) (the "**Interim Receiver's First Report**") is attached as Appendix "**F**" to this Fourth Report. In the Interim Receiver's First Report, particularly paragraphs 24-29 thereto, the Interim Receiver noted unusual circumstances with respect to inventory of the Loretta Group potentially located at a warehouse in Monroe, Michigan. Specifically:

(a) prior to the Interim Receiver's appointment, the Loretta Group consistently reported to BMO that it owned inventory with book value in the millions of dollars located in facilities leased by Tarbrac's subsidiary North Dakota Holdings Limited ("**NDHL**") at 1115 West Elm Avenue, Monroe, Michigan (the "**Monroe Warehouse**"). Management of the Loretta Group arranged for representatives of GDR Advisory Group Inc. ("**GDR**"), a firm engaged by BMO that specializes in the performance of collateral examinations, to count inventory with a book value of approximately $7.8 million at the Monroe Warehouse at August 31, 2010;

(b) shortly before the Interim Receiver's appointment, however, Loretta management told EYI it no longer owned any inventory located at the Monroe Warehouse and was unable to provide a comprehensive or consistent explanation for the disposition of the inventory it had previously reported to BMO; and

(c) shortly after its appointment, the Interim Receiver sent two representatives to the Monroe Warehouse to inquire as to whether there was currently, or had recently been, any property of the Loretta Group on the premises. A representative of the organization occupying the warehouse indicated to the Interim Receiver's representatives that his organization was not affiliated with the Loretta Group, although he was aware of the Loretta Group's financial situation, and refused to allow the representatives access to the premises or to answer any further questions.

18. On May 4, 2011, the Receiver's counsel, Borden Ladner Gervais LLP ("**BLG**") received a letter from counsel to the Quality Trustee (the "**May 4 Letter**"). In that letter, counsel to the Quality Trustee indicated that a representative of the Quality Trustee had inspected inventory located at a warehouse leased by Quality in Monroe, Michigan and found that the inventory might include branded goods in the name of the Loretta Group or its related entities. The letter requested that the Receiver provide a schedule of inventory indicated in the Loretta Group's records as belonging to the Loretta Group "so that we may discuss an amicable resolution regarding the disposition of this inventory".

19. On May 5, 2011 the Receiver sent a reply letter to counsel to the Quality Trustee. The letter described the circumstances summarized in paragraph 17 above, and appended the most recent inventory listing provided by Loretta management to GDR. That inventory listing indicated a book value of approximately $10.3 million (currency was not specified) as at October 13, 2010.

20. On May 17, 2011, representatives of the Receiver and BLG spoke by telephone with counsel to the Quality Trustee. Counsel to the Quality Trustee indicated that Quality was the lessee of the Monroe Warehouse and of a second warehouse (the "**Telegraph Warehouse**") located on Telegraph Road in Monroe, Michigan. The Quality Trustee indicated that the Monroe Warehouse was essentially vacant, but the Telegraph Warehouse contained the branded goods mentioned in the May 4 Letter. At the date of the call, the Quality Trustee had been unable to obtain an existing listing of inventory at the Telegraph Warehouse from the records of Quality and had not yet arranged for a count of the inventory on the premises. The Receiver agreed to obtain an estimate of the cost of a count for discussion with the Quality Trustee.

21. On May 20, 2011, the Receiver sent an e-mail to the Quality Trustee and his counsel, proposing that the Receiver attend at the Telegraph Warehouse and perform an inventory count for the use of the Quality Trustee and the Receiver in identifying inventory that may be property of the Loretta Group and facilitating the negotiation of an amicable resolution regarding the disposition of any such inventory. The Receiver proposed that because there is currently no certainty that any of the goods in the Telegraph Warehouse are property of the Loretta Group, the count be performed at the cost of the Loretta Group estate but subject to the express understanding that in attending the Telegraph Warehouse to perform the count, the Receiver would not assume any obligation for the costs associated with the Telegraph Warehouse unless otherwise negotiated between the Receiver and the Quality Trustee. Although the Receiver has attempted to contact the Quality Trustee and his counsel to follow up the e-mail, it has not yet received a reply.

22. On June 20, 2011, Quality filed its schedules of assets and liabilities in the Quality Chapter 7 proceedings with the EDNY Court. The schedule of assets includes inventory

with a book value of approximately U.S. $1.1 million and makes reference to a detailed inventory listing of more than 1,000 items comprising approximately U.S. $1.0 million of that amount. The Receiver was unable to determine from the schedules whether the inventory described therein includes the inventory located at the Telegraph Warehouse. The Receiver has sent an e-mail to the Quality Trustee and his counsel requesting clarification of this point and a copy of the detailed listing referred to in the schedules, but has not yet received a response.

23. On June 23, 2011, Monroe Associates, which describes itself as the lessor of what the Receiver believes is the Telegraph Warehouse, filed a motion with the EDNY Court seeking an order (a) compelling the Quality Trustee to pay rent accrued since January 1, 2011 in the sum of not less U.S. $98,974.98, and (b) compelling the Quality Trustee to assume the lease of the subject property in its entirety, or to reject it, within 20 days after the entry of the order. The hearing of that motion is scheduled for July 25, 2011.

24. On July 8, 2011 the Quality Trustee filed an expedited motion to sell the inventory and office furniture at the Telegraph Warehouse, the lease for the Telegraph Warehouse, Quality's right, title and interest in certain equipment leases, and Quality's UPC code under Section 363 of the United States Bankruptcy Code to Bektrom Foods Inc. for total consideration of U.S. $159,000. A copy of the Quality Trustee's motion is attached to this Fourth Report as Appendix "**G**". Citing concerns that a large proportion of the inventory at the Telegraph Warehouse is perishable, the Quality Trustee has requested that the motion be heard on July 14, 2011 or as soon thereafter as the EDNY Court is available.

25. It is not clear from the motion materials provided as Appendix "**G**" the sale process, if any, that was conducted by the Quality Trustee prior to negotiating the sale agreement with Bektrom Foods Inc. The Receiver notes that Section 363 of the *United States Bankruptcy Code* allows for competing bids in an auction under supervision of (in this instance) the EDNY Court. However, there is no certainty that any party will submit a competing bid.

RECEIPTS AND DISBURSEMENTS

Receipts and Disbursements to Date

26. Appendix "**H**" to this Fourth Report reports the receipts and disbursements in this proceeding to July 8, 2011. Those receipts and disbursements (rounded to the nearest dollar) are summarized as follows:

Bank balances on Nov 26/10	$324,745
Net realizations from Food Services Business	(53,152)
Net realizations from Spice Business	746,619
Net realizations from Flour Business	334,636
Head office and miscellaneous disbursements	(387,787)
Receivership administration disbursements	(333,418)
Receiver's certificate borrowings from BMO	450,000
Net cash receipts	$1,081,643

27. Brief explanations of certain of the line items above are as follows:

(a) Net realizations from the Food Services Business represent the proceeds from the sale of the Food Services Business to Rosedale Food Company Inc., net of the negative cash flow from the interim operation of the Food Services Business while it was marketed and sold. As indicated in previous reports of the Receiver, the Mississauga premises of the Debtors (the "Davand Premises") included both the Food Services Business and the Loretta Group head office premises. For administrative convenience, however, all rent and utilities paid in respect of the Davand Premises were treated as operating disbursements of the Food Services Business rather than attempting to allocate a portion to head office disbursements;

(b) Net realizations from the Spice Business represent the net positive cash flow from the interim operation of the Spice Business during the Receiver's sale process and the wind-down of the Spice Business, plus the net proceeds of the auction of the Spice Business assets;

(c) Net realizations from the Flour Business represent the proceeds from the sale of the Flour business to JEF, less the negative cash flow incurred to maintain and protect the assets of the Flour Business while it was marketed and sold;

(d) Head office and miscellaneous disbursements represent disbursements for salaries and benefits of head office staff, amounts paid to retain key personnel at head office and all three operating businesses, insurance costs for the Loretta Group in its entirety, and other miscellaneous amounts. For administrative convenience, the Receiver has not attempted to allocate amounts such as insurance costs and retention payments to the operating businesses; and

(e) Receivership administration disbursements represent fees of the Interim Receiver and its counsel paid pursuant to the Interim Receiver's Charge established by paragraph 14 of the Interim Receivership Order, fees of the Receiver's Canadian and U.S. counsel that have been paid to date, amounts paid to the contract controller engaged by the Receiver and to other professionals such as locksmiths, disbursements for advertising and the electronic data room in connection with the Receiver's sale processes, and interest paid to date on borrowings under receiver's certificates.

28. Net receipts in the Loretta Group receivership have been substantially less than the Receiver had originally anticipated based on the internal financial statements of the Loretta Group (which indicated consolidated assets and year-to-date net income of $64.7 million and $2.8 million, respectively, at September 30, 2010) and on oral comments from Loretta management during the interim receivership concerning the level of unsolicited interest in the businesses from third parties and with respect to the appraised values of certain assets. This difference is primarily the result of three factors:

(a) the difficulties encountered by the Receiver in attempting to collect the accounts receivable of the Trading Business, which have an aggregate book value of U.S.

$25.6 million, as discussed in detail in paragraphs 38-44 of the Third Report. A copy of the Third Report (without appendices) is attached as Appendix "I" to this Fourth Report;

(b) the inability of the Debtors to account for approximately $19 million of the inventory reflected on the internal financial statements of the Loretta Group at September 30, 2010, as first discussed in paragraphs 24-28 of the Interim Receiver's First Report;

(c) the difficulties encountered by the Receiver in obtaining financial information of the Loretta Group, as discussed in the Interim Receiver's First Report and in previous Reports. The Receiver notes in particular (i) the considerable time required to isolate the financial results of the operating businesses, by identifying and backing out transactions believed to relate to the Trading Business, in preparing information for the sale processes, and (ii) the losses or substantially lower profitability revealed in the operating businesses once their results were isolated, and the consequent loss of purchaser interest in the businesses. The Receiver also notes that it was unable to locate any evidence in the Loretta Group records of the asset appraisals mentioned orally by Loretta management, and that independent appraisals obtained by the Receiver indicated markedly lower asset values.

<u>Remaining Activities in Receivership and Expected Future Receipts and Disbursements</u>

29. The Receiver anticipates that the remaining activities in the receivership of the Loretta Group will consist of the following:

(a) Attempting to collect the remaining accounts receivable of the Spice Business and the past due accounts receivable of the Food Services Business, both as discussed in greater detail above, to the extent those collections can be pursued cost-effectively. With respect to the accounts receivable related to the Trading Business, however, based on the results of its collection efforts to date (as discussed in detail in the Third Report) the Receiver does not expect that any portion of these balances will be collected and does not intend to invest additional resources pursuing them;

(b) Continuing to communicate with the Quality Trustee with respect to the property located in the Telegraph Warehouse with the intent of determining whether the Telegraph Warehouse contains any property of the Loretta Group and, to the extent it can be done cost-effectively, realizing any property of the Loretta Group located therein;

(c) Continuing to communicate with Canada Revenue Agency (**"CRA"**) to clarify any amounts owed to CRA that are deemed to be held in trust. An examiner from CRA has reviewed the records of the Loretta Group, which review indicated a deemed trust liability of approximately $55,000 in respect of unremitted source deductions, but CRA has not yet issued a final notice of assessment;

(d) Applying to the Court for approval of the fees and disbursements of the Receiver and of the Interim Receiver; and

(e) Applying to the Court for the discharge of the Receiver. The Interim Receiver was discharged by operation of statute when the Receiver was appointed.

30. Additional expected or potential receipts in this proceeding consist of:

(a) all or part of the remaining $100,000 in accounts receivable of the Spice Business and the $660,000 in past due accounts receivable of the Food Services Business;

(b) any net realization from inventory of the Loretta Group potentially located at the Telegraph warehouse; and

(c) recovery of HST paid on certain of the disbursements listed below that are HST-exigible.

31. Expected future disbursements in this proceeding consist primarily of:

(a) the deemed trust amount owed to CRA, once finalized;

(b) invoiced and outstanding professional fees of the Receiver and its Canadian and U.S. counsel in the combined amount of approximately $1.4 million, including HST; and

(c) the professional fees of the Receiver and its counsel to carry out the remaining tasks in the receivership administration as outlined above.

Requested Increase in Receiver's Borrowing Limit

32. Paragraph 22 of the Receivership Order grants a charge (the "**Receiver's Charge**") for the fees and disbursements of the Receiver on the property of the Loretta Group that ranks in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA (collectively the "**BIA Priority Charges**"). Paragraph 25 of the Receivership Order grants a charge (the "**Receiver's Borrowings Charge**") for receiver's certificate borrowings to a maximum principal amount of $500,000 (the "**Receiver's Borrowing Limit**"), which charge ranks in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the BIA Priority Charges. As indicated in the above summary of receipts and disbursements, to date the Receiver has borrowed $450,000 from BMO via receiver's certificates.

33. The Receiver does not have sufficient funds to pay the outstanding professional fees in full. If all of the funds currently in the hands of the Receiver were applied to those accounts, there would still be a shortfall of approximately $300,000. While sales of assets and collections have been substantially completed, a number of steps remain to be taken to complete the Receivership.

34. BMO has indicated that it is willing to increase its advances under receiver's certificates to fund the existing shortfall and the costs to efficiently complete the receivership. In agreeing to increase its loans to the Receiver, BMO understands that it is unlikely to recover the additional advances; however, is prepared to make these advances in order to see the Receivership funded to completion.

35. There are two main alternatives to effect the additional advances from BMO:

(a) The outstanding professional fees and expenses could be paid to the extent of the funds currently in the possession of the Receiver, and BMO could advance additional amounts to fund the balance of the outstanding professional fees and expenses and any negative cash flow incurred during the remaining administration of the receivership. Under this approach, BMO would advance a further amount of approximately $300,000 to fund the balance of the outstanding professional fees and expenses, bringing the total receiver's certificate borrowings to approximately $750,000, and then advance additional amounts as required to fund the remaining administration; or

(b) BMO could advance additional funds to pay the full amount of the outstanding professional fees and expenses. The funds currently in the possession of the Receiver would then be used to fund any negative cash flow incurred during the remaining administration of the receivership and the remaining receivership funds would be used in partial repayment of the aggregate receiver's certificate borrowings. Under this approach, BMO would advance a further amount of approximately $1.4 million to fund the balance of the outstanding professional fees and expenses, bringing the total receiver's certificate borrowings to approximately $1,850,000, but would then be entitled under the Receiver's Borrowing Charge to receive the balance of funds in the Receiver's trust accounts (currently approximately $1.1 million, as described above) less any negative cash flow incurred during the remaining administration of the receivership.

36. The net receiver's certificate borrowings, after the application of the balance of funds in the Receiver's trust accounts, are expected to be the same under either of the two approaches described above.

37. The Receiver and BMO intend to utilize the second approach, which will simplify the remaining administration of the Loretta Group receivership by allowing costs to be paid as incurred, rather than paid piecemeal as the remaining assets are realized. BMO is prepared to lend up to an aggregate of $1,950,000 to the Receiver to fund the existing

shortfall and the costs to efficiently complete the receivership. Accordingly, the Receiver has made a motion for an order, *inter alia*, increasing the Receiver's Borrowing Limit from the $500,000 limit established in the Receivership Order to $1,950,000.

38. It is anticipated that advances by BMO under the proposed increased facility will be used to pay the outstanding and future professional fees and expenses. Those fees and expenses remain subject to the approval of the Court. The Receiver expects that on its next motion, it will seek approval of those fees and expenses on notice to the service list.

39. In light of the deficiency in the estate at present, and the limited future recoveries, there is no prejudice to any person in authorizing the proposed increase in the Receiver's Borrowing Limit. The additional receiver's certificate borrowings will be used to pay amounts that, under the Receiver's Charge, already have priority over existing creditors, and therefore the proposed increase will replace one Court-authorized priority charge with another.

40. In addition, the proposed increase in the Receiver's Borrowing Limit will not further impair the position of any existing creditor: pursuant to paragraphs 24 and 23 of the Receivership Order, respectively: (i) the Receiver is authorized to pay the fees and disbursements of the Receiver and its counsel from time to time from the monies in its hands, and (ii) the Receiver and its legal counsel are required to pass their accounts with the Court from time to time. Neither of these requirements will be modified by the proposed increase in the Receiver's Borrowing Limit.

41. Accordingly, the Receiver requests that the Court grant the motion increasing the Receiver's Borrowing Limit from the $500,000 limit established in the Receivership Order to $1,950,000.

RELIEF SOUGHT BY THE RECEIVER

42. The Receiver respectfully requests that this Court grant an order:

(a) Increasing the Receiver's Borrowing Limit to $1,950,000; and

(b) approving the activities of the Receiver as set out in this Fourth Report.

All of which is respectfully submitted this 14th day of July 2011.

ERNST & YOUNG INC., in its capacity as Receiver and Receiver and Manager of 2110458 Ontario Limited o/a Loretta Flour, 2131413 Ontario Limited o/a Loretta Foods, 787755 Ontario Limited o/a New Durham Trading and o/a NDT Food Service and o/a Skyway Wholesale and Tarbrac Holdings Inc. and not in its personal or corporate capacity.

Per:

Mike Dean, CA•CIRP
Senior Vice-President

Court File No. CV-10-8991-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY WHOLESALE and TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

FOURTH REPORT TO THE COURT OF ERNST & YOUNG INC., AS RECEIVER

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Tel.: 416-367-6000
Fax: 416-367-6749

Michael MacNaughton - LSUC No. 25889U
Mary Arzoumanidis - LSUC No. 53915V
Harriet Greenwood - LSUC No. 58915H

Lawyers for Ernst & Young Inc., in its capacity as Receiver of 2110458 Ontario Limited o/a Loretta Flour, 2131413 Ontario Limited o/a Loretta Foods, 787755 Ontario Limited o/a New Durham Trading, and o/a NDT
TOR01: 4678352: v4

TAB E

Attached is Exhibit E

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

AMENDED THIS Oct 14-11 PURSUANT TO
MODIFIÉCE CE CONFORMÉMENT À
☑ RULE/LA RÉGLE 26.02 ('A')
☐ THE ORDER OF
L'ORDONNANCE DU
DATED/FAIT LE
LOCAL REGISTRAR GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-11-9287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Plaintiff

- and -

MAIR FAIBISH, GIUSEPPE GATTI, aka JOE GATTI, TARAGH BRACKEN, aka TEAMHRACH NI BREACAIN, PETER NELIPA, GEORGE BABIOLAKIS, CHIKORETI INVESTMENTS LTD., BEKTROM FOODS, INC., BEKTROM INDUSTRIES, LLC, TERRY MAK, MICHAEL FALCONE, MICHAEL FALCONE PROFESSIONAL CORPORATION, FALCONETURNERMOORE LLP, RENEE FAIBISH, LIBRA MARKETING INC. O/A MICHIGAN MILLS, 2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, NORTH DAKOTA HOLDINGS LTD., 787755 ONTARIO LIMITED O/A as NDT FOOD SERVICE, also O/A NEW DURHAM TRADING, also O/A SKYWAY WHOLESALE, TARBRAC HOLDINGS INC., SYNERGY BRANDS INC., QUALITY FOOD BRANDS, INC. O/A G&R CORP., PHS GROUP INC. O/A PRIVATE LABEL GROUP, also O/A GROCERS SUPPLY, also O/A HOUSEHOLD SUPPLIES, DEALBYNET.COM INC., NYCE NORTH AMERICA INC., JOHN DOE, JANE DOE, ABC CORPORATION and XYZ CORPORATION

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Patrick McKenzie
Registrar, Superior Court of Justice

~~July 4, 2011~~
Dated: October 14, 2011 Issued by: ______________________
Local Registrar

Address of court office: 330 University Avenue
Toronto, ON
M5G 1R7

TO: Mair Faibish
14 Sabrina Ct.,
Dix Hills, New York
United States 11746

AND TO: Giuseppe Gatti
~~83 Fifeshire Road~~
~~North York, Ontario~~
~~Canada M2L 2G9~~
1389 Rougemont Drive
Pickering, Ontario
Canada L1V 1N2

AND TO: Taragh Bracken
~~83 Fifeshire Road~~
~~North York, Ontario~~
~~Canada M2L 2G9~~
1389 Rougemont Drive
Pickering, Ontario
Canada L1V 1N2

AND TO: Peter Nelipa
1107 Athol Street
Whitby, Ontario
L1N 4A6

AND TO: George Babiolakis
15 Ritter Crescent
Unionville, Ontario
L3R 4K4

AND TO: Chikoreti Investments Ltd.
424 4261-A14 Highway 7 East
Suite #424
Markham, Ontario
Canada L4R 9W6

AND TO: Bektrom Foods, Inc.
c/o XL Corporate Services Inc.
88 South E Street
Virginia City, Nevada
United States 89440

AND TO: Bektrom Industries, LLC
502 Main Avenue
Colgate, North Dakota
United States 58046

AND TO: Terry Mak
27 Owl Ridge Drive,
Richmond Hill, Ontario
L4S 1P7

AND TO: Michael Falcone
780 Highland Blade Road
Newmarket, Ontario
L3X 1P3

AND TO: Michael Falcone Professional Corporation
27 John Street West
Bradford, Ontario
P.O. Box 753
L3Z 2B3

AND TO: FalconeTurnerMoore LLP
No. 101
27 John Street West
Bradford, Ontario
P.O. Box 753
L3Z 2B3

AND TO: Renee Faibish
14 Sabrina Ct.,
Dix Hills, New York
United States 11746

AND TO: Libra Marketing Inc.
33 Lakebridge Drive
Kings Park, New York
United States 11754

AND TO: 2110458 Ontario Limited
1700 McEwen Drive
Whitby, Ontario
Canada L1N 0A2

AND TO: 2131413 Ontario Limited
6820 Davand Drive
Mississauga, Ontario
Canada L5T 1J5

AND TO: North Dakota Holdings Ltd.
6815 Davand Drive
Mississauga, Ontario
Canada L5T 1L4

AND TO: 787755 Ontario Limited
6815 Davand Drive
Mississauga, Ontario
Canada L5T 1L4

AND TO: Tarbrac Holdings Inc.
1389 Rougemount Drive
Pickering, Ontario
Canada L1V 1N2

AND TO: Synergy Brands Inc.
310 Michael Drive
Syosset, NY 11791

AND TO: Quality Food Brands Inc.
317 Front Street
Monroe, Michigan
United States 48161

AND TO: PHS Group Inc.
223 Underhill Boulevard
Syosset, New York
United States 11791-3409

AND TO: Dealbynet.com Inc.
310 Michael Drive
Syosset, New York
United States 11791

AND TO: NYCE North America Inc.
223 Underhill Boulevard
Syosset, New York
United States 11791

CLAIM

1. The plaintiff, Bank of Montreal ("BMO"), claims jointly and severally against the defendants, Giuseppe Gatti, aka Joe Gatti, ("Gatti"), Taragh Bracken aka Teamhrach Ni Breacain ("Bracken"), Peter Nelipa ("Nelipa"), 2110458 Ontario Limited ("Loretta Flour"), 2131414 Ontario Limited ("Loretta Foods"), North Dakota Holdings Ltd. ("North Dakota"), 787755 Ontario Limited ("NDT Food Service") and Tarbrac Holdings Inc. ("Tarbrac") (collectively, the "Loretta Defendants"), Mair Faibish ("Faibish"), Synergy Brands Inc. ("Synergy"), Quality Food Brands Inc. ("Quality Food"), PHS Group Inc. ("PHS"), Bektrom Foods, Inc., Bektrom Industries, LLC, Dealbynet.com Inc. ("Dealbynet") and NYCE North America Inc. (collectively, the "Faibish Defendants"), and George Babiolakis and Chikoreti Investments Ltd. (collectively the "Babiolakis Defendants") for:

(a) damages for fraud, misrepresentation, unjust enrichment and conspiracy in the amount of $20,000,000.00 or such other amount as may be proven at trial;

(b) an accounting of all assets, effects and property of these defendants, including any interest in any accounts and of all money had or received by these defendants, or any person on their behalf and all of the dealings and transactions between these defendants and any of the other defendants, and between these defendants and BMO;

(c) an interlocutory and permanent injunction restraining these defendants from disposing of any of their assets, wherever located, including those held by any other person on their behalf;

(d) special damages arising out of the detection, investigation and quantification, and recovery of the fraud, losses, and consequential losses suffered by BMO in an amount to be proven at trial;

(e) a declaration that BMO is entitled to trace the monies fraudulently obtained from BMO in, to and through any financial institution, accounts or deposit facilities in the name of these defendants and in, to or through any assets purchased by these defendants with BMO's money and to recover same;

(f) punitive and exemplary damages in the amount of $1,000,000.00;

(g) prejudgment and post-judgment interest on all amounts awarded to BMO under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(h) costs of this action on a full indemnity basis, plus all applicable taxes; and

(i) such further and other relief as this Honourable Court may deem just.

2. In the alternative to the relief sought at subparagraph 1(a) above, BMO claims jointly and severally against the Loretta Defendants damages for breach of contract in the amount of $20,000,000.00, or such other amount as may be proven at trial.

~~3. BMO claims against the defendant, Taragh Bracken aka Teamhrach Ni Breacain ("Bracken"):~~

~~(a) an accounting of all assets, effects and property of Bracken, including any interest in any accounts and of all money had or received by Bracken, or any person on~~

~~her behalf and all of the dealings and transactions between Bracken and the other defendants;~~

~~(b) an interlocutory and permanent injunction restraining Bracken from disposing of any of her assets, wherever located, including those held by any other person on her behalf;~~

~~(c) a declaration that BMO is entitled to trace the monies fraudulently obtained from BMO in, to and through any financial institution, accounts or deposit facilities in the name of Bracken and in, to or through any assets purchased by Bracken with BMO's money and to recover same;~~

~~(d) a declaration that to the extent that Bracken holds any funds, or assets purchased from funds, which have been misappropriated from BMO, she does so as constructive trustee; and~~

(e) ~~such further and other relief as this Honourable Court may deem just.~~

4. In addition to the relief sought above, BMO claims against each of the defendants, Gatti, Nelipa and Bracken:

(a) judgment and/or damages in the amount of $250,000.00 for breach of contract;

(b) interest on all amounts awarded to BMO from November 5, 2010 to the date of judgment as prescribed under the terms of Guarantees signed by these defendants on October 5, 2009 or, in the alternative, as prescribed under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) costs of this action on a full indemnity basis, plus all applicable taxes; and

(d) such further and other relief as this Honourable Court may deem just.

5. BMO claims against the defendants, Michael Falcone ("Falcone"), Michael Falcone Professional Corporation ("MFPC"), Terry Mak ("Mak"), and FalconeTurnerMoore LLP, jointly and severally:

(a) damages for negligent misrepresentation and negligence in the amount of \$20,000,000.00, or such other amount as will be proven at trial;

(b) special damages arising out of the detection, investigation and quantification, and recovery of the fraud, losses, and consequential losses suffered by BMO in an amount to be proven at trial;

(c) prejudgment and post-judgment interest on all amounts awarded to BMO under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(d) costs of this action, plus all applicable taxes; and

(e) such further and other relief as this Honourable Court may deem just.

6. BMO claims against the defendants, Renee Faibish and Libra Marketing Inc. (collectively the "Renee Defendants"), jointly and severally, for:

(a) an accounting of, and of all information available with respect to, the funds received in and disbursed from the bank accounts of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants and any other related investment vehicle since August 25, 2009; and

(b) a declaration that to the extent that the Renee Defendants hold any funds, or assets purchased from funds, which have been misappropriated from BMO, they do so as constructive trustees.

7. BMO further claims a declaration that BMO has and maintains a proprietary interest in the proceeds of funds fraudulently obtained by all the defendants or proceeds derived therefrom, including any assets purchased with the proceeds.

Overview

8. This is a commercial fraud in which the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants participated in a sophisticated cheque-kiting scheme (the "Kiting Scheme"), as detailed below. Cheque-kiting occurs when a party or parties take advantage of the timing lag in the cheque clearing process to inflate their bank account balances, provided the bank does not place a hold on deposits. It involves the illegal practice of writing a cheque drawn upon a bank account with insufficient funds to cover the cheque, with a view that the funds from a previously deposited cheque will reach the account before the bank debits the amount of the outstanding cheque. In this case, the Kiting Scheme caused the plaintiff, BMO, to suffer damages in excess of $20,000,000.00.

The Parties

The Plaintiff

9. BMO is a Canadian chartered bank, organized and operated under the provisions of the *Bank Act*, S.C. 1991, c. 46, as amended, and carries on business in Toronto, Ontario and elsewhere across Canada.

Unknown Defendants

10. John Doe, Jane Doe, ABC Corporation and XYZ Corporation are individuals and corporations respectively who participated in or benefited from the Kiting Scheme defined below, including possibly as constructive trustee defendants, but whose identities are presently unknown to BMO.

The Loretta Defendants

11. The defendant, Gatti, is an individual ordinarily resident in ~~North York~~ Pickering, Ontario.

11(a) The defendant, Bracken, is an individual ordinarily resident in Pickering, Ontario, and is the spouse of Gatti. Bracken is a practicing lawyer in the Province of Ontario, running her practice under the business name The Law Firm of Taragh Bracken. Gatti is a 50% owner of The Law Firm of Taragh Bracken, while Bracken owns the remaining 50%. The Law Firm of Taragh Bracken has its principal office in Whitby, Ontario.

12. The defendant, Nelipa, is an individual ordinarily resident in Mississauga, Ontario.

13. The defendant, Loretta Flour, is an Ontario corporation with a registered office located in Whitby, Ontario. As detailed below, Loretta Flour is currently in receivership. At all material times, ~~Gatti~~ Bracken served as ~~the sole~~ an officer and director of Loretta Flour, and Gatti served as an officer. Loretta Flour operated as the alter ego of both Bracken and Gatti. As such, Bracken and Gatti ~~is~~ are liable for all conduct, as set out below, of Loretta Flour.

14. The defendant, Loretta Foods, is an Ontario corporation with a registered office located in Mississauga, Ontario. As detailed below, Loretta Foods is currently in receivership. At all

material times, ~~Gatti~~ Bracken served as ~~the sole~~ an officer and director of Loretta Foods, and Gatti served as an officer. Loretta Foods operated as the alter ego of both Bracken and Gatti. As such, Gatti and Bracken ~~is~~ are liable for all conduct, as set out below, of Loretta Foods.

15. The defendant, NDT Food Service, is an Ontario corporation with a registered office located in Mississauga, Ontario. As detailed below, NDT Food Service is currently in receivership. At all material times, Gatti served as Chief Operating Officer of NDT Food Service, while Nelipa served as President and sole director. Nelipa was also the sole shareholder of NDT Food Service. At all material times, NDT Food Service operated as the alter ego of Nelipa. As such, Nelipa is liable for all conduct, as set out below, of NDT Food Service.

16. Loretta Flour, Loretta Foods and NDT Food Service are collectively referred to below as the "Loretta Group".

17. The defendant, Tarbrac, is an Ontario corporation with a registered office located in Pickering, Ontario. Tarbrac is the sole shareholder of the defendants, Loretta Floor, Loretta Foods and North Dakota. As detailed below, Tarbrac is currently in receivership. Bracken owns 100% of the common shares of Tarbrac and, at all material times, served as the sole director and officer.

18. The defendant, North Dakota, is an Ontario corporation with its registered office located at Mississauga, Ontario (at the same address as the registered office of NDT Food Service). At all material times, Gatti served as a director of North Dakota. North Dakota operated as the alter ego of Gatti. As such, Gatti is liable for all conduct, as set out below, of North Dakota.

The Faibish Defendants

19. The defendant, Faibish, is an individual ordinarily resident in Long Island, New York.

20. The defendant, Synergy, is a publicly traded company, which traded on the NASDAQ under the symbol SYBRQ and is incorporated under the laws of Delaware in the United States. Synergy's head office is located in Syosset, New York. Faibish is a shareholder and former CEO and Chairman of the Board of Directors of Synergy. At all material times, the core operations of Synergy included:

(a) a baking mix manufacturing operation in Michigan;

(b) a spice business, which was distributed through its Michigan facilities;

(c) a packaged meal business, which was also distributed through the Company's Michigan distribution center and manufactured under a co-packing arrangement in North Dakota.

21. On January 28, 2011, Synergy sought Chapter 7 bankruptcy protection in Central Islip, New York.

22. The defendant, Quality Food, is a Nevada corporation and is a wholly-owned subsidiary of Synergy. Quality Food operates under various business names, including G&R Corp. Quality Food operates the baking mix manufacturing operation of Synergy located at Monroe, Michigan. Synergy's Chapter 7 filing did not apply to Quality Food.

23. The defendant, PHS, is a Pennsylvania corporation and is a wholly-owned subsidiary of Synergy. Synergy's voluntary Chapter 7 filing also applies to the defendant PHS. PHS operates

under various business names, including, but not limited to Private Label Group, Grocers Supply and Household Supplies.

24. The defendant, Bektrom Foods, Inc. is a Nevada corporation involved in the grocery and spice business in the United States and elsewhere. At all material times, Bektrom Foods, Inc. operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of Bektrom Foods, Inc.

25. The defendant, Bektrom Industries, LLC is a North Dakota corporation involved in the grocery and spice business in the United States and elsewhere. At all material times, Bektrom Industries, LLC operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of Bektrom Industries, LLC.

26. The defendant, Dealbynet, is a New York corporation, which has the same principal office as Synergy. At all material times, Dealbynet operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of Dealbynet.

27. The defendant, NYCE North America Inc., is a New Jersey corporation, which has the same principal office as PHS. At all material times, NYCE North America Inc. operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of NYCE North America Inc.

The Babiolakis Defendants

28. The defendant, George Babiolakis, in an individual ordinarily resident in Unionville, Ontario.

29. The defendant, Chikoreti Investments Inc. is an Ontario corporation with its registered office in Markham, Ontario. At all material times, Chikoreti Investments Inc. operated as the alter ego of Babiolakis. As such, Babiolakis is liable for all conduct as set out below of Chikoreti Investments Inc.

The Falcone Defendants

30. The defendant, FalconeTurnerMoore LLP, was, at all material times, a limited liability partnership formed under the laws of the province of Ontario and carried on business in Bradford and elsewhere in Ontario as a full service accounting firm, providing accounting and auditing services to, among others, the defendants Loretta Flour, Loretta Foods and NDT Food Service.

31. The defendant, Falcone, was, at all material times, a Certified General Accountant and member of the Certified General Accountants of Ontario. In June 2009, Falcone was a partner and employee with FalconeTurnerMoore LLP, in Bradford, Ontario, and acted within the course and scope of that employment. FalconeTurnerMoore LLP is liable for all the conduct of Falcone that took place before December 2009. From December 2009 to November 2010, Falcone served as Chief Financial Officer for the Loretta Group. Falcone provided his Chief Financial Officer services to the Loretta Group through his personal corporation, Falcon Crest Management Inc. or, alternatively, through his sole proprietorship Falcon Crest Management Group.

32. The defendant, MFPC, was, at all material times, an Ontario professional corporation. MFPC carried on business in Toronto and elsewhere as a professional accounting services corporation, providing accounting and auditing services to, among others, the Loretta Group.

The sole director and officer of MFPC was Falcone. MFPC operated as the alter ego of Falcone. As such, Falcone is liable for all conduct, as set out below, of MFPC.

33. The defendant, Mak, is an individual ordinarily resident in Richmond Hill, Ontario. At all material times, Mak served as an employee of Michael Falcone Professional Corporation as well as FalconeTurnerMoore LLP while being the controller of the defendants, Loretta Flour, Loretta Foods and NDT Food Service. At all material times, Mak acted within the course and scope of her employment. FalconeTurnerMoore LLP is liable for all the conduct of Mak described below. The Loretta Group was billed for Mak's services by Falcone's personal corporation, Falcon Crest Management Inc. or, alternatively, by Falcone's sole proprietorship Falcon Crest Management Group. However, this billing arrangement did not alter the employment relationship that existed between Mak and MFPC nor between Mak and FalconeTurnerMoore LLP.

The Constructive Trustee Defendants

~~34. The defendant, Bracken, is an individual ordinarily resident in North York, Ontario, and is the spouse of Gatti.~~

35. The defendant, Libra Marketing Inc., is a New York corporation, which also operates under the business name "Michigan Mills". The chief executive officer of Libra Marketing Inc. is Renee Faibish. At all material times, Libra Marketing Inc. operated as the alter ego of Renee Faibish. As such, Renee Faibish is liable for all conduct, as set out below, of Libra Marketing Inc.

36. The defendant, Renee Faibish, is an individual ordinarily resident in Long Island, New York, and is the spouse of Faibish.

The Receivership Order

37. On November 26, 2010, upon hearing BMO's application, The Honourable Mr. Justice Wilton-Siegel granted an order under section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, appointing Ernst & Young Inc. ("E&Y") as receiver and manager over all assets, undertakings and properties of Loretta Flour, Loretta Foods, NDT Food Service and Tarbrac (the "Receivership Order").

38. The Receivership Order provided that no proceedings could be commenced against the debtors or the debtors' property without leave of the court or E&Y's written consent. By subsequent court order dated February 10, 2011, BMO was expressly granted permission to commence legal proceedings against the Loretta Group and Tarbrac.

Background – The Loan Agreements

39. Commencing in August 2009, BMO and the Loretta Group entered into a series of loan agreements, described below. So far as BMO was aware, the Loretta Group was a legitimate commercial enterprise and these loan agreements reflected ordinary course commercial lending. As set out below, BMO has since come to learn that such understanding was untrue.

The Fraudulent Misrepresentations

40. In August 2009, Gatti approached BMO to arrange financing for the Loretta Group. During initial discussions with BMO, Gatti made, among others, the following representations:

(a) The Loretta Group was organized into three divisions:

(i) Retail and Wholesale – Loretta Foods;

(ii) Food Service and Catering – NDT Food Service; and

(iii) Flour and Sugar – Loretta Flour;

(b) Loretta Flour produced various types of hard wheat flour from wheat sourced from Ontario and Western Canada at its flour mill located in Ajax, Ontario, and specialized in white cake flour; and

(c) The current owners purchased Loretta Foods in 2006/2007 and combined it with their other businesses (Loretta Flour and NDT Food Service) in 2007/2008.

41. In addition, Gatti made the following misrepresentations, among others, all of which were fraudulent (the "Fraudulent ~~Representations~~ Misrepresentations"):

(a) The bulk of Loretta Flour's sales were to a diversified commercial client base in Canada and the United States comprised of large and small bakeries and confectionaries;

(b) The current owners of the Loretta Group had grown the business significantly by expanding their wholesale network in the United States and Canada;

(c) The defendant, North Dakota Holdings, had leased facilities in Michigan and North Dakota that were used by the Loretta Group to store inventory distributed in the United States;

(d) The Loretta Group's revenues had increased from $41,000,000 to $97,000,000 between 2006 and 2008;

(e) The Loretta Group's earnings before interest, taxes, depreciation and amortization were $4,000,000;

(f) The Loretta Group had $8,980,288 in accounts receivable and $8,019,781 in inventory; and

(g) The Loretta Group was banking with Laurentian Bank ("Laurentian") and had "outgrown" them.

41(a). Bracken had knowledge, actual or constructive, of the Fraudulent Misrepresentations.

42. BMO relied on the Fraudulent ~~Representations~~ Misrepresentations. It was reasonable for BMO to have done so. As set out below, BMO has since come to learn that the Fraudulent ~~Representations~~ Misrepresentations were in fact untrue and were made deliberate or with willful blindness as to their truth by the Loretta Defendants.

43. The Fraudulent ~~Representations~~ Misrepresentations were repeated by the Loretta Defendants during the course of the relationship between BMO and the Loretta Defendants with the intention and effect of prolonging the relationship and extracting further funds from BMO.

The Term Sheet

44. On or about August 25, 2009, based upon the Fraudulent ~~Representations~~ Misrepresentations and based upon BMO's review of, and reasonable reliance on, the Loretta Group's audited and combined financial statements (prepared by the Falcone Defendants), BMO issued a term sheet to the Loretta Group, which provided the following facilities (the "Term Sheet"):

(a) a Demand Revolving Operating facility in the amount of $10,000,000.00;

(b) Letters of Credit in the amount of $500,000.00;.

(c) Treasury Facility in the amount of $1,500,000.00; and

(d) a Corporate MasterCard Facility in the amount of $50,000.00.

45. Under the Term Sheet, among other things,:

(a) the Loretta Group agreed to pay BMO interest at a rate between the prime lending rate plus 1.00% to 2.00% depending on the Loretta Group's total debt to EBITDA ratio.

(b) the Loretta Group granted BMO a first-ranking security interest in all of the present and future undertaking, property and assets of the Loretta Group;

(c) the defendants Gatti, Nelipa and Bracken each provided personal guarantees in the amount of $250,000.00 in respect of each of the borrowers; and

(d) the Loretta Group agreed to indemnify BMO from and against any and all losses, claims, damages and liability arising from activities under or contemplated by the Term Sheet.

The Loan Agreement

46. On or about October 5, 2009, BMO and the Loretta Group entered into an operating loan agreement (the "Loan Agreement"). As with the Term Sheet, BMO continued to rely upon the Fraudulent ~~Representations~~ Misrepresentations and the Loretta Group's audited and combined financial statements in making the Loan Agreement.

47. The Loan Agreement provided for a "Loan Limit" as defined in the Loan Agreement of $10,000,000. The Loan Agreements were signed by Gatti in his capacity as officer of Loretta Foods and Loretta Flour, and Nelipa in his capacity as officer of NDT Food Service.

48. Further, under the Loan Agreement, each of the defendants, Tarbrac, Nelipa, Bracken and Gatti, guaranteed all or certain of the obligations of the Loretta Group to BMO.

Transition of lending facilities from Laurentian to BMO

49. The Loretta Group's transition of its credit facilities occurred gradually over a number of months. During this transition, in or around early November 2009, Laurentian placed a five-day hold on several cheques that were deposited in the Loretta Group's accounts. This caused a series of cascading cheque returns within the Loretta Group and created a strained cash situation, which prompted BMO to explore options of reducing its overall exposure under the Term Sheet and Loan Agreement.

50. Ultimately, BMO proposed a new financing structure that included entering into an Invoice Purchase/Discount Facility with NDT Food Service in the amount of USD $9,000,000.00, under which BMO agreed to purchase various accounts receivable generated by NDT Food Service (the "Discounting Facility Agreement"). This new arrangement allowed NDT Food Service to monetize accounts receivable through BMO's Invoice Purchase/Discounting Program, provided that such accounts receivable were qualified as insured receivables by Export Development Canada ("EDC"). The Discounting Facility Agreement also allowed BMO to reduce its overall exposure by lowering the Loretta Group's operating facility.

The First Amended Term Sheet

51. On or about January 17, 2010, BMO and the Loretta Group entered into an amended term sheet, which replaced the Term Sheet (the "Amended Term Sheet"). As with the Term Sheet and Loan Agreement, BMO continued to rely on the Fraudulent ~~Representations~~ Misrepresentations and the Loretta Group's audited and combined financial statements in providing the Amended Term Sheet. The Amended Term Sheet provided for:

(a) a Demand Revolving Operating facility in the amount of $10,000,000.00;

(b) a treasury facility in the amount of $500,000.00;

(c) a Corporate MasterCard Facility in the amount of $50,000.00;

(d) the Invoice Purchase/Discount Facility in the amount of USD $9,000,000.00; and

(e) interest to be paid by the Loretta Group at a rate between the prime lending rate plus 1.00% to 2.00% depending on the Loretta Group's total debt to EBITDA ratio.

52. Under the First Amended Term Sheet,

(a) the Loretta Group granted BMO a first-ranking security interest in all of the present and future undertaking, property and assets of the Loretta Group;

(b) the defendants Gatti, Nelipa and Bracken each provided personal guarantees in the amount of $250,000.00 in respect of each of the borrowers; and

(c) the Loretta Group agreed to indemnify BMO from and against any and all losses, claims, damages and liability arising from activities under or contemplated by the Amended Term Sheet.

The Second Amended Term Sheet

53. On or about June 30, 2010, BMO and the Loretta Group entered into a second amended term sheet (the "Second Amended Term Sheet"), which replaced the Amended Term Sheet. As with the Term Sheet, Loan Agreement and First Amended Term Sheet, BMO continued to rely on the Fraudulent ~~Representations~~ Misrepresentations in providing the Second Amended Term Sheet. The Second Amended Term Sheet provided for:

(a) a Demand Revolving Operating facility in the amount of \$7,500,000.00, which would reduce to \$5,000,000 by July 31, 2010 and to \$3,500,000 by August 31, 2010;

(b) a discounting facility in respect of receivables insured by EDC in the amount of \$13,500,000.00;

(c) a Corporate MasterCard Facility in the amount of \$50,000.00; and

(d) interest to be paid by the Loretta Group at the prime lending rate plus 2.00%.

The Letter Agreement

54. On or about August 19, 2010, BMO and the Loretta Group entered into a letter agreement, which was supplemental to the Term Sheet, the Loan Agreement, the Amended Term Sheet and the Second Amended Term Sheet (the "Letter Agreement"). As with the Term Sheet,

the Loan Agreement, the Amended Term Sheet and the Second Amended Term Sheet, BMO continued to rely on the Fraudulent ~~Representations~~ Misrepresentations and the Loretta Group's audited and combined financial statements in entering the Letter Agreement.

55. Under the Letter Agreement, among other things, the Loretta Group agreed to pay to BMO:

(a) $1,500,000.00 by August 31, 2010;

(b) $3,500,000.00, plus payment of all outstanding accrued interest on the Demand Revolving Operating Facility and any outstanding expenses and costs of BMO, by October 31, 2010; and

(c) an administration/extension fee, which depending on the amount of outstanding principal would be between $300.00 - $500.00 to be charged daily starting October 1, 2010.

56. Collectively, the Term Sheet, the Loan Agreement, the Amended Term Sheet, the Second Amended Term Sheet and the Letter Agreement are referred to below as "the Loan Agreements".

Breaches of the Loan Agreements and Guarantees

57. The Loretta Group breached the Loan Agreements by, among other things:

(a) failing to remit monies to BMO to which it was entitled;

(b) opening bank accounts at Canadian Imperial Bank of Commerce and depositing funds into these accounts that were properly payable to BMO; and

(c) failing to pay \$3,500,000.00, plus payment of all outstanding accrued interest on the Demand Revolving Operating Facility and any outstanding expenses and costs of BMO by October 31, 2010.

58. On or about November 5, 2010, BMO made a demand for payment to the Loretta Group and to its guarantors (Tarbrac, Nelipa, Bracken and Gatti) for payment under the Loan Agreements and the guarantees. The demands were sent to the addresses that the guarantors provided to BMO. In addition, BMO served a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3. At the time of the demand, the total indebtedness under the Loan Agreements was US \$17,483,987.40 and CDN \$50,142.55.

59. The Loretta Group has failed to pay the outstanding amount of any of the monies owing under the Loan Agreements and accordingly, have wrongfully withheld payment of a just debt owed to BMO.

60. Each of Tarbrac, Nelipa, Bracken and Gatti, all of whom acted as guarantors under the Loan Agreements have failed to pay any amount towards the outstanding loans of the Loretta Group and accordingly, have wrongfully withheld payment of a just debt owed to BMO.

The Kiting Scheme

61. Unbeknownst to BMO, the Loan Agreements were not made with a legitimate commercial enterprise. Rather, BMO has subsequently discovered that:

(a) the vast majority of the Loretta Group's business operations was not legitimate, but was in fact part of a sophisticated cheque kiting scheme that was intended to, and had the effect of, defrauding BMO out of millions of dollars;

(b) the working capital assets of the Loretta Group were substantially less than those reported on the companies' financial statements and borrowing base certificates provided to BMO by the Loretta Group;

(c) the Loretta Group cannot account for approximately $19,000,000.00 of the inventory referred to in the companies' financial statements;

(d) there was in fact no association between the Loretta Group and the facilities in the United States, which the Loretta Defendants represented held substantial amounts of inventory that the Loretta Group owned;

(e) there was a gross deficiency in the value of the property owned by the Loretta Group (over which BMO had a first priority security interest) to repay the outstanding debts owed to BMO; and

(f) the accounts receivable that were purchased by BMO under the discounting facility were fraudulent in that the purported debtor on the accounts receivable did not receive any goods from the Loretta Group as represented on the invoice and purchase order upon which BMO relied in purchasing the accounts receivable.

62. While the full particulars of the Kiting Scheme are not yet known to BMO, but are within the knowledge of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants, BMO is generally aware that between September 1, 2009 and November 1, 2010, the Loretta

Defendants engaged in the Kiting Scheme whereby they fraudulently cycled funds between banking accounts in the name of the Loretta Group to accounts held by the and the Babiolakis Defendants all with a view to creating the fraudulent illusion that the Loretta Group had revenues far exceeding reality and so that the BMO loan facilities could be drawn down and dissipated, thereby defrauding BMO.

63. Without limitation, the Loretta Defendants, at the direction of Faibish and Gatti, would deposit cheques drawn on one bank account into another bank account to cover the value of the written cheques before they were processed, then withdraw the funds from the latter account before the cheques had cleared. These transfers occurred between accounts held by the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants. Specific examples of the Kiting Scheme include:

(a) On September 28, 2009:

(i) Quality Food transferred $795,000.00 into one of Loretta Foods' BMO accounts (#4624-283);

(ii) Loretta Foods transferred $1,038,908.00 into one of NDT Food Service's Laurentian accounts (#085027-601);

(iii) NDT Food Service transferred $3,990,000.00 from this account to PHS;

(iv) Loretta Foods transferred $1,202,760.00 into a further NDT Food Service's Laurentian account (#089829-601);

(v) NDT Food Service transferred $1,976,000.00 from this account to PHS;

(vi) PHS transferred $874,998.70 to Loretta Foods' BMO account referred to into Loretta Foods' BMO account (#4624-283).

(b) On October 1, 2009:

(i) Quality Food transferred $437,500.00 into one of Loretta Flour's BMO accounts (#4623-205);

(ii) Loretta Flour transferred $1,241,313.00 from this account to one of NDT Food Services' BMO accounts (#089829-601);

(iii) NDT Food Service transferred $1,500,000.00 from this account to PHS; and

(iv) PHS transferred $862,498.70 to Loretta Flour's BMO account (#4623-205).

64. The net result of all these kiting transactions was a large-scale cycling of hundreds of millions of dollars between the Loretta Defendants, the Faibish Defendants, the Babiolakis Defendants and others.

65. Given the timing of the transfers, the lack of any legitimate business purpose for those transfers and the large sums of money involved in the transfers, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants were complicit in, conspired in and acted jointly to facilitate the Kiting Scheme for their benefit and to defraud BMO of funds.

66. The following acts are known to have been taken by the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants in furtherance of the Kiting Scheme:

(a) Faibish directed the directing minds of the Loretta Group to send wire transfers of funds from accounts held by the Loretta Group to accounts held by the Faibish Defendants and the Babiolakis Defendants when he knew or ought to have known that there was no underlying business purpose for these fund transfers; and

(b) Gatti prepared and signed all or substantially all of the cheques written on the accounts of the Loretta Group which were directed to accounts held by the Faibish Defendants and the Babiolakis Defendants when he knew or ought to have known that there was no underlying business purpose for these payments.

67. Further particulars of the Kiting Scheme and the conspiracy to effect the Kiting Scheme are within the knowledge of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants.

68. In the alternative, if the Faibish Defendants and the Babiolakis Defendants were not complicit in the Kiting Scheme, then they knew, ought to have known or were willfully blind to the use of their accounts and the kiting conducted by the Loretta Defendants.

Conspiracy

69. In engaging in the Kiting Scheme, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants have acted jointly and unlawfully with the common purpose and malicious intention of injuring BMO. Alternatively, these defendants have acted jointly, their conduct as set out above was directed at BMO, and these defendants knew or ought to have known that BMO would suffer harm as a result of these defendants' actions.

70. By virtue of the conspiracy of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants, BMO has suffered losses including the loss of the unreturned principal and interest under the Loan Agreements. Further, by conspiring in the manner they have, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants are jointly and severally liable to BMO for the entirety of BMO's collective losses despite that a particular defendant may not have conducted a particular act alleged above.

Fraudulent Misrepresentations

71. As set out above, BMO has since come to learn that certain of the Fraudulent Misrepresentations were untrue, inaccurate and misleading.

72. Full particulars of the falsity of the Fraudulent Misrepresentations are known to the Loretta Defendants, but include, among other things:

(a) The Loretta Group while organized into three divisions, was not operating a legitimate business, but were rather the primary instruments through which the Kiting Scheme was effected;

(b) While Loretta Flour produced various types of hard wheat flour it sold that flour primarily to Quality Food, and it did so at a price that was well below Loretta Flour's cost of production;

(c) While Gatti had purchased Loretta Foods in 2007, he did so after perpetrating a similar or nearly identical cheque-kiting scheme on another financial institution;

(d) The Loretta Group's previous lender had detected that the Loretta Group was involved in illegitimate business operations and requested that they find another lender;

(e) The Loretta Group did not have a wholesale network of clients in North America;

(f) The facilities in Michigan and North Dakota stored inventory that was not owned by the Loretta Group;

(g) Millions of dollars of funds were being wired from Loretta Group accounts to accounts controlled by the Faibish Defendants and the Babiolakis Defendants for no legitimate business purpose other than depleting the BMO lending facilities;

(h) Millions of dollars were being wired from the Loretta Group to third-party companies who appeared to have no business relationship whatsoever with the Loretta Group; and

(i) Millions of dollars were being deposited in Loretta Group bank accounts in the absence of corresponding sales that would be necessary to generate such large sums.

73. Further, the Fraudulent Misrepresentations were made by Gatti with the knowledge of Bracken, actual or constructive, and in circumstances where ~~he~~ Gatti and Bracken knew they were untrue, inaccurate or misleading or in which they were willfully blind as to the truth of such statements.

74. BMO reasonably relied on the Fraudulent Misrepresentations in entering into the Loan Agreements and suffered losses, as set out below, as a result.

BMO's losses caused by the Kiting Scheme and Fraudulent Misrepresentations

75. Had BMO known that Gatti's and the other Loretta Defendants' representations regarding the business of the Loretta Group were untrue and inaccurate, BMO would not have agreed to loan any funds under the Loan Agreements.

76. As a result of BMO's reliance on the representations of Gatti and the other Loretta Defendants and as a result of the Kiting Scheme, BMO has suffered losses including the outstanding principal amounts of the loans and the opportunity to earn a return on those monies.

Fraudulent Conveyances

77. At various times, the full particulars of which are only known to the defendants, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants have transferred assets from themselves to others in order to avoid creditors, including BMO, or alternatively to the payees in preference to other creditors, including BMO (the "Fraudulent Conveyances"). The Fraudulent Conveyances were done at such a time as the relevant defendants knew they were insolvent or knew that, in light of the claims against them, including the potential claim of BMO, they were on the eve of insolvency. All such Fraudulent Conveyances are illegal and contrary to the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 and the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, which statutes BMO expressly relies upon.

78. Without limiting the generality of the above, Fraudulent Conveyances are presently known to include:

(a) payments to Bracken in the amount of $128,400 CAD, which payments have no commercial or legitimate purpose;

(b) the conveyance of the property municipally described as 83 Fifeshire Road, Toronto, Ontario (the "Fifeshire Property"), which Loretta Flour purchased on June 29, 2010, using funds from NDT Food Service's BMO account, and which was registered solely in Bracken's name on July 2, 2010;

(c) the conveyance of the property municipally described as Suite 201, 201 Carlaw Avenue, Toronto, Ontario (the "Carlaw Condominium"), which was registered solely in Bracken's name on June 16, 2010; and

(d) the transfer of a lien registration on a 2008 Ferrari, F430 Coupe F1 (the "Ferrari") from Loretta Flour to 2287521 Ontario Ltd.

79. BMO seeks orders of this Court to set aside the Fraudulent Conveyances and make the assets so transferred available to BMO to satisfy such judgments as BMO may obtain against the defendants.

80. As a result of the Fraudulent Conveyances, BMO names the recipients of such Fraudulent Conveyances, to the extent not otherwise named in this statement of claim, as defendants respecting their participating in the Fraudulent Conveyances.

Unjust Enrichment

81. The defendants have received, at minimum, the following amounts, all of which were deposited in bank accounts held with financial institutions other than BMO:

(a) Faibish - $1,442,611.70 USD;

(b) Bracken – $1,047,117.70 CAD and $564,778.78 USD;

(c) Loretta Foods - $5,370,838.00 USD;

(d) NDT Food Service - $53,159,449.00 USD and $8,410,249.07 CAD;

(e) PHS operating as "Household Supplies" - $10,412,243.00 USD;

(f) Libra Marketing Inc. operating as "Michigan Mills" - $7,732,049.00 USD;

(g) North Dakota - $25,100.00 CAD and $994,100.00 USD;

(h) PHS - $188,321,406.79 USD;

(i) Quality Food - $61,938,478.60 USD; and

(j) Synergy - $475,106.00.

82. BMO's funds advanced under the Loan Agreements were included in some or all of the above payments. These defendants have received the benefit of BMO's funds to the detriment of BMO. There is no juristic basis for these defendants to keep these funds.

Previous Cheque Kiting Scheme

83. Gatti, Bracken, and Nelipa, among others, perpetrated the same or nearly identical fraudulent scheme against another financial institution ("the Bank"). In 2007, the Bank commenced a lawsuit against a number of parties including Loretta Food Group Inc. (a company founded and controlled by Bracken and Nelipa), in which a significant cheque-kiting fraud

(involving the cycling of approximately $60,000,000 of funds from as between various companies, including NDT Food Service) was alleged.

84. Loretta Food Group Inc. was placed in receivership and later deemed bankrupt. Gatti, who was a named defendant in the lawsuit, purchased the Loretta Food Group Inc. and NDT Food Service from the receiver.

85. As necessary, BMO will lead such similar fact evidence at the trial of this Action and in relation to any interlocutory applications in this Action.

BMO's claims against the Falcone Defendants

86. At all material times, Falcone provided accounting and auditing services to the Loretta Group. He provided these services through MFPC and FalconeTurnerMoore LLP.

87. Falcone and MFPC issued audited financial statements for Loretta Flour, Loretta Foods and NDT Food Service for the year ended December 31, 2008 (the "Audited Financial Statements"). Falcone and MFPC gave unqualified audit opinions in accordance with Generally Accepted Auditing Standards ("GAAS") for the year ended December 31, 2008, stating that the Audited Financial Statements presented on a consistent basis, and fairly, in all material respects, the respective financial positions and the results of operations of Loretta Flour, Loretta Foods and NDT Food Service in accordance with Generally Accepted Accounting Principles ("GAAP"). Falcone and MFPC provided assurances that the financial statements were free of material misstatement. Falcone and MFPC knew that BMO was going to and did rely on these Audited Financial Statements. Consequently, Falcone and MFPC owed BMO a duty of care to provide competent auditing services in accordance with GAAS.

88. Falcone's and MFPC's unqualified audit opinions resulted in the issuance of materially misleading financial statements, which overstated revenues, accounts receivable balances, and were contrary to GAAP. The Audited Financial Statements also failed to include an accrual for unpaid payroll tax liability relating to payroll that was paid to the Loretta Group's employees on a cash basis, thereby materially misstating the net income of the Loretta Group. Contrary to Falcone's and MFPC's representations, the Audited Financial Statements were not free of material misstatements.

89. Within one week of issuing the Audited Financial Statements, and knowing that BMO required them in order to make a lending decision, Falcone and FalconeTurnerMoore LLP issued "Notice to Reader" combined financial statements for the Loretta Group for the year ended December 31, 2008 (the "Combined ~~financial statements~~ Financial Statements"). In preparing the Combined Financial Statements, these defendants had full knowledge of the actual financial position of the Loretta Group given that Falcone had prepared and issued the auditor's reports on the Audited Financial Statements one week earlier.

90. Mak provided BMO with the Audited Financial Statements and the Combined Financial Statements in her capacity as employee of FalconeTurnerMoore LLP, and while she was also employed with the Loretta Group.

The Negligence of the Falcone Defendants

91. At all material times, the Falcone Defendants owed duties of care to BMO.

92. Falcone, MFPC and FalconeTurnerMoore LLP represented themselves as professional advisors with experience and expertise in accounting and auditing matters. These defendants were engaged to perform auditing and accounting services for the Loretta Group and possessed

special knowledge with respect to the financial and operational position of each of the companies within the Loretta Group.

93. Falcone and FalconeTurnerMoore LLP also provided notice to reader financial statements on the Combined Financial Statements. The Combined Financial Statements were based on the Audited Financial Statements with the removal of any intercompany transactions between Loretta Flour, Loretta Foods and NDT Food Service. Because the Loretta Group companies were not owned by the same shareholders, Falcone and MFPC reviewed or ought to have reviewed the related party transactions in detail in performing the audits of Loretta Flour, Loretta Foods and NDT Food Service. Therefore, in preparing the Combined Financial Statements, Falcone and FalconeTurnerMoore LLP knew or ought to have known of the related party transactions that needed to be eliminated on the Combined Financial Statements and should have audited all of the financial information underlying the Combined Financial Statements.

94. The Falcone Defendants knew, or ought to have known, that:

(a) BMO's agreement to enter into the Term Sheet and its decision to enter into any subsequent loan facility with the Loretta Group was dependent upon the financial position and strength of the Loretta Group, including its capacity to carry on its business in a financially prudent and profitable manner;

(b) BMO required audited and combined financial statements as a condition to its agreement under the Term Sheet and its agreement to continue to provide facilities under the subsequent Loan Agreements;

(c) BMO received, reviewed and relied upon the Audited Financial Statements and the Combined Financial Statements for the purposes stated above;

(d) BMO would suffer damages in the event that either the Audited Financial Statements or the Combined Financial Statements were prepared in a negligent manner; and

(e) BMO would be exposed to substantial losses if the Loretta Group was unable to repay the amounts owed to BMO under the Loan Agreements and/or otherwise breached their contractual obligations under the Loan Agreements.

95. BMO would not and could not reasonably conduct its own independent audit of the Loretta Group and that BMO would and did reasonably rely on the Audited Financial Statements and Combined Financial Statements in entering into financing arrangements with these companies.

96. In the circumstances, Falcone and FalconeTurnerMoore LLP owed duties of care to BMO in accordance with Canadian accounting and auditing standards, in the preparation of the Audited Financial Statements. Similarly, Falcone and MFPC owed duties of care to BMO in the preparation of the Combined Financial Statements.

97. Pursuant to the duties of care owed by the Falcone Defendants to BMO, the Falcone Defendants were required to exercise the reasonable degree of care, skill and diligence and competence expected of a competent and prudent auditors and accountants including, but not limited to, the duty to:

(a) act with reasonable care, diligence and judgment in reviewing the Audited Financial Statements and Combined Financial Statements;

(b) ensure the Audited Financial Statements and Combined Financial Statements were prepared in accordance with GAAS and Canadian GAAP and they did not contain information that the Falcone Defendants knew or ought to have known was false or misleading;

(c) make reasonable inquiries and investigation to obtain sufficient information and knowledge of the operations and activities of the Loretta Group;

(d) thoroughly and intelligently assess and analyze such information and knowledge, and in particular, whether the information being reported was accurate;

(e) undertake additional or more extensive procedures when the results of inquiries and investigations caused or should have caused the Falcone Defendants to doubt the accuracy of the information;

(f) fairly and accurately disclose all the results of the Falcone Defendants' inquiries, investigations, assessment and analysis, in the Audited Financial Statements and the Combined Financial Statements; and

(g) not knowingly misrepresent or give a false impression of analysis, recommendations, actions or other professional activities.

98. The particulars of the negligence on the part of the Falcone Defendants, which are presently known to BMO, are as follows:

(a) failing to audit the Audited Financial Statements in accordance with GAAS;

(b) failing to possess adequate technical training and proficiency to properly carry out the audit of the Audited Financial Statements;

(c) failing to plan and properly execute the audit of the Audited Financial Statements;

(d) failing to have sufficient knowledge of the Loretta Group's business;

(e) failing to have a sufficient understanding of the internal control environment so as to properly conduct the audit;

(f) failing to adequately supervise and review the work of assistants;

(g) failing to act with reasonable care, diligence, professional skepticism and judgment expected of competent accountants and auditors in similar circumstances;

(h) failing to obtain sufficient appropriate audit evidence to support an unqualified audit opinion of the Audited Financial Statements;

(i) failing to make reasonable inquiries and investigations to obtain the necessary information and knowledge about the financial and operational situation of the Loretta Group;

(j) failing to thoroughly and intelligently assess and analyze the information and knowledge about the financial and operational situation of the Loretta Group;

(k) failing to undertake additional or more extensive procedures when the results of inquiries and investigations caused or ought to have caused the Falcone Defendants to doubt the accuracy of the information and knowledge obtained by it;

(l) failing to fairly and accurately disclose all the results of the Falcone Defendants' inquiries, investigations, assessment and analysis in the Audited Financial Statements and Combined Financial Statements;

(m) overstating the Loretta Group's accounts receivable, revenue, net income and retained earnings in the Audited Financial Statements and Combined Financial Statements;

(n) wrongfully reporting that the Audited Financial Statements and Combined Financial Statements were fairly stated in all material respects;

(o) knowingly representing or giving the false impression the Loretta Group was comprised of companies with a sound and stable financial position;

(p) failing to disclose that, at the time of preparing the Audited Financial Statements and Combined Financial Statements, Falcone was considering joining the Loretta Group as Chief Financial Officer (which he did shortly after BMO advanced funds under the Term Sheet); and

(q) such further breaches as may be proven at the trial of this action.

99. In addition to the above, after joining the Loretta Group as Chief Financial Officer, Falcone become intimately aware of the Kiting Scheme and further knew that the Audited Financial Statements were materially misleading. As such, Falcone had a professional duty to revise the audit report or request that management revise the Audited Financial Statements. Falcone breached this duty by failing to take any of these steps.

100. The Falcone Defendants knew, or ought to have known, that it was reasonably foreseeable that a breach of the Falcone Defendants' duties of care would result in injury to BMO.

The Negligent Misrepresentations of the Falcone Defendants

101. In issuing the Audited Financial Statements with an unqualified opinion, and in issuing the Combined Financial Statements which were based on the Audited Financial Statements, the Falcone Defendants expressly or impliedly represented to BMO that the Loretta Group was comprised of companies with sound and stable financial positions.

102. Amongst other things, the Audited Financial Statements and the Combined Financial Statements contained the following misrepresentations, all of which were untrue, inaccurate or misleading:

(a) Loretta Flour had:

(i) accounts receivable of $2,642,251;

(ii) revenue of $52,780,532;

(iii) net income of $1,308,691; and

(iv) retained earnings of $1,458,161;

(b) Loretta Foods had:

(i) accounts receivable of $2,748,201;

(ii) revenue of $27,821,432;

(iii) net income of $711,206; and

(iv) retained earnings of $968,902;

(c) NDT Food Service had:

(i) accounts receivable of $3,577,235;

(ii) revenue of $80,043,929;

(iii) net income of $588,850; and

(iv) retained earnings of $1,511,344;

(d) The Loretta Group collectively had:

(i) assets of approximately $19,788,493;

(ii) accounts receivable of $8,967,688;

(iii) revenue of $97,281,466;

(iv) net income of $2,608,754;

(v) retained earnings of $3,938,309.00; and

(vi) a debt to net worth ratio of 0.44.

103. Further, the Audited Financial Statements and Combined Financial Statements failed to disclose, among other things, that:

(a) incoming and outgoing payments that were made between the Loretta Group, PHS and Quality Food were significantly greater than the sales and costs of goods sold as listed in Audited Financial Statements and the Combined Financial Statements; and

(b) there were various loan agreements as between the Loretta Group, PHS and Quality Food.

104. The particulars of the negligence on the part of the Falcone Defendants, which are presently known to BMO, are as follows:

(a) failing to audit the Audited Financial Statements in accordance with GAAS;

(b) failing to possess adequate technical training and proficiency to properly carry out the audit of the Audited Financial Statements;

(c) failing to plan and properly execute the audit of the Audited Financial Statements;

(d) failing to have sufficient knowledge of the Loretta Group's business;

(e) failing to have a sufficient understanding of the internal control environment so as to properly conduct the audit;

(f) failing to adequately supervise and review the work of assistants;

(g) failing to act with reasonable care, diligence, professional skepticism and judgment expected of competent accountants and auditors in similar circumstances;

(h) failing to obtain sufficient appropriate audit evidence to support an unqualified audit opinion of the Audited Financial Statements;

(i) failing to make reasonable inquiries and investigations to obtain the necessary information, evidence and knowledge about the financial and operational situation of the Loretta Group;

(j) failing to thoroughly and intelligently assess and analyze the information and knowledge about the financial and operational situation of the Loretta Group;

(k) failing to undertake additional or more extensive procedures when the results of inquiries and investigations caused or ought to have caused the Falcone Defendants to doubt the accuracy of the information and knowledge obtained by it;

(l) failing to fairly and accurately disclose all the results of the Falcone Defendants' inquiries, investigations, assessment and analysis in the Audited Financial Statements and Combined Financial Statements;

(m) wrongfully reporting that the Audited Financial Statements and Combined Financial Statements were fairly stated in all material respects;

(n) knowingly representing or giving the false impression the Loretta Group was comprised of companies with a sound and stable financial position;

(o) failing to disclose that, at the time of preparing the Audited Financial Statements and Combined Financial Statements, Falcone was considering joining the Loretta Group as Chief Financial Officer (which he did shortly after BMO advanced funds under the Term Sheet);

(p) failing to disclose the economic dependence that the Loretta Group had on PHS and Quality Food; and

(q) such further breaches as may be proven at the trial of this action.

105. Before the terms of the Term Sheet were finalized, the Falcone Defendants knew that BMO was relying on Audited Financial Statements and the Combined Financial Statements. The Falcone Defendants audited and compiled the Audited Financial Statements and the Combined Financial Statements with the intention that BMO would rely on the misrepresentations contained therein.

106. On or about August 2009, BMO, in reasonable reliance upon the Audited Financial Statements and the Combined Financial Statements, entered into the Term Sheet with the Loretta Group.

107. BMO would not have advanced the funds under any of the financing agreements to the Loretta Group if the Audited Financial Statements and Combined Financial Statements fairly disclosed the financial position of these companies.

108. As a result of the Falcone Defendants' negligence and negligent misrepresentations described above, BMO has suffered damages and losses in the amount of $20,000,000.00, and these losses are continuing to accrue.

109. Further, as a result of the above negligence and negligent misrepresentations of the Falcone Defendants, BMO has suffered special damages, particulars of which will be provided before trial.

Claim against Bracken

110. Between August 2009 and November 2010, Bracken received $128,400 CAD directly from the Loretta Group and or other defendants. In addition, during the same period, approximately $965,000 was paid by the Loretta Group to credit card accounts that were under Bracken's name and/or control. These monies originated from BMO under the terms of the Loan Agreements. Accordingly, Bracken acquired these funds from BMO improperly ~~holds these funds as constructive trustee for the benefit of BMO~~.

~~111. In addition, Bracken received either portions of the proceeds from the Kiting Scheme, or assets acquired with the proceeds of the Kiting Scheme with knowledge, actual or constructive, of the Kiting Scheme, and holds all such funds or assets as constructive trustee for the benefit of BMO.~~

112. As a result of the above conduct, BMO expressly claims rights to constructive trusts and equitable liens and interests in and against the following properties:

(a) the Fifeshire Property, which comprises the following PINs:

(i) PIN 10098-0838 (LT), Lot 49, Plan 3456 (North York) save and except Part 3 on Reference Plan 64R15198;

(ii) PIN 0098-1341 (LT), Part of Lot 46, Plan 3456 (North York) designated as Part 5 on Reference Plan 66R20573; and

(iii) PIN 10098-1338 (LT), Part of Lot 50, Plan 3456 (North York) designated as Part 2 on Reference Plan 66R20573;

(b) the Carlaw Condominium, which comprises the following PINs:

(i) PIN 13073-0064 (LT) Unit 1, Level 2, Toronto Standard Condominium Plan No. 2073 and its appurtenant interest;

(ii) PIN 13073-0383 (LT) Unit 37, Level B, Toronto Standard Condominium Plan No. 2073 and its appurtenant interest; and

(iii) PIN 13073-0451 (LT) Unit 105, Level B, Toronto Standard Condominium Plan No. 2073 and its appurtenant interest.

113. BMO seeks certificates of pending litigation against these lands and any other lands registered in the name of Bracken, which were purchased using funds BMO loaned to the Loretta Group.

Claim against the Renee Defendants

114. The Renee Defendants received either portions of the proceeds from the Kiting Scheme, or assets acquired with the proceeds of the Kiting Scheme with knowledge, actual or

constructive, of the Kiting Scheme, and hold all such funds or assets as trustees of a constructive trust for the benefit of BMO.

115(a). The Renee Defendants were enriched by the proceeds and assets they received through the Kiting Scheme. This enrichment caused BMO a corresponding deprivation in that the proceeds and assets were obtained through monies fraudulently obtained from BMO. There is no juristic reason for this enrichment of the Renee Defendants.

115. As a result of the above conduct, BMO expressly claims rights to constructive trusts and equitable liens in and against all real property held by the Renee Defendants. BMO seeks a certificate of pending litigation against these lands and any other assets of the Renee Defendants.

BMO is entitled to Tracing, Freezing Assets, Accounting and Disgorgement

116. As a result of the defendants' wrongful conduct as set out above, BMO is entitled to trace all amounts received or disbursed by the defendants as part of or as a result of the Kiting Scheme and to recover same. BMO is also entitled to an accounting of the monies belonging to BMO that have come into the possession of any of the defendants and to an accounting of any benefit received by any of the defendants as a result of the Kiting Scheme.

117. BMO is also entitled to interlocutory and permanent injunctions restraining the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants from disposing of any of their assets wherever located and an accounting of all of these defendants' assets, effects, and property, including any trust account or jointly held assets, any improper disposition thereof, and all money had or received by these defendants or anyone on their behalf.

118. The defendants are liable to make restitution to BMO and to disgorge any benefits they have received from the Kiting Scheme to BMO.

119. BMO has incurred, and will continue to incur, significant out-of-pocket expenses and special damages in their detection, investigation and quantification of the fraud and losses suffered at the hands of Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants in an amount to be proven at the trial of this action.

Action Survives Bankruptcy

120. The liability of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants arises out of their fraud and conspiracy. BMO relies upon the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, in particular section 178.

BMO is entitled to recover Punitive Damages and Costs

121. BMO is entitled to recover punitive and exemplary damages in the amount of $1,000,000 as a result of the acts of the Loretta Defendants, Faibish Defendants and the Babiolakis Defendants described above. The actions of these defendants were intentional, reckless, highhanded, callous and constituted a wanton disregard for BMO.

122. Further, as a result of the defendants' fraudulent and malicious conduct set out above, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants ought to pay costs of this action on a full indemnity basis.

Service

123. BMO relies upon Rule 17.02 of the Ontario *Rules of Civil Procedure*, specifically that this action:

(a) relates to real or personal property that is located in Ontario;

(b) is in respect of a tort committed in Ontario;

(c) is in respect of damages sustained in Ontario arising from a tort, and breach of contract; and

(d) is against persons outside Ontario who are necessary and proper parties to this proceeding.

Place of Trial

124. BMO requests that the trial of this action take place in the City of Toronto.

~~July 4, 2011~~ October 14, 2011

BENNETT JONES LLP
Barristers & Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto ON M5X 1A4

Munaf Mohamed
Tel: (403) 298-4456
Fax: (403) 265-7219
Jason W. Woycheshyn (LSUC #: 53318A)
Tel: (416) 777-4662
Fax: (416) 863-1716

Lawyers for the Plaintiff

BANK OF MONTREAL -and- MAIR FAIBISH e t al

Plaintiff Defendants Court File No. CV-11-9287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

<u>AMENDED</u> STATEMENT OF CLAIM

BENNETT JONES LLP
Barristers & Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Munaf Mohamed
Tel: (403) 298-4454
Fax: (403) 265-7219
Jason W.J. Woycheshyn (LSUC #: 53318A)
Tel: (416) 777-4662
Fax: (416) 863-1716

Lawyers for the plaintiff,
Bank of Montreal

TAB F

Attached is Exhibit F

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

Canada Revenue Agency | Agence du revenu du Canada

NOTICE OF ASSESSMENT

PD67A E (08)

1 Date March 3, 2011

Account number 882109846 RP 0001

787755 ONTARIO LIMITED sometime carrying on business as NEW DURHAM TRADING

TAXATION YEAR 2008

You have been assessed the amounts indicated for failure to remit as required. These amounts are due immediately and are hereby requested.

Please pay the amount shown as balance.

employer 7252.82
employee 7252.82

employer 2618.69
employee 1870.49

• IMPORTANT - SEE REVERSE •

SUMMARY	
Previous balance	
Amount assessed	
Federal tax	
Provincial tax	
Canada Pension Plan	$14,505.64 INC
E.I.	$4,489.18 INC
Penalty	$1,899.48 INC
Interest	$2,172.00 INC
Payment	
BALANCE	$23,066.30 DR

A balance of less than $2.00 is neither due nor refunded.

Please direct your payment to:

Ottawa Technology Centre
Ottawa, ON K1A 1B1

You must pay the amount owing immediately. Failure to do so may result in legal action being taken without further notice.

Linda Lizotte-MacPherson
Commissioner of Revenue

Retain this part for your records
Detach here and return part 2 with your payment

CUT HERE ... CUT HERE

Canada Revenue Agency | Agence du revenu du Canada

This remittance voucher must only be used for source deductions amounts assessed, penalty and interest.

PD67A E (08)

2

04

Account number
882109846 RP 0001

787755 ONTARIO LIMITED sometime carrying on
business as NEW DURHAM TRADING
ERNST & YOUNG AS RECEIVER
P.O. BOX 251, Td Centre
222 Bay Street
Toronto ON M5K 1J7

Amount of payment

0620000004000000882109846RP00010000000000023066300620003

ENQUIRIES

If you wish to:

(a) receive clarification of any aspect of the assessment;
(b) make representations concerning some point with which you do not agree; or
(c) submit additional information,

you should enquire at the Tax Services Office in your area without delay. Enquiries by mail should be addressed to "Tax Services Office" at the appropriate address.

Refer to the Government of Canada section in your telephone book for the current address and telephone number of your local Tax Services Office. You can also visit our Web site at **www.cra.gc.ca**.

If you are unable to resolve the issue by such an enquiry, you have the right to object to and appeal your assessment. You can file an objection to any tax amount assessed under the *Income Tax Act* (ITA) by completing Form T400A. You can appeal any amount assessed under the *Canada Pension Plan* (CPP) or the *Employment Insurance Act* (EIA) by completing Form CPT101. You can also file an objection and/or an appeal by sending a letter, stating all related facts, addressed to the Chief of Appeals of any tax services office within 90 days of the mailing of the *Notice of Assessment* or by using the My Business Account service on our Web site.

The *Income Tax Act,* Canada Pension Plan and *Employment Insurance Act*, provide that any balance owing shall be paid when due, whether or not an objection or appeal has been filed.

* Interest is charged at the rate prescribed by law.

* Please quote your account number when corresponding.

Please note that, where this document is sent to one member of a partnership, it is deemed to have been provided to the other members of that partnership, whether or not a copy is sent to them, and the firm name is read as a reference to all their members.

PAYMENT INFORMATION

- Visit our Web site at **www.cra.gc.ca/electronicpayments** for information on paying through Internet banking or by telephone, or contact your financial institution to see if it offers these services.
- You can return the remittance voucher with your cheque made payable to the Receiver General. Write your account number on the back of your cheque and mail it to the Canada Revenue Agency, 875 Heron Road, Ottawa ON K1A 1B1.
- If you make your payment at an Automated Teller Machine, check with your financial institution to make sure your payment will be processed and credited to the Receiver General account by the due date.
- You may be able to pay online using CRA's My Payment option. To use My Payment, or to see if your financial institution offers this service, go to **www.cra.gc.ca/mypayment**.

Amount of payment

Canada Revenue Agency | Agence du revenu du Canada

NOTICE OF ASSESSMENT

PD67A E (08)

1 Date
March 3, 2011

Account number
882109846 RP 0001

787755 ONTARIO LIMITED sometime carrying on business as NEW DURHAM TRADING

TAXATION YEAR 2009

You have been assessed the amounts indicated for failure to remit as required. These amounts are due immediately and are hereby requested.

Please pay the amount shown as balance.

employer 6190.47
employee 6190.47

employer 2049.10
employee 1463.58

• IMPORTANT - SEE REVERSE •

SUMMARY	
Previous balance	$23,066.30 DR
Amount assessed	
Federal tax	
Provincial tax	
Canada Pension Plan	$12,380.94 INC
E.I.	$3,512.59 INC
Penalty	$1,589.35 INC
Interest	$921.00 INC
Payment	
BALANCE	$41,470.18 DR

A balance of less than $2.00 is neither due nor refunded.

Please direct your payment to:

Ottawa Technology Centre
Ottawa, ON K1A 1B1

You must pay the amount owing immediately. Failure to do so may result in legal action being taken without further notice.

Linda Lizotte-MacPherson
Commissioner of Revenue

Retain this part for your records
Detach here and return part 2 with your payment

------------ CUT HERE ------------ CUT HERE ------------

Canada Revenue Agency | Agence du revenu du Canada

2

This remittance voucher must only be used for source deductions amounts assessed, penalty and interest.

PD67A E (08)

04

Account number
882109846 RP 0001

787755 ONTARIO LIMITED sometime carrying on
business as NEW DURHAM TRADING
ERNST & YOUNG AS RECEIVER
P.O. BOX 251, Td Centre
222 Bay Street
Toronto ON M5K 1J7

Amount of payment

06200000040000008821098846RP00010000000000041470180620000

ENQUIRIES

If you wish to:

(a) receive clarification of any aspect of the assessment;
(b) make representations concerning some point with which you do not agree; or
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you should enquire at the Tax Services Office in your area without delay. Enquiries by mail should be addressed to "Tax Services Office" at the appropriate address.

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Amount of payment

Canada Revenue Agency | Agence du revenu du Canada

NOTICE OF ASSESSMENT

PD67A E (08)

1 Date
March 3, 2011

Account number
882109846 RP 0001

• IMPORTANT - SEE REVERSE •

787755 ONTARIO LIMITED sometime carrying on business as NEW DURHAM TRADING

TAXATION YEAR 2010

You have been assessed the amounts indicated for failure to remit as required. These amounts are due immediately and are hereby requested.

Please pay the amount shown as balance.

employer 4684.48
employee 4684.48

employer 1403.21
employee 1002.29

SUMMARY	
Previous balance	$41,470.18 DR
Amount assessed	
Federal tax	
Provincial tax	
Canada Pension Plan	$9,368.96 INC
E.I.	$2,405.50 INC
Penalty	$1,177.45 INC
Interest	$136.00 INC
Payment	
BALANCE	$54,558.09 DR

A balance of less than $2.00 is neither due nor refunded.

Please direct your payment to:

Ottawa Technology Centre
Ottawa, ON K1A 1B1

You must pay the amount owing immediately. Failure to do so may result in legal action being taken without further notice.

Linda Lizotte-MacPherson
Commissioner of Revenue

Retain this part for your records
Detach here and return part 2 with your payment

CUT HERE ---------- CUT HERE

Canada Revenue Agency | Agence du revenu du Canada

2

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PD67A E (08)

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Account number
882109846 RP 0001

787755 ONTARIO LIMITED sometime carrying on
business as NEW DURHAM TRADING
ERNST & YOUNG AS RECEIVER
P.O. BOX 251, Td Centre
222 Bay Street
Toronto ON M5K 1J7

Amount of payment

062000000400000088210984GRP00010000000000005455809062000 5

ENQUIRIES

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- If you make your payment at an Automated Teller Machine, check with your financial institution to make sure your payment will be processed and credited to the Receiver General account by the due date.
- You may be able to pay online using CRA's My Payment option. To use My Payment, or to see if your financial institution offers this service, go to **www.cra.gc.ca/mypayment**.

Amount of payment

TAB G

Attached is Exhibit G

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

District of Ontario
Division No. 09
Court No. ________________
Estate No. ________________

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
TARBRAC HOLDINGS INC.
of the City of Pickering,
in the Province of Ontario

CONSENT OF TRUSTEE

ERNST & YOUNG INC. hereby consents to act as Trustee in the above-noted matter.

DATED at Toronto, this 1st day of December, 2010.

ERNST & YOUNG ~~INC.~~

By: ______________________
Name: Mike Dean c/s
Title: Senior Vice President

IN THE MATTER OF THE BANKRUPTCY OF TARBRAC HOLDINGS INC.

District of Ontario
Division No. 09
Court File No. __________
Estate File No. __________

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

CONSENT OF TRUSTEE

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Steven L. Graff – LSUC No 31871B
Aaron T. Collins – LSUC No. 55490T

Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for Bank of Montreal

7542944.1

BANK OF MONTREAL - and - 2110458 ONTARIO LIMITED, 2131413 ONTARIO LIMITED, 787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC.

Applicant | Respondents

Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

AFFIDAVIT OF ROBERT KIEFER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9
Tel: 416.863.1500
Fax: 416.863.1515

Steven L. Graff – LSUC No 31871B
Aaron T. Collins – LSUC No. 55490T

Lawyers for the Applicant

TAB 3

Court File No.: CV-10-8991-00CL

THE HONOURABLE _____	)	MONDAY, THE 19th
	)	
JUSTICE _________________	)	DAY OF DECEMBER, 2011

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Applicant

and

2110458 ONTARIO LIMITED O/A LORETTA FLOUR,
2131413 ONTARIO LIMITED O/A LORETTA FOODS,
787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE
AND O/A SKYWAY WHOLESALE
AND TARBRAC HOLDINGS INC.

Respondents

ORDER

THIS MOTION made by Bank of Montreal ("**BMO**") for an Order lifting the stay of proceedings granted pursuant to the Order of the Honourable Mr. Justice Wilton-Siegel dated November 26, 2010 (the "**Receivership Order**") for the sole purpose of permitting the application for a Bankruptcy Order in respect of 787755 Ontario Limited o/a New Durham Trading, NDT Food Service and Skyway Wholesale ("**787**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Kiefer, sworn November 25, 2011, and the Exhibits thereto, and on hearing the submissions of counsel for Bank of Montreal and counsel for the Ernst & Young Inc., in its capacity as receiver of the Respondents, no one else appearing although duly served as appears from the affidavit of service of Stella Kostopoulos sworn December 1, 2011;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the stay of proceedings granted pursuant to paragraph 13 of the Receivership Order is hereby lifted for the sole purpose of permitting BMO to make an application for a Bankruptcy Order in respect of 787.

3. **THIS COURT ORDERS** that BMO shall have its costs of this Motion, up to and including entry and service of this Order, provided for by the terms of BMO's security.

BANK OF MONTREAL Applicant	- and -	**2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESAE AND TARBRAC HOLDINGS INC.** Respondents

Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9
Tel: 416.863.1500
Fax: 416.863.1515

Steven L. Graff – LSUC No. 31871B
Aaron T. Collins – LSUC No. 55490T

Lawyers for the Applicant

11489405.1

TAB 4

District of Ontario
Division No. 09
Estate No. 31-OR-207788-T

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE _______	)	MONDAY, THE 19th DAY
JUSTICE ________________________	)	
	)	OF DECEMBER, 2011

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE of the City of Mississauga, in the Province of Ontario

BANKRUPTCY ORDER
FORM 91

On the application of Bank of Montreal ("**BMO**"), a creditor, filed on the 30th day of November, 2010;

Having heard submissions from counsel to BMO, no one else appearing although attempted to be duly served as evidenced by the affidavit Stella Kostopoulos, sworn November 30, 2010;

And it appearing to the court that the following act of bankruptcy has been committed:

> 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale (the "**Debtor**") has ceased to meet its liabilities generally as they become due, in that it has failed to pay its obligations to BMO;

1. **THE COURT HEREBY ORDERS** that the Debtor be adjudged bankrupt by virtue of a bankruptcy order hereby made on this date.

2. **THE COURT FURTHER ORDERS** that Ernst & Young Inc., of the City of Toronto, in the Province of Ontario, be appointed as trustee of the estate of the Debtor.

3. **THE COURT FURTHER ORDERS** that the trustee give security in cash or by bond without delay, in accordance with subsection 16(1) of the Act.

4. **THE COURT FURTHER ORDERS** that the costs of BMO be paid out of the estate of the Debtor on taxation of the estate.

____

TO: 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale

TAKE NOTICE that 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale is required, pursuant to section 159 of the *Bankruptcy and Insolvency Act*, to attend at the office of ______________________________, the Official Receiver, at ______________________________ on ____________________, 2010, at ______ [a.m.][p.m.] o'clock in the ____________noon, there to answer such questions with respect to the conduct of the bankrupt corporation, the causes of its bankruptcy and the disposition of its property as may be put by the Official Receiver, and take notice that if you fail to present yourself for examination, the court may by warrant cause you to be apprehended and brought up for examination and may order you to be imprisoned for a term not exceeding three years.

DATED at Toronto this ____ day of December, 2011.

____
Official Receiver

11462033.1

District of Ontario
Division No. 09
Estate No. 31-OR-207788-T

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE of the City of Mississauga, in the Province of Ontario

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BANKRUPTCY ORDER

AIRD & BERLIS LLP
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Lawyers for Bank of Montreal

BANK OF MONTREAL - and - 2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE AND TARBRAC HOLDINGS INC.

Applicant

Respondents

Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

MOTION RECORD

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