

**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 WHOLESALE
AND TARBRAC HOLDINGS INC.**

**IN THE MATTER OF SECTION 243(1) 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**

**SECOND CONFIDENTIAL REPORT TO THE COURT
OF ERNST & YOUNG INC. AS RECEIVER**

31 October 2011

BACKGROUND

Appointments

1. On 10 November 2010, Bank of Montreal (“**BMO**”) made an application to the Court for an order, and the Court made an order (the “**Interim Receivership Order**”), appointing Ernst & Young Inc. (“**EYI**”) as an interim receiver (the “**Interim Receiver**”) pursuant to Section 47(1) of the *Bankruptcy & Insolvency Act* and pursuant to Section 101 of the *Courts of Justice Act* of 2110458 Ontario Limited (“**211**”), 2131413 Ontario Limited (“**213**”), 787755 Ontario Limited (“**787**”) and Tarbrac Holdings Inc. (“**Tarbrac**”).
2. On 26 November 2010, Bank of Montreal (“**BMO**”) made an application to the Court for an order, and the Court made an order (the “**Receivership Order**”), appointing EYI as receiver and receiver and manager (the “**Receiver**”) pursuant to Section 243(1) of the

Bankruptcy & Insolvency Act and pursuant to Section 101 of the *Courts of Justice Act* of the assets, undertakings and properties of 211 o/a Loretta Flour , 213 o/a Loretta Foods, 787 o/a New Durham Trading, and o/a NDT Food Service and o/a Skyway Wholesale and Tarbrac (collectively, the “**Debtors**”). A copy of the Receivership Order is attached as Appendix “A” to this Report.

PURPOSE

3. This is the second confidential report of the Receiver. The purpose of this Second Confidential Report is to:
 - (a) report to the Court concerning the outcome of the requests made by BMO and Signature Bank ("**Signature**") for access to the books and records of the Debtors; and
 - (b) recommend the making of an Order by the Court unsealing the First Confidential Report of the Receiver dated 4 February 2011 (the "**First Confidential Report**"), the motion materials related thereto; and the Order of The Honourable Mr. Justice Morawetz dated 10 February 2011 (the "**Confidential Order**") (collectively, the "**Confidential Motion Materials**") and removing all of the restrictions contained in the Confidential Order.

TERMS OF REFERENCE

4. In developing this Report, the Receiver has relied upon the books and records of the Debtors, including images of the electronic information contained on the Debtors' computers and servers, and other information from various sources. The Receiver has not audited, reviewed or otherwise verified such information. Further, the Receiver has not reviewed all of the information and documents in its possession or under its control.

REQUESTS FOR INFORMATION

5. As reported in the First Confidential Report, attached as Appendix "**B**" (without appendices), two of the Debtors' senior secured creditors, BMO and Signature, independently requested information and documentation in the Receiver's possession.

6. The purpose of those requests was to allow each of BMO and Signature to conduct its own investigation to determine whether it had causes of action relating to the unusual circumstances surrounding assets represented to be property of the Debtors (as set out in the First Confidential Report), and if so, against whom it had causes of action and whether any other remedies were available to it.
7. At the time that the requests were made by BMO and Signature in January 2011, public disclosure of the requests or the information requested might have fundamentally restricted the ability of BMO and Signature to employ remedies.
8. On 10 February 2011, the Receiver brought a motion, in absence of the public, to request an order authorizing the Receiver to allow BMO, Signature and their respective legal and financial advisors to have access to and make copies of, the records of the Debtors in the possession of the Receiver (the "**Information**") on certain terms. Mr. Justice Morawetz granted the Order (the "**Confidential Order**"). A copy of the Confidential Order is attached hereto as Appendix "C".
9. The Confidential Order also contained several terms and restrictions including the restriction that BMO and Signature could not disclose any of the Information except during the course of litigation.
10. Further, the Confidential Order provided the Confidential Motion Materials would be sealed, treated as confidential, would be secured by the Registrar and the public would not have access to those materials without an order from the Court.

TERMS AND RESTRICTIONS OF CONFIDENTIAL ORDER NO LONGER NECESSARY

11. Since the making of the Confidential Order, and as authorized under the Confidential Order, BMO has made use of information made available to it under the Confidential Order to initiate litigation against, among others, many of the individuals and entities described in the First Confidential Report.
12. Since the making of the Confidential Order, Signature has taken information available to it under the Confidential Order into account in its responses to motions in the Chapter 7

proceedings of Synergy Brands, Inc., PHS Inc., SYBR.com Inc. and Quality Food Brands, Inc. These proceedings, and the business dealings of the Debtors with certain of these entities prior to the commencement of the Chapter 7 proceedings, have been described in previous reports of the Receiver.

13. The continued sealing of the Confidential Motion Materials appears to provide little, if any, benefit to BMO and Signature in investigating and pursuing potential claims in connection with the unusual circumstances surrounding the Debtors' assets.
14. BMO and Signature do not object to the unsealing of the Confidential Motion Materials. Accordingly, the Receiver recommends that the Confidential Motion Materials be unsealed.
15. Further, given that the purpose of the Confidential Order has been exhausted since each of BMO and Signature have made use of the Information provided to them, the terms and restrictions in the Confidential Order, including the restriction from disclosing the Information to third parties except during the course of litigation, are no longer necessary. Accordingly, the Receiver recommends that the terms and restrictions in the Confidential Order be removed.

RELIEF SOUGHT BY THE RECEIVER

16. The Receiver respectfully requests that this Court grant an Order:

- (a) unsealing the First Confidential Report of the Receiver dated 4 February 2011, the motion materials related thereto, and the Order of The Honourable Mr. Justice Morawetz dated 10 February 2011; and
- (b) removing all of the restrictions contained in the Confidential Order.

All of which is respectfully submitted this 31st day of October, 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.

A handwritten signature in black ink, appearing to read 'Mike P. Dean', with a stylized, cursive script.

Per:

Mike P. Dean, CA●CIRP
Senior Vice-President

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, Court File No. CV-10-8991-00CL
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.

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

**SECOND CONFIDENTIAL REPORT TO
THE COURT OF ERNST & YOUNG
INC., AS RECEIVER**

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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
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