Court File No.: SJM-46-2020

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF:

COURT OF QUEEN'S BENCH
CLERK / SAINT JOHN
REC'D / REÇU JUN 19 2020 FILED / DÉPOSÉ
COUR DU BANC DE LA REINE
GREFFIÈRE / SAINT JOHN

HILLSPRING FARMS LTD., HSF FOODS LTD. and HILLSPRING WAREHOUSE & LOGISTICS INC.

-and-

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

FARM CREDIT CANADA, a Federal Crown Corporation

-and-

HILLSPRING FARMS LTD., HSF FOODS LTD. and HILLSPRING WAREHOUSE & LOGISTICS INC., each a New Brunswick Corporation

APPLICANTS,

- and –

HILLSPRING FARMS LTD., HSF FOODS LTD. and HILLSPRING WAREHOUSE &

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LOGISTICS INC., each a New Brunswick Corporation

RESPONDENTS

Affidavit of Ben Brake

I, Ben Brake, of the Village of Centreville, in the Province of New Brunswick, MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am the director of Hillspring Farms Ltd. ("**Hillspring**"), HSF Foods Ltd. ("**HSF**") From The Farm Inc. ("**FTF**") and 631544 N.B. Ltd. ("**631544**") and the ultimate shareholder of those companies. In addition to those companies, I have been involved in the operations of related entities that my son Jeremy Brake is the sole director and sole shareholder of; namely: Hillspring Warehouse & Logistics Inc. ("**Logistics**"), Burbank Water & Wastewater Inc. ("**BWW**"), Burbank Industrial Supply Inc. ("**BIS**"), Sunrise Seed Farms Ltd. ("**SSF**"), Hillspring Thaw Ltd. ("**Thaw**") and Empire Construction & Fabrication Ltd. ("**Empire**").

2. I have personal knowledge of the matters hereinafter deposed to, except where otherwise stated, and in such cases I do verily believe the truth of the matters deposed to. I am authorized by each of Hillspring, HSF, FTF and 631544 to make this affidavit.

3. I have reviewed the affidavit of Jason Inman (the "**Inman Affidavit**") of Farm Credit Canada ("**FCC**") that will be filed in relation to the application for the appointment of Ernst & Young Inc. ("**EYI**") as receiver and receiver manager (the "**Receiver**") of Hillspring, HSF and Logistics (collectively, the "**Companies**" and each a "**Company**").

4. The Inman Affidavit provides an accurate overview of the Companies and their operations.

5. As set out in the Inman Affidavit, the need for a Receiver is a result of various factors including the need to complete the transaction (the "**Transaction**") documented in the final agreement of purchase and sale

dated as of June 11, 2020 (the "**Sale Agreement**") between the Companies and McCain Farms, a division of McCain Produce Inc. (the "**Purchaser**").

Additional Background

6. As set out in the Inman Affidavit, the Hillspring Group carried on a large potato farming operation through Hillspring ("**Farming**") and a potato flake manufacturing operation through HSF ("**Flakes**"). The remaining members of the Hillspring Group, other than the shareholders who are myself and my son Jeremy, are corporations that carried on related operations to generally support the Farming and Flakes operations or holding corporations with assets unrelated to Farming and Flakes.

7. Hillspring was incorporated in 1981 and I have been in charge of its operations since that time. Over the years I had to hire additional people for the management of the Hillspring Group given the size of Farming's operations and the development of the Flakes operations.

8. It took years to grow Farming as large blocks of land are generally not available for purchase. The large amount of cultivated land that makes up Farming had to be put together from buying up smaller farms. It was a long process but from 2016 to 2019 we pursued very aggressive growth. Farming also required additional potato storages, warehouses and other infrastructure to support its growing operations along with a significant amount of equipment.

9. The Flakes operation is state of the art but it experienced ongoing difficulties in sourcing product to be profitable. The investment in Flakes' infrastructure as well as the infrastructure for Related Parties that supported the Flakes operations put significant pressure on Farming.

10. The Hillspring Group encountered financial pressure in 2019 and sought out the support of FCC as well as the Canadian Imperial Bank of Commerce ("**CIBC**"). Both FCC and CIBC provided support in 2019 by FCC deferring payments and subordinating certain collateral mortgages and by CIBC restructuring certain of its loans.

11. The Hillspring Group, unfortunately, continued to experience losses and was unable to pay all of its bills despite best efforts. In the fall of 2019 I carried on some discussions with people in the industry of Farming and Flakes about a possible sale or partnership. None of these discussions became serious and no one made any offer that would have addressed the overall issues with the Hillspring Group's finances.

Recent Events

12. In early 2020 both CIBC and FCC told me they were concerned about the ongoing operations of the Hillspring Group. CIBC hired PricewaterhouseCoopers Inc. (**"PWC"**) who was represented by David Boyd and others. FCC retained EYI who was represented by George Kinsman and others. In the month of February, 2020 representatives of both PWC and EYI attended at our offices to review our books and records, inspect our properties, and ask various questions about, among other things, how Farming was planning to plant its cultivated land in 2020 (the **"2020 Crop"**).

13. I also hired George MacPherson, an accountant, to provide advice and support, and to assist in trying to develop a plan for the future of the Hillspring Group and in answering the various questions from PWC and EYI.

14. Over the month of February, 2020, it became clear to me that there was no plan that the Hillspring Group could develop on its own to address the significant issues it faced. I realized that, in order for Farming and Flakes to survive, some form of sale would have to occur. I approached various parties in the Farming and Flakes industry and carried on serious discussions with a few parties that expressed an interest in Farming.

15. I did not explore sales of just some parcels of land or some items of equipment but, rather, a sale of Farming as a going concern. I wanted to look for a buyer that could take on the significant operation and, I hoped, would continue to employ some or all of our employees. Also, I hoped there would be continued business for local suppliers if Farming continued as a going concern.

16.The discussions with McCain Foods ("**McCain**") and other parties in the month of February, 2020, were very time sensitive. The Hillspring Group was under significant financial pressure that only grew with every day that passed because of the pending 2020 Crop. Although the planting of the 2020 Crop would not occur until the end of April or early May, the planning for the 2020 Crop had to done well in advance and Hillspring had no source of financing or other resources for the 2020 Crop related expense.

17.The discussions with McCain were the most serious, and various McCain representatives met with me and other people on Farming's management team. As set out in the Inman Affidavit, my efforts culminated in a meeting on March 4, 2020 between myself for the Hillspring Group, FCC, CIBC, McCain Foods and their respective counsel and financial advisors in Fredericton New Brunswick.

18.Following the meeting on March 4, 2020, the meetings, discussions and correspondence with McCain increased in number and the speed at which the parties addressed issues also increased.

19.On March 6, 2020 CIBC issued demands against the Companies and other members of the Hillspring Group.

20.I had agreed to have exclusive discussions with McCain until March 9, 2020. On the expiry of that period I then pursued another alternative purchaser who had expressed serious interest in Farming and who was, based on my dealings with them over the years, of a size that could purchase Farming as a going concern. I had serious discussions with this competitor to McCain before the commencement and following the expiry of the exclusivity period with McCain.

21.On March 11 2020, McCain presented an initial term sheet and through various discussions and negotiations, an amended term sheet was issued on March 13, 2020 and finalized late that night (the "**Term Sheet**").

22.On March 13, 2020, FCC issued demands for payment against the Companies and other members of the Hillspring Group.

23. The Term Sheet provided for McCain to provide support in the form of management skills and finances for Farming by means of a management agreement (the "**Management Agreement**"). This was the only way for Farming to continue in business and complete a 2020 Crop. The immediate benefit was continued employment for Hillspring's employees and continued business for local suppliers. This was significant both to the Hillspring Group and to me personally.

24. In addition to addressing the Farming operations, I had also been attempting to arrange a sale of Flakes (which is not part of the Transaction with McCain). This led me to enter into serious negotiations with Oregon Potato Company ("**OPC**").

25. FCC and CIBC advised me that were not willing to advance further funds to cover the significant cash requirements necessary to keep Flakes in operation pending completion of negotiations with OPC. At this point, the global COVID 19 pandemic prevented OPC's representative from entering the country to inspect Flakes' assets.

26. Despite the impact of COVID 19, FCC and OPC reached an agreement providing for the assignment of FCC's security in the primary assets used by Flakes, and a portion of the associated secured debt. In addition, similar agreements were reached with Business Development Bank of Canada and later with CIBC.

27. Since March 31, 2020 Flakes has continued in operation under a management agreement with a Canadian subsidiary of OPC. Under this arrangement, many of Flakes' employees have remained employed and local suppliers have benefited from Flakes' ongoing business.

The Transaction

28. The Companies, together with FCC, have brought the application for the appointment of the Receiver and for it to complete the Transaction.

29. The Companies are without financing and cannot continue to deal with the assets which will remain in the Companies after the closing of the Transaction, if approved by this Court.

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30.The arrangements put in place as a result of the Term Sheet and the Management Agreement have already had a positive impact in our community from continued employment and related economic spin off to suppliers and the Transaction will see this benefit continue.

31.As the ultimate shareholder in Hillspring and HSF, I concluded in early March, 2020 that the Farming assets did not have enough value to deal with all of Hillspring's debts and certainly no equity that would be available to me. Even so, I understood the importance of ongoing operations to the community and pursued that possible benefit with McCain. I am glad McCain has worked as hard as it has to put together the Transaction, which will not benefit me personally but which I hope will benefit my community.

32.Based on my years of operating the Hillspring Group, I am not aware of anyone other than McCain who would take on an operation of the scale and size of Farming on the terms of the Transaction. In addition to the normal market pressure on the potato industry, the impact of COVID 19 has been significant.

33.If the Receiver is not appointed and the Transaction not completed, I believe that the shutdown of Farming would be a significant loss to our community, as well as to FCC and CIBC.

34.I have reviewed the various list of assets to the Sale Agreement and specifically confirm that Article 12 of the Sale Agreement is accurate in all respects including that the Related Parties do not have any interest in the Purchased Assets or the Farming Equipment, as those terms are defined in the Sale Agreement.

35.I make this affidavit in support of the within application for the appointment of Ernst & Young Inc. as a receiver and receiver manager, the powers and duties of which are more particularly set out in the draft orders attached to the Notice of Application including to complete the Transaction.

Town of Woodstock

SWORN TO at the ___1___, in the)
Province of New Brunswick, this 18th)
day of June, 2020)

BEFORE ME:

Notary Public in and for the Province of New Brunswick

PETER E. CROCCO, Q.C. NEW BRUNSWICK NOTARY PUBLIC

BEN BRAKE

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