Court File No. CV-21-00657098-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE 13th
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

DISTRIBUTION ORDER

THIS MOTION, made by the TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc., Tiffany Gate Foods Inc. (collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form included at Tab 3 of the Motion Record was heard this day via video-conference due to the ongoing COVID-19 pandemic.

ON READING the affidavit of Stephen Marotta sworn April 8, 2021 and the Exhibits thereto (the "**Third Marotta Affidavit**"), the Third Report of Ernst & Young Inc., in its capacity as Monitor of the Applicants (the "**Monitor**"); and

UPON HEARING the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the DIP lenders and other counsel as listed on the Counsel Slip, no one else appearing for any party although duly served as appears on the affidavits of service of Lee Nicholson.

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.

STAY PERIOD

2. **THIS COURT ORDERS** that the stay period referred to in the Initial Order of the Honourable Justice Hainey dated February 17, 2021 (as amended and restated on February 26, 2021, the "**Initial Order**") is extended until and including June 27, 2021.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that, subject to the establishment of the Reserve (as defined below) in accordance with paragraph 6 hereof, upon closing (the "**Closings**") of the sale transactions contemplated in each of the Asset Purchase Agreement (the "**Save-On APA**" and the "**Save-On Transaction**") entered into between Sun Rich Fresh Foods Inc. ("**Sun Rich Canada**") and Save-On-Foods Limited Partnership ("**Save-On**") and in the Asset Purchase Agreement (the "**Homestyle APA**" and the "**Homestyle Transaction**") entered into between Sun Rich Canada, Tiffany Gate Foods Inc. ("**TG**") and Homestyle Selections LP ("**Homestyle**") and upon filing of the Monitor's Certificate referred to in both the Approval and Vesting Order (Re: Save-On-Foods Transaction) and the Approval and Vesting Order (Re: Homestyle Transaction) granted by this Court in these proceedings on March 26, 2021, the Monitor shall be authorized and directed, without further order of this Court, to make, as soon as practicable, one or more distributions of the net sale proceeds (collectively, the "**Sale Proceeds**") resulting from the closing of the Save-On Transaction and the Homestyle Transaction to the Agent (as defined below) on account of Sun Rich Canada's and TG's respective indebtedness and obligations outstanding under or in connection with the following agreements (collectively, the "**Loan Documents**"), in the following order, and for greater certainty, in the event that one of the Closings occurs and not the other, the Sale Proceeds from the applicable Closing shall be distributed in accordance with this paragraph:

(a) First, the Term Loan Credit Agreement (Super Senior) (as amended on December 29, 2020 and February 4, 2021, the "**Super Senior Term Loan Credit Agreement**") entered into between Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as the Canadian borrower, and Cortland Capital Market Services LLC ("**Cortland**" or the "**Agent**"), as administrative agent to the lenders under the Super Senior Term Loan Credit Agreement (the "**First Lien Lenders**"), which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Super Senior) dated June 1, 2020;

(b) Second, the Credit Agreement (First Lien) (as amended on April 22, 2020, the "**First Lien Credit Agreement**") entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the First Lien Credit Agreement, which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (First Lien) dated April 29, 2019; and

(c) Third, the Credit Agreement (Second Lien) (as amended on April 22, 2020, the "Second Lien Credit Agreement") entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the Super Second Lien Credit Agreement, which was guaranteed which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Second Lien) dated April 29, 2019.

4. **THIS COURT ORDERS AND DECLARES** that any payments, distributions and disbursements made under this Order shall not constitute a "distribution" by any person and the Monitor shall not constitute a "legal representative" or "representative" of the Applicants for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 23 of the *Canada Pension Plan Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), section 14 of the *Tax Administration Act* (Quebec) and section 97.39 of the *Customs Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Tax Statutes**"), nor a "receiver" within the meaning of *An Act Respecting the Quebec Sales* Tax, and the Monitor, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, and is not exercising any discretion in making such distributions, disbursements or payments under this Order and no person is "distributing", nor shall be considered to "distribute" nor have "distributed", such funds for the purpose of the Tax Statutes. Further, the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments, distributions or disbursements ordered or permitted under this Order, and are hereby forever released and discharged from any claims against it, him or her under or pursuant to the Tax Statutes or otherwise at law, arising in respect of any such payments, distributions or disbursements made under this Order and any claims of this nature are hereby forever barred.

5. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Canadian Sellers and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Applicants,

any distribution and disbursement to be made pursuant to this Order shall be binding on any trustee-in-bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by their respective creditors, nor shall any such distribution or disbursement constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RESERVE

6. **THIS COURT ORDERS** that upon the Closings (or any one of them), the Applicants shall establish with the Monitor a reserve (the "**Reserve**") from the Sale Proceeds, which the Monitor shall be authorized and directed to hold in segregated interest-bearing accounts, for the benefit of the holders of the Reserve Claims (as defined below).

7. **THIS COURT ORDERS** that the Monitor shall be authorized and directed to pay from the funds to be held in the Reserve (the "**Reserve Funds**"), in the name of and on behalf of the Applicants, or transfer all or portion of the Reserve Funds to Sun Rich Canada and/or TG to allow them to pay the following claims (collectively, the "**Reserve Claims**"):

(a) Any costs and fees incurred by the Applicants and the Monitor in connection with any post-closing matters contemplated in either the Save-On APA or the Homestyle APA, including any post-closing liability, obligation or claim against Sun Rich Canada or TG related to ordinary course trade payables, which are not assumed either by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;

(b) Any unpaid employee wages, including vacation accruals, that are not otherwise assumed by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;

(c) Any cure costs payable by Sun Rich Canada pursuant to the Save-On APA, if any;

(d) Any liability, obligation or claim (if any) secured by the Administration Charge, the Intercompany DIP Charge, the Directors' Charge, the Transaction Fee Charge and the Canadian Intercompany Charge (as each of those terms are defined in the Initial Order) that were incurred either prior to or after the Closings and which, upon payment of same, shall be terminated, released and discharged without further order of the Court;

(e) Any costs and fees incurred by the Applicants, the Monitor, their respective counsels and the other professionals engaged by the aforementioned parties in relation with the dissolution, winding-up, liquidation or bankruptcy of the Applicants, including all costs and fees incurred in relation to any proceedings under the BIA in respect of any of the Applicants;

(f) Any other amounts agreed upon between the Applicants, the Monitor and the First Lien Lenders.

8. **THIS COURT ORDERS** that following payment of all Reserve Claims from the Reserve Funds in accordance with this Order, the Monitor shall file a certificate substantially in the form attached hereto as Schedule "A" (the "**Reserve Certificate**") with the Court and deliver a final accounting of the payments made from the Reserve Funds to Sun Rich Canada, TG and to the Agent, and, provided that there remains any Reserve Funds in the Reserve after payment of all Reserve Claims, the Monitor shall be authorized and directed to proceed with a final distribution of any remaining Reserve Funds to the Agent on account of the Applicants' respective indebtedness and obligations outstanding under the Loan Documents, without further order of this Court.

MONITOR PROTECTIONS

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any

claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

10. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor set forth in this Order, the Initial Order and the CCAA, the Monitor shall have no obligation to make any distribution unless the Monitor is in receipt of funds adequate to effect any such payment.

GENERAL

11. **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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for filing or entry.

Hainey J.

Schedule A – Form of Monitor's Certificate

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The Applicants

RESERVE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated February 17, 2021, Ernst & Young Inc. was appointed as the monitor (the **"Monitor")** of the Applicants, in respect of these CCAA Proceedings.

B. Pursuant to an Order of the Court dated April 13, 2021 (the "**Distribution Order**"), the Court approved, *inter alia*, the establishment of a reserve (the "**Reserve**") from the sale proceeds resulting from the Save-On Transaction and the Homestyle Transaction (as such terms are defined in the Distribution Order), as applicable;

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has paid the Reserve Claims in accordance with the Distribution Order, including the claims (if any) secured by the Administration Charge, the Intercompany DIP Charge, the Directors' Charge, the Transaction Fee Charge and the Canadian Intercompany Charge which have been terminated, released and discharged in accordance with the Distribution Order;

2. The Reserve has been administered to the satisfaction of the Monitor; and

3. This Certificate was delivered by the Monitor at ________ [TIME] on _______, 2021.

Ernst & Young Inc., in its capacity as Monitor of the Applicants, and not in its personal or corporate capacity

Per: ______________________________________

Name:

Title:

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(COMMERCIAL LIST)

Proceeding commenced at Toronto

DISTRIBUTION ORDER

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