

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

**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.**

**(Applicants)**

**FACTUM OF THE APPLICANTS  
(Re: Sale Approval Motion)  
(Returnable March 26, 2021)**

March 26, 2021

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**Lawyers for the Applicants**

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**(Applicants)**

**PART I - OVERVIEW**

1. TGF Acquisition Parent Ltd. ("**TGF**"), Sun Rich Fresh Foods Inc. ("**Sun Rich Canada**"), Tiffany Gate Foods Inc. ("**Tiffany Gate**") (collectively, the "**Applicants**" or the "**CCAA Entities**") are part of a corporate group that provides branded and private-label offerings of fresh-cut fruits and vegetables, ready-to-go meals and meal kits, behind-the-glass salads, snacks, and ingredients/bulk food components to supermarkets, club stores, convenience stores, industrial, and food-service customers in the United States and Canada.

2. On February 17, 2021, the Applicants sought and obtained creditor protection and certain other ancillary relief pursuant to an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") granted by this Court (the "**Canadian Court**"). Previously, on February 15, 2021, certain US affiliates of the Applicants (the "**Chapter 11 Entities**", together with the Applicants, "**FFG**" or the "**Company**") had filed voluntary petitions commencing parallel insolvency proceedings before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**US Court**") under chapter 11 of title 11 of the United States Code (the "**Chapter 11 Proceedings**" and together with the CCAA Proceedings, the "**Restructuring Proceedings**").

3. The Restructuring Proceedings were commenced in a context where FFG has been experiencing significant negative economic pressures arising from the COVID-19 pandemic over the last year, resulting in near-term liquidity and capital structure challenges throughout 2020. As a result of these pressures and FFG's liquidity situation, the Company, among other things, began exploring financing and sale opportunities. These efforts culminated in the Company entering into a stalking horse asset purchase agreement (the "**Stellex APA**") with affiliates of Stellex Capital Management ("**Stellex**").

4. On February 26, 2021, the Canadian Court granted an amended and restated initial order (the "**ARIO**"). That same day, the U.S. Court entered the Bidding Procedures Order that, among other things, approved the execution by the Chapter 11 Entities of the Stellex APA and approved the Bidding Procedures. The Canadian Court granted the Canadian Bidding Procedures Order on March 1, 2021 that, among other things, approved the execution by the CCAA Entities of the Stellex APA, approved the Bidding Procedures, and approved the form of notices to be sent to the counterparties to those contracts previously entered into by the CCAA Entities which may be assumed by the Stellex or the "Successful Bidder" to be determined in accordance with the Bidding Procedures.

5. This factum is filed in support of a motion by the Applicants for the issuance of the following orders:

(a) an order (the "**Homestyle Sale Approval Order**"):

(i) approving the Homestyle Transaction contemplated in the Homestyle APA entered into between Sun Rich Canada and Tiffany Gate, as sellers, and Homestyle Selections LP, as buyer ("**Homestyle**"), a party dealing at arm's length with FFG, including Sun Rich Canada and Tiffany Gate, and vesting in Homestyle all of the Homestyle Purchased Assets, on a free and clear basis, pursuant to s. 36 of the CCAA;

- (ii) approving the assignment of the Homestyle Assigned Agreements in accordance with s. 11.3 of the CCAA. All counterparties to the “*11.3 Contracts*” and the “*11.3 Leases*” shall have the right to apply to the Canadian Court up until the Closing Date contemplated in the Homestyle APA to object to such assignment, but only on the basis that Homestyle will not be able to perform the obligations under such “*11.3 Contract*” or “*11.3 Lease*”, but not on the basis of the other criteria set out in s. 11.3 of the CCAA, including the quantum of the cure costs to be paid, as such issues, if any, will be adjudicated at the hearing for the approval of the Homestyle Transaction;
- (b) an order (the “**Save-On Sale Approval Order**”):
  - (i) approving the Save-On Transaction contemplated in the Save-On APA entered into between Sun Rich Canada, as seller, and Save-On-Foods Limited Partnership, as buyer (“**Save-On**”), a party dealing at arm’s length with FFG, including Sun Rich Canada, and vesting in Save-On all of the Save-On Purchased Assets, on a free and clear basis, pursuant to s. 36 of the CCAA;
  - (ii) approving the assignment of the Save-On Assigned Agreements in accordance with s. 11.3 of the CCAA. All counterparties to the “*11.3 Contracts*” and the “*Third Party Leases*” shall have the right to apply to the Canadian Court up until the Closing Date contemplated in the Save-On APA to object to such assignment, but only on the basis that Save-On will not be able to perform the obligations under such “*11.3 Contract*” or “*Third Party Leases*”, but not on the basis of the other criteria set out in s. 11.3 of the CCAA, including the quantum of the cure costs to be paid, as such issues, if

any, will be adjudicated at the hearing for the approval of the Save-On Transaction; and

(c) an order extending the Stay Period to April 18, 2021.

## **PART II - THE FACTS**

6. The facts with respect to this motion are more fully set out in the affidavit of Stephen Marotta sworn March 25, 2021 (the “**Marotta Affidavit**”). Capitalized terms used within this Factum but not otherwise defined have the meanings ascribed to them in the Marotta Affidavit.

### **A. The Sale and Investment Solicitation Process**

7. As noted in the Marotta Affidavit, FFG began a strategic review of its options in 2020. FFG held strategic discussions with various parties that were either contacted by FFG or that contacted FFG themselves with inquiries in connection with a potential sale transaction. In total, nine parties submitted such inquiries to FFG, two of whom submitted offers to FFG. One offer was from the Initial Potential Buyer.

Marotta Affidavit at paras. 37 to 40, Motion Record, Tab 2.

8. To ensure that the Initial Potential Buyer’s offer was competitive, FFG engaged Stout, as investment banker, in October 2020 to conduct a formal sale and investment solicitation process. Stout reached out to more than 30 potential acquirers. FFG did not receive any serious offers other than the offer from the Initial Potential Buyer by December 14, 2020, and accordingly entered into the Initial LOI with the Initial Potential Buyer. The Initial LOI contemplated the sale and purchase of all or substantially all of the assets of the Chapter 11 Entities, as well as certain of the assets of the CCAA Entities. The Initial LOI further contemplated that the Initial Potential Buyer would act as a stalking horse bidder. The Initial Potential Buyer, however, withdrew its offer on January 7, 2021.

Marotta Affidavit at paras. 41 to 47, Motion Record, Tab 2.

9. Stout launched the Second Formal Solicitation Process following the withdrawal of the Initial LOI. Solicitation materials were sent to an additional 170 potential acquirers or investors, which included sponsors in the food/beverage industry, strategic parties in the consumer/retail sector, and packaged food processors and food distributors. As at the commencement of the Restructuring Proceedings:

- (a) More than 210 potentially interested parties had been solicited and had received solicitation packages, including:
  - (i) 90 strategic parties;
  - (ii) 20 “*hybrid*” parties (meaning private equity firms with strategic portfolio companies in the food and beverage sector); and
  - (iii) More than 100 financial parties.
- (b) 83 non-disclosure agreements had been executed by potentially interested parties to whom access to the virtual data room set up by Stout was given.

Marotta Affidavit at paras. 48 to 50, Motion Record, Tab 2.

10. As a result of this process, FFG received a letter of intent from Stellex regarding a potential transaction whereby Stellex would acquire virtually all of FFG’s American and Canadian assets, subject to certain exceptions, and would assume some of its liabilities. Stellex and FFG executed the Stellex APA on February 15, 2021, which provided that Stellex would act as a stalking horse bidder through a sale process supervised by the US Court and the Canadian Court.

Marotta Affidavit at paras. 51 to 52, Application Record, Tab 2.

11. On February 26, 2021 and March 1, 2021, respectively, the U.S. Court and the Canadian Court both approved the execution by FFG of the Stellex APA, as well as the related Bidding Procedures.

Marotta Affidavit at para. 55, Application Record, Tab 2.

## **B. The Formal Sale Process**

12. Since the issuance of the Bidding Procedures Orders, FFG, with the assistance of Stout, have pursued the Formal Solicitation Process in accordance with said Bidding Procedures.

Marotta Affidavit at para. 56, Application Record, Tab 2.

13. On March 12, 2021, FFG and Stout, in consultation with the Consultation Parties described in the Bidding Procedures, extended certain key dates in the sales process by a few days.

Marotta Affidavit at paras. 56 and 57, Application Record, Tab 2.

14. As part of the Formal Solicitation Process, FFG and Stout received six Qualified Bids (including the offer set out in the Stellex APA) in respect of the assets of FFG. Four Qualified Bids were in respect of some or all of the assets of the Canadian Entities.

Marotta Affidavit at para. 58, Application Record, Tab 2.

15. On March 23 and 24, 2021, FFG and Stout conducted the Auction, the details of which are outlined in the Monitor's Second Report filed in support of the present application. At the conclusion of the Auction, Homestyle and Save-On were designated as the "Successful Bidders" for the assets of the Canadian Entities, and Stellex was designated as the "Successful Bidder" for the assets of the U.S. Entities. The Homestyle APA and the Save-On APA were executed on March 24, 2021.

Marotta Affidavit at paras. 59, Application Record, Tab 2.

The Second Report of the Monitor dated March 26, 2021, at paras. 37 and 45.

### **(i) The Homestyle APA**

16. The Homestyle APA provides that Homestyle will purchase the Homestyle Purchased Assets, which include all assets and properties owned by Sun Rich Canada and Tiffany Gate in connection with their respective business, including the Brampton facility and the Steinway property. The purchase price is US\$30 million. Homestyle will assume certain liabilities, including

all liabilities arising from the ownership and operation of the Homestyle Purchased Assets from and after closing, and all liabilities under the “Assigned Contracts” and “Assigned Leases” as well as all “Cure Costs” related to any such Assigned Contracts and Assigned Leases, subject to certain conditions. Homestyle will provide a list of employees it intends to make offers of employment to within five business days prior to the closing, provided that Homestyle shall hire a minimum of 193 employees of either Sun Rich Canada or Tiffany Gate. The outside closing date is May 31, 2021.

Marotta Affidavit at para. 62, Application Record, Tab 2.

**(ii) The Save-On APA**

17. The Save-On APA provides that Save-On will purchase the Save-On Purchased Assets, which include all assets and properties owned by Sun Rich Canada in connection with the business of the Vancouver facility. The purchase price is US\$2.5 million. Save-On will assume certain liabilities, including all liabilities arising from the ownership and operation of the Save-On Purchased Assets from and after closing; and all liabilities under the “Assigned Contracts” and “Assigned Leases” as well as all “Cure Costs” related to Assigned Contracts and Assigned Leases listed in the schedules to the Save-On APA, subject to certain conditions and a maximum amount of US\$100,000. Save-On will provide a list of employees it intends to make offers of employment to within five business days prior to the closing, provided that Save-On shall hire a minimum of 80% of the employees employed in connection with the purchased business and facility. The outside closing date is May 31, 2021.

Marotta Affidavit at para. 63, Application Record, Tab 2.

**(iii) The New Stellex Transaction**

18. The U.S. Entities agreed to a revised transaction with Stellex for only the assets of the U.S. Entities. The New Stellex Transaction, among other things, increased the cash consideration paid by Stellex, favourably adjusted certain terms related to purchase price adjustments, and favourably changed certain terms related to assumed liabilities under the sale. The U.S. Court approved the



New Stellex Transaction on the record, and asked counsel to submit the proposed form of sale order.

Marotta Affidavit at paras. 13 and 64, Application Record, Tab 2.

19. The CCAA Entities have consulted with the Consultation Parties and all agree that the transactions contemplated in the Homestyle Transaction, the Save-On Transaction and the New Stellex Transaction constitute the best offer in respect of FFG's various assets and maximize value for the CCAA Entities, the Chapter 11 Entities, and their stakeholders.

Marotta Affidavit at para. 65, Application Record, Tab 2.

### **C. Assignment of Agreements**

20. As part of both the Homestyle APA and the Save-On APA, Homestyle and Save-On have both provided a list of contracts and leases (together with the cure costs payable in respect therewith) which they intend on assuming, as part of the Homestyle Transaction and the Save-On Transaction (each of these contracts and leases are referred to in the Homestyle APA and the Save-On APA as the "*11.3 Contracts*" and the "*11.3 Leases*"). The assignment of the aforementioned contracts and leases is subject to the following:

- (a) each of Homestyle and Save-On will have the right, up until the Closing Date contemplated in each of the Homestyle APA and the Save-On APA, to designate any "*11.3 Contracts*" as an "*Excluded Contract*" and, in the Homestyle APA, to designate any of the "*11.3 Leases*" as an "*Excluded Lease*"; and
- (b) unless any such "*11.3 Contracts*" and "*11.3 Leases*" as an "*Excluded Contract*" or an "*Excluded Lease*" by either Homestyle or Save-On, as applicable, then such "*11.3 Contracts*" and "*11.3 Leases*" shall be assigned to Homestyle or Save-On, as applicable, in accordance with section 11.3 of the CCAA, without further order of the Canadian Court;

- (c) each counterparty to the “11.3 Contracts” and “11.3 Leases” listed in either the Homestyle APA or the Save-On APA shall be entitled, up until the Closing Date contemplated in the Homestyle APA or the Save-On APA, to object to such assignment, but only on the basis that on the basis that either Homestyle or Save-On, as applicable, will not be able to perform the obligations under such “11.3 Contract” or “11.3 Lease”, but not on the basis of the other criteria set out in Section 11.3 of the CCAA (including the quantum of the cure costs to be paid upon the assignment of the “11.3 Contract” or “11.3 Lease”), as such issues, if any, will be dealt adjudicated at the hearing on the Applicants’ Motion for the approval of the Homestyle Transaction and the Save-On APA.

Marotta Affidavit at paras. 70 and 71, Motion Record, Tab 2.

21. The Canadian Bidding Procedure Order approved assumption and assignment procedures, including the Assumption and Assignment Notices that provided counterparties to the Proposed Assigned Agreements with notice of (a) the Restructuring Proceedings; (b) the Formal Solicitation Process; and (c) the fact that all contracts listed in such Assumption and Assignment Notice could potentially be assigned as part of an eventual transaction in respect of the assets of FFG, including those of the CCAA Entities. Counterparties to the Proposed Assigned Agreements were also advised of the proposed cure costs payable for the assignment of such Proposed Assigned Agreements.

Marotta Affidavit at paras. 73 to 75, Motion Record, Tab 2.

22. Counterparties to the Proposed Assigned Agreements were also advised of the proposed cure costs payable for the assignment of such Proposed Assigned Agreements, and that the issuance of the Assumption and Assignment Notice would constitute proper notice of the proposed assignment of such Proposed Assigned Agreements. Counterparties to the Proposed Assigned Agreements were further advised that if they had any objections to the proposed assignments,

then a formal objection would need to be filed by no later than 5:00 p.m. EST on the earlier of (i) March 23, 2021, and (ii) 14 calendar days following service of the Assumption and Assignment Notice.

Marotta Affidavit at para. 75, Motion Record, Tab 2.

23. An Assumption and Assignment Notice was posted on the Monitor's website on March 2, 2021 and served by Epiq, on behalf of FFG, to all counterparties to the Proposed Assignment Agreements that same day. A supplement to the Assumption and Assignment Notice was posted on the Monitor's website and served by Epiq, on behalf of FFG, to the same contract counterparties on March 12, 2021.

Marotta Affidavit at para. 76, Motion Record, Tab 2.

24. Only two Contract Objections have been filed in respect of a Proposed Assigned Agreement entered into with one of the CCAA Entities. The Applicants expect to have such Contract Objections resolved before the hearing on the present motion.

Marotta Affidavit at para. 77, Motion Record, Tab 2.

### **PART III - ISSUES**

25. The issues before the Canadian Court, as addressed below, are whether the Court should:
- (a) approve the Homestyle Transaction contemplated in the Homestyle APA and vest in Homestyle all of the Homestyle Purchased Assets on a free and clear basis, pursuant to s. 36 of the CCAA;
  - (b) approve the Save-On Transaction contemplated in the Save-On APA and vest in Save-On all of the Save-On Purchased Assets on a free and clear basis, pursuant to s. 36 of the CCAA;
  - (c) approve the assignment of the Homestyle Assigned Agreements in accordance with s. 11.3 of the CCAA;

- (d) approve the assignment of the Save-On Assigned Agreements in accordance with s. 11.3 of the CCAA; and
- (e) extend the Stay Period to April 18, 2021.

#### **PART IV - THE LAW**

##### **A. The Homestyle APA and the Save-On APA Should be Approved**

26. Section 36 of the CCAA sets out the applicable legal test for obtaining court approval where a debtor company seeks to sell assets outside the ordinary course of business during a CCAA proceeding. In particular, s. 36(3) outlines certain factors that the Court may consider when deciding whether to approve a sale:

##### **Factors to be considered**

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s. 36(3).

27. The factors enumerated in s. 36(3) are not intended to be exhaustive, nor are they intended to be a checklist that must be followed in every CCAA sale transaction.

28. Courts have noted that the s. 36(3) criteria largely corresponds with the principles articulated in *Soundair* for the approval of the sale of assets in an insolvency scenario, those being:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

*Target*, *supra* ([CanLII](#)) at paras 14-17.

*Royal Bank v Soundair Corp*, [1991 CanLII 2727](#) (ONCA) [*Soundair*].

29. CCAA courts have previously noted in the context of approving a sale transaction that the informed business judgement of a debtor and the opinion of the monitor are entitled to deference.

*Target*, *supra* ([CanLII](#)) at para 18.

30. If the Court approves a sale, then it may issue a vesting order that disposes of assets free and clear of any security, charge or other restriction.

CCAA, s. 36(6).

31. For the reasons that follow, both the Homestyle Transaction and the Save-On Transaction satisfy each of the factors set out in s. 36(3) of the CCAA and the *Soundair* principles:

- (a) **The sale process was reasonable:** The Homestyle APA and the Save-On APA are each the culmination of a solicitation process that began several months ago. The Company first engaged in a strategic review in 2020, which review has been ongoing with the engagement of Stout since November 2020. Since the commencement of these CCAA Proceedings, the sale process has been conducted under the oversight of the Monitor and under the ultimate oversight and supervision

of this Court, as contemplated by the Bidding Procedures. Ample notice of the Company's efforts to sell its assets was provided to potentially interested parties, as demonstrated by more than 210 potentially interested parties receiving solicitation packages as at the commencement of the Restructuring Proceedings (including 90 strategic, 20 hybrid and more than 100 financial parties) and 83 potentially interested parties executing non-disclosure agreements. The Auction was transparent and had competitive bidding between the various Qualified Bidders for the various assets. The Monitor has filed its Second Report stating that the process conducted by the Company and Stout was fair and reasonable. The Monitor has also confirmed that the process was carried out in accordance with the Bidding Procedures approved by this Court and that it was satisfied with the degree of involvement and consultation provided to the Monitor.

Marotta Affidavit at paras. 37 to 50, 59 and 66, Motion Record, Tab 2.

Second Report at paras. 28, 30, 46, 60 and 61.

- (b) **The purchase price payable is fair and reasonable:** The Purchase Price payable under both the Homestyle APA and the Save-On APA provide a reasonable value well in excess of the values offered prior to the Auction for the Homestyle Purchased Assets and the Save-On Purchased Assets, which will ultimately benefit the CCAA Entities' creditors. The auction process resulted in a substantial increase in the Net Bid Value, from \$66,878,513 in the stalking horse Stellex APA to \$88,884,000 when considering the combined value of the Homestyle APA, the Save-On APA and the New Stellex APA. The nature of the consideration paid by the winning bidders (all cash) was also substantially improved over the consideration contemplated in the initial Stellex APA (combined cash and secured note).

Marotta Affidavit at paras. 62, 65, 67(a) and Exhibit "B", Motion Record, Tab 2.

- (c) **The Monitor approves of the Homestyle Transaction and the Save-On Transaction:** The Monitor states in the Second Report that there is no reasonable prospect of an offer superior to the Homestyle APA and the Save-On APA. The Second Report further states that the Monitor is of the view that the proposed transactions are significantly more beneficial to the creditors and stakeholders of the Applicants than a sale or disposition of assets under a bankruptcy.

Marotta Affidavit at para. 62, Motion Record, Tab 2.

Second Report at paras. 59 and 62

- (d) **Stakeholders were consulted during the sale process:** At all relevant times, the Consultation Parties, which include the Monitor, the Unsecured Creditors' Committee and the DIP Lenders, were regularly appraised with respect to the conduct of the Formal Solicitation Process by Stout. All such Consultation Parties are supportive of the Homestyle Transaction and the Save-On Transaction; and

Marotta Affidavit at paras. 65, 68 and 69, Motion Record, Tab 2.

Second Report at paras. 42, 45 and 63

- (e) **The Homestyle Transaction and the Save-On Transaction benefit the whole economic community:** Homestyle and Save-On have both committed to providing a number of employment offers to the employees of the CCAA Entities and to assume certain liabilities. The proposed transactions will also allow for current operations to continue in a number of locations, thereby allowing goods and service providers to maintain their business with a new client.

Marotta Affidavit at paras. 62, 63 and 67, Motion Record, Tab 2.

Second Report at para. 64.

32. For the reasons above, the CCAA Entities are of the view that the Homestyle Transaction and the Save-On Transaction represent the best option under the circumstances to maximize value for the CCAA Entities' stakeholders.

Marotta Affidavit at paras. 63 and 65, Motion Record, Tab 2.

**B. The Homestyle Assigned Agreements and the Save-On Assigned Agreements Should be Assigned**

33. As part of both the Homestyle APA and the Save-On APA, Homestyle and Save-On have both provided a list of contracts and leases (together with the cure costs payable in respect therewith) which they intend on assuming, as part of the Homestyle Transaction and the Save-On Transaction.

Marotta Affidavit at para. 70, Motion Record, Tab 2.

34. The CCAA provides for the assignment of contracts at s. 11.3(1), which provides that on application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment. In deciding whether to make the order, the court is to consider, among other things:

- (a) Whether the monitor approved the proposed assignment;
- (b) Whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) Whether it would be appropriate to assign the rights and obligations to that person.

CCAA, s. 11.3(1) and (3).

35. In the present case, the aforementioned factors have been satisfied and it is appropriate to assign the rights and obligations of the Homestyle Assigned Agreements to Homestyle, and to assign the rights and obligations of the Save-On Assigned Agreements to Save-On, subject to the counterparties of the Homestyle Assigned Agreements and the Save-On Assigned Agreements having the right apply to this Court to object to such assignment up until the Closing Date contemplated in the Homestyle APA and the Save-On APA, respectively, for the following reasons:



- (a) The Monitor supports the assignment of contracts, including the mechanics by which such proposed assignment of contracts is to be effected.

Marotta Affidavit at para. 79, Motion Record, Tab 2.

Second Report at para. 67.

- (b) Homestyle and Save-On are able to continue fulfilling the CCAA Entities' obligations in the ordinary course pursuant to the Proposed Assigned Agreements. Counterparties will be left in substantially the same position that they were in prior to the Homestyle Transaction and Save-On Transaction. Homestyle and Save-On will effectively be stepping into the shoes of the CCAA Entities and maintaining the *status quo* for contract counterparties.

- (c) The assignment of the Homestyle Assigned Agreements and the Save-On Assigned Agreements, in accordance with the draft Homestyle Sale Approval Order and Save-On Approval Order, respectively, is reasonable and justified in the circumstances. Indeed, such assignment is necessary for the success of the Homestyle Transaction and Save-On Transaction.

Marotta Affidavit at para. 78, Motion Record, Tab 2.

Second Report at para. 66.

36. Counterparties to the Proposed Assigned Agreements have already received Assumption and Assignment Notices that advised them that their agreements could be assigned to the Successful Bidder as part of an eventual transaction in respect of the assets of FFG, including those of the CCAA Entities. Counterparties of any Proposed Assigned Agreements that Homestyle and Save-On ultimately determine to assume will be provided with related cure costs.

Marotta Affidavit at para. 73, Motion Record, Tab 2.

37. Only two Contract Objections have been filed in respect of a Proposed Assigned Agreement entered into with one of the CCAA Entities, but the Applicants' expect to have such Contract Objections resolved before the hearing on the present motion.

Marotta Affidavit at para. 77, Motion Record, Tab 2.

38. Based on the foregoing, the Homestyle Assigned Agreements and the Save-On Assigned Agreements should be assigned to Homestyle and Save-On, respectively.

**C. The Stay Period Should be Extended**

39. The current stay period expires on March 28, 2021. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.

CCAA, s. 11.02(2) and (3).

40. The CCAA Entities are seeking to extend the stay period to and including April 18, 2021 to allow them to proceed with the closing of the Homestyle Transaction and the Save-On Transaction, while at the same time preserving the *status quo* and preventing creditors and others from taking any steps to try and better their positions in comparison to other creditors. To the extent possible, and provided that the Homestyle Transaction and the Save-On Transaction will have closed by then, the CCAA Entities also intend to bring a motion to allow a distribution to be made in respect of the proceeds resulting from the aforementioned transaction to the secured creditors of the CCAA Entities, subject to the necessary holdbacks, on or before the next stay extension motion (on or about April 18, 2021).

Marotta Affidavit at para. 81, Motion Record, Tab 2.

41. No creditors are expected to suffer material prejudice as a result of the extension of the stay of proceedings. The CCAA Entities are acting in good faith and will continue to pay their post-

filing obligations in the ordinary course. As detailed in the Applicants' cash flow forecast, the CCAA Entities are expected to have sufficient liquidity to continue their operations during the contemplated extension of the stay.

Marotta Affidavit at paras. 82 to 84, Motion Record, Tab 2.

**PART V - ORDER SOUGHT**

42. The Applicants respectfully request that this Court grant the Homestyle Sale Approval Order and the Save-On Sale Approval Order, substantially in the form of the draft orders attached at Tab 3 and Tab 5 of the Applicants' Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 26<sup>th</sup> day of March, 2021.

A handwritten signature in black ink, appearing to read 'L. Ni', is positioned above a horizontal line.

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**Stikeman Elliott LLP**  
Lawyers for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Cases**

1. *Lydian International Limited (Re)*, 2020 ONSC 4006 ([CanLII](#))
2. *Re Target Canada Co*, 2015 ONSC 1487 ([CanLII](#))
3. *Royal Bank v Soundair Corp*, 1991 CanLII 2727 (ONCA) ([CanLII](#))

**SCHEDULE “B”  
RELEVANT STATUTES**

**Companies’ Creditors Arrangement Act, RSC 1985, c C-36**

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

**(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

**(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

**(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**(3)** The court shall not make the order unless

**(a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and

**(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[...]

**Assignment of agreements**

**11.3 (1)** On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

### **Exceptions**

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement.

### **Factors to be considered**

(3) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

[...]

### **Restriction on disposition of business assets**

**36 (1)** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

### **Notice to creditors**

**36 (2)** A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

### **Factors to be considered**

**36 (3)** In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;

- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

#### **Additional factors — related persons**

**(4)** If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

#### **Related persons**

**(5)** For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

#### **Assets may be disposed of free and clear**

**(6)** The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

#### **Restriction — employers**

**(7)** The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and 6(a) if the court had sanctioned the compromise or arrangement.

**Restriction — intellectual property**

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.



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

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

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.

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

Proceeding commenced at Toronto

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(RETURNABLE MARCH 26, 2021)**

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