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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 26th
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2021

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
JUSTICIA

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.

APPROVAL AND VESTING ORDER
(Re: Save-On-Foods Transaction)

THIS MOTION, made by the TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc., and 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 approving the sale transaction (the "**Sale Transaction**") contemplated by the Asset Purchase Agreement (the "**APA**") by and between Save-On-Foods Limited Partnership (the "**Save-On**"), a limited partnership formed under the laws of British Columbia, and Sun Rich Fresh Foods Inc., a corporation incorporated under the laws of British Columbia (the "**Seller**"), dated March 25, 2021 and appended as Exhibit "E" to the Marotta Affidavit sworn March 25, 2021 (the "**Marotta Affidavit**"), and vesting the Seller's right, title and interest in the Assets to Save-On or any Affiliate of Save-On which the APA is assigned to in accordance with Section 10.10 of the APA (the "**Buyer**"), was heard this day via video-conference due to the ongoing COVID-19 pandemic.

ON READING the Marotta Affidavit, the Second 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, counsel for the Buyer, counsel for the Royal Bank of Canada, counsel for HSBC, counsel for the Official Unsecured Creditors Committee of the affiliates of the

Applicants and other counsel as listed on the Counsel Slip, no one else appearing for any party although duly served as appears on the affidavit of service.

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.

DEFINITIONS

2. **THIS COURT ORDERS** capitalized terms not otherwise defined herein have the meaning ascribed to them in the APA.

SALE TRANSACTION

3. **THIS COURT ORDERS AND DECLARES** that the Sale Transaction is hereby approved, and the execution of the APA by the Seller is hereby authorized, with such minor amendments as the Seller and the Buyer, with the approval of the Monitor, may agree upon. The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Sale Transaction and for the conveyance of the Assets to the Buyer.

4. **THIS COURT ORDERS** that the Seller is authorized and directed to perform its obligations under the APA and any ancillary documents related thereto.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Seller (or its counsel) and to the Buyer (or its counsel) substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Assets shall vest absolutely in the Buyer, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other orders made in these CCAA proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), *Personal Property Security Act* (British Columbia) or any other personal property registry system; and (iii) any Excluded Liabilities (all of which are collectively

referred to as the "**Encumbrances**"), provided that, the Claims and the Encumbrances referred to herein shall not include Permitted Encumbrances under the APA or the Assumed Liabilities set forth in Section 2.4 of the APA. For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets except for the Permitted Encumbrances and Assumed Liabilities.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Sale Transaction.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof to the Seller and the Buyer, or to their respective counsel.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer or their respective counsel regarding the satisfaction or waiver of the conditions to Closing under the APA, and shall incur no liability with respect to the delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Seller are authorized and permitted to disclose and transfer to the Buyer all human resources and payroll information in the Seller's records pertaining to the Seller's past and current employees. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

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

    (a) the pendency of these CCAA 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 Seller and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Seller;

the vesting of the Assets in the Buyer and transactions, payments, distributions and disbursements made pursuant to this Order shall be binding on any trustee-in-bankruptcy that may be appointed in respect of the Seller (or any one of them) and shall not be void or voidable by creditors of the Seller, nor shall it constitute nor be deemed to be 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 it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

ASSIGNED AGREEMENTS

11. **THIS COURT ORDERS** that upon the filing of the Monitor's Certificate, the Seller's rights and obligations under the 11.3 Contracts and the Third Party Lease set out in Schedule "B" hereto may be assigned to and assumed by the Buyer in accordance with section 2.1 and 2.6 of the APA and such assignment and assumption is hereby approved pursuant to section 11.3 of the CCAA, provided that, the Buyer may designate any 11.3 Contract as an Excluded Contract prior to the Closing Date in accordance with the APA and this Order. Each 11.3 Contract and Third Party Lease assigned to and assumed by the Buyer in accordance with the APA as of the Closing Date shall be an "**Assigned Agreement**" and collectively, the "**Assigned Agreements**".

12. **THIS COURT ORDERS** that, with respect to the Assigned Agreements that are real property leases (collectively, the "**Real Property Leases**"), the Buyer shall be entitled to all of the rights and benefits and subject to all of the obligations as tenant pursuant to the terms of the Real Property Leases for the period commencing from and after the Assumption Effective Date (as defined below) and may enter into and upon and hold and have quiet enjoyment of the premises contemplated by the Real Property Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Real Property Leases, without any interruption from the Seller, the landlords under the Real Property Leases or any

other person whomsoever claiming through or under any of the Seller or the landlords under the Real Property Leases.

13. **THIS COURT ORDERS** that the outstanding monetary defaults under the 11.3 Contracts and Third Party Lease shall be as set out in Schedule "B" (the "**Cure Amounts**") or as otherwise agreed in writing between the relevant counterparty of the Assigned Agreement (each a "**Contract Counterparty**"). Within fourteen (14) Business Days following the Closing Date, the Buyer shall pay the Cure Amounts with respect to each applicable Assigned Agreement, in full and final satisfaction of any monetary defaults under the Assigned Agreements arising prior to the Closing Date.

14. **THIS COURT ORDERS** that the assumption of the Seller's rights and obligations under the Assigned Agreements by the Buyer and the assignment of the Assigned Agreements by the Seller to the Buyer pursuant to the CCAA and this Order is valid and binding upon each Contract Counterparty notwithstanding any restriction or prohibition contained in any Assigned Agreement relating to the assignment thereof, including any provision requiring the consent of any party to the assignment and each Contract Counterparty shall be forever barred, estopped, and permanently enjoined from enforcing the same against the Buyer or the Seller.

15. **THIS COURT ORDERS** that, except as otherwise dealt with herein, the Seller's right, title and interest in the Assigned Agreements shall vest absolutely in the Buyer free and clear of all Encumbrances other than the Permitted Encumbrances.

16. **THIS COURT ORDERS** that, from and after the Closing Date and conditional on the payment of the relevant Cure Amount, if any, (a) the Assigned Agreements will remain in full force and effect and the Buyer shall be entitled to all the rights, benefits and entitlements of the Seller thereunder (subject to any amendments agreed to between the Contract Counterparty and the Buyer), (b) no default (monetary or other cure) shall exist under the Assigned Agreement; and (c) no Contract Counterparty shall be permitted (i) to declare a default by the Buyer under such Assigned Agreement, or (ii) to accelerate, terminate, rescind, refuse to perform, repudiate its obligations thereunder, or otherwise exercise any rights or remedies or take any action or proceedings against the Buyer, as a result of: (A) any circumstance that existed on or prior to the Closing Date; (B) any Seller's financial condition, the insolvency of the Seller or the affiliates of the Seller in the United States; (C) the commencement of these proceedings by the Seller or the chapter 11 proceedings in respect of the affiliates of the Seller in the United States; (D) any steps taken by the Seller in these proceedings or pursuant to the

APA or this Order; (E) any change of control of the Seller arising from the implementation of the Sale Transaction or any anti-assignment provision in the Assigned Agreements; or (F) any failure of the Seller or their affiliates to perform a non-monetary obligation under the Assigned Agreements.

17. **THIS COURT ORDERS** that any Contract Counterparty may apply to this Court prior to the Closing Date to vary or amend this Order on not less than five (5) business days' notice to the Applicants, the Monitor and the Buyer, if such Contract Counterparty objects to the assignment and assumption of their 11.3 Contract or the Third Party Lease on the basis that the Buyer will not be able to perform the obligations under such 11.3 Contract or Third Party Lease. For greater certainty, no Contract Counterparty may further apply to this Court to amend or vary the Cure Amount under the 11.3 Contract or Third Party Lease.

GENERAL

18. **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.

19. **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.

<u>Schedule A – Form of Monitor's Certificate</u>

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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)

MONITOR'S 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 undertakings, property and assets of Applicants.

B. Pursuant to an Order of the Court dated February 26, 2021 (the "**Approval and Vesting Order**"), the Court approved the Asset Purchase Agreement (the "**APA**") by and between Sun Rich Fresh Foods Inc. (the "**Seller**"), and Save-On-Foods Limited Partnership (the "**Buyer**"), dated March 25, 2021 and the sale transaction (the "**Sale Transaction**") contemplated therein, and provided for the vesting in the Buyer of the Applicants' right, title and interest in and to the Assets, which vesting is to be effective upon the delivery by the Monitor to the Seller and the Buyer (or their counsel) of a certificate confirming (i) the payment by the Buyer of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in the APA have been satisfied or waived by the Seller and/or the Buyer, as applicable; and (iii) the Sale Transaction has been completed to the satisfaction of the Monitor.

C. Pursuant to the Approval and Vesting Order, the Monitor may rely on written notice from the Seller and the Buyer regarding fulfillment of conditions to closing under the APA.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

THE MONITOR CERTIFIES the following:

1. The Seller and the Buyer have each delivered written notice to the Monitor that all applicable conditions under the APA have been satisfied and/or waived, as applicable;

2. The Buyer have paid and the Seller, as applicable, have received the Purchase Price, subject to applicable adjustments, for the Assets payable on the Closing Date pursuant to the APA;

3. The Sale Transaction has been completed to the satisfaction of the Monitor; and

4. This Certificate was delivered by the Monitor at ________ [TIME] on _______ [DATE].

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

Per: ______________________________

Name:
Title:

Schedule "B" – 11.3 Contracts and Third Party Lease

11.3 Contracts

#	Counterparty	Debtor Entity	Contract Type	Description	Contract Date	Cure Costs
1.	Atlas Pacific Engineering Co.	Sun Rich Fresh Foods Inc.	Equipment Lease	Lease no. 2018-SRM	9/1/2018	$4,904.43
2.	Ceridian Canada Ltd.	Sun Rich Fresh Foods Inc. and Tiffany Gate Foods Inc., among others	Service Agreement	Ceridian Contract	5/9/2020	$6,875.88
3.	TELUS	Sun Rich Fresh Foods Inc.	Service Agreement	Service agreement together with amendments	2/27/2020	$23,101.57
4.	Vita-Pakt Citrus Products Co.	Sun Rich Fresh Foods Inc.	Supply Agreement	Raw Materials Supply Agreement	8/26/2016	$-

Third Party Leases

#	Counterparty	Debtor Entity	Contract Type	Description	Contract Date	Cure Costs
1.	592209 B.C. Ltd	Sun Rich Fresh Foods, Inc.	Lease	Dayhu Lease together with all amendments	9/1/2017	$-

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Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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