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

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 TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

APPLICANTS

AMENDED NOTICE OF MOTION
(Returnable April 13, 2021)

The Applicants will make a motion to the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on **April 13, 2021** a **12:30 P.M. EST**.

PROPOSED METHOD OF HEARING: Due to the ongoing COVID-19 pandemic, the motion is to be heard via video conference, the details of which can be found in **Schedule "A**" to this Notice of Motion. If you intend to join the hearing on this Motion, please advise Mr. Lee Nicholson of Stikeman Elliott LLP by email at lnicholson@stikeman.com.

THE MOTION IS FOR:

1. An order:

   (a) extending the Stay Period (as defined below) to June 27, 2021;

   (b) authorizing the Monitor (as defined below), subject to the establishment of the Reserve (as defined below), to proceed with the distribution, without further order of the Court, of the purchase price to be paid by each of Save-On and Homestyle (as such terms are defined below) pursuant to the Save-On APA and the Homestyle APA (as such terms are defined below), as applicable, on account of Sun Rich Canada's and TG's respective indebtedness and obligations outstanding under or in connection with the following agreements (in the following order):

      (i) First, the Super Senior Term Loan Credit Agreement and the Super Senior Canadian Guaranty (as such terms are defined below);

(ii) Second, the First Lien Credit Agreement and the First Lien Canadian Guaranty (as such terms are defined below); and

(iii) Third, the Second Lien Credit Agreement and the Second Lien Canadian Guaranty (as such terms are defined below)

(c) authorizing Sun Rich Canada and TG to establish with the Monitor a reserve (the "**Reserve**") from the Sale Proceeds (as defined below), which the Monitor shall be authorized and directed to hold in segregated interest-bearing accounts, and pay therefrom, in the name of and on behalf of the Applicants, the Reserve Claims (as defined below);

(d) <u>amending and restating the Approval and Vesting Order granted by the Canadian Court (as defined below) on March 26, 2021, whereby the Canadian Court approved the transaction (the "**Homestyle Transaction**") contemplated in the Homestyle APA (the "**Homestyle AVO**"), for the sole purpose of designating Freshstone Brands Inc. ("**Freshstone**"), a corporation incorporated under the laws of Canada, and 12901927 Canada Ltd. ("**12901927**"), a corporation also incorporated under the laws of Canada, as the "**Assignee Buyers**" under the Homestyle Transaction;</u>

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

3. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Affidavit of Stephen Marotta sworn on April 8, 2021 (the "**Third Marotta Affidavit**").

Background

4. The Applicants, TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc. and Tiffany Gate Foods Inc. (collectively, the "**CCAA Entities**"), are part of a group of companies known as the Fresh Food Group ("**FFG**"), which include several entities that are based in the U.S., including Country Fresh Holding Company Inc., Country Fresh Midco Corp., Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, Country Fresh LLC, Country Fresh Dallas, LLC, Country Fresh Carolina, LLC, Country Fresh

Midwest, LLC, Country Fresh Orlando, LLC, Country Fresh Transportation LLC, CF Products, LLC, Country Fresh Manufacturing, LLC, Champlain Valley Specialty of New York, Inc., Country Fresh Pennsylvania, LLC, Sun Rich Fresh Foods (NV) Inc., Sun Rich Foods (USA) Inc. and Sun Rich Fresh Foods (PA) Inc. (collectively, the "**Chapter 11 Entities**").

5. On February 15, 2021, the Chapter 11 Entities 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 Bankruptcy Code (the "**Chapter 11 Proceedings**" and together with the CCAA Proceedings, the "**Restructuring Proceedings**".

6. On February 17, 2021, the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") rendered a "*first day*" Initial Order (the "**First Day Order**") in favor of the CCAA Entities, among other things:

   (a) declaring that the CCAA Entities were affiliated debtor companies to which the CCAA applied;

   (b) staying all proceedings and remedies taken or that might be taken against or in respect of the CCAA Entities, any of their respective property or director and officers, except as otherwise set forth in the First Day Order or as otherwise permitted by law (the "**Stay**"), for an initial period of ten (10) days in accordance with the CCAA (the "**Stay Period**");

   (c) appointing Ernst & Young Inc. ("**E&Y**" or the "**Monitor**") as the monitor of the CCAA Entities in these proceedings (the "**CCAA Proceedings**");

   (d) approving the execution by the CCAA Entities of a Super Priority Senior Secured Debtor-in-Possession Financing Agreement (the "**DIP Credit Agreement**"), together with certain ancillary agreements thereto (together with the DIP Credit Agreement, the "DIP Documents") entered into on February 16, 2021, between, amongst others, the lenders thereunder (the "**DIP Lenders**"), Country Fresh Holdings, LLC, as borrower (in such capacity, the "**DIP Borrower**"), and several of its direct and indirect subsidiaries, including the CCAA Entities, as guarantors, pursuant to which amounts of up to

US$13,416,000 (the “**DIP Facility**”), would be made available to the DIP Borrower;

(e) granting: (a) a priority charge against the assets of the CCAA Entities in favor of the DIP Borrower and its U.S. subsidiaries that are party to the DIP Credit Agreement, securing the full amount of any funding or advances made by any of them to any of the CCAA Entities (the “**Intercompany DIP Advances**”) plus interest during the course of these CCAA Proceedings (the “**Intercompany DIP Charge**”); and (b) a priority charge against the assets of the CCAA Entities for the benefit of the DIP Agent (as defined below) and the DIP Lenders (the “**DIP Lenders’ Charge**”), securing the full amount of the CCAA Entities’ obligations under the Canadian Guaranty and Security Agreement (the “**Canadian Guarantee Agreement**”) entered into in conjunction with the DIP Credit Agreement, which provides that, inter alia, the CCAA Entities would guarantee, in favor of the DIP Lender, the payment of an amount equivalent to the Intercompany DIP Advances, plus interest and the reasonable fees and disbursements of Canadian counsel to the DIP Lenders at their standard rates and charges both before and after the making of the First Day Order;

(f) granting an “**Administration Charge**” in an amount of US$400,000 and a Directors’ Charge in an amount of US$2,500,000 to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;

(g) approving a “**Canadian Intercompany Charge**” for the purpose of securing the repayment of the various amounts which may be advanced, from time to time, plus interest thereon, between the CCAA Entities during the initial Stay Period; and

(h) authorizing the CCAA Entities to make payments to certain suppliers deemed crucial by the CCAA Entities, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, up to an amount of $750,000, subject to the prior approval of the Proposed Monitor.

7. On February 26, 2021, the Canadian Court rendered an amended and restated initial order (the "**ARIO**") in favor of the CCAA Entities, among other things:

(a) extending the Stay Period until March 28, 2021;

(b) confirming the appointment of E&Y as the Monitor of the CCAA Entities in these CCAA Proceedings;

(c) approving the engagement of Ankura (Stephen Marotta), as Chief Restructuring Organization, and of Stout Capital, LLC ("**Stout**"), as investment banker and financial advisor to FFG, including the CCAA Entities, and granting to Stout a "Transaction Fee Charge" in the amount of US$2,500,000 in order to secure the payment of the "Transaction Fee" payable under the Stout Engagement Letter (as defined below);

(d) confirming the approval of the DIP Credit Agreement, the Canadian Guarantee Agreement and the granting of the Intercompany DIP Charge and the DIP Lenders' Charge;

(e) confirming and increasing, as applicable, the amount of the Administration Charge (US$750,000) and the Directors Charge (US$2,500,000) previously approved as part of the First Day Order;

(f) confirming the Canadian Intercompany Charge previously approved as part of the First Day Order;

(g) confirming the Applicants' authority to make payments to certain suppliers deemed crucial by the Applicants, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, subject to the prior approval of the Proposed Monitor; and

(h) approving the Guidelines and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network for the purposes of these CCAA Proceedings.

8. On the same day, the U.S. Court rendered an order in the context of the Chapter 11 Proceedings (the "**U.S. Bidding Procedures Order**"), among other things:

(a) approving the execution by the Chapter 11 Entities of a stalking horse asset purchase agreement (the "**Stellex APA**") entered into between the Chapter 11 Entities and the CCAA Entities, as sellers, and Stellex US Newco and Stellex Canadian Newco (both newly incorporated entities whose shares are owned by Stellex Capital Management ("**Stellex**")), as purchasers, subject to certain amendments which could be agreed upon in respect of the Stellex APA; and

(b) approving the bidding procedures (the "**Bidding Procedures**") to be followed in connection with the pursuit and continuation of the Formal Solicitation Process (as defined below) previously initiated by Stout in November 2020.

9. On March 1, 2021, following the issuance of the U.S. Bid Procedures Order by the U.S. Court, the Canadian Court also rendered an order in the context of the CCAA Proceedings (the "**Canadian Bidding Procedures Order**", together with the U.S. Bidding Procedures Order, the "**Bidding Procedures Orders**"), among other things:

(a) approving the execution by the CCAA Entities of the Stellex APA, subject to certain amendments which could be agreed upon in respect of the Stellex APA;

(b) approving the Bidding Procedures to be followed in connection with the pursuit and continuation of the Formal Solicitation Process previously initiated by Stout in November 2020; and

(c) approving 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 of the "*Successful Bidder*" to be determined in accordance with the Bidding Procedures.

10. Following the issuance of the Bidding Procedures Orders, the CCAA Entities and the Chapter 11 Entities have jointly conducted, with the assistance of Stout, the Formal Solicitation Process with the objective of soliciting and receiving offers for the business and assets of each of the CCAA Entities and the Chapter 11 Entities, either as a whole or on a stand-alone basis.

11. On March 24, 2021, after having received and considered a total amount of six (6) "*Qualified Bids*" submitted as part of the Formal Solicitation Process (including the offer submitted as part of the Stellex APA) and after having conducted an auction with a view to obtain the best offers possible for the assets of the CCAA Entities and the Chapter 11 Entities, together or on a standalone basis, Save-On Foods Limited Partnership ("**Save-On**") and Homestyle Selections LP ("**Homestyle**") were designated as the "*Successful Bidders*" for the assets of the Canadian Entities, and Stellex, Inc. was designated as the "*Successful Bidder*" for the assets of the U.S. Entities (the "**Stellex Transaction**").

12. On the same date, and in accordance with the Bidding Procedures Order, FFG issued a Post-Auction Notice and served the Post-Auction Notice on the service list confirming the identity of the "*Successful Bidders*" and of the "*Back-up Bidders*". On March 25, 2021, an asset purchase agreement was finalized and executed with each of Save-On (the "**Save-On APA**") and Homestyle (the "**Homestyle APA**").

13. On March 25, 2021, the U.S. Court approved the Stellex Transaction.

14. On March 26, 2021, the Canadian Court approved the transaction contemplated in each of the Save-On APA and the Homestyle APA and extended the Stay Period until April 18, 2021.

The Extension of the Stay Period

15. The CCAA Entities request that the Stay Period be extended until June 27, 2021, so as to allow them to proceed with the closing of the Save-On Transaction and the Homestyle Transaction (which are both expected to occur on or about April 16, 2021), and deal with any post-closing matters related therewith, 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. I believe that the CCAA Entities' stakeholders, including creditors, will all benefit from the Extension of the Stay Period

16. The CCAA Entities' stakeholders, including creditors, will all benefit from the extension of the Stay Period.

17. As set out in the cash flow projections (the "**Cash Flow Statement**") that was prepared by the CCAA Entities in consultation with Ankura, and reviewed by the Monitor for the

period up to June 27, 2021, the CCAA Entities expect that they will have sufficient cash to fund their projected operating costs during such period.

The Proposed Distribution and Establishment of a Reserve

18. The CCAA Entities now seek the Canadian Court's approval to proceed, upon closing of the Save-On Transaction and the Homestyle Transaction, with one or more distributions to be effected by the Monitor (the "**Proposed Distribution**") of all sale proceeds (the "**Sale Proceeds**") resulting from said transaction to the CCAA Entities' secured lenders, on account of Sun Rich Canada's and TG's respective indebtedness and obligations outstanding under or in connection with the following agreements (in the following order):

(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 (the "**Super Senior Canadian Guaranty**"). As at the date hereof, a total amount of US$24 million in principal (plus interests, costs and other allowable charges) remains outstanding under the First Lien Credit Agreement, and therefore under the Super Senior Canadian Guaranty;

(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. Borrower, 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 (the "**First Lien Canadian Guaranty**"). As at the date of this hereof, a total amount of US$35 million in principal (plus interests, costs and other allowable charges) remains outstanding under the First Lien Credit Agreement, and therefore under the First Lien Canadian Guaranty; 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. Borrower, 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 (the "Second Lien Canadian Guaranty"). As at the date hereof, a total amount of US$60 million in principal (plus interests, costs and other allowable charges) remains outstanding under the Second Lien Credit Agreement, and therefore under the Second Lien Canadian Guaranty.

19. The Proposed Distribution is subject to the establishment of a reserve (i.e. the Reserve) which the Monitor shall hold back from the Sale Proceeds, in segregated interest-bearing accounts, for the benefit of the holders of the following claims (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 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. It should be noted that as of the date hereof, there is no amount owing that is secured by the Intercompany DIP Charge or the Canadian Intercompany Charge;

(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 CCAA Entities, the Monitor and the First Lien Lenders.

20. Based on the Applicants' current calculation of the Reserve Claims, an amount of US$24 million should be distributed upon closing of the Save-On Transaction and the Homestyle Transaction to the CCAA Entities' secured lenders in accordance with the Proposed Distribution set out above.

The Request for and Amended and Restated Homestyle AVO

21. As previously discussed, on March 26, 2021, the Canadian Court rendered the Homestyle AVO, pursuant to which the Homestyle Transaction was approved.

22. As appears from the Homestyle AVO, "*Homestyle Selections LP*" (i.e. Homestyle) was referred therein as the "*Buyer*".

23. However, counsels to Homestyle have advised that:

(a) on April 11, 2021, an Assignment and Assumption Agreement was entered into pursuant to which Homestyle assigned all of its rights, title and interest in and to the Homestyle APA to the Assignee Buyers, Freshstone and to 12901927 (both affiliates of Homestyle), such that the actual "*Buyers*" as part of the Homestyle Transaction will ultimately be Freshstone (which will acquire the movable assets under the Homestyle APA) and 12901927 (which will acquire the real property under the Homestyle APA);

(b) unless the Homestyle AVO is amended and restated to reflect such assignment to the Assignee Buyers, they have concerns that this may ultimately create issues with the registration of the Homestyle AVO, particularly at the applicable land title office, since, as previously discussed, the Real Property (as defined in the Homestyle APA) will ultimately be sold to 12901927, as opposed to Homestyle.

24. Accordingly, in addition to the aforementioned reliefs, the Applicants also seek the issuance of an amended and restated Homestyle AVO, for the sole purpose of reflecting the assignment of Homestyle's rights, title and interest in and to the Homestyle APA to the Assignee Buyers.

Other Grounds

25. The provisions of the CCAA, including s. 11.02(2) thereof, and the inherent and equitable jurisdiction of this Honourable Court;

26. The provisions of the Rules of Civil Procedure, RRO 1990, Reg. 194, including rules 2.03, 3.02 and 37 thereof; and

27. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the applications:

a. the Affidavits of Stephen Marotta, sworn on February 16, 2021, March 25, 2021 and on April 8, 2021, respectively, and the exhibits attached thereto;

b. the Third Report of E&Y, as Monitor, to be filed; and

c. such further and other evidence as counsel may advise and this Honourable Court may permit.

April 12, 2021

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SCHEDULE A

ZOOM MEETING DETAILS

Join Zoom Meeting
https://zoom.us/j/99527477213

Meeting ID: 995 2747 7213
One tap mobile
+14086380968,,99527477213# US (San Jose)
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+1 312 626 6799 US (Chicago)
+1 346 248 7799 US (Houston)
Meeting ID: 995 2747 7213
Find your local number: https://zoom.us/u/ac5rtJAmJH

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.

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Proceeding commenced at Toronto

AMENDED NOTICE OF MOTION

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