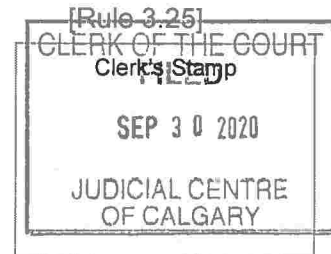


Form 10



B201-642858

COURT FILE NUMBER 25-2642858

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

DOCUMENT **AFFIDAVIT OF NOLI TINGZON**
Sworn September 30, 2020

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AFFIDAVIT OF NOLI TINGZON

Sworn September 30, 2020

I, NOLI TINGZON, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the President of Olympus Food (Canada) Inc. ("**Olympus**" or the "**Corporation**"). As such I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, in which case I believe the same to be true.

Overview

2. On May 1, 2020, the Corporation filed a Notice of Intention to Make a Proposal (the "**NOI**") with the Official Receiver pursuant to section 50.4(1) of the *Bankruptcy and Insolvency*

Act (the "**BIA**"). BDO Canada Limited was appointed as the proposal trustee (the "**Proposal Trustee**") under the NOI. The Corporation filed a cash flow statement with the Official Receiver on May 5, 2020.

3. On May 28, 2020, pursuant to the Order of the Honourable Justice A. M. Grosse, the time for Olympus to file a proposal was extended by a 45 day period to July 15, 2020, pursuant to section 50.4(9) of the BIA.

4. On June 16, 2020, pursuant to the Order of the Honourable Justice C. M. Jones, the time for Olympus to file a proposal was extended by an additional 45 day period to August 29, 2020, pursuant to section 50.4(9) of the BIA. On the same date, a claims solicitation process order was granted by this Honourable Court for the purpose of identifying the claims against Olympus (the "**Claims Solicitation Process**"). In accordance with the Claims Solicitation Process, any party with a Claim (as that term is defined in the Claims Solicitation Process) against Olympus was required to file their proof of claim with the Proposal Trustee by July 31, 2020 (the "**Claims Bar Date**").

5. On August 26, 2020, pursuant to the Order of the Honourable Justice B. E. C. Romaine, the time for Olympus to file a proposal was extended by an additional 45 day period to October 13, 2020, pursuant to section 50.4(9) of the BIA.

Background

6. On September 17, 2012, the Corporation purchased 65 Kentucky Fried Chicken ("**KFC**"), KFC/Taco Bell and KFC/Pizza Hut franchises in the province of Quebec. All of these franchise locations operated out of leased premises. In September 2018, the franchisor, Kentucky Fried Chicken Company Canada ("**KFCCC**") notified the Corporation that it was in breach of the franchise agreement and demanded the closure or sale of 15 KFC and KFC/Taco Bell locations and the Corporation's exit from the Quebec market before December 31, 2019.

7. In June of 2019, Olympus sold 33 of its locations to FMI Atlantic, Inc. ("**FMI**"). Then, in November of 2019, Olympus sold an additional 14 locations to FMI. As part of these sale transactions, Olympus, FMI and the respective landlords entered into assignment agreements for 46 of the 47 leased locations. For the final location, an assignment agreement between FMI, Olympus and the landlord, Le Carrefour Laval (2013) Inc. ("**Carrefour Laval**"), was not completed as the consent of Carrefour Laval could not be obtained. However, as is described

at paragraph 16 below, Carrefour Laval is now maintaining that Olympus' lease was assigned to FMI.

8. The 22 KFC, KFC/Taco Bell and KFC/Pizza Hut locations that were not part of the sale transactions with FMI are not operating and have all been permanently closed.

9. Olympus has not operated any restaurants since December 30, 2019.

Formulation of a Proposal

10. As of the date of filing of the NOI, the Corporation's books and records indicated that it owed its unsecured creditors approximately \$17,413,007.12, including an unsecured claim of \$11,529,48.20 owing to a related party, Hi-Flyer Food (Canada) Inc. ("Hi-Flyer"), which operates KFC and KFC/Taco Bell franchises in Alberta and Manitoba.

11. The Corporation has limited assets comprised mainly of cash, accounts receivable of approximately \$122,790 (of which the Corporation anticipates some amount will be uncollectible) and used/abandoned restaurant equipment. Aside from the assets that would be available in a bankruptcy of Olympus, the Corporation's principal asset that would only have potential realizable value to its creditors in a proposal scenario is its corporate tax losses.

12. Olympus had approximately \$10 million of corporate tax losses as at December 31, 2019, but at this time their value is uncertain. Olympus has been in discussions with Hi-Flyer regarding a transaction which would allow Hi-Flyer to utilize the tax losses. The terms of the transaction have not yet been determined and more information about the transaction will be forthcoming later. The proceeds of the proposed transaction with Hi-Flyer would contribute to the pool of funds to be made available to the Corporation's unsecured creditors in a proposal. As part of the proposed transaction, Hi-Flyer has agreed to fund the professional fees of Olympus' counsel associated with the NOI proceedings.

13. The Corporation anticipates that, as part of the proposed tax loss transaction, Hi-Flyer will not file a claim in the proposal of the Corporation which would increase the funds available to the Corporation's other unsecured creditors. It is the Corporation's understanding, based on preliminary advice from their accountants, that the tax losses will have no value in the event of a bankruptcy and thus, the proposed transaction with Hi-Flyer and resulting proposal represent a better recovery for the creditors.

14. The viability of the proposed transaction between Hi-Flyer and Olympus will depend upon the resolution of a contested disclaimer of Olympus' lease with Carrefour Laval and the requisite number of creditors voting in favour of the proposal filed by Olympus. Discussions between Olympus and Carrefour Laval are ongoing, through counsel, on the potential resolution of the contested disclaimer.

Results of the Claims Solicitation Process

15. By the Claims Bar Date, 44 creditors had filed proofs of claims totalling \$16,595,448.83 in accordance with the Claims Solicitation Process. Olympus and the Proposal Trustee are working on resolving all of the claims that were filed which differed from the amounts reflected in Olympus' books and records. There are two significant claims filed by former landlords of Olympus in the total amount of \$2,642,043 which, in subsequent correspondence with the landlords' counsel were reduced to \$451,208.

16. There is one significant landlord claim, by Carrefour Laval, that will need to be resolved before any proposal can be presented to Olympus' creditors. The claim relates to the lease with Carrefour Laval which Olympus disclaimed by Notice by Debtor Company to Disclaim or Resiliate an Agreement dated July 29, 2020. The Cadillac Fairview Corporation Limited ("CFC"), as agent for Carrefour Laval filed an application on August 14, 2020 disputing the disclaimer and asserting that the lease was assigned to FMI (the "**Disclaimer Application**"). On August 28, 2020, CFC served the supporting affidavit in respect of the Disclaimer Application on Olympus. The Disclaimer Application is scheduled to be heard on October 14, 2020, one day after Olympus' current deadline for filing a proposal under the Order of Romaine J. dated August 26, 2020, therefore necessitating a further stay extension.

17. Olympus has reviewed the Disclaimer Application and considered the potential impact on Olympus' ability to formulate a successful proposal to its creditors. Olympus has concluded that absent an amicable or successful resolution of the Disclaimer Application, Olympus does not anticipate that it will be able to make a viable proposal.

18. After the Claims Bar Date, it was determined the Canada Revenue Agency ("**CRA**") did not receive a Claims Package in accordance with the Claims Solicitation Process. While Olympus' records do not show any amount outstanding to CRA, the failure to serve CRA was an oversight. The Proposal Trustee has been in discussions with CRA and understands that CRA

may still need to complete a trust audit to confirm whether any amounts are outstanding. If a trust audit is required, CRA has indicated that at this time, it may be unable to complete trust examinations on a timely basis due to the current COVID-19 restrictions which prevent its employees from attending company premises. The Proposal Trustee is continuing its discussions with CRA to determine how best to proceed.

19. CRA has also advised that based on a preliminary estimate, it appears there may be a shortfall on the payroll account in the approximate amount of \$11,445.05. Based on a review of Olympus' records, I understand this amount may relate to any over-remittance made by a related party in respect of an employee who was working both Hi-Flyer and Olympus. Olympus has requested a transfer of the balance from Hi-Flyer to Olympus' payroll account with the understanding that, once the transfer is complete, there should be no further amounts outstanding to CRA.

Extension of Time to File a Proposal

20. The time to file a proposal is set to expire on October 13, 2020. Olympus requests an extension of the time for filing a proposal to October 30, 2020, in accordance with section 50.4(9) of the BIA in order to work towards the resolution of the claims by the landlords and CRA and continue to work towards the formulation and filing of a proposal.

21. Since the NOI was filed on May 1, 2020, Olympus has taken the following steps:
- (a) exploring a transaction with Hi-Flyer which would provide funding for the proposal in addition to the cash on hand and collection of accounts receivable by Olympus during these proceedings;
 - (b) working with the Proposal Trustee on a review of the status of the former leased premises;
 - (c) working with the Proposal Trustee on the formulation and completion of the Claims Solicitation Process;
 - (d) working with the Proposal Trustee on the resolution of certain claims filed by the Claims Bar Date;

- (e) reviewing the Disclaimer Application and considering, in consultation with the Proposal Trustee, its impact on any potential proposal;
- (f) working with the Proposal Trustee on the formulation of the proposal and the analysis of the relative recoveries to the creditors in a proposal as compared to a bankruptcy;
- (g) communicating with its creditors and former landlords; and
- (h) disclaiming the leases for four restaurant locations and the former office premises in Quebec.

22. Olympus has acted in good faith and with due diligence since the NOI was filed and will likely be able to make a viable proposal if the extension applied for were granted. While a successful resolution of the Carrefour Laval disclaimer dispute is critical, to the best of my knowledge, information and belief, none of the creditors of Olympus will be materially prejudiced if this Honourable Court grants the extension sought.

23. I make this Affidavit in support of an application for an Order extending the time for Olympus to file a proposal.

SWORN (OR AFFIRMED) BEFORE ME at)
 Calgary, Alberta, this 30th day of September,)
 2020.)

The deponent was not physically present)
 before me, but was linked with me utilizing)
 video technology. The process outlined in)
 the Court of Queen's Bench of Alberta Notice)
 to the Profession and Public for Remote)
 Commissioning of Affidavits for use in Civil)
 and Family Proceedings During the COVID-)
 19 Pandemic (NPP#2020-02), dated March)
 25, 2020, was followed.)



 NOLI TINGZON



 Commissioner for Oaths in and for the)
 Province of Alberta)