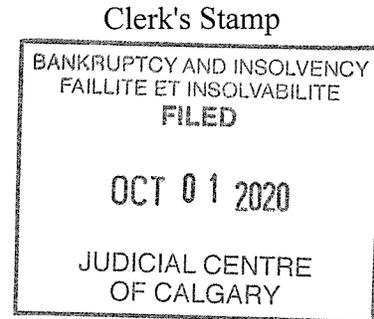


COURT FILE NUMBER 25-2642858
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *BANKRUPTCY
AND INSOLVENCY ACT*

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

DOCUMENT **FOURTH REPORT OF THE PROPOSAL
TRUSTEE, BDO CANADA LIMITED
SEPTEMBER 30, 2020**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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**FOURTH REPORT OF THE PROPOSAL TRUSTEE
BDO CANADA LIMITED
SEPTEMBER 30, 2020**

I N D E X

INTRODUCTION	1
TERMS OF REFERENCE	3
COMPANY BACKGROUND	4
CADILLAC FAIRVIEW CORPORATION LIMITED.....	4
UPDATE ON POTENTIAL CRA PRIORITY AMOUNTS.....	6
FINANCIAL PERFORMANCE	6
CASH FLOW FORECAST	8
RESTRUCTURING EFFORTS	9
RECOMMENDATION	10

INTRODUCTION

1. On May 1, 2020 (the “**Filing Date**”), Olympus Food (Canada) Inc. (“**Olympus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the *Bankruptcy & Insolvency Act* (the “**Act**”). BDO Canada Limited consented to act as trustee (the “**Proposal Trustee**”) pursuant to the proceedings.
2. On May 4, 2020, the Proposal Trustee filed the following documents with the Office of the Superintendent of Bankruptcy (the “**OSB**”):
 - a. the Cash Flow Statement prescribed by S.50.4(2)(a) of the Act covering the period beginning May 1, 2020 through to July 25, 2020 (the “**Initial Forecast**”);
 - b. the *Trustee’s Report on Cash Flow Statement* as prescribed by S.50.4(2)(b) of the Act; and
 - c. the *Report on Cash Flow Statement by the Person Making the Proposal* as prescribed by S.50.4(2)(c) of the Act.
3. On May 28, 2020, the Court of Queen’s Bench of Alberta (the “**Court**”) granted an Order extending the time in which Olympus must file its proposal to its creditors to July 15, 2020 upon application by the Company.
4. In connection with the May 28, 2020 application, the following materials were filed with the Court:
 - a. The First Report of the Proposal Trustee; and
 - b. The Affidavit of Noli Tingzon, sworn on May 22, 2020.
5. On June 24, 2020, the Company sought and received the following two Orders of the Court:
 - a. A Claims Solicitation Process Order (the “**Claims Solicitation Process Order**”) to solicit and identify claims against the Company; and
 - b. A further Extension Order (the “**June 24 Extension Order**”), extending the time in which Olympus is required to file a proposal to its creditors to August 29, 2020.

6. In connection with the June 24, 2020 application, the following materials were filed:
 - a. The Second Report of the Proposal Trustee; and
 - b. The Affidavit of Noli Tingzon, sworn June 16, 2020.
7. On August 26, 2020, the Company sought and received a further Extension Order (the “**August 26 Extension Order**”) of the Court extending the time in which Olympus is required to file a proposal to its creditors to October 13, 2020.
8. In connection with the August 26, 2020 application, the following materials were filed:
 - a. The Third Report of the Receiver, dated August 20, 2020; and
 - b. The Affidavit of Noli Tingzon, sworn on August 20, 2020.
9. On July 30, 2020, the Company served a Notice to Disclaim or Resiliate an Agreement (the “**Disclaimer**”) dated July 29, 2020 on Le Carrefour Laval (2013) Inc. (“**Laval**”) pursuant to Section 65.2 of the Act.
10. On August 31, 2020, Laval filed an application (the “**Disclaimer Objection Application**”) with the Court seeking an order, *inter alia*:
 - a. Declaring that the leases between Laval and Olympus dated June 11, 2015 and March 3, 2015 (the “**Leases**”) shall not be disclaimed or resiliated pursuant to section 65.2 of the *Bankruptcy and Insolvency Act*;
 - b. Setting aside the Notice by Debtor Company to Disclaim or Resiliate an Agreement dated July 29, 2020 served by Olympus on Laval on July 30, 2020; and
 - c. Prohibiting and enjoining Olympus and the Proposal Trustee from taking further action to terminate or disclaim the Leases, except upon the consent of the parties or upon Order of this Court.
11. In connection with the within application, the Proposal Trustee understands that Noli Tingzon will be filing a further affidavit, to be sworn on September 30, 2020 (the “**Tingzon September Affidavit**”).

12. The contemplated objective of these proceedings is for Olympus to formulate a proposal that would be funded, in part, by a related party, Hi-Flyer Food (Canada) Inc. (“**Hi-Flyer**”) through its payment of professional fees of Olympus’ counsel and a limited guarantee of the professional fees of the Proposal Trustee, thereby providing a greater recovery to the creditors of Olympus than would be available in a bankruptcy while permitting Hi-Flyer to amalgamate with Olympus in order to benefit from Olympus’s tax losses.
13. The purpose of this fourth report (the “**Fourth Report**”) is to provide an update to the Court with respect to the following:
 - a. Discussions between the Company, the Proposal Trustee and Cadillac Fairview in its capacity as agent to Les Galeries d’Anjou Leaseholds Inc. (“**d’Anjou**”), Ontrea Inc. (“**Ontrea**”) and Laval, which represents a material creditor who will hold a significant voting position and may control the Company’s ability to put forward a successful proposal;
 - b. Results of actual cash flows during the period August 16 to September 26, 2020 versus those forecast by the Company;
 - c. The Company’s revised cash flow forecast for the period September 27, 2020 to October 31, 2020;
 - d. The Company’s continued restructuring activities; and
 - e. The Company’s request for a further extension of the time required to file a proposal and a corresponding extension of the stay of proceedings (the “**Stay**”) through to October 30, 2020 and the Proposal Trustee’s recommendation with respect thereto.

TERMS OF REFERENCE

14. In preparing this Fourth Report, the Proposal Trustee has been provided with, and has relied upon unaudited financial information, certain books and records of Olympus and discussions with management (“**Management**”) (collectively the “**Information**”).

15. Except as described in this Fourth Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“GAAS”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of such information.
16. Some of the Information referred to in this Fourth Report consists of forecasts and projections. An examination or review of any financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
17. All monetary amounts noted herein are expressed in Canadian dollars.
18. Capitalized words or terms not defined herein are as defined in the Receiver’s First through Third Reports or the Claims Solicitation Process Order.

COMPANY BACKGROUND

19. Olympus is a private company which is owned and controlled by Trenova Holdings S.A.R.L., a non-resident of Canada. Olympus was incorporated in British Columbia; however, its head office is located in Calgary, Alberta. The Company owned and operated a number of Kentucky Fried Chicken franchise restaurants in Quebec, the majority of which were sold to FMI Atlantic Inc (“FMI”) in 2019. Remaining unsold locations ceased operating prior to December 31, 2019, such that there were no ongoing operations as of the Filing Date.
20. Olympus no longer has any employees; however, it continues to be managed from Calgary, Alberta by Hi-Flyer under the direction of Olympus’ board of directors.

CADILLAC FAIRVIEW CORPORATION LIMITED

21. In addition to correspondence pertaining to various lease disclaimers, including but not limited to the disclaimer pertaining to Laval which is subject to the Disclaimer Objection Application, each of the Proposal Trustee and the Company have had recent discussions with Cadillac Fairview Corporation Limited (“CF”) through their respective legal representatives.

22. Claims were originally submitted by d'Anjou, Ontrea and Laval in the Claims Solicitation Process, as set out below:
- a. Ontrea submitted a proof of claim in the amount of \$1,389,460.22, with \$122,320.62 of this amount subject to a claim to priority;
 - b. d'Anjou submitted a proof of claim in the amount of \$1,252,582.42 with \$109,020.60 of this amount subject to a claim to priority; and
 - c. L'Aval submitted a proof of claim in the amount of \$1,501,058.73, without any claim to priority.
23. Notwithstanding these proofs of claim, the Proposal Trustee expects that CF will submit revised or amended proofs of claim based on successful mitigation efforts in relation to the claims by d'Anjou and Ontrea. If the Disclaimer Objection Application is settled or resolved by the Court in favour of Olympus, the Proposal Trustee expects the amount of Laval's claim to be determined by the formula under S.65.2(4) of the Act. Notwithstanding the foregoing, CF will remain a material creditor who, in aggregate, will hold a significant voting position with regard to any proposal put forward by Olympus.
24. In its discussions with both Olympus and CF, the Proposal Trustee has highlighted that, in its view, the potential viability of a proposal will ultimately be determined by Olympus's ability to enter into a business agreement whereby CF will receive a dividend greater than what it would be expected to receive in a bankruptcy and of a quantum which is acceptable to CF, among other creditors.
25. The Proposal Trustee understands that legal counsel to Olympus and CF are currently in discussions pertaining to a potential resolution, which may avoid the necessity of litigating the Disclaimer Opposition Application.
26. The Proposal Trustee further understands from Management that while it believes that its legal position is strong, in the event that the Disclaimer Opposition Application requires prolonged litigation, Hi-Flyer will likely withdraw both its funding of Olympus' legal fees, together with its contemplated purchase of the Olympus tax losses which would be expected to result in a bankruptcy of Olympus.

27. The Proposal Trustee anticipates filing a short further report in advance of the Disclaimer Opposition Application in the event that a negotiated settlement is not reached between Olympus and CF and in the further event that Olympus does not assign itself into, or is not otherwise deemed to be bankrupt prior to such application.

UPDATE ON POTENTIAL CRA PRIORITY AMOUNTS

28. As described in the Tingzon September Affidavit, the Proposal Trustee understood that the Company's payroll account with Canada Revenue Agency illustrated an amount outstanding of approximately \$11,445 that may have constituted a priority charge in the proposal proceedings.
29. However, upon Olympus reviewing its books and records, Management advises that this amount outstanding would be offset by an over-remittance made by Hi-Flyer pursuant to an employee who was working for both Hi-Flyer and Olympus.
30. Hi-Flyer requested a transfer of the over-remittance 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.
31. The Proposal Trustee has spoken with a CRA representative and has confirmed that this transfer has taken place. The Proposal Trustee has sent correspondence to confirm that CRA will not require a confirming payroll trust audit and that the Company can proceed on the basis that no priority amounts are outstanding to CRA.

FINANCIAL PERFORMANCE

32. In connection with Olympus' previous application for an extension of the time to file a proposal, the Company provided an updated cash flow forecast for the period August 16, 2020 through to October 17, 2020 (the "**Third Report Forecast**"), which was attached to the Third Report.
33. A variance analysis of the Company's actual receipts and disbursements from August 16, 2020 to September 26, 2020 versus the corresponding period in the Third Report Forecast is set out in the following table:

Olympus Food (Canada) Inc.			
Forecast to Actual Analysis			
For the period of August 16, 2020 - September 26, 2020			
	<u>Actual</u>	<u>Forecast</u>	<u>Variance</u>
Receipts			
Accounts receivable	\$ 19,461	\$ -	\$ 19,461
Insurance	37,162	37,162	-
Other	10,575	-	10,575
Disbursements			
Bank fees	-	(150)	150
Professional fees	3,705	(75,713)	79,417
Other	(1,364)	-	(1,364)
Net cash flow	69,539	(38,701)	108,240
Opening cash	185,862	185,862	
Closing cash	<u>\$ 255,401</u>	<u>\$ 147,161</u>	<u>\$ 108,240</u>

34. Olympus experienced an increase of cash of approximately \$69,539 over the period versus a forecast decrease of approximately \$38,701, for a positive variance of approximately \$108,240, with the difference comprised substantially of the following components:
- a. Olympus continued to experience unanticipated receipts of ongoing revenues from stores that have been sold to FMI, reducing the amount receivable from FMI by a further approximate \$19,461 during the referenced forecast period;
 - b. Other receipts relates substantially to the receipt of a GST refund from Canada Revenue Agency;
 - c. The deferral of payment of professional fees which is expected to reverse, with professional fees of the Proposal Trustee and its legal counsel proposed to be paid during the Fourth Report Forecast as defined and discussed below, noting that the professional fees of legal counsel to the Company are currently contemplated to be paid by Hi-Flyer in the event of a successful proposal as described in the September Tingzon Affidavit; and

d. Management advises that the negative bank fees arose from a service charge refund provided by the Company's financial institution due to a historical error on the fee rate dating back to July 2019.

35. The Company maintained an approximate cash balance of \$255,401 as at September 29, 2020.

CASH FLOW FORECAST

36. Management has prepared a further updated cash flow forecast for the period September 27, 2020 through to October 31, 2020 (the "Fourth Report Forecast") which is attached as Appendix "A" to this Fourth Report.

37. A summary of the Fourth Report Forecast is set out in the table below

Olympus Food (Canada) Inc.	
Cash flow forecast	
For the period September 27 - October 31, 2020	
	Forecast
Receipts	
Accounts receivable	\$ -
Insurance	-
	<hr/>
	-
Disbursements	
Bank fees	(300)
Professional fees	(95,000)
	<hr/>
	(95,300)
Net Cash Flow	(95,300)
Opening cash	255,401
Closing cash	<hr/> <hr/>
	\$ 160,101

38. The Fourth Report Forecast reflects negative cash flow of \$95,300 over the forecast period, leaving an estimated forecast cash balance of \$160,101 at October 31, 2020.

39. The Fourth Report Forecast does not include any forecast receipts derived from settlements of outstanding accounts receivable (if any) given the uncertainty with respect to the amounts and timing of any such settlements.

40. The Fourth Report Forecast also does not include forecast receipts generated through continued collections from stores that have been sold to FMI as the Company assumes that FMI will soon update the banking information associated with store payment authorizations, rather than paying the receivable owed by FMI to Olympus through its failure to do so.
41. Disbursements forecast over the period include substantially the payment of forecast professional fees of approximately \$95,000 to the Proposal Trustee and legal counsel to the Proposal Trustee for both incurred but unpaid professional fees, together with forecast professional fees for the Fourth Report Forecast. As outlined in the Tingzon September Affidavit, professional fees of Olympus' legal counsel are contemplated to be paid by Hi-Flyer.
42. The Proposal Trustee is satisfied that the Fourth Report Forecast is reasonable in the circumstances, with the material forecast disbursement being professional fees, the quantum of which is significantly dependent on the resolution, if any, of the matters with Cadillac Fairview as described herein.

RESTRUCTURING EFFORTS

43. The Proposal Trustee is satisfied that Management has been acting with due diligence and in good faith towards ultimately presenting a proposal to the Company's creditors. Subsequent to the date of the Third Report, Management has:
 - a. Attempted to communicate, through legal counsel, and directly with Cadillac Fairview;
 - b. Reviewed with its legal counsel the impact of the Disclaimer Objection Application;
 - c. Reviewed and evaluated the costs incurred to date in determining whether to proceed with the within proposal proceedings, together with the risks of an unsuccessful proceeding, together with Hi-Flyer who is funding the substantial portion of the professional fees;
 - d. Continued to investigate a potential transaction with Hi-Flyer whereby Hi-Flyer would obtain the benefit of Olympus's tax losses; and

- e. Continued to work with the Proposal Trustee on the formulation of a proposal.

RECOMMENDATION

- 44. The Proposal Trustee is of the view that a further extension of the Stay to October 30, 2020 is warranted to allow the Company the opportunity to formulate and file a proposal to its creditors, noting that this will be the final extension for which the Company will be eligible prior to having to file a proposal pursuant to Section 50.4(9) of the Act.
- 45. The Proposal Trustee is satisfied that:
 - a. Management continues to act in good faith and with due diligence with a view towards presenting a proposal to its creditors; and
 - b. No creditor would be materially prejudiced if an extension is granted.

All of which is respectfully submitted this 30th day of September 2020.

BDO Canada Limited

in its capacity as the Proposal Trustee of Olympus Food (Canada) Inc.
and not in its personal capacity

Per:



Kevin Meyler
Senior Vice President

APPENDIX A

OLYMPUS FOOD (CANADA) INC.
WEEKLY PROJECTED CASH FLOW

PROJECTED	Notes	Projected					Projected
		1	2	3	4	5	
		Sept 27 - Oct 3	Oct 4 - 10	Oct 11 - 17	Oct 18 - 24	Oct 25 - 31	Total
Beginning cash		255,401.28	255,251.28	205,251.28	205,251.28	205,251.28	255,401.28
Receipts	1						
Accounts receivable	2						-
Disbursements	3						-
Professional Fees			(50,000.00)				(45,000.00)
Bank service charges			(150.00)				(150.00)
Ending cash		255,251.28	205,251.28	205,251.28	205,251.28	160,101.28	160,101.28

Assumptions:

- All stores are closed. Olympus has not had any operating stores since December 30, 2019, and all employees have been terminated. Therefore, there is no revenue being generated, there are no operating expenses, and remaining lease payments related to closed locations are reflected in the creditor list. Certain management employees are employed by a related entity, Hi-Flyer Food Canada Inc. ("Hi-Flyer"), and the amounts of these individuals salaries are funded by Hi-Flyer.
- Olympus's records have accounts receivable of \$122,790 as of September 15, 2020. This projection does not include future collections as we are uncertain on the timing and/or probability of collection.
- With all locations closed, the only ongoing expenses are bank fees and professional costs related to the restructuring process. The professional fees included herein pertain to the forecast costs of the proposal trustee and its legal counsel as Hi Flyer has agreed to fund the legal costs of Olympus' counsel as it works towards putting forth a proposal to its creditors.

Olympus Food (Canada) Inc.

Per:

29-Sep-20