

Court File No.

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

B E T W E E N:

DINA LEIDER

Applicant

- and -

**733907 ONTARIO LTD. o/a EUROPEAN QUALITY MEATS AND SAUSAGES and
1265849 ONTARIO INC.**

NOTICE OF APPLICATION

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The Claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Friday, October 10, 2014, at 10:00 a.m., at 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date October 6, 2014

Issued by _____
Local Registrar

Address of 330 University Avenue, 7th Floor
court office: Toronto, ON M5G 1R7

TO: Attached service list

APPLICATION

1. Dina Leider (the “**Applicant**”) make an application for an order (the “**Order**”), among other things:

- (a) If necessary, abridging the time for service and filing of this notice of application and the application record and dispensing with service thereof on any interested party other than those served with these proceedings;
- (b) Lifting the stay of proceedings that was imposed pursuant to sections 69(1) and 69.1 of the BIA in the administratively consolidated proceedings bearing Court No./Estate No.: 32-1869233, 32-1869238 and 32-1869237 in Division No.: 09-Mississauga (the “**Proposal Proceedings**”) with respect to 733907 Ontario Ltd. o/a European Quality Meats & Sausages (“**European**”) and 1258659 Ontario Inc. (“**HoldCo**”, together with European the “**Receivership Debtors**”) is lifted for the purpose of Dina Leider making an application to appoint a limited receiver over specific assets of the Receivership Debtors, as defined in paragraph 1(c), below;
- (c) Terminating the period for making a proposal as it relates to European, pursuant to section 50.4(11)(b) and (c) of the BIA;
- (d) Appointing BDO Canada Limited (“**BDO**”) as receiver (in such capacity, the “**Disbursement Receiver**”), without security, over the following limited assets:

- (i) the proceeds of sale (“**Sale Proceeds**”) received following the closing of the sale transaction contemplated pursuant to the sale agreement between the Receivership Debtors and Leider Properties Inc. (collectively, the “**Companies**”), as vendors, and 2427400 Ontario Inc. (the “**Purchaser**”), as purchaser, dated August 26, 2014 (“**Sale Agreement**”) approved by this Honourable Court by order of Justice Pattillo, dated August 29, 2014 (the “**Approval and Vesting Order**”);
 - (ii) the cash receipts (“**European Cash Receipts**” and together with the Sale Proceeds, the “**Estate Proceeds**”) of European, comprising:
 - (1) All cash on hand or cash in any account maintained by European as at October 10, 2014;
 - (2) All cash generated from the collection of any or all Post-Closing Receivables (defined below), provided that such collection is completed on or before January 31, 2015; and
 - (3) Any Harmonized Sales Tax or other tax refunds due or owing to European received by European (including by its agents or trustee in bankruptcy) on or before January 31, 2015.
 - (e) Such further and other Relief as to this Honourable Court may seem just.
2. The grounds for the application are:
- (a) Each of the Receivership Debtors is a corporation incorporated pursuant to the laws of the Province of Ontario;

- (b) The Receivership Debtors have significant creditors, including:
- (i) the Bank of Montreal (“**BMO**”), for credit facilities in the amount of approximately \$3,300,000.00;
 - (ii) Harbour First Mortgage Fund GP Inc. (“**Harbour**”) for mortgage funding totalling \$3.750 million to HoldCo;
 - (iii) Morris Leider, the principal of the Receivership Debtors, and others individuals and corporations related to him including the Applicant, Sandra Leider, 484688 Ontario Ltd., and 1318792 Ontario Ltd. (the “**Leider Family**”) in the amount of approximately \$3.56 million; and
 - (iv) trade and other unsecured creditors of European who are owed approximately \$3.369 million.
- (c) The Applicant hold security over the Receivership Debtors in the form of a DIP charge (the “**Security**”), pursuant to the Order of Justice Pattillo dated August 29, 2014 (the “**Non-Vesting Order**”). The Non-Vesting Order authorized the Companies to borrow under a credit facility from the Applicant and Morris Leider, not to exceed \$1,000,000. This credit facility was secured by a charge subordinate to BMO, Harbour, an Administration Charge (as defined in the Non-Vesting Order) and charges held by the Leider Family.

The Decision to File the NOI and the Appointment of the Proposal Trustee

- (d) On April 11, 2014, the Companies filed the NOIs and commenced proposal proceedings.
- (e) By the Order of Justice M. Penny, dated May 6, 2014 (the “**Initial Order**”), BDO was appointed as Proposal Trustee and the Court approved a Sales Process in order to explore the possibilities of sales of their respective assets and interests as a going concern, and also to include a request for proposals from liquidators.
- (f) The Sales Process, which was approved in the Initial Order, was originally expected to run until the end of August, 2014.
- (g) Since the filing of the NOIs, the Companies sought, and obtained, four extensions of the time to file a proposal from May 12, 2014 up to and including October 10, 2014.

Approval of the Sale Agreement

- (h) The Companies, with the assistance of the Proposal Trustee, negotiated final terms of sale with the Purchaser, as set out in the Sale Agreement, which was executed on August 22, 2014. The Sale Agreement was approved by this Court in the Approval and Vesting Order.
- (i) On September 26, 2014, the sale successfully closed and substantially all of the Companies’ assets, except for the Brampton Real Property, certain business assets including equipment and accounts receivable relating to

the business conducted at the Etobicoke Real Property and the Etobicoke Real Property, were sold.

- (j) On or about September 26, 2014, European ceased carrying on business.

Appointment of the Receiver

- (k) The Sale Proceeds and European Cash Receipts (the “**Estate Proceeds**”) are sufficient to satisfy BMO’s security, but are not sufficient to satisfy the debts of all of the remaining secured creditors.
- (l) The Applicant has, at all times, acted in good faith towards the Receivership Debtors;
- (m) It is reasonable and prudent for the Applicant to begin the enforcement of her security in an effort to recover her outstanding loans to the Receivership Debtors and it is within the Applicants’ rights to do so under the Security;
- (n) The Companies are in negotiations with Harbour with respect to the formation of a forbearance agreement related to its security over the Receivership Debtors, and Harbour does not oppose the appointment of BDO as Disbursement Receiver.
- (o) Although Holdco and Leiderco intend to file proposals in the Proposal Proceedings, European does not and accordingly will be deemed to have made an assignment in bankruptcy on or before October 14, 2014.

- (p) The Disbursement Receiver is necessary for the protection of the Receivership Debtors' estates, the Applicant's interests, and the interests of other stakeholders and will allow for oversight over the Estate Proceeds and their distribution.
 - (q) The Leider Family consents to the appointment of BDO as Disbursement Receiver, and BDO has consented to act as Disbursement Receiver.
 - (r) such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Dina Leider, sworn October 6, 2014;
 - (b) the consent of BDO to act as Disbursement Receiver;
 - (c) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 6, 2014

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European Quality Meats & Sausages and
1268549 Ontario Inc.

DINA LEIDER
Applicant

and

733907 Ontario Ltd. o/a EUROPEAN QUALITY MEATS AND SAUSAGES et al.
Respondent

Court File No.

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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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