



Court File No. CV-08-7630-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR) ERI DAY, THE 11th DAY
)
JUSTICE MORAWETZ) OF JULY 2008

ROYAL BANK OF CANADA

Applicant

- and -

THE FISH MAN COMPANY LIMITED, 1669836 ONTARIO INC. o/a GREAT
NORTHERN SMOKEHOUSE AND FINE FOOD, and OCEANFRESH PACKAGING
INTERNATIONAL CORP.

Respondents

ORDER

THIS MOTION, made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA") appointing Grant Thornton Limited as Interim Receiver (in such capacity, the "Interim Receiver") without security, of all of the assets, undertakings and properties of The Fish Man Company Limited, 1669836 Ontario Inc. o/a Great Northern Smokehouse and Fine Food and Oceanfresh Packaging International Corp. (the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Fick sworn the 3rd day of July, 2008, the affidavit of Sia Mizrahi sworn the 3rd day of July, 2008, and the Exhibits thereto and on hearing the submissions of counsel for Royal Bank of Canada, and on reading the consent of Grant Thornton Limited to act as the Interim Receiver,

and on reading the letter of
Andrea Hubas, counsel for
Respondents, (S)

APPOINTMENT

1. THIS COURT ORDERS that pursuant to section 47(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

INTERIM RECEIVER'S POWERS

2. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) Monitor and control the receipts and monitor, control and approve the disbursements arising out of or from the Property;
- (b) Report to the Court at such times and intervals as the Interim Receiver may deem appropriate with respect to matters relating to the Property, the business of the Debtors, and such other matters as may be relevant to the proceedings herein;
- (c) the taking of physical inventories (including third party owned, leased or financed property), review all inventory records, and monitor all future sales, leases and transfers of inventory in relation to the Property;
- (d) review all financial records, including without limitation, relating to sales, leases, transfers, purchases, inventories, intercompany transactions, and employees;
- (e) to take such steps on behalf of the Debtors as are necessary or desirable to protect and preserve the Property;

- (f) to safeguard the Property on behalf of the Debtors, including, without limiting the generality of the foregoing, engaging of independent security personnel;
- (g) to arrange on behalf of the Debtor for the placement of such insurance coverage as may be necessary or desirable in respect of the Property;
- (h) to examine the accounts payable, accounts receivable and payroll records of the Debtors, and to take such steps as in the opinion of the Interim Receiver are necessary or appropriate to review;
- (i) to have unrestricted access at all times to the Property and all books and records, including financial records, in respect of the Property or the business of the Debtors as may be deemed appropriate by the Interim Receiver wherever same may be located;
- (j) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (k) to report to, meet and discuss with the Applicant or any other secured creditor of one or more of the Debtors as the Interim Receiver deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems appropriate;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (m) to meet with and discuss with any Person with which any of the Debtors currently or previously have had any dealings, and to share information or

require the delivery of such documents as the Interim Receiver may require, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

- (n) to take immediate control of all bank accounts existing at any financial institution other than those held by the Applicant, whether or not such accounts have been established in the name of or for the benefit of any of the Respondents, in circumstances where the Interim Receiver is satisfied that all or some of the monies in such accounts form part of the Property
- (o) to consider and report to the court, if appropriate, on whether the role of the Interim Receiver should be expanded to include going into possession and control of the other assets, rights and undertaking of the Debtors not specifically referred to in this paragraph, including the rights and powers to manage, operate, sell, market, lease, transfer such rights and Property; and
- (p) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

3. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities as the Interim Receiver deems necessary and appropriate in its sole discretion (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

4. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

7. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

8. THIS COURT ORDERS that the Debtors are hereby restrained from selling, mortgaging, charging or further encumbering any of the Property, without written consent of the Interim Receiver or leave of this Court

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtors, or as may be ordered by this Court.

EMPLOYEES

12. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors. The Interim Receiver shall not, by virtue of this Order, be empowered to carry on the business of the Debtors, and shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall

exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

15. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

16. THIS COURT ORDERS the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

18. THIS COURT ORDERS that the Interim Receiver shall within 10 days of making this Order arrange to have a copy of this Order posted on its website, www.grantthornton.ca, and shall send notice of this Order with reference to this website to all Persons who have registered a financing statement against the Debtors under the PPSA.

19. THIS COURT ORDERS that the Interim Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mail.

20. THIS COURT ORDERS that the Interim Receiver, the Bank and any other party may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' e-mail address as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable.

GENERAL

21. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

23. 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 Interim Receiver and its 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

24. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

26. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

27. THIS COURT ORDERS that the Applicant, the Debtors and the Interim Receiver may serve any Court materials (including, without limitation, motion records, application records, facts and orders) in this proceeding on all represented parties by prepaid mail, courier, personal delivery, telecopier or electronic transmission (including, but not limited to, email a PDF copy of the materials) to any interested party at their addresses as last shown on the records of the Debtors and to counsels' email addresses as recorded on the service list and that any such service or notice shall be deemed to be received the day of forwarding or if sent by ordinary mail, on the second business day following the mailing.

28. THIS COURT HEREBY dispenses with the requirement to file a Factum in respect of this Application in accordance with Rule 38.09(4).

SERVICE

29. THIS COURT ORDERS that service of the Notice of Application and the Application Record is hereby dispensed with so that this application is properly returnable today.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 1 1 2008

PER/PAR: JSN Joanne Nicoara
Registrar, Superior Court of Justice

ROYAL BANK OF CANADA

- and -

THE FISH MAN COMPANY LIMITED, ET. AL.
Defendant(s)

Plaintiff(s)

Court File No. CV-08-7630-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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