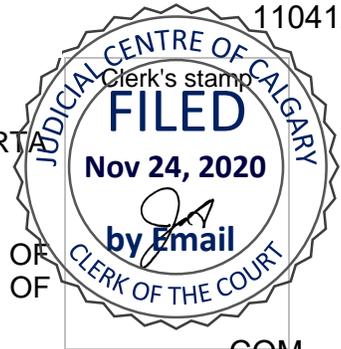


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COURT FILE NUMBER B201 642858
25-2642858
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PROCEEDINGS IN THE MATTER OF THE NOTICE OF
INTENTION TO FILE A PROPOSAL OF
OLYMPUS FOOD (CANADA) INC.



COM
Dec. 14 2020
Justice Macleod

APPLICANT BDO CANADA LIMITED in its capacity as
Proposal Trustee of Olympus Food (Canada)
Inc.

DOCUMENT **APPLICATION BY PROPOSAL TRUSTEE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Proposal Trustee
BDO Canada Limited
110, 5800 – 2nd Street SW
Calgary, AB T2H 0H2
Attn: Kevin Meyler
Email: kmeyler@bdo.ca
Tel: 403-536-8526
Fax: 403-640-0591

Proposal Trustee's Counsel
Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 CANADA

Attn: Howard A. Gorman, Q.C. / D. Aaron Stephenson
Email: howard.gorman@nortonrosefulbright.com
aaron.stephenson@nortonrosefulbright.com
Tel: 403-267-8222
Fax: 403-264-5973

NOTICE TO RESPONDENT: SERVICE LIST

This Application is made against you. You are a Respondent. You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: December 14, 2020
Time: 2:00 P.M.
Where: Calgary Courts Centre via Webex
Before Whom: The Honourable Justice A.D. Macleod, on the Commercial List

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

- 1 An Order substantially in the form attached hereto as Schedule A:
 - (a) Declaring service of this Application to be good and sufficient;
 - (b) Approving the proposal filed on behalf of Olympus Food (Canada) Inc. (**Proposal** and **Olympus**), which was accepted previously by the creditors of Olympus;
 - (c) Approving a sale of certain equipment of Olympus to Hi-Flyer Food (Canada) Inc. (**Hi-Flyer**); and
 - (d) Such further and other relief as counsel may advise and this Honourable Court may grant.

Grounds for making this application:

- 2 All capitalized terms not defined herein are defined in the Proposal.
- 3 Olympus owned and operated Kentucky Fried Chicken (**KFC**), KFC / Taco Bell and KFC / Pizza Hut franchise restaurants. However, Olympus was forced to sell or close all of its restaurants upon failing to fund a development plan under its franchise agreement. All restaurants were sold or closed prior to December 31, 2019.
- 4 On May 1, 2020, Olympus filed a Notice of Intention to Make a Proposal (**NOI**) under the *Bankruptcy and Insolvency Act* (**BIA**). BDO Canada Limited consented to act as trustee (**Proposal Trustee**) in the proceedings.
- 5 Orders extending the time for Olympus to file its Proposal were granted by the Court of Queen's Bench of Alberta (**Court**) on May 28, June 24, August 26 and October 6, 2020. The last of those orders extended the time for Olympus to file its Proposal to October 30, 2020.
- 6 On June 24, 2020, the Court granted an Order to establish, in part:

- (a) a process (**Claims Process**) for the solicitation of claims (**Claims**) by creditors (**Creditors**) of Olympus; and
 - (b) a claims bar date of July 31, 2020 (**Claims Bar Date**) pursuant to which Claims submitted thereafter would be barred.
- 7 Claims totalling approximately \$1,881,532 were accepted by the Proposal Trustee through the Claims Process, excluding a Claim by Hi-Flyer in the amount of \$11,491,408 that is unaffected under the Proposal. All accepted Claims were unsecured with the exception of one small secured Claim in the approximate amount of \$21.
- 8 The Proposal Trustee is not aware of any Applications by Creditors to contest the disallowance of Claims; however, as at the date of this Application, the deadline for Creditors to contest disallowances has not expired.
- 9 On October 14, 2020, the Court granted an Order approving a settlement agreement (**Settlement Agreement**) between Olympus and The Cadillac Fairview Corporation Limited (**CF**) as agent for three of Olympus' landlords or former landlords: Le Carrefour Laval (2013) Inc., Les Galeries D'Anjou Leaseholds Inc. and Ontrea Inc. CF agreed to support the Proposal subject to the terms of the Settlement Agreement. Among the Claims accepted in the Claims Process are the three represented by CF in the total approximate amount of \$910,103.
- 10 On October 29, 2020, Olympus filed its Proposal under Part III, Division I of the BIA. Minor amendments were made to the Proposal on November 3, 2020.
- 11 The Proposal contemplates, in part, that Hi-Flyer will backstop a Proposal Fund to ensure that a minimum of \$360,000 is available to distribute to Affected Creditors with Proven Claims. Affected Creditors with Proven Claims of \$1,500 or less are to be paid in full from the Proposal Fund and are therefore deemed to vote in favour of the Proposal. Affected Creditors with Proven Claims of more than \$1,500 will each be entitled to a distribution of \$1,500 plus a *pro rata* entitlement to the remainder of the Proposal Fund. All distributions are subject to the levy payable under s. 147 of the BIA.

- 12 A sale of certain equipment of Olympus to a related party, Hi-Flyer, is contemplated in the Proposal. Under the Proposal, Hi-Flyer's contribution to the funding of the Proposal Fund will include the resulting sale proceeds in the approximate amount of \$19,361.
- 13 Creditors' packages were mailed to Creditors during the first week of November 2020. Those packages included, among other things, the Proposal, the Proposal Trustee's Report to Creditors, and a notice of the meeting of Creditors (**Creditors' Meeting**).
- 14 The Creditors' Meeting proceeded as scheduled on November 19, 2020. All votes of Creditors were cast in advance through the submission of voting letters. The Proposal was supported unanimously by twenty-six (26) Affected Creditors with Proven Claims totalling approximately \$1,773,388 (including seventeen (17) Affected Creditors with Proven Claims of \$1,500 or less each of whom will be paid in full and are therefore deemed to vote in favour of the Proposal).
- 15 The unanimous support at the Creditors' Meeting more than satisfied the level of creditor support required under s. 54(2) of the BIA: a majority in number and two thirds in value of creditors voting in person or by proxy.
- 16 The Proposal should now be approved by the Court. The Proposal Trustee is of the view that Olympus has acted in good faith and with due diligence throughout these proceedings. The terms of the Proposal are fair and reasonable, and the Proposal will benefit the general body of Creditors by providing a recovery greater than would be achieved in a bankruptcy scenario.
- 17 The Proposal Trustee is of the view that all statutory requirements have been complied with. In particular, the Proposal Trustee is of the view that Olympus has not committed any of the offences listed in ss. 198-200 of the BIA. Nor are any of the facts listed in s. 173 of the BIA applicable to Olympus.

Material or evidence to be relied on:

- 18 Report of Trustee on the Proposal.

Applicable rules:

- 19 *Rules of Court*, Alta Reg 124/2010, including Part 6 thereof.

Applicable Acts and regulations:

20 BIA, including ss. 54, 58, 59, 65.13, 173 and 198-200 thereof.

Any irregularity complained of or objection relied on:

21 None.

How the application is proposed to be heard or considered:

22 Before the Honourable Justice A.D. Macleod on the Commercial List, by Webex.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBER 25-2642858
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PROCEEDINGS IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

Clerk's stamp

APPLICANT BDO CANADA LIMITED in its capacity as Proposal Trustee of Olympus Food (Canada) Inc.

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Proposal Trustee
BDO Canada Limited
110, 5800 – 2nd Street SW
Calgary, AB T2H 0H2

Attn: Kevin Meyler
Email: kmeyler@bdo.ca
Tel: 403-536-8526
Fax: 403-640-0591

Proposal Trustee's Counsel
Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 CANADA

Attn: Howard A. Gorman, Q.C. / D. Aaron Stephenson
Email: howard.gorman@nortonrosefulbright.com
aaron.stephenson@nortonrosefulbright.com
Tel: 403-267-8222
Fax: 403-264-5973

DATE ON WHICH ORDER WAS PRONOUNCED: December 14, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Macleod J.

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of BDO Canada Limited in its capacity as Proposal Trustee of Olympus Food (Canada) Inc. (**Olympus**); AND UPON Olympus' filing of a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (**BIA**) on May 1, 2020; AND UPON

the filing of a proposal by Olympus on October 29, 2020, as amended thereafter on November 3, 2020 (**Proposal**); AND UPON the unanimous acceptance of the Proposal by the voting creditors of Olympus at a creditors' meeting on November 19, 2020;

IT IS HEREBY ORDERED AND DIRECTED THAT:

- 1 Service of the Proposal Trustee's application for this order and all supporting materials is hereby declared to be good and sufficient.
- 2 The Proposal, as attached hereto as Schedule A, is hereby approved.
- 3 Without limiting the generality of paragraph 2 above, the sale of equipment by Olympus to Hi-Flyer Food (Canada) Inc. (**Hi-Flyer**) as contemplated in section 2.4 of the Proposal is hereby approved.
- 4 Olympus, the Proposal Trustee and Hi-Flyer are each hereby authorized and directed to take all steps and actions necessary or appropriate to implement the Proposal and the transactions contemplated thereby in accordance with the Proposal's terms, and all such steps and actions are hereby approved.
- 5 This order shall have full force and effect in all provinces and territories in Canada.
- 6 This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body, in Canada or elsewhere, to give effect to this order and to assist in the carrying out of its terms. All courts, tribunals, and regulatory and administrative bodies are hereby requested to make such orders of their own and to otherwise provide such assistance as may be reasonably necessary or desirable to give effect to this order.
- 7 Service of this order may be effected by posting it to the Proposal Trustee's website and by emailing it to counsel for such parties as attended at the hearing of the Proposal Trustee's application for this order.

Justice of the Court of Queen's Bench of Alberta