COURT OF APPEAL FOR ONTARIO

BETWEEN:

8527504 CANADA INC.

Applicant (Respondent)

and

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER Section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, and Section 101 of the Courts of Justice Act, R.S.O. 1990, c.C.43

Court File No. CV-14-10543-00CL Court of Appeal file No. M44533

COURT OF APPEAL FOR ONTARIO

BETWEEN:

8527504 CANADA INC.

Applicant (Respondent)

and

LIQUIBRANDS INC.

Respondent (Moving Party)

APPLICATION UNDER Section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, and Section 101 of the Courts of Justice Act, R.S.O. 1990, c.C.43

MOTION RECORD OF THE RESPONDENT/
MOVING PARTY CREDITOR, LIQUIBRANDS INC.
(Motion for Leave to Appeal)

February 17, 2015

WIRES JOLLEY LLP

Barristers and Solicitors 90 Adelaide Street West Suite 200 Toronto, Ontario M5H 3V9

David E. Wires (LSUC# 18017P)

dewires@wiresjolleyllp.com Email:

(416) 366-4006 Tel:

Krista Bulmer (LSUC# 52198H)

kbulmer@wiresjolleyllp.com

(416) 366-6516 Tel:

(416) 366-0000 Tel:

(416) 366-0002 Fax:

Lawyers for the respondent/ moving party creditor, Liqubrands Inc.

TO:

CHAITONS LLP

Barristers and Solicitors 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSUC# 21592F)

harvey@chaitons.com Email: (416) 218-1129 Tel:

(416) 218-1849 Fax:

Fax:

Sam Rappos (LSUC# 51399S)

samr@chaitons.com Email: (416) 218-1137 Tel: (416) 218-1837

(416) 222-8888 Tel:

(416) 222-8402 Fax:

Lawyers for the applicant

TO: LIPMAN, ZENER & WAXMAN LLP

Barristers and Solicitors 1220 Eglinton Avenue West Toronto, Ontario M6C 2E3

Jason D. Spetter Email: jspetter@lzwlaw.com

Anthony J. O'Brien Email: tobrien@lzwlaw.com

Tel: (416) 789-0652 Fax: (416) 789-9015

Lawyers for the receiver, BDO

COURT OF APPEAL FOR ONTARIO

BETWEEN:

8527504 CANADA INC.

Applicant (Respondent)

and

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER Section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, and Section 101 of the Courts of Justice Act, R.S.O. 1990, c.C.43

Court File No. CV-14-10543-00CL Court of Appeal file No. M44533

COURT OF APPEAL FOR ONTARIO

BETWEEN:

8527504 CANADA INC.

Applicant (Respondent)

and

LIQUIBRANDS INC.

Respondent (Moving Party)

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

INDEX

Tab	Document	Page(s)
1	Order of Justice Cronk to have the motions heard/read together dated January 12, 2015	1-3
2	Notice of Motion (Court of Appeal File No. M44532)	4-21
3	Notice of Motion (Court of Appeal File No. M44533)	22-37
4	Endorsement of Newbould, J. dated December 4, 2014	38-47
5	Order of Newbould, J. dated December 4, 2014, re motion to lift stay (Liquibrands' order)	48-50
6	Order of Newbould, J. dated December 4, 2014, re Receiver's distribution order (BDO's order)	51-55
7	Order of Newbould, J. dated December 4, 2014, re receivership of Liquibrands Inc. (8527504's order)	56-73
8	Email from S. Rappos to K. Bulmer dated November 25, 2014 and supplementary factum of 8527504 Canada Inc.	74-84
9	Affidavit of Csaba Reider sworn April 3, 2014 ("Reider Affidavit")	85-101
9A	Exhibit A – Resume of Csaba Reider	102-105
9B	Exhibit B – Promissory note from Sun Pac to Liquibrands dated May $1,2012$	106-108
9C	Exhibit C – General Security Agreement between Sun Pac to Liquibrands dated May $1,2012$	109-131
9D	Exhibit D – Letter Agreement between Sun Pac and Bridging dated October 1, 2012	132-151
9E	Exhibit E – Amended and Restated Letter Agreement between Sun Pac and Bridging dated January 17, 2013	152-169
9F	Exhibit F – General Security Agreement between Sun Pac and Bridging dated October 1, 2012	170-187
9G	Exhibit G – Agreement between Sun Pac and Loblaws dated September 18, 2014	188-217

Tab	Document	Page(s)
9H	Exhibit H - Financing Presentation prepared in October, 2013	218-239
91	Exhibit I – Letter from P. Taylor to C. Reider dated September 5, 2013	240-242
9Ј	Exhibit J – Forbearance and Amending Agreement among Sun Pac, Liquibrands and 8527504 dated September 11, 2013	243-261
9K	Exhibit K – Letter of Intent from Furlani's and Sun Pac dated September 6, 2013	262-264
9L	Exhibit L – Financial Due Diligence Engagement Letter from Sun Pac to BDO dated September 5, 2013	265-274
9M	Exhibit M – Financial Due Diligence Report dated September 25, 2013	275-290
9N	Exhibit N – Letter from P. Taylor to C. Reider dated October 10, 2013	291-292
90	Exhibit O – Email from C. Reider to P. Taylor dated October 15, 2013	293-298
9P	Exhibit P – Statement of Claim in action No. CV-13-00492612-0000	299-311
9Q	Exhibit Q – Order of Justice Mesbur dated November 12, 2013	312-327
10	Excerpt of cross-examination transcript of N. Sharpe dated June 9, 2014, P.168, Q.824 – P.170, Q.836	328-330
11	Exhibit 37 to N. Sharpe's cross-examination, assignment of contracts as of May 23, 2013 between Bridging Capital and 8527504 Canada Inc.	331-333
12	Excerpt of cross-examination transcript of C. Reider dated July 17, 2014, P.126, Q.510	334
13	Rule 39 transcript of J. Coco dated May 22, 2014, P.43, Q.213-215	335
14	Excerpt of cross-examination transcript of N. Sharpe dated June 9, 2014, P.138-140, Q.660-671	336-338
15	Excerpt of cross-examination transcript of C. Reider dated July 17, 2014, P.111, Q.435-436	339

Tab	Document	Page(s)
16	Liquibrands motion dated April 28, 2014	340-356
17	Notice of Application issued May 5, 2014	357-366
18	Affidavit of N. Sharpe sworn May 13, 2014 ("Sharpe Motion Affidavit")	367-385
18A	Exhibit A – Subordination, Assignment, Postponement and Standstill Agreement dated October 1, 2012	386-388
18B	Exhibit B – Email from N. Sharpe to C. Reider dated September 4, 2013	389-392
18C	Exhibit C – Email from J. Shone to N. Sharpe dated September 5, 2013	393-397
18D	Exhibit D – Confidential Information Memorandum dated September, 2013	398-420
18E	Exhibit E – Sun Pac's List of Potential Equity Investors	421-422
18F	Exhibit F – Sun Pac 2012 Financials Spreadsheet	423-426
18 G	Exhibit G – Sun Pac Profit and Loss Statement	427-430
18H	Exhibit H – Emails from J. Shone and L. Kofman dated October 2, 2013	431-433
18I	Exhibit I – Email from L. Kofman to G. Rombough dated October 1, 2013	434-439
18J	Exhibit J – Email from J. Shone to N. Sharpe dated August 9, 2012	440-441
18K	Exhibit K – Email from J. Sovran to L. Kofman dated September 30, 2013	442-443
18L	Exhibit L – Email from G. Rombough to L. Kofman dated October 1, 2013	444-450
18M	Exhibit M – Email from J. Shone to L. Kofman dated October 10, 2013	451-453
18N	Exhibit N – Email from L. Kofman to N. Sharpe dated October 31, 2013	454-455

Tab	Document	Page(s)
18O	Exhibit O – Endorsement of Justice Mesbur dated November 12, 2013	456-458
19	Affidavit of N. Sharpe sworn April 11, 2014 ("Sharpe Application Affidavit")	459-468
19A	Exhibit A – Corporation Profile Report for Liquibrands Inc.	469-473
19B	Exhibit B – Officer's Certificate of C. Reider dated October 1, 2012	474-477
19C	Exhibit C – Amended and Restated Loan Agreement dated January 18, 2013	478-496
19D	Exhibit D – Guarantee and Postponement Agreement dated October 1, 2012	497-506
19E	Exhibit E - General Security Agreement dated October 1, 2012	507-525
19F	Exhibit F – Demand Letter and NITES dated September 5, 2013 re Sun Pac Foods	526-529
19G	Exhibit G – Forbearance and Amending Agreement dated September 11, 2013	530-545
19H	Exhibit H – Consents signed by Liquibrands Inc.	546-550
19I	Exhibit I – Letter from P. Taylor to C. Reider dated October 10, 2013	551-553
19J	Exhibit J – Email exchange between H. Chaiton and J. Grout dated November 11, 2013	554-556
19K	Exhibit K – PPSA Certificate current as of February 10, 2014 re Liquibrands Inc.	557-563
19L	Exhibit L – Receivership order of Justice Mesbur dated November 12, 2013 re Sun Pac Foods	564-580
19M	Exhibit M – Statement of Claim of Liquibrands Inc. and Sun Pac Foods	581-594
19N	Exhibit N $-$ Demand Letter and NITES dated April 7, 2014 re Liquibrands Inc.	595-598
190	Exhibit O – Consent of BDO Canada Limited	599-601