



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:** CV-24-00720526-00CL

**DATE:** 19 August 2024

**NO. ON LIST:** 11

**TITLE OF PROCEEDING:** FARM CREDIT CANADA v. GLOBAL FOOD AND INGREDIENTS INC. et al

**BEFORE:** JUSTICE STEELE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
No one appeared	Farm Credit Canada	n/a

**For Defendants, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Meena Alnajar	FTI Consulting Canada Inc. (Receiver of Farm Credit Canada)	<a href="mailto:malnajar@mccarthy.ca">malnajar@mccarthy.ca</a>
Sanee Tanvir		<a href="mailto:stanvir@mccarthy.ca">stanvir@mccarthy.ca</a>
Alexandra Teodorescu	Richter LLP (Receiver of Siena Lending Group Canada LLC)	<a href="mailto:ateodorescu@blaney.com">ateodorescu@blaney.com</a>
No one appeared	35 Oak Holdings Ltd.	n/a

**ENDORSEMENT OF JUSTICE STEELE:**

- [1] FTI Consulting Canada Inc., the Receiver over the FCC Secured Property of Global Food and Ingredients and GFI Brands Inc. (the “Debtors”), brings a motion for, among other things, the approval of a Sale and Investment Solicitation Process in respect of the FCC Secured Property, and a Key Consultant Retention Plan and related charge.

- [2] No one opposes the relief sought on the motion.
- [3] Counsel for the receiver of the other senior secured creditor, Siena Lending Group Canada LLC, was also present at the motion.

*Should the SISP be approved?*

- [4] The test for the Court to consider when asked to approve a SISP is set out in *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at para. 6:
- a. The fairness, transparency and integrity of the proposed process;
  - b. The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
  - c. Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

- [5] The fairness, transparency and integrity of the proposed SISP is outlined at paras. 28-35 of the Receiver's factum.

- [6] I am satisfied that the two-phase process designed by the Receiver with the expert assistance of the Sales Agent is appropriate and should be approved. The proposed process is typical for sales processes in restructuring proceedings. The first phase of the process allows the Receiver and Sale Agent to quickly determine market interest. The second phase is more focused on due diligence and negotiations with the parties that have the most likely potential to complete a transaction. The Receiver is of the view that the proposed timelines are an appropriate balance between timeliness and providing enough time to achieve market exposure for the FCC Secured Property. The Receiver is entitled to deference in respect of its proposed sale process: *Bank of Montreal v. Dedicated National Pharmacies Inc.*, 2011 ONCS 4634, at para. 43.

*Should the KCRP and KCRP Charge be approved?*

- [7] As noted by the Honourable Chief Justice Morawetz, the Court has jurisdiction to approve a key employee retention plan within receivership proceedings: *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347, at paras. 13-14.
- [8] I agree with the Receiver's submission that while the key consultants in this case are not employees, but are consultants, the same considerations as would apply for the determination of whether a KERP is appropriate should be applied in this case. The considerations for determining whether a KERP is appropriate were set out in *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 at para. 29:

- a. Whether the Monitor supports the KERP agreement and charge (to which great weight was attributed);

- b. Whether the employees to which the KERP applies would consider other employment options if the KERP agreement were not secured by the KERP charge;
- c. Whether the continued employment of the employees to which the KERP applies is important for the stability of the business and to enhance the effectiveness of the marketing process;
- d. The employees' history with and knowledge of the debtor;
- e. The difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies;
- f. Whether the KERP agreement and charge were approved by the board of directors, including the independent directors, as the business judgment of the board should not be ignored;
- g. Whether the KERP agreement and charge are supported or consented to by secured creditors of the debtor; and
- h. Whether the payments under the KERP are payable upon the completion of the restructuring process.

[9] For the reasons set out at para. 40 of the Receiver's factum, I am satisfied that the KCRP and KCRP Charge are just and appropriate. Among other things, the key consultants are anticipated to be critical to the Receiver's ability to efficiently and expeditiously conduct the SISP.

*Should the Requested Sealing Order be granted?*

[10] The Receiver requests a sealing order in respect of the confidential appendix, which contains the details of the KCRP recipients and amounts to be received.

[11] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. The Court also has inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.* (2010), 100 O.R. (3d) 510 (ONSC), at para. 34.

[12] I am satisfied that the proposed sealing of the Confidential Appendix is appropriate in the circumstances. The Confidential Appendix contains confidential information regarding the KCRP payments. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. As a matter of proportionality, the benefits of keeping the Confidential Appendix sealed to protect the personal information of the recipients outweighs the negative effects of restricting public access to a very limited amount of information. The aggregate of the amount of the KCRP (\$53,450) has been disclosed.

[13] Courts have recognized in other cases that it would be detrimental to the operations of the company to disclose the identity of KERP recipients and the quantum of the payments: *Ontario Securities Commission v. Bridging Finance*, 2021 ONSC 4347, at paras. 23-28.

[14] Having considered the test set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2022 SCC 41, at para. 45, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, I am satisfied that it is appropriate to grant the requested sealing order.

[15] The Receiver is directed to provide the sealed Confidential Appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the Confidential Appendices can be physically sealed.

[16] Order attached.

A handwritten signature in blue ink, appearing to be "J. P. [unclear]", is located in the lower right quadrant of the page.