

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

FARM CREDIT CANADA

Applicant

and

GLOBAL FOOD AND INGREDIENTS INC. and GFI BRANDS INC.

Respondents

**APPLICANT'S FACTUM
(Receivership Appointment)**

May 17, 2024

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TO: THE SERVICE LIST

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OVERVIEW

1. This Factum is filed in support of an Application by Farm Credit Canada (“**FCC**”) for an order appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of the Term Loan Priority Collateral (as defined below) of Global Food and Ingredients Inc. (“**Global Food Canada**”) and GFI Brands Inc. (“**GFI Brands**”, and together with Global Food Canada, the “**Debtors**”, and each, a “**Debtor**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada)¹ (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).²

¹ [Bankruptcy and Insolvency Act \(Canada\), RSC 1985, c B-3 \[“**BIA**”\].](#)

² [Courts of Justice Act \(Ontario\), RSO 1990, c C43 \[“**CJA**”\].](#)

SUMMARY OF FACTS

2. The facts with respect to this Application are summarized below, and are set out in more detail in the Affidavit of Jason Inman sworn May 16, 2024³ (the “**Inman Affidavit**”). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Inman Affidavit.

Background

3. The Applicant, Farm Credit Canada (“**FCC**”) is an independent mortgage finance company specializing in commercial and development mortgage financing for the Canadian agricultural and food sector.⁴

4. Global Food Canada is a member of the GFI group of companies (the “**GFI Group**”) and is a subsidiary of Global Food and Ingredients Ltd. (“**Parentco**”). Parentco is a publicly traded company trading on the TSX Venture Exchange under the symbol PEAS.V..⁵

5. Global Food Canada is a company that carries on business in Ontario and Saskatchewan as a purchaser and processor of plant-based foods and ingredients, including peas, beans, lentils, chickpeas and other high protein specialty crops.⁶

6. Global Food Canada’s corporate decisions, employee administration and human resource functions, marketing and communications, corporate, banking, strategic and management

³ Affidavit of Jason Inman sworn May 16, 2024, Application Record of Farm Credit Canada dated May 16, 2024 [“**Application Record**”], Tab 2 [“**Inman Affidavit**”].

⁴ Inman Affidavit at para 5, Application Record, Tab 2.

⁵ Inman Affidavit at paras 9 and 49, Application Record, Tab 2.

⁶ Inman Affidavit at para 6, Application Record, Tab 2.

functions, cash management systems, business development initiatives, and accounts receivable and payables management occur in Toronto, Ontario.⁷

7. Global Food Canada owns and operates two processing facilities in Saskatchewan, one in Zealandia, Saskatchewan and the other in Lajord, Saskatchewan (the “**Mortgaged Lands**”). In addition, Global Food Canada holds a leasehold interest (the “**Leasehold Interest**”) against a processing facility owned by Stewart Southern Railway Inc. in Lajord, Saskatchewan (the “**Leasehold Lands**”).⁸

8. GFI Brands is a company that carries on business in Ontario as a brokerage for the GFI Group, and in particular hires companies to buy pasta and outsources the manufacture of pasta for the GFI Group.⁹

FCC Credit Agreement and Security

9. FCC made available certain credit facilities to Global Food Canada pursuant to a credit agreement dated as of November 22, 2019 between FCC, as lender, and Global Food Canada, as borrower (the “**Initial FCC Credit Agreement**”). The Initial FCC Credit Agreement was subsequently amended by¹⁰:

- (a) an Amendment No. 1 to Credit Agreement dated as of August 31, 2020;
- (b) a First Amended and Restated Credit Agreement dated as of May 28, 2021;

⁷ Inman Affidavit at para 8, Application Record, Tab 2.

⁸ Inman Affidavit at paras 6, 10 and 11, Application Record, Tab 2.

⁹ Inman Affidavit at para 14, Application Record, Tab 2.

¹⁰ Inman Affidavit at paras 15, 16, 17, 18, 20, 21 and 22, Application Record, Tab 2.

- (c) a Second Amended and Restated Credit Agreement dated as of May 17, 2022;
 - (d) an Amending Agreement to Second Amended and Restated Credit Agreement dated as of December 20, 2022;
 - (e) a Second Amending Agreement to the Second Amended and Restated Credit Agreement dated as of March 17, 2023; and
 - (f) a Third Amending Agreement to the Second Amended and Restated Credit Agreement dated as of February 1, 2024,
- (collectively, the “**FCC Credit Agreement**”).

10. Pursuant to the FCC Credit Agreement, FCC extended three real property loans to Global Food Canada.¹¹

11. As security for its indebtedness and liability to FCC pursuant to the FCC Credit Agreement, among other things, Global Food Canada provided FCC with certain security (collectively the “**FCC Security**”), namely a first charge real property mortgage in the principal amount of \$50,000,000 (the “**Mortgage**”) which is registered first in time against the Mortgage Lands, a first charge leasehold mortgage in the principal amount of \$50,000,000 (the “**Leasehold Mortgage**”, with the Mortgage, collectively, the “**FCC Mortgages**”)) which is registered first in time against the Leasehold Lands, a general security agreement in respect of all of Global Food Canada’s present and after-acquired personal property dated as of November 26, 2019 registered first in time in Saskatchewan and Ontario, and an assignment of material contracts agreement dated as of

¹¹ Inman Affidavit at para 23, Application Record, Tab 2.

November 26, 2019.¹²As further security for the indebtedness and liability of Global Food Canada to FCC pursuant to the FCC Credit Agreement, among other things, GFI Brands provided FCC with a general security agreement in respect of all of GFI Brand's present and after-acquired personal property dated as of May 17, 2022 registered first in time in Saskatchewan and Ontario, and an unlimited guarantee (the "**Guarantee**") dated as of May 17, 2022 guaranteeing to FCC payment of all current and future indebtedness owing by Global Food Canada to FCC.¹³

12. Siena Lending Group Canada LLC ("**Siena**") registered a second charge real property mortgage in the principal amount of \$30,000,000 against the Mortgaged Lands and a second charge leasehold mortgage of the same amount against the Leasehold Lands.¹⁴

13. As of May 13, 2024, the aggregate outstanding indebtedness owed by the Debtors to FCC is \$15,004,907.17, excluding professional fees, disbursements and accruing interest (the amount owing to FCC from the Debtors from time to time, the "**Indebtedness**").

FCC-Siena Intercreditor Agreement

14. Global Food Canada has two Siena secured lenders: FCC and Siena – each with first ranking security interests over different asset pools pursuant to an intercreditor agreement dated as of February 1, 2024 (the "**Intercreditor Agreement**").¹⁵

¹² Inman Affidavit at paras 25(a) to 25(h), 28 to 30, 31, 33, Application Record, Tab 2.

¹³ Inman Affidavit at paras 19 and 25(i) 32, 34, Application Record, Tab 2.

¹⁴ Inman Affidavit at paras 28, 29 and 30, Application Record, Tab 2.

¹⁵ Inman Affidavit at para 40, Application Record, Tab 2.

15. FCC has a first ranking security interest in respect of all “Term Loan Priority Collateral” which is defined under the Intercreditor Agreement as¹⁶:

- (a) all Equipment and fixtures;
- (b) all Intellectual Property owned by any Loan Party;
- (c) all Real Property;
- (d) the insurance policy with respect to the life of David Hanna in the amount of \$1,000,000; and
- (e) all books and records relating to the foregoing (including, without limitation, all books, databases, customer lists, engineer drawings, and records, whether tangible or electronic which contain any information relating to any of the foregoing), and all Proceeds of the foregoing (including, without limitation, all insurance proceeds) and all collateral security and guarantees given by any Person with respect to any of the foregoing;

provided, however, "Term Loan Priority Collateral" shall not include Proceeds from the disposition of any Term Loan Priority Collateral permitted by the Term Loan Agreement to the extent such Proceeds are not required to be applied to the mandatory prepayment of the Term Loan Obligations pursuant to the Term Loan Documents, unless such Proceeds arise from a disposition of Term Loan Priority Collateral resulting from Enforcement Action taken by the Term Loan Lender permitted by this Agreement.

(collectively, the “**Term Loan Priority Collateral**”).

16. “Real Property” under the Intercreditor Agreement includes the Mortgaged Lands and Leasehold Interest, and a “Loan Party” includes the Debtors.

17. Siena has a first ranking security in respect of all “ABL Priority Collateral” which is defined as “all ABL Collateral other than the Term Loan Priority Collateral” (the “**ABL Priority Collateral**”).¹⁷

18. The Intercreditor Agreement sets out FCC’s and Siena’s respective rights in an enforcement scenario, including that, unless consented to by Siena, FCC may only enforce its

¹⁶ Inman Affidavit at para 41, Application Record, Tab 2.

¹⁷ Inman Affidavit at para 40, Application Record, Tab 2.

security against the Term Loan Priority Collateral and may not enforce its security against the ABL Priority Collateral.¹⁸

Defaults and Demands

19. Global Food Canada began experiencing financial distress in 2022 which continues through to today.¹⁹

20. In or around March 22, 2024, Global Food Canada began an orderly wind down and liquidation process to layoff employees, liquidate its remaining inventory and collecting all outstanding accounts receivable. As part of this process, Global Food Canada engaged Richter Consulting Inc. for insolvency and restructuring advice.²⁰

21. On May 7, 2024, Parentco issued a press release (the “**Press Release**”) advising that the GFI Group would be commencing an immediate wind-down of its business operations, which includes the operations of the Debtors.²¹

22. Following the issuance of the Press Release and confirmation from Siena and the Borrower that farmers would no longer be able to be paid from the Borrower’s operations, on May 7, 2024, FCC’s legal counsel sent the Debtors demand letters and notices of its intention to enforce its security pursuant to Section 244 of the BIA (the “**NITES**”).²²

¹⁸ Inman Affidavit at para 42, Application Record, Tab 2.

¹⁹ Inman Affidavit at paras 46 and 50, Application Record, Tab 2.

²⁰ Inman Affidavit at para 47 and 48, Application Record, Tab 2.

²¹ Inman Affidavit at para 49, Application Record, Tab 2.

²² Inman Affidavit at para 50, Application Record, Tab 2.

23. On May 8, 2024, the Debtors executed waivers to the NITES allowing FCC to immediately proceed with enforcement of the FCC Secured Property.²³

24. Siena has brought an application for the appointment of a receiver over the ABL Priority Collateral of Global Food Canada, which application will be heard concurrently with the immediate application.²⁴

STATEMENT OF ISSUES, LAW & AUTHORITIES

25. The sole issue in respect of this Application is whether it is just or convenient for the Court to appoint FTI as Receiver over the FCC Secured Property.

The Technical Requirements for the Appointment of a Receiver have been Met

26. FCC is a secured creditor of the Debtors in respect of the FCC Secured Property and is therefore entitled to bring an application under section 243 of the BIA. As required under sub-section 243(1.1) of the BIA, FCC issued the NITES and the Debtors waived the statutory notice period thereunder.²⁵

27. FTI is qualified to act as Receiver in accordance with the requirements of sub-section 243(4) of the BIA and has consented to serving as Receiver in these proceedings.²⁶

²³ Inman Affidavit at para 51, Application Record, Tab 2.

²⁴ Inman Affidavit at para 53, Application Record, Tab 2.

²⁵ Inman Affidavit at para 53, Application Record, Tab 2.

²⁶ [BIA, s. 243\(4\)](#); Consent to Act, Application Record, Tab 3.

It Is Just and Convenient To Appoint the Receiver

28. Pursuant to sub-section 243(1) of the BIA, the Court may, on application by a secured creditor, appoint a receiver where it considers it to be just or convenient to do so:

Court may appoint a receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.²⁷

29. Sub-section 101(1) of the CJA similarly provides for the appointment of a receiver by interlocutory order where the appointment is "just and convenient":

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.²⁸

²⁷ [BIA, supra note 1, section 243](#)

²⁸ [CJA, supra note 2, sub-section 101\(1\)](#)

30. In *Freure Village*, Justice Blair (as he was then), found that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to *inter alia* the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.²⁹

31. Among other things, the following may be considered by a Court in determining whether or not it is just or convenient to appoint a receiver:

- (a) the potential costs of the receiver;
- (b) the relationship between the debtor and the creditor;
- (c) the likelihood of preserving and maximizing the return on the subject property;
and
- (d) the best way of facilitating the work and duties of the receiver.³⁰

32. Where a secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an “extraordinary remedy”. In such circumstances, as Justice Morawetz (as he then was), held in *Sherco Properties*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.³¹ Similarly, in *Atlas Healthcare*, this Court held that where a secured

²⁹ [Bank of Nova Scotia v. Freure Village on Clair Creek](#), [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List)) at paras 10-12 [“**Freure Village**”].

³⁰ [Elleway Acquisitions Limited v. The Cruise Professionals Limited](#), 2013 ONSC 6866 (Commercial List) at paras 28, 30 and 34 [“**Elleway**”]; [Freure Village](#) at para 12.

³¹ [Bank of Montreal v. Sherco Properties Inc.](#), 2013 ONSC 7023 (Commercial List) at para 42; [Elleway](#) at para 27.

creditor has bargained for the contractual right to have a receiver appointed, there must be a good reason to deprive the creditor of that contractual right.³²

33. In *Freure Village*, the Ontario Superior Court held that an important consideration in deciding whether or not to appoint a receiver is whether an appointment by the Court is necessary to enable the receiver to carry out its work and duties more efficiently.³³

34. FCC submits that in accordance with the test and factors outlined above, it is both just and convenient to appoint FTI as Receiver over the FCC Secured Property, as³⁴:

- (a) The Debtors are in default of their obligations under the FCC Credit Agreement, Guarantee and FCC Security, and FCC has lost faith in the Debtors' ability to repay the Indebtedness by reason of:
 - (i) Global Food Canada failing to make its monthly principal and interest payments on May 1, 2024, as required under the FCC Credit Agreement;
 - (ii) Global Food Canada becoming insolvent;
 - (iii) Global Food Canada being unable to pay its debts or meet its liabilities as the same become due;
 - (iv) Global Food Canada admitting to FCC in writing and in the Press Release of its inability to pay its debts generally;
 - (v) Global Food Canada suffering a Material Adverse Change (as defined in the FCC Credit Agreement) by taking steps to cease its business and operations which change shall have a material adverse effect on the business, property,

³² [Romspen Investment Corporation v. Atlas Healthcare \(Richmond Hill\) Ltd. et al](#), 2018 ONSC 7382 (Commercial List) at para 100.

³³ [Freure Village](#) at para 11.

³⁴ Inman Affidavit at paras 56(a) to 56(g), Application Record, Tab 2.

assets, liabilities, operations condition (financial or otherwise), affairs and prospects of the Debtor, and its ability to perform its obligations under the Credit Agreement;

- (vi) FCC, in good faith and upon commercially reasonable grounds, believing that the prospect of repayment or performance of the Indebtedness is impaired;
 - (vii) GFI Brands failing to repay the Indebtedness following demand by FCC under the Guarantee;
- (b) the appointment of the Receiver will protect FCC's secured collateral which Global Food Canada is no longer in a position to protect given the GFI Group's announced wind up;
 - (c) the appointment of the Receiver will allow for a transparent and objective marketing process for the sale of the Term Loan Priority Collateral, including lands and facilities secured by the Mortgages that both (i) properly tests the market to determine the fair value of the same under Court-supervision, and (ii) maximizes value for all of the Debtors' stakeholders;
 - (d) the Debtors' credit documents specifically provide FCC with the right to seek the appointment of the Receiver.

CONCLUSION

35. For the reasons set out above, FCC requests that the Court grant the Receivership Order in the form sought by FCC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of May, 2024.



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SCHEDULE “A”

LIST OF AUTHORITIES

1. **Bank of Nova Scotia v. Freure Village on Clair Creek**, [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List))
2. **Elleway Acquisitions Limited v. The Cruise Professionals Limited**, 2013 ONSC 6866 (Commercial List)
3. **Bank of Montreal v. Sherco Properties Inc.**, 2013 ONSC 7023 (Commercial List)
4. **Romspen Investment Corporation v. Atlas Healthcare (Richmond Hill) Ltd. et al.**, 2018 ONSC 7382 (Commercial List)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, RSC, 1985, c. B-3, as amended

Stay of proceedings — consumer proposals

69.2 (1) Subject to subsections (2) to (4) and sections 69.4 and 69.5, on the filing of a consumer proposal under subsection 66.13(2) or of an amendment to a consumer proposal under subsection 66.37(1) in respect of a consumer debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until

- (a) the consumer proposal or the amended consumer proposal, as the case may be, has been withdrawn, refused, annulled or deemed annulled; or
- (b) the administrator has been discharged.

Exception

(2) Subsection (1) does not apply where the consumer proposal, other than an amendment to a consumer proposal referred to in section 66.37, is filed within six months after the filing of a previous consumer proposal in respect of the same debtor.

Idem

(3) Subsection (1) does not apply where an amendment to a consumer proposal is filed within six months after the filing of a previous amendment to the same consumer proposal.

Secured creditors

(4) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a consumer proposal under subsection 66.13(2) does not prevent a secured creditor from realizing or otherwise dealing with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows:

- (a) in the case of a security for a debt that is due at the date of the approval or deemed approval of the consumer proposal or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and
- (b) in the case of a security for a debt that does not become due until more than six months after the date of the approval or deemed approval of the consumer proposal, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no

instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or act, or law, creating the security.

Exception

(5) No order may be made under subsection (4) if the order would have the effect of preventing a secured creditor from realizing or otherwise dealing with financial collateral.

...

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

- (4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, RSO 1990, c C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

FARM CREDIT CANADA

Applicant

-and- GLOBAL FOOD AND INGREDIENTS INC. and
GFI BRANDS INC.

Respondents

Court File No. CV-24-00720526-00CL

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