

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

FARM CREDIT CANADA

Applicant

- and -

**WHYTE'S FOODS INC./LES ALIMENTS WHYTE'S INC., MAISON GOURMET INC.,
TRIAK CAPITAL INC./CAPITAL TRIAK INC., AND MARIO SAROLI SALES INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

FACTUM OF THE RECEIVER

November 3, 2023

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*Lawyers for FTI Consulting Canada Inc.
solely in its capacity as Court-appointed
Receiver*

FACTUM OF THE RECEIVER

PART I: OVERVIEW

1. On October 4, 2023 this Court granted an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") and section 101 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended, appointing FTI Consulting Canada Inc. as receiver and manager (in such capacity, the "**Receiver**"), without security, of all of those assets that constitute the Property (as defined below) of Whyte's Foods Inc./Aliments Whyte's Inc. ("**Whyte's**"), together with its affiliated and subsidiary entities, Triak Capital Inc./Capital Triak Inc. ("**Triak**"), Maison Gourmet Inc. ("**Gourmet**"), and Mario Saroli Sales Inc. ("**Saroli**"), and together with Whyte's, Triak, and Gourmet, the "**Debtors**").

2. This factum is filed in support of a motion by the Receiver for, among other things:

- (a) an order (the "**Approval and Vesting Order**"), approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**THS APA**") between the Receiver and THS Foods Canada Ltd. (the "**Purchaser**" or "**THS**") and sealing the purchase price contemplated by the THS APA until the Transaction has been completed; and
- (b) an order (the "**Distribution and Ancillary Relief Order**"), among other things:
 - (i) authorizing or directing the Receiver to make one or more distributions to Farm Credit Canada ("**FCC**");

- (ii) amending the style of cause of these proceedings to correct the French-language spelling of "Les Ailments Whyte's Inc." to "Les Ailments Whyte's Inc.";
- (iii) approving the First Report of the Receiver dated October 30, 2023 (the "**First Report**") and the activities of the Receiver described therein; and
- (iv) approving the fees of the Receiver and legal counsel to the Receiver up to and including October 27, 2023.

3. As further detailed below, the Transaction materialized after extensive marketing and solicitation efforts by the Debtors and their financial advisors, followed by negotiations by the Receiver with the Purchaser on key aspects of the THS APA. As a result, the Receiver believes that the Transaction is fair and reasonable in the circumstances and presents the best available option for the sale of the assets (the "**Purchased Assets**").

4. The Distribution and Ancillary Relief Order is also appropriate. It will enable timely payments from the Receiver to FCC, while also allowing funds to remain with the Receiver for the purpose of funding the receivership.

PART II: FACTS

5. The facts underlying these proceedings are more fully set out in the First Report and the affidavit of Dale Snider sworn October 2, 2023 (the "**Snider Affidavit**"). Capitalized terms not otherwise defined have the meanings ascribed to them therein.

A. The Debtors

6. The Debtors conducted business as a leading producer of pickled and fermented food products in Canada.¹ They did so through the operation of two manufacturing facilities located in Wallaceburg, Ontario (the "**Wallaceburg Facility**") and Saint-Louis, Quebec (the "**St. Louis Facility**"), as well as a distribution facility located in Sainte-Thérèse, Quebec.²

B. Procedural History and Receivership Proceedings

7. On August 23, 2023, following the delivery of demand and default letters and notices of intention to enforce security by their primary creditors FCC and Wells Fargo Capital Financing Corporation Canada ("**Wells Fargo**"), the Debtors filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to subsection 50.4(1) of the BIA (such proceedings, the "**Proposal Proceedings**").³ The Proposal Proceedings were initiated by the Debtors to create a stabilized environment to permit them to continue operations while a court-supervised sales process was conducted.⁴

8. On August 31, 2023, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order, among other things, approving the Debtors' engagement of Kroll Corporate Finance Canada ("**Kroll**") as financial advisor, and approving a sale and solicitation process (the "**NOI SISP**").⁵

9. The NOI SISP failed to result in an executable comprehensive going-concern transaction for the Debtors' business.⁶ However, it did result in a sale of the St. Louis Facility and the Non-

¹ The First Report of the Receiver FTI Consulting Canada Inc. at para 1. [First Report]

² *Ibid* at para 2.

³ *Ibid* at para 5.

⁴ *Ibid* at para 6.

⁵ *Ibid* at para 7.

⁶ *Ibid* at para 8.

Trade Personal Property located at that premises (the "**St. Louis Transaction**").⁷ As a result, both FCC and Wells Fargo brought separate applications for the appointment of receivers over the security they held in the Debtors.⁸

10. On October 6, 2023, the Court issued an order (the "**FCC Receivership Order**"), among other things, appointing the Receiver over the Non-Trade Personal Property and real property of the Debtors, including land and buildings at the Wallaceburg Facility (the "**Property**" and these proceedings, the "**FCC Receivership Proceedings**") upon the earlier of the proposal trustee in the Proposal Proceedings delivering a certificate upon the closing of the St. Louis Transaction or Thursday, October 12, 2023 at 5 pm (the "**Appointment Time**").⁹

11. Separately, on October 6, 2023, the Court issued an order (the "**Wells Receivership Order**") appointing Ernst & Young Inc. as receiver and manager of the Trade Personal Property upon the occurrence of the Appointment Time (in such capacity, the "**Wells Receiver**" and such proceedings, the "**Wells Receivership Proceedings**").¹⁰

12. The St. Louis Transaction closed on October 12, 2023, and the proceeds therefrom (the "**St. Louis Proceeds**") were transferred to the Receiver at the Appointment Time in accordance with the FCC Receivership Order.¹¹

⁷ *Ibid* at para 8.

⁸ *Ibid* at paras 9 and 11.

⁹ *Ibid* at para 10.

¹⁰ *Ibid* at para 11.

¹¹ *Ibid* at para 12.

C. Marketing Efforts and the THS APA

(i) Marketing Efforts

13. As previously discussed, prior to the commencement of the FCC Receivership Proceedings, the Debtors and their advisors undertook significant marketing efforts in respect of the Property.

14. Kroll embarked on a broad sales and marketing process prior to the commencement of NOI Proceedings in which 156 interested parties were approached and 72 parties were granted access to a virtual data room (the "**Pre-Filing Sale Process**").¹² While two parties submitted letters of intent by the prescribed deadline, the Debtors were ultimately unable to complete a transaction.¹³

15. Following the commencement of NOI proceedings, the Debtors undertook a second sales and marketing process assisted by their advisors.¹⁴ As part of this process, the Debtors were in contact with 42 interested parties.¹⁵ On reaching the deadline, four offers were received, however, the parties were unable to agree on acceptable terms for a comprehensive and executable going concern transaction involving the Purchased Assets.¹⁶

(ii) The Transaction

16. THS was a participant in the NOI SISP and had negotiated a draft asset purchase agreement with the Debtors in respect of the Purchased Assets prior to the termination of NOI Proceedings.¹⁷

¹² *Ibid* at para 33.

¹³ *Ibid.*

¹⁴ *Ibid* at para 35.

¹⁵ *Ibid.*

¹⁶ *Ibid* at para 36.

¹⁷ *Ibid.*

17. Upon the Receiver's appointment, the Receiver worked with THS to update and finalize the draft asset purchase agreement to reach its execution version.¹⁸

18. A summary of the Transaction is as follows:

- (a) Purchaser: THS Foods Canada, Ltd. (the "**Purchaser**");
- (b) Structure: Asset purchase agreement pursuant to an approval and vesting order;
- (c) Purchase Price: The Purchase Price as specified in the THS APA, to be paid by wire transfer of immediately available cash on closing, subject to application of the Deposit;
- (d) Purchased Assets: Substantially as listed in Schedule 2.1(a) of the THS APA, comprising substantially all Non-Trade Personal Property of the Debtors located at the Wallaceburg and St Therese Facilities;
- (e) Deposit: 10% of Purchase Price, which has been paid to the Receiver in escrow pending closing;
- (f) Outside Date: November 23, 2023, or such later date as may be agreed;
- (g) Material Conditions: the only material condition is Court approval; and

¹⁸ *Ibid* at para 38.

- (h) Termination: the THS APA is terminable by the Receiver or Purchaser if the Approval and Vesting Order is not granted, or by either party if there is a material breach by the other party that is not cured prior to the Outside Date.¹⁹

C. Proposed Distributions

19. As previously outlined, the Receiver is seeking to distribute the proceeds of the St. Louis Transaction and the Transaction to FCC. The basis for this distribution is FCC's status as the sole holder of economic interest in the Purchased Assets and the St. Louis Proceeds.²⁰

20. FCC's status with regard to the St. Louis Proceeds and the proceeds of the Transaction (the "**Proceeds**"), is grounded in the FCC Security which was granted pursuant to the FCC Credit Agreement, as well as the priorities set-out with regard to security in the Intercreditor Agreement between Wells Fargo and FCC.²¹

21. As further detailed in the Snider Affidavit, the FCC Security includes, among other things:

- (a) a Mortgage in the principal amount of \$35,000,000 by Whyte's in favor of FCC;
- (b) a universal deed of hypothec (movable and immovable) in the principal amount of \$18,217,500 by Whyte's in favor of FCC;
- (c) a universal deed of hypothec (movable and immovable) in the principal amount of \$16,782,500 by Whyte's in favor of FCC;
- (d) unlimited corporate guarantees from Triak, Gourmet and Saroli in favor of FCC; and
- (e) Security Agreements in favor of FCC by Whyte's, Gourmet and Saroli.²²

¹⁹ *Ibid* at para 40.

²⁰ *Ibid* at para 49.

²¹ *Ibid* at para 45.

²² The Affidavit of Dale Snider sworn October 4, 2023 at para 19. [Snider Affidavit]

22. The Intercreditor Agreement grants FCC a first-ranking priority in the Non-Trade Personal Property to the extent of indebtedness under the FCC Credit Agreement.²³ FCC is currently anticipated to suffer a loss on its secured debt, having regard to the consideration offered in the THS APA and the value of FCC's remaining collateral.²⁴

23. As a result, the Receiver intends to distribute the Proceeds and the St-Louis Proceeds to FCC, while also holding some funds back as agreed between FCC and the Receiver in order to fund the Receivership and satisfy the court-ordered charges relating to the Proposal Proceedings contemplated in the FCC Receivership Order.²⁵

PART III: ISSUES

24. The issues in this motion are twofold:

- (a) Should this Court grant the Approval and Vesting Order?
- (b) Should this Court grant the Distribution and Ancillary Relief Order?

PART IV: LAW AND ARGUMENT

A. The Approval and Vesting Order

1. The Transaction Should be Approved

25. Section 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, authorizes this Court to grant an order vesting "in any person an interest in real or personal property that the Court

²³ The First Report at para 29.

²⁴ *Ibid* at para 49.

²⁵ *Ibid*.

has authority to order be conveyed".²⁶ Similarly, section 243(1) of the BIA, vests this Court with jurisdiction to "grant a vesting order vesting property in a purchaser".²⁷

26. The principles to be applied when determining whether to approve a sale transaction are well known to this Court and were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* ("**Soundair**"):

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.²⁸

27. The proposed Transaction satisfies the *Soundair* principles given that:

- (a) the Purchased Assets were subject to multiple broad marketing efforts by both the Debtors and Kroll. Those processes were transparent, robust, and provided for a fair and transparent solicitation of the market for the Purchased Assets over a reasonable amount of time;
- (b) the Purchaser is the only party with whom negotiations reached a stage wherein a reasonable agreement was capable of being reached;

²⁶ *Courts of Justice Act*, RSO 1990, c. C.43 s 100; *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009 at para 30 [*Elleway*].

²⁷ *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at para 87 [*Third Eye*]; *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 s 243(1).

²⁸ *Royal Bank of Canada v Soundair Corp.*, [1991] 46 OAC 321 at para 16 [*Soundair*]; *Elleway* at para 31; *Home Trust Co v 2122775 Ontario Inc.*, 2014 ONSC 1039 at para 11; *Romspen Investment Corp v 6176666 Canada Ltée*, 2012 ONSC 1727 at para 18 [*Romspen*].

- (c) the Receiver believes that the approval of the THS APA and the Transaction contemplated therein represents the best recovery in respect of the Non-Trade Personal property in the circumstances; and
- (d) FCC, the only party with an economic interest in the Purchased Assets and proceeds of the sale, is supportive of completing the Transaction.²⁹

2. The Court has Jurisdiction to Grant the Approval and Vesting Order

28. In *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, the Ontario Court of Appeal clarified that a court's jurisdiction under section 243(1) of the BIA to authorize a receiver to "take any other action that the court considers advisable" includes the authority to grant a vesting order vesting property in a purchaser free and clear of encumbrances and extinguishing liabilities.³⁰

29. In granting approval and vesting orders, courts have made clear that the recommendation of the Court-appointed receiver in respect of the proposed sale transaction should only be ignored in exceptional circumstances.³¹

3. The Sealing Language is Necessary

30. The Receiver respectfully requests that the Court seal the purchase price of the THS APA until the completion of the Transaction.

²⁹ First Report at paras 31-38 and 42.

³⁰ *Third Eye* at para 87.

³¹ *Soundair* at para 58; *Romspen*, at para 18.

31. In *Sherman Estate v. Donovan*, the Supreme Court recast the test to be used by a court in considering whether a sealing order should be granted.³² The party asking a court to exercise its discretion to grant a sealing order must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.³³

32. Sealing orders relating to transaction economics are regularly granted in receivership and other insolvency proceedings, and courts have recognized that the disclosure of highly sensitive commercial information, including purchase prices, can be "harmful to stakeholders by undermining the integrity of the sale process".³⁴ Courts have also recognized that there is a broader public interest in maintaining the confidentiality of sensitive commercial information, including key business terms of sale purchase agreements.³⁵

33. The proposed sealing language has been narrowly tailored to only redact the purchase price, with such information only to be sealed until the Transaction closes. The THS APA with the purchase price redacted has been made publically available. In the event that the Transaction fails to close, the disclosure of this information could cause material harm to the value of the Purchased Assets, and therefore prejudice to FCC. This court has previously held that such narrowly tailored sealing orders greatly outweigh any deleterious effects that such sealing may cause.³⁶ Therefore, as a matter of proportionality the benefits of sealing the purchase price and

³² *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38. [Sherman Estate]

³³ *Ibid.*

³⁴ *Elleway* at para 48. See also: *Ontario Securities Commission v Bridging Finance Inc. et al.* (Approval and Vesting Order) para 7. [Bridging]

³⁵ *U.S. Steel Canada Inc. et al. v The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union et al.*, 2023 ONSC 2579 at para 54; and *American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al.*, 2023 ONSC 3322 at para 30.

³⁶ *Ibid.*

thereby preserving the value of the Purchased Assets outweigh the negative effects, and the sealing order should be granted.

B. The Distribution and Ancillary Relief Order

1. The Receiver's activities should be approved

34. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the FCC Receivership Order, and were in each case in the best interests of the Debtors and their stakeholders generally.

2. The fees and disbursements of the Receiver and its counsel are fair and reasonable

35. The Receiver is seeking approval of the professional fees incurred by it and its legal counsel as described in the Fee Affidavit of Sean Zweig and Fee Affidavit of Jeffrey Rosenberg. The standard to be applied is whether the compensation sought is "fair and reasonable", with an emphasis on the value provided and what was accomplished.³⁷ Given the complexity of this insolvency matter, the fees of the Receiver and the fees of its counsel are within an appropriate range for insolvency services of this nature rendered by other firms in the City of Toronto.

3. The proposed distribution is fair and reasonable

36. The Receiver is seeking authorization and direction to make a distribution of the Proceeds and St. Louis Proceeds to FCC, while withholding an amount to fund the Receiver's ongoing activities, as well as an amount sufficient to satisfy the Administration Charge and Directors'

³⁷ [Bank of Nova Scotia v. Diemer](#), 2014 ONCA 851 at paras 44-45.

Charge remaining from the Proposal Proceedings, in accordance with paragraph 21 of the FCC Receivership Order.

37. Orders authorizing distributions with a reserve are routinely granted by courts in insolvency proceedings, including receiverships.³⁸ For example, in *Kingsett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes (Minu Towns) Inc. et al.*, this Court approved a distribution by a receiver to a secured creditor to reduce the indebtedness owed to the secured creditor, while holding an amount in reserve to, among other things, complete the administration of the receivership.³⁹

38. Similarly, in *Abitibowater* the Court considered a number of factors in determining whether an interim distribution should be permitted including, among other things, (i) whether the payee's security was valid and enforceable; (ii) whether the distribution would leave the estate with sufficient liquidity; and (iii) whether the amounts owed to the beneficiary of the distribution far exceed the amount of the proposed distribution.⁴⁰

39. FCC holds security over the Purchased Assets and the Property and the indebtedness owed to FCC is such that they will likely not be paid-out in full.⁴¹ Furthermore, the Receiver's counsel has undertaken a review of FCC's security and determined that FCC's security is valid and enforceable, subject to standard assumptions and qualifications.⁴²

40. The Receiver's go-forward activities will be funded through an amount that will remain with the Receiver following the proposed distribution, with the agreement of FCC.⁴³ As a result, the

³⁸ *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ONSC) at paras 8 & 13; *Abitibowater Inc. (Re)*, 2009 QCCS 6461 at paras 70-75 [*Abitibowater*].

³⁹ *Kingsett Mortgage Corporation and Dorr Capital Corporation v Stateview Home (Minu Towns Inc) et als* (Distribution Order) at paras 7 -13

⁴⁰ *Abitibowater* at para 75;

⁴¹ First Report at para 43.

⁴² *Ibid* at para 46.

⁴³ *Ibid* at para 49.

Receiver submits that the proposed distributions are fair and reasonable as they will ensure the continued viability of the Receivership and preserve priority obligations pursuant to the court-ordered charges recognized in the FCC receivership, while maximizing the amount that FCC may recoup as the primary secured creditor of the Debtors and the only party with an economic interest in the St. Louis Proceeds and the Proceeds of the Transaction.

4. The Ancillary Relief Should Be Granted

41. The Receiver is requesting an update to the style of cause of these proceedings to correct the French-language name of the Debtors. Such a correction is necessary due to the inadvertent misspelling of the French-language name of Whyte's in the Applicant's application record which was then tracked into the FCC Receivership Order.⁴⁴

42. The Receiver is satisfied that this was the result of a clerical error and is not aware of any party that was or will be prejudiced by such a correction and thus respectfully submits that the name be updated.

PART V: RELIEF REQUESTED

43. The Receiver requests that this Court grant the proposed form of Approval and Vesting Order and this Distribution and Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 3, 2023


Bennett Jones LLP
Lawyers for FTI Consulting
Canada, Inc.

⁴⁴ *Ibid* at para 50.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Abitibowater Inc. \(Re\)*, 2009 QCCS 6461](#)
2. [*American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al.*, 2023 ONSC 3322](#)
3. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851](#)
4. [*Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009](#)
5. [*Home Trust Co v 2122775 Ontario Inc.*, 2014 ONSC 1039](#)
6. [*Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772](#)
7. [*Romspen Investment Corp v 6176666 Canada Ltée*, 2012 ONSC 1727](#)
8. [*Royal Bank of Canada v Soundair Corp.*, \[1991\] 46 OAC 321](#)
9. [*Sherman Estate v. Donovan*, 2021 SCC 25](#)
10. [*Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508](#)
11. [*U.S. Steel Canada Inc. et al. v The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union et al.*, 2023 ONSC 2579.](#)

Materials and Court Orders

1. Approval and Vesting Order in [*Ontario Securities Commission v Bridging Finance Inc. et al.*](#)
2. Distribution order in [*Kingsett Mortgage Corporation and Dorr Capital Corporation v Stateview Home \(Minu Towns Inc\) et al.*](#)

SCHEDULE B – STATUTES RELIED ON

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Section 243

Court may appoint receiver

(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.

Courts of Justice Act, R.S.O. 1990, c. C.43**Section 100****Vesting Orders**

A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

FARM CREDIT CANADA

and

**WHYTE'S FOODS INC./LES ALIMENTS WHYTE'S INC.,
MAISON GOURMET INC., TRIAK CAPITAL INC./CAPITAL
TRIAK INC., AND MARIO SAROLI SALES INC.**

Applicant

Respondents

Court File No.: CV-23-00707205-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

Factum of the Receiver

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capacity as Court-appointed Receiver*