

Court File No.: CV12-9616-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P.,
NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.**

Respondents

**THIRD REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

1. On January 17, 2012 (the “**CCAA Filing Date**”), pursuant to an application brought before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (together with NFC Acquisition L.P., and New Food Classics, “**NFC**” or the “**Company**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”), the Honourable Mr. Justice Morawetz made an initial order (as extended from time to time, the “**Initial Order**”) in respect of NFC, which, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (in that capacity, the “**Monitor**”).

2. After an unsuccessful going-concern sale process (the “**Transaction Process**”) for the NFC business in the CCAA Proceedings, on February 22, 2012, Bank of Montreal (“**BMO**”) brought: (i) a motion in the CCAA Proceedings to lift the stay of proceedings contained in the Initial Order to allow BMO to bring an application for the appointment a receiver of the property, assets and undertaking of NFC (the “**NFC Assets**”); and (ii) an application under section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of FTI as receiver (in that capacity the “**Receiver**”) of the NFC Assets. The Court granted the BMO motion and the application, and made the Order in these proceedings dated February 22, 2012 (the “**Receivership Order**”), a copy of which is attached hereto as **Appendix “A”**.

PURPOSE OF THIS REPORT

3. The purpose of this third report of the Receiver (the “**Third Report**”) is to:
- (a) provide the Court with a summary of the marketing process of the Company’s two former food processing facilities located in Calgary, Alberta (together, the “**Calgary Facilities**”) owned by NFC Land Holdings Corp., being the land and building having the municipal address of 4211 13A Street SE, Calgary (the “**13A Facility**”), and the land and building having the municipal address of 4043-4089 Brandon Street SE, Calgary (the “**Brandon Facility**”) ;
 - (b) provide the Court with the background information and Receiver’s recommendation relating to the Receiver’s motion for:
 - (i) the approval of the Court, pursuant to subparagraph 3(l)(ii) of the Receivership Order, for the Receiver to enter into and carry out the terms

- of an agreement (the “**TVR Agreement**”) with TVR Construction Inc. (“**TVR**”) to sell the 13A Facility to TVR’s nominee, Recon Metal Ltd., (the “**Nominee Purchaser**”) (the “**Proposed Transaction**”);
- (ii) an order vesting the 13A Facility in the Nominee Purchaser (the “**Vesting Order**”) effective upon closing of the Proposed Transaction;
- (iii) Approving the Receiver’s activities, as described in this report; and
- (c) such other relief as counsel may advise and the Court permit.

TERMS OF REFERENCE

4. In preparing this report, the Receiver has relied upon unaudited financial information of NFC, NFC’s books and records, certain financial information prepared by NFC and discussions with NFC’s management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation.

5. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor’s Prefiling Report, the Receivership Order and the Receiver’s Second Report (including the Monitor’s Third Report appended thereto).

SALES PROCESS IN THE CCAA PROCEEDINGS

6. Until late 2010, NFC's head office and two of its three food processing facilities were located in Calgary Alberta (the third processing facility was located in Saskatoon, Saskatchewan (the "**Saskatoon Facility**")). In August of 2010, NFC acquired a processing facility in St. Catharines, Ontario and relocated the food processing operations undertaken at the Calgary Facilities to St. Catharines in early 2011 (the "**St. Catharines Facility**"). At or about the same time, NFC moved its head office from Calgary to leased premises in Burlington, Ontario.

7. Following the decision in 2010 to vacate the Calgary Facilities, the Company solicited marketing proposals for the Calgary Facilities from Barclay Street Real Estate Ltd. ("**Barclay's**") and from Colliers International ("**Colliers**"). Copies of the Barclay's proposal and the Colliers proposal are filed but not attached hereto, as **Confidential Appendix "A"** and **Confidential Appendix "B"** respectively.

8. Pursuant to an exclusive listing agreement dated November 11, 2010, NFC engaged Barclay's to market and sell the Calgary Facilities as agent for NFC until August 31, 2011 (the "**Barclay's Listing Agreement**"). A copy of the Barclay's Listing Agreement is filed but not attached hereto as **Confidential Appendix "C"**. It is the Receiver's understanding that the term of the Barclay's Listing Agreement was informally extended by the agreement of NFC and Barclays after August 31, 2011 and that Barclay's continued to be NFC's exclusive agent in respect of the marketing and sale of Calgary Facilities as of the CCAA Filing Date.

CCAA TRANSACTION PROCESS

9. Upon commencement of the CCAA Proceedings, NFC and the Monitor commenced the Court approved Transaction Process for all of property, assets and undertaking of NFC on a going-concern basis, including the Calgary Facilities. The principal steps of the Transaction Process are outlined in paragraph 36 of the Prefiling Report of FTI filed in the CCAA Proceedings, a copy of which, without appendices, is attached hereto as **Appendix “B”**. In the Transaction Process the NFC Assets were offered both *en bloc* and as separate parcels, as follows:

- (i) The Saskatoon Facility (including the associated equipment, inventory and accounts receivable);
- (ii) The St Catharines Facility (including the associated equipment, inventory and accounts receivable);
- (iii) The 13A Facility; and
- (iv) The Brandon Facility.

10. After publishing Sales Ads in the *Globe & Mail National Edition* on January 20 and 23, 2012, the Monitor received eleven Expressions of Interest from interested parties. Of the eleven Expressions of Interest received, only two parties submitted Expressions of Interest for all of the NFC assets on an *en bloc* basis which included the 13A Facility and the Brandon Facility (the “**En Bloc Parties**”). No parties submitted Expressions of Interest for the Calgary Facilities, or either of them, on a stand alone basis. The En Bloc Parties were among the group of “Selected Parties” who were invited to participate in Phase 2 of the Transaction Process and

provided with access to more detailed information in the NFC virtual data room (the “**Data Room**”). The Monitor also received informal expressions of interest for the Calgary Facilities from third parties outside the Transaction Process, however none of those parties, notwithstanding the Monitor’s request, submitted formal Expressions of Interest that complied with the Court approved Transaction Process. The En Bloc Parties, after reviewing the additional the additional information in the Data Room, declined to submit a binding final proposal. As a result, by the CCAA Transaction Process bid deadline, NFC had received no offers for the purchase of the Calgary Facilities or either of them.

11. A fuller summary of the results of the Transaction Process conducted in the CCAA Proceedings and the results thereof is outlined in further detail in the Receiver’s Second Report to the Court dated April 12, 2012 (the “**Second Report**”). A copy of the Second Report is attached hereto as **Appendix “C”**. As mentioned therein, on February 20, 2012, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement and thereafter commenced these Receivership Proceedings.

SALES PROCESS IN THE RECEIVERSHIP PROCEEDINGS

12. Following the making of the Receivership Order, the Receiver continued to work with Barclay’s to pursue and solidify the various informal expressions of interest that both Barclay’s and FTI as Monitor had received in respect of the Calgary Facilities.

13. As part of that process, the Receiver made inquiries of Barclay’s with respect to the marketing efforts that Barclay’s had undertaken in respect of the Calgary Facilities up to the commencement of the CCAA Proceedings in order to determine whether there would be any benefit to the Receiver embarking upon an entirely new marketing and sales campaign for the

Calgary Facilities, or whether between the Barclay's marketing efforts since November of 2010 and the CCAA Transaction Process, the market for the Calgary Facilities had been duly canvassed.

14. Barclays confirmed that the marketing campaign for the Calgary Facilities included the following: (i) postings on the Barclay's Real Estate website; (ii) weekly updates posted on Kijiji; (iii) an initial mass mailing to Barclay's substantial database of industrial users and developers; (iv) email solicitations to Barclay's network of real estate brokers; (v) a quarterly post-card mailer to 2,800 Barclay's contacts; (vi) an ad in the *Barclay Street Real Estate Ltd. – Industrial Report*; (vii) monthly full page advertisements in the *Western Investor* newspaper¹; (viii) an ad in the Winter 2011 *Alberta Food Processors Association Publication*; (ix) the hand delivery of brochures to seventy five targeted Calgary area businesses/investors; and (x) a telephone solicitation campaign to additional targeted businesses, developers, food processors and landlords. Between November 2010 and the CCAA Filing Date, Barclay's had conducted tours of the Calgary Facilities with approximately twenty interested parties, and since the CCAA Filing Date has conducted an additional six tours of the 13A Facility, and thirty tours of the Brandon Facility.

15. Based on the foregoing, the Receiver is of the view that, between the efforts of Barclay's since November of 2010 and the solicitations made during the Transaction Process, the market for the Calgary Facilities has been fully and duly canvassed, and that there would be no perceptible economic benefit to a period of further marketing of the Calgary Facilities and the 13A Facility in particular.

¹ Circulation of 40,000 subscribers.

THE TRANSACTION

16. TVR was a party that originally expressed an interest in the 13A Facility to Barclays in November of 2011. After a series of negotiations between TVR and Barclay's/the Receiver, and negotiations between Barclay's/the Receiver and the other parties identified by Barclay's that had expressed serious interest in acquiring the 13A Facility, the Receiver agreed, subject to Court approval in accordance with the Receivership Order, to accept the offer to purchase the 13A Facility submitted by TVR. In accordance with the March 29, 2012 amendment to the TVR Agreement, TVR has delivered a non-refundable deposit in the amount of \$100,000 to the receiver which is held in the Fasken Martineau trust account. A redacted copy of the TVR Agreement is attached hereto as **Appendix "D"**. An un-redacted copy of the TVR Agreement is filed but not attached hereto, as **Confidential Appendix "D"**.

17. The Receiver has reviewed the principal business terms of the TVR Agreement with BMO and with TD Capital Mezzanine Partners Management Ltd. ("TD"), the second ranking secured creditor of NFC behind BMO, who are the only parties with an economic interest in the Calgary facilities, and has been advised of both of their support for the approval of the TVR Agreement and Proposed Transaction sought herein.

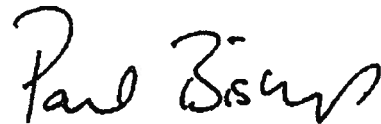
18. Because of the unique nature of the Calgary Facilities, being specialized food processing facilities, appraisals based upon sales of similar food processing facilities in the Calgary area are not readily available. Further it is the Receiver's understanding that many of the parties interested in the 13A Facility (including TVR) did not intend to use the facility for food processing. As such the Receiver and Barclays have compared the price offered by TVR to prices per acre of other industrial land sales in the Calgary area. The purchase price per acre of

the 13A Facility under the TVR Agreement falls within the higher range of prices received for industrial land sales in the Calgary area within the last 12 months. A list of Calgary industrial land sales, including the price obtained for each sale prepared by Barclay's is filed but not attached hereto, as **Confidential Appendix "E"**.

19. Based on the extensive marketing and solicitation processes for the 13A Facility both by Barclays since November of 2010, and undertaken in the Transaction Process, and based upon the support of BMO and TD, the Receiver respectfully recommends that the Court approve the TVR Agreement, authorize the Receiver to carry out the Transaction, and grant the Vesting Order, vesting the 13A Facility in the Nominee Purchaser upon closing of the Transaction.

All of which is respectfully submitted this 3rd day of July, 2012.

**FTI Consulting Canada Inc.
Receiver of the property, assets and
undertaking of New FC**



Name: Paul Bishop
Title: Senior Managing Director,
FTI Consulting Canada Inc.