

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

BETWEEN:

FARM CREDIT CANADA

Applicant

- and -

ASPIRE FOOD GROUP LTD./LE GROUPE ALIMENTAIRE ASIRE
LTÉE, ASPIRE FOOD GROUP CANADA LTD./LE GROUPE
ALIMENTAIRE ASPIRE CANADA LTÉE, 11850407 CANADA
INC., 8679398 CANADA INC. AND ASPIRE FOOD GROUP USA,
INC.

Respondents

**FACTUM
(Receivership Appointment)**

February 28, 2025

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Fax: (416) 862-7661

Clifton P. Prophet (34845K)

Tel: (416) 862-3509
Email: clifton.prophet@gowlingwlg.com

Katherine Yurkovich (80396R)

Tel: 416- 862-4342
Email: kate.yurkovich@gowlingwlg.com

Lawyers for the Applicant

TO: THE SERVICE LIST

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

BETWEEN:

FARM CREDIT CANADA

Applicant

AND

**ASPIRE FOOD GROUP LTD./LE GROUPE ALIMENTAIRE
ASIRE LTÉE, ASPIRE FOOD GROUP CANADA LTD./LE
GROUPE ALIMENTAIRE ASPIRE CANADA LTÉE,
11850407 CANADA INC., 8679398 CANADA INC. AND
ASPIRE FOOD GROUP USA, INC.**

Respondents

**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**

**SERVICE LIST
(as at February 28, 2025)**

TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street, Suite 1600 Toronto, ON M5X 1G5 Tel: (416) 862-7525 Fax: (416) 862-7661 Clifton P. Prophet (34845K) clifton.prophet@gowlingwlg.com</p> <p>Katherine Yurkovich (80396R) kate.yurkovich@gowlingwlg.com</p> <p><i>Counsel to Farm Credit Canada</i></p>
AND TO:	<p>FTI CONSULTING CANADA INC. Toronto-Dominion Centre, TD South Tower 79 Wellington St W Suite 2010 Toronto, ON M5K 1G8</p> <p>Jeffrey Rosenberg Email: jeffrey.rosenberg@fticonsulting.com</p> <p><i>Proposed Receiver</i></p>
AND TO:	<p>STIKEMAN ELLIOTT LLP 5300 Commerce Court West, 199 Bay St. Toronto, ON M5L 1B9</p> <p>Maria Konyukhova Email: mkonyukhova@stikeman.com</p> <p><i>Counsel to the Proposed Receiver</i></p>
AND TO:	<p>ASPIRE FOOD GROUP LTD./LE GROUPE ALIMENTAIRE ASPIRE LTÉE 2450 Innovation Drive London, ON N6M0C5</p> <p>Mohammed Ashour Email: ma@aspirefg.com</p> <p>David Rosenberg Email: david@aspirefg.com</p> <p><i>Respondent</i></p>

AND TO:	<p>ASPIRE FOOD GROUP CANADA LTD./ LE GROUPE ALIMENTAIRE ASPIRE CANADA LTÉE; 11850407 CANADA INC.; 8679398 CANADA INC. 2450 Innovation Drive London, ON N6M0C5</p> <p>Mohammed Ashour Email: ma@aspirefg.com</p> <p><i>Respondents</i></p>
AND TO:	<p>ASPIRE FOOD GROUP USA, INC. 6231 E Stassney Lane, Building 12, Suite 105, Austin, Texas, USA</p> <p>2450 Innovation Drive London, ON N6M0C5</p> <p>Mohammed Ashour Email: ma@aspirefg.com</p> <p><i>Respondent</i></p>
AND TO:	<p>OSLER, HOSKIN & HARCOURT LLP 1000 Rue De la Gauchetière O Suite 1100, Montreal, QC H3B 4W5</p> <p>Sandra Abitan, Ad. E. sabitan@osler.com</p> <p><i>Counsel to the Respondents</i></p>
AND TO:	<p>MARK BRENDER PROFESSIONAL CORPORATION INC. 2100 1000 De La Gauchetiere Street West Montreal, QC H3B 4W5</p> <p><i>PPSA Registrant</i></p>
AND TO:	<p>DONNA STEINBERG 11A – 1160 Park Avenue New York, NY, USA 10128</p> <p><i>PPSA Registrant</i></p>

AND TO:	FINANCIÈRE SAVOIE INC. 549 De Verrazano Street Boucherville, QC J4B 7W2 <i>PPSA Registrant</i>
AND TO:	LINGOTTO SPECIAL OPPORTUNITIES MASTER FUND IVAC on behalf of its sub-fund LINGOTTO SPECIAL OPPORTUNITIES MASTER FUND 3 55 Charlemont Place, Unit 2 Dublin, Ireland D02 F985 <i>PPSA Registrant</i>
AND TO:	MARGOT STEINBERG 11H – 500 West End Avenue New York, NY, USA 10024 <i>PPSA Registrant</i>
AND TO:	JC2 INVESTMENTS LLC (JOHN CHAMBERS AND FORMERLY JCEP) P.O. Box 10195, Department 12 Palo Alto, CA, USA 94303 <i>PPSA Registrant</i>
AND TO:	BMO CAPITAL PARTNERS INC. 100 King Street West, 21 st Floor Toronto, ON M5X 1A1 Email: lrclitigationparalegalservices@bmo.com <i>PPSA Registrant</i>
AND TO:	CROWN CREDIT (CANADA) CORPORATION 210 Annagem Blvd. Mississauga, ON L5T 2V5 <i>PPSA Registrant</i>

AND TO:	CROWN EQUIPMENT CORPORATION 44 S. Washington Street New Bremen, OH, USA 45869 <i>UCC Registrant</i>
AND TO:	ONTARIO MINISTRY OF FINANCE INSOLVENCY UNIT Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca
AND TO:	OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA 151 Yonge Street, 4th Floor Toronto, ON M5C 2W7 Email: osbservice-bsfservice@ised-isde.gc.ca
AND TO:	ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Intake Centre – Ontario Regional Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
AND TO:	THE CORPORATION OF THE CITY OF LONDON P.O. Box 5035 London, ON N6A 4L9

Email Address List:

clifton.prophet@gowlingwlg.com; kate.yurkovich@gowlingwlg.com;
jeffrey.rosenberg@fticonsulting.com; mkonyukhova@stikeman.com; ma@aspirefg.com;
david@aspirefg.com; sabitan@osler.com; lrcplitigationparalegalservices@bmo.com;
insolvency.unit@ontario.ca; osbservice-bsfservice@ised-isde.gc.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

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

BETWEEN:

FARM CREDIT CANADA

Applicant

- and -

ASPIRE FOOD GROUP LTD./LE GROUPE ALIMENTAIRE ASIRE
LTÉE, ASPIRE FOOD GROUP CANADA LTD./LE GROUPE
ALIMENTAIRE ASPIRE CANADA LTÉE, 11850407 CANADA
INC., 8679398 CANADA INC. AND ASPIRE FOOD GROUP USA,
INC.

Respondents

**FACTUM
(Receivership Appointment)**

I. OVERVIEW

1. This Factum is filed in support of an Application by Farm Credit Canada (“FCC”) for an Order (the “**Appointment Order**”) appointing FTI Consulting Canada Inc. (“FTI”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the property, assets and undertakings (collectively, the “**Property**”) of Aspire Food Group Ltd./Le Groupe Alimentaire Asire Ltée (“**Aspire**”), Aspire Food Group Canada Ltd./Le Groupe Alimentaire Aspire Canada Ltée (“**Aspire Canada**”), 11850407 Canada Inc. (“**118 Canada**”), 8679398 Canada Inc. (“**867 Canada**” and, together with Aspire, Aspire Canada and 118 Canada, the “**Aspire Borrowers**”), and Aspire Food Group USA, Inc., (“**Aspire USA**” and, together with Aspire, Aspire Canada, 118 Canada and 867

Canada, the “**Aspire Group**”) 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

II. FACTS

2. The facts with respect to this Application are only briefly recited herein, and are set out in more detail in the Affidavit of Dale Snider sworn February 14, 2025 (the “**Snider Affidavit**”).³ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Snider Affidavit.

Background of the Aspire Group’s Business and FCC Credit Facilities

3. The Aspire Group operates in the insect agriculture industry, producing crickets and cricket biproducts for pet and human consumption.⁴

4. In Canada, the Aspire Group operates out of a production plant (the “**Facility**”) located at 2450 Innovation Drive, London, Ontario (the “**Mortgaged Property**”), owned by 118 Canada.⁵ The Facility was built by the Aspire Group with the intention of scaling a proprietary cricket growing process that was developed from its research and development facility based in Austin, Texas (the “**Austin R&D Facility**”).⁶

5. As further described in the Snider Affidavit, Aspire is the parent company of the Aspire Group, and is owned by multiple investors. The other entities within the Aspire Group are either

¹ *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 [the “**BIA**”]

² *Courts of Justice Act*, RSO 1990, c C43 [the “**CJA**”]

³ [**Affidavit of Dale Snider sworn February 14, 2025**](#), Application Record of Farm Credit Canada dated February 26, 2025, Tab 2 [the “**Snider Affidavit**”]

⁴ [**Snider Affidavit, para 3**](#)

⁵ [**Snider Affidavit, para 5, para 26**](#)

⁶ [**Snider Affidavit, paras 4-5**](#)

operating entities (Aspire Canada and Aspire USA) or holding companies (118 Canada and 867 Canada).⁷

6. FCC has extended credit facilities to each of the Aspire Borrowers under the terms and subject to the conditions of the Credit Agreement.⁸ The obligations of the Aspire Borrowers to repay each of the Loan Facilities under the Credit Agreement are joint and several.⁹

7. As of January 17, 2025, FCC is owed approximately \$41,468,672.29 under the Credit Agreement by the Aspire Borrowers (the amount owing from time to time by the Aspire Borrowers to FCC, the “**Indebtedness**”).¹⁰

8. As security for the indebtedness and liability owing to FCC pursuant to the Credit Agreement, among other things, the Aspire Group provided FCC with the following security:

- (a) 118 Canada delivered a first charge/mortgage against the Mortgaged Property in favour of FCC in the principal amount of \$60,000,000 (the “**Mortgage**”);¹¹
- (b) Each of the Aspire Borrowers delivered general security agreements, governed by the laws of Ontario (the “**Canadian GSAs**”);¹² and
- (c) Aspire USA delivered a general security agreement, governed by US law (the “**Aspire USA GSA**”).¹³

9. Aspire USA also provided FCC with a US law governed unlimited guaranty of the Indebtedness.¹⁴

⁷ [Snider Affidavit, paras 22-28](#)

⁸ [Snider Affidavit, paras 31-33](#)

⁹ [Snider Affidavit, para 34](#)

¹⁰ [Snider Affidavit, para 10](#)

¹¹ [Snider Affidavit, para 35\(a\), Exhibit “H”](#)

¹² [Snider Affidavit, para 35\(c\), Exhibit “J”](#)

¹³ [Snider Affidavit, para 35\(e\), Exhibit “L”](#)

Issues with the Facility and Scaling Operations

10. Although the design and production methodologies developed in the Austin R&D Facility were able to demonstrate viable production yields and forecasts, geographical and environmental differences between Texas and Ontario, as well as certain deviations in respect of the design and build of cricket habitats in the Facility have caused fundamental operational and scalability issues at the Facility.¹⁵ Specifically, and despite the Aspire Group's plans for production at the Facility to be at full capacity by 2023, commercial operations at the Facility have been at or under 50% since May of 2024, and, at certain points, production has completely shut down in order for the Aspire Group to focus on further research and development efforts.¹⁶

11. Given the issues plaguing operations at the Facility, the Aspire Group has not been able to generate positive cash flow/ earnings to date.¹⁷ At this juncture, it is clear that further time and research and development is required in order to attempt to scale operations, replicate the yields that were projected for the Facility based on projections out of the Austin R&D Facility and ultimately make the Facility commercially viable.¹⁸

Financial Difficulties of the Aspire Group

12. The Aspire Group has struggled with fundamental operational issues, minimal production yields and resulting liquidity challenges since entering into the Credit Agreement (prior to being amended by the First Amendment and the Second Amendment, the "ARCA").¹⁹ At the time of entry into the ARCA, the Aspire Group required significant funding to finance working capital requirements in order to successfully scale operations at the Facility, and certain capital expenditures in connection

¹⁴ [Snider Affidavit, para 36, Exhibit "M"](#)

¹⁵ [Snider Affidavit, para 7](#)

¹⁶ [Snider Affidavit, para 8](#)

¹⁷ [Snider Affidavit, para 8](#)

¹⁸ [Snider Affidavit, para 11](#)

¹⁹ [Snider Affidavit, paras 49-50](#)

with improvements being made to the Facility.²⁰ In an effort to support the ongoing working capital requirements of the Aspire Borrowers, FCC agreed to approve Facility 2 under the Credit Agreement, made available by way of two conditional tranches of \$5,000,000.²¹ Ultimately, the second tranche of Facility 2 was cancelled as the requisite conditions precedent, including a satisfactory annual review of the Aspire Borrowers in July 2024 (one month after entry into the ARCA), were not met.²²

13. Notwithstanding the rapidly deteriorating financial condition of the Aspire Group, in light of the Aspire Group's consistent need to replenish working capital while focusing on research and development in an attempt to optimize operations, FCC provided various accommodations and amendments to the terms of the ARCA. Specifically, pursuant to both the First Amendment and Second Amendment, FCC deferred payments of principal (First Amendment) or principal and interest (Second Amendment), on a partially retroactive basis, and reimbursed these payments to the Aspire Borrowers to support urgent working capital requirements.²³

14. The terms of the First Amendment further required that FTI be engaged as financial consultant (in such capacity, the "**Consultant**").²⁴ Although the Aspire Borrowers implemented internal restructuring efforts following input from the Consultant in order to reduce operating expenses (including terminating or temporarily laying off over 100 employees and seasonal contract workers), the Aspire Group continued to face a cash shortfall.²⁵

15. The financial difficulties and pressures facing the Aspire Group are not limited to the need for additional working capital to support operational improvements, and the long-term commercial viability of the Facility is becoming increasingly uncertain. In this regard:

²⁰ [Snider Affidavit, paras 49-50](#)

²¹ [Snider Affidavit, para 48, para 51](#)

²² [Snider Affidavit, paras 52-53](#)

²³ [Snider Affidavit, para 54, para 60](#)

²⁴ [Snider Affidavit, para 56](#)

²⁵ [Snider Affidavit, para 59](#)

- (a) 118 Canada has accrued, as of January 31, 2025, \$1,015,131.43 in property taxes due and owing in respect of the Mortgaged Property;²⁶
- (b) Equity injections from the Aspire Group’s founders ceased in recent months signaling concerns about support for the business;²⁷
- (c) Government grants and cost reimbursement programs previously relied on by the Aspire Group for additional working capital have dried up and are no longer collectable;²⁸ and
- (d) Current economic uncertainty and market volatility arising from the threat of tariffs on Canadian exports entering the United States has generally affected shareholder sentiment and the certainty of supply (if production ever reaches viable yields) to the US market.²⁹

Default under the Credit Agreement

16. In order to ensure that FCC’s collateral position would not be prejudiced by a disorderly shut down of operations at the Facility, FCC required, as a covenant under the Second Amendment, that the Aspire Borrowers maintain, at minimum, a cash balance of \$1,000,000 at all times during the period of November 29, 2024 – June 27, 2025 (the “**Required Cash Balance**”).³⁰ Although the terms of the Second Amended provided that any deficiency in the Required Cash Balance could be cured by way of equity injection or subordinate financing, the Aspire Borrowers breached the covenant under the Credit Agreement with respect to the Required Cash Balance by January 27, 2025 and have not cured this breach to date. Breach of the Required Cash Balance covenant amounted to an event of default under the Credit Agreement (the “**Event of Default**”).³¹ The maintenance of the Required Cash

²⁶ [Snider Affidavit, para 66](#)

²⁷ [Snider Affidavit, para 67](#)

²⁸ [Snider Affidavit, para 62](#)

²⁹ [Snider Affidavit, para 13](#)

³⁰ [Snider Affidavit, para 63](#)

³¹ [Snider Affidavit, para 64](#)

Balance is quite significant, insofar as it was intended to provide funding in the event that the cricket production operations had to be shut down, and clean up or decommissioning costs were incurred.

17. In addition to the deterioration of the Required Cash Balance, the arrears in property tax and recent challenges in meeting payroll have materially added to the risks face by FCC as lender to Aspire Group.

Issuance of Demands

18. On January 24, 2025, FCC issued demand letters to each of the Aspire Group entities (the “**Demand Letters**”) demanding repayment of the Indebtedness due and owing to FCC by no later than February 8, 2025. The Demand Letters additionally enclosed notices of intention to enforce security (collectively, the “**NITES**”), delivered in accordance with section 244 of the BIA. The notice period set out in the Demand Letters and NITES has expired.³²

PART III. ISSUES

The issue to be determined by the Court in respect of this Application is whether it is just or convenient for the Court to appoint FTI as Receiver over the Property?

PART IV. THE LAW

Technical Requirements to Appoint a Receiver Have Been Met

19. FCC submits that the technical requirements for the appointment of a receiver under both the BIA and CJA have been met.

20. FCC is a secured creditor of the Aspire Group in respect of the Property and is therefore entitled to bring an application under section 243 of the BIA. As required under sub-section 243(1.1)

³² [Snider Affidavit, para 65](#)

of the BIA, FCC issued the Demand Letters and NITES. The notice period under the NITES has expired.³³

21. 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.³⁴

It Is Just and Convenient To Appoint the Receiver

22. 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.³⁵

23. 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

³³ [BIA](#), *supra* note 1, [sections 243 and 244](#); [Snider Affidavit](#), [para 65](#)

³⁴ [BIA](#), *supra* note 1, [sub-section 243\(4\)](#); [Snider Affidavit](#), [para 73](#)

³⁵ [BIA](#), *supra* note 1, [section 243](#)

an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.³⁶

24. 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.³⁷

25. In the circumstances, the nature of the property warrants the appointment of the Receiver. There are live cricket crops currently being bred at the Facility, and the potential for unplanned mortality could adversely affect the Facility if operations are not supported in the short term.³⁸ In *Elleway Acquisitions*,³⁹ this Court additionally noted the “likelihood of preserving and maximizing the return on the subject property” as a factor that a court should consider in making the determination of whether the appointment of a receiver is just and convenient.⁴⁰ FTI, in its capacity as Consultant, has intimate knowledge of the Aspire Group’s business and the operation of the Facility, and possesses the requisite knowledge to conduct an orderly wind down of operations while preserving the Property of the Aspire Group for the benefit of all stakeholders.⁴¹

26. Generally speaking, the appointment of a receiver is “an extraordinary remedy”. That being said, 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”. The rationale for this relaxed standard is that, in such circumstances, as

³⁶ [CJA](#), *supra* note 2, [sub-section 101\(1\)](#)

³⁷ [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”].

³⁸ [Snider Affidavit](#), [para 72](#)

³⁹ [Elleway Acquisitions Limited v The Cruise Professionals Limited](#), 2013 ONSC 6866 [“*Elleway Acquisitions*”]

⁴⁰ [Elleway Acquisitions](#), *supra* note 39, at [para 28](#)

⁴¹ [Snider Affidavit](#), [para 72](#)

Justice Morawetz (as he then was), remarked in *Sherco Properties*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.⁴²

27. FCC’s credit documents with the Aspire Group explicitly provide for the appointment of a receiver.⁴³ To this effect the Canadian GSAs executed by each of the Aspire Borrowers state that: “If you default... we can appoint a receiver or manager (the “receiver”) to manage the Collateral or to operate your business. [...] We can ask the court to appoint a receiver and, if the court does so, the receiver shall have the powers listed in the court order.”.⁴⁴

28. Similarly, the Mortgage (and specifically Standard Charge Terms 201925 incorporated therein) provides that “We may appoint a receiver or receiver-manager – We may appoint or ask a court to appoint someone to manage, sell or liquidate the property”.⁴⁵

29. In *Atlas Healthcare*, this Court held that where a secured creditor has bargained for the contractual right to have a receiver and manager appointed, there must be a good reason to deprive the creditor of that contractual right.⁴⁶

30. 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 Property, as:

- (a) The Aspire Borrowers are in default under the terms of the Credit Agreement and the other credit documents as a result of the Event of Default. Demand has been made and the Aspire Borrowers have failed to repay the Indebtedness;

⁴² [*Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023 \(Commercial List\), at para 42; *Elleway Acquisitions*, supra note 39, at para 27](#)

⁴³ [*Snider Affidavit*, para 70](#)

⁴⁴ [*Snider Affidavit*, Exhibit “J”, at sub-section 9\(e\)](#)

⁴⁵ [*Snider Affidavit*, Exhibit “H”, at Standard Charge Terms 201925, sub-section 5.2\(e\)](#)

⁴⁶ [*Romspen Investment Corporation v Atlas Healthcare \(Richmond Hill\) Ltd et al*, 2018 ONSC 7382 \(Commercial List\), at para 100.](#)

- (b) FCC's credit documents specifically provide FCC with the right to seek the appointment of the Receiver;
- (c) Internal restructuring efforts completed by the Aspire Group to date have failed at reducing operating expenses to manageable levels, and liabilities, including the significant real property taxes against the Mortgaged Property, continue to accrue;
- (d) The Aspire Borrowers are facing significant and urgent cash flow constraints. Immediate working capital financing is required in order to continue the limited operations out of the Facility, and further research and development is required in order for the Aspire Group to achieve any meaningful yields from production. Despite significant time, financial investment and research and development, the Aspire Group has been unable to scale operations at the Facility. Without an immediate and substantial source of financing, the Aspire Borrowers are unlikely to generate revenue in the short or medium-term and the viability of the Aspire Group's business is tenuous at best;
- (e) FCC has provided many opportunities for Aspire Group to resolve its operational and financial issues, including recent opportunities to secure emergency liquidity to meet pressing obligations such as payroll. Despite these accommodations, to date the Aspire Group has not obtained the cash required to address its short-term financial problems, let alone its longer term challenges; and
- (f) The proposed Receiver is deeply familiar with the Aspire Group's business, is well positioned to take control of the property and, specifically, the live cricket crops at the Facility, and is the best position to oversee an orderly wind-down of operations and an eventual sale of the Aspire Group's property through a transparent and Court approved process for the benefit of all stakeholders.

PART V. CONCLUSION AND RELIEF SOUGHT

31. For the reasons set out above, FCC requests that the Court grant the Receivership Order, substantially in the form included at Tab 4 of the Application Record.

RESPECTFULLY SUBMITTED this 28 day of February, 2025.



Clifton Prophet / Katherine Yurkovich

Lawyers for Farm Credit Canada

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. [*Bank of Montreal v Sherco Properties Inc*](#), 2013 ONSC 7023 (Commercial List).
3. [*Elleway Acquisitions Limited v The Cruise Professionals Limited*](#), 2013 ONSC 6866.
4. [*Romspen Investment Corporation v Atlas Healthcare \(Richmond Hill\) Ltd et al*](#), 2018 ONSC 7382.

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC, 1985, c B-3

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

243 (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

243 (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)

243 (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

243 (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

243 (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

243(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

243 (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 C43

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.

Terms

101 (2) An order under subsection (1) may include such terms as are considered just.

FARM CREDIT CANADA

Applicant

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

-AND- ASPIRE FOOD GROUP LTD./LE GROUPE ALIMENTAIRE ASIRE LTÉE, ASPIRE FOOD GROUP CANADA LTD./LE GROUPE ALIMENTAIRE ASPIRE CANADA LTÉE, 11850407 CANADA INC., 8679398 CANADA INC. AND ASPIRE FOOD GROUP USA, INC.

Respondents

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

Proceeding commenced at Toronto

FACTUM

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Clifton P. Prophet (34845K)
clifton.prophet@gowlingwlg.com

Katherine Yurkovich (80396R)
kate.yurkovich@gowlingwlg.com

Tel: (416) 862-7525

Lawyers for Farm Credit Canada, the Applicant