

**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

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**SUPPLEMENTARY FACTUM  
(Receivership Appointment)**

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May 1, 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](mailto:clifton.prophet@gowlingwlg.com)

**Katherine Yurkovich (80396R)**  
Tel: 416- 862-4342  
Email: [kate.yurkovich@gowlingwlg.com](mailto:kate.yurkovich@gowlingwlg.com)

Lawyers for the Applicant

**TO: THE SERVICE LIST**

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**I. OVERVIEW**

1. This Supplementary 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)<sup>1</sup> (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).<sup>2</sup>

2. This supplementary factum is supplementary to FCC’s factum filed on February 28, 2025<sup>3</sup> (the “**First FCC Factum**”) and should be read together with the First FCC Factum.

## II. FACTS

3. 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**”)<sup>4</sup>, the Supplementary Affidavit of Dale Snider sworn May 1, 2025 (the “**Supplementary Snider Affidavit**”)<sup>5</sup> and the First FCC Factum. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Snider Affidavit and the Supplemental Snider Affidavit, as applicable.

### **The Adjournment of the Receivership Proceedings and the Aspire Borrowers Default of the Adjournment Letter**

4. A hearing of FCC’s Receivership Application was originally returnable before the Court on March 5, 2025 (the “**Original Hearing Date**”).<sup>6</sup>

<sup>1</sup> [Bankruptcy and Insolvency Act](#), RSC, 1985, c B-3 [the “**BIA**”]

<sup>2</sup> [Courts of Justice Act](#), RSO 1990, c C43 [the “**CJA**”]

<sup>3</sup> [Factum of Farm Credit Canada dated February 28, 2025](#) [the “**First FCC Factum**”]

<sup>4</sup> [Affidavit of Dale Snider sworn February 14, 2025](#), Application Record of Farm Credit Canada dated February 26, 2025, Tab 2 [the “**Snider Affidavit**”]

<sup>5</sup> [Supplementary Affidavit of Dale Snider sworn May 1, 2025, Supplementary Application Record of Farm Credit Canada dated May 1, 2025](#) [the “**Supplementary Snider Affidavit**”]

<sup>6</sup> [Supplementary Snider Affidavit, para 3](#)

5. In advance of the Original Hearing Date, and upon the request of the Aspire Borrowers, FCC agreed to adjourn the hearing of this application until May 6, 2025 (the “**Adjournment Request**”), in order to allow the Aspire Borrowers to formalize arrangements to obtain immediate working capital from certain shareholders of Aspire (the “**Shareholder Financing**”), and ultimately enter into a refinancing or sale transaction (the “**Repayment Transaction**”) capable of generating net proceeds sufficient to repay either (A) \$22,000,000 to FCC towards the Indebtedness (the “**Paydown Amount**”); or (B) \$18,000,000 of the Indebtedness upon closing of any such transaction (the “**Partial Paydown Amount**”), with a further \$7,000,000 (the “**Remaining Indebtedness**”) to be paid by the Aspire Borrowers on terms acceptable to FCC.<sup>7</sup>

6. Pursuant to a letter dated March 11, 2025, acknowledged by each entity within the Aspire Group and FCC (the “**Adjournment Letter**”),<sup>8</sup> FCC confirmed its agreement to the Adjournment Request, subject to compliance by the Aspire Borrowers with the following milestones (collectively, the “**Milestones**”):

- (a) By no later than 5:00 PM on March 14, 2025, the Aspire Borrowers shall have received the entire balance of the Shareholder Financing in immediately available funds;
- (b) By no later than 5:00 PM on April 1, 2025, the Aspire Borrowers shall have entered into, and provided to FCC, a fully negotiated and executed binding agreement (the “**Repayment Agreement**”) providing for a Repayment Transaction that was

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<sup>7</sup> [Supplementary Snider Affidavit, para 4](#)

<sup>8</sup> [Supplementary Snider Affidavit, para 6; Exhibit “B”: Adjournment Letter dated March 11, 2025](#)

capable of closing and generating net proceeds sufficient to pay the Paydown Amount by no later than April 30, 2025, or providing for payment of the Partial Paydown Amount and payment of the Remaining Indebtedness on terms satisfactory to FCC by no later than April 30, 2025 (the “**Repayment Agreement Milestone**”); and

- (c) By no later than 5:00 PM on April 30, 2025, the Aspire Borrowers shall have successfully closed the Repayment Transaction and paid either the Paydown Amount or the Partial Paydown Amount to FCC in full (the “**Repayment Milestone**”).<sup>9</sup>

7. As a condition precedent to delivery of the Adjournment Letter, FCC required, and the Aspire Borrowers delivered, among other things, a consent to receivership order (the “**Consent**”).<sup>10</sup> The form of receivership appointment order attached to the Consent is substantially the same as the form of the Appointment Order. Pursuant to the terms of the Adjournment Letter, upon the Aspire Borrowers’ failure to comply with any of the Milestones, the Consent was to go into immediate full force and effect, and FCC would be at liberty to proceed with the Receivership Application.<sup>11</sup>

8. On or around April 1, 2025, and concurrent with the deadline for the Repayment Agreement Milestone, the Aspire Borrowers advised FCC that they required additional time to finalize a Repayment Agreement in accordance with the terms of the Adjournment Letter. Notwithstanding this breach of the terms of the Adjournment Letter, FCC, without waiving

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<sup>9</sup> [Supplementary Snider Affidavit, para 6](#)

<sup>10</sup> [Supplementary Snider Affidavit, para 7, Exhibit “C”: Consent to Receivership Order](#)

<sup>11</sup> [Supplementary Snider Affidavit, para 8](#)

this breach and reserving its rights and remedies, including its right to rely on the Consent, agreed to extend the deadline for the Repayment Agreement Milestone to no later than April 21, 2025.<sup>12</sup>

9. On April 21, 2025, the Aspire Borrowers once again breached the terms of the Adjournment Letter, as amended, by failing to deliver to FCC a Repayment Agreement in accordance with the extended Repayment Agreement Milestone.<sup>13</sup>

10. Despite the Aspire Borrowers assurances to FCC that the additional time provided under the Adjournment Letter, and subsequent extension of the Repayment Agreement Milestone, would provide the Aspire Borrowers with the necessary time and breathing room to formalize a Repayment Transaction, both FCC and the Consultant have not received any binding agreement suggesting that the parties are close to formalizing a transaction.<sup>14</sup>

11. On April 30, 2025, the Aspire Borrowers once again breached the terms of the Adjournment Letter by failing to remit payment of the Paydown Amount or Partial Paydown Amount to FCC in accordance with the Repayment Milestone.<sup>15</sup>

### **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?

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<sup>12</sup> [Supplementary Snider Affidavit, para 10, Exhibit "D": Email Amendment to Adjournment Letter dated April 1, 2025](#)

<sup>13</sup> [Supplementary Snider Affidavit, para 11](#)

<sup>14</sup> [Supplementary Snider Affidavit, para 12](#)

<sup>15</sup> [Supplementary Snider Affidavit, para 13](#)

#### PART IV. THE LAW

12. FCC refers to its previous submissions at paragraphs 19-21 of the First FCC Factum<sup>16</sup> regarding FCC's submission that the technical requirements for the appointment of a receiver under both the BIA and CJA have been met.

13. In addition to its prior submissions at paragraphs 22-30 of the First FCC Fatum,<sup>17</sup> FCC submits that it remains just and convenient to appoint FTI as receiver over the Property in the circumstances.

14. The Aspire Borrowers have consented to the Appointment Order and have executed the Consent.<sup>18</sup> In light of the Consent, it is not open to the Aspire Borrowers to argue that the appointment of the Receiver is not "just or convenient". In *Servus*,<sup>19</sup> the Alberta Court of Queen's Bench reviewed the state of the law on contested receivership applications where a consent to receivership order had previously been executed by the respondents as a condition to the secured creditor's agreement to forbear from taking enforcement steps. In its reasons regarding the granting of the receivership order, the Court in *Servus* noted:

[50] By signing the consent receivership order, the debtors acknowledged their indebtedness to Servus, their default status, the triggering of Servus's enforcement options (which included applying for a receiver), and that the appointment of a receiver was warranted i.e. once the period of forbearance, purchased (in part) by the provision of the consent receivership order, had expired without clearance of Servus's debt.

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<sup>16</sup> [First FCC Factum, paras 19-21](#)

<sup>17</sup> [First FCC Factum, paras 22-30](#)

<sup>18</sup> [Supplementary Snider Affidavit, para 7, Exhibit "C": Consent to Receivership Order](#)

<sup>19</sup> [Servus Credit Union Ltd v Proform Management Inc](#), 2020 ABQB 316 ["*Servus*"]

[51] The debtors effectively surrendered, on a contingent basis: “If we are not able to clear our defaults in full by the end of the forbearance period, you can enter this receivership order.”

[...]

[53] It is not open to the debtors or the guarantor, at this stage, to offer arguments about why the receivership order is not “just or convenient” in light of this agreement. Servus lived up to its end of the deal, forbearing from taking enforcement action, first (formally) for four months and then a further (formal) two and a half months, plus informally in the lead-ups to the two forbearance agreements. By the end of those periods, the debtors had not accomplished the one thing that could stave off enforcement action: clearing Servus’s debt in full.

[...]

[55] Servus has not agreed to any further forbearance or stay period. The consequence that it could seek the receivership order in such circumstances is precisely what the debtors agreed to.

[56] Having effectively conceded their default status and the triggering of Servus’s enforcement options, and having expressly agreed that Servus could seek the entry of the consent receivership order in that circumstance, the debtors have blocked themselves from resisting the granting of the orders i.e. beyond forbearance-related arguments, as discussed further below.<sup>20</sup>

15. To date, FCC has provided many opportunities for Aspire Group to resolve its operational and financial issues. In this regard, FCC has provided the Aspire Borrowers with opportunities to secure emergency liquidity to meet pressing obligations such as payroll, and entered into the Adjournment Letter in order to provide the Aspire Group with additional time to finalize a Repayment Transaction. Despite these accommodations, the Aspire Group has not been successful in formalizing any Repayment Transaction that will see the Indebtedness repaid in the short or long-term.

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<sup>20</sup> [Servus](#), *supra* note 19, at [paras 50-56](#)

16. At this juncture, it has become clear to FCC that the possibility of the Aspire Borrowers finalizing a Repayment Transaction in the near term and on terms satisfactory to FCC is negligible.<sup>21</sup> Similar to the facts in *Servus*, FCC has ‘lived up to its end of the deal’ and entered into the Adjournment Letter with the Aspire Group in an attempt to accommodate the Aspire Borrower’s refinancing efforts. As those efforts have not materialized into a Refinancing Transaction, FCC submits that it is both just and convenient for this Court to grant the Appointment Order, which is in substantially the same form as the form of receivership appointment order attached as Schedule “A” to the Consent. It is time for a FTI, an independent and expert third party, to take control of the business and manage the realization and monetization of the business and its assets for the benefit of creditors, under the supervision of the Court and as the Court’s officer.

#### **PART V. CONCLUSION AND RELIEF SOUGHT**

17. For the reasons set out above and in the First FCC Factum, FCC requests that the Court grant the Appointment Order, substantially in the form included at Tab 2 of the Supplementary Application Record.<sup>22</sup>

**PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED** certifies that they are satisfied as to the authenticity of every authority cited in this factum.




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**Katherine Yurkovich (LSO#80396R)**

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<sup>21</sup> [Supplementary Snider Affidavit, para 13](#)

<sup>22</sup> [Supplementary Application Record, Tab 2: Revised Draft Order Appointing Receiver](#)

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of May, 2025.

*Gowling WLG (Canada) LLP*

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**Gowling WLG (Canada) LLP**

Lawyers for Farm Credit Canada

**SCHEDULE "A"**

**LIST OF AUTHORITIES**

1. [\*Servus Credit Union Ltd v Proform Management Inc\*](#), 2020 ABQB 316

**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

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Applicant

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

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Proceeding commenced at Toronto

**SUPPLEMENTARY 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](mailto:clifton.prophet@gowlingwlg.com)

Katherine Yurkovich (80396R)  
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Tel: (416) 862-7525

Lawyers for Farm Credit Canada, the Applicant