

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

FARM CREDIT CANADA

Applicant

- and -

GLOBAL FOOD AND INGREDIENTS INC. and GFI BRANDS 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

**(Motion for Sale Approval and Vesting Order and Ancillary Relief, returnable February 4,
2025)**

February 3, 2025

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FACTUM OF THE RECEIVER

PART I—OVERVIEW

1. This is a motion to seek approval of the sale of the remaining real property interest (and related equipment) included in the FCC Secured Property¹ subject to this receivership: the Vigro Lands and related Books and Records and Equipment (also known as the “**Vigro Purchased Assets**”) (the “**Third Approval and Vesting Order**”), and certain other ancillary relief (the “**Ancillary Relief Order**”). The two other real property interests included in the FCC Secured Property have already been sold subject to court-approved sale transactions.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Third Report of FTI Consulting Canada Inc. in its capacity as court-appointed receiver (the “**Receiver**”) dated January 27, 2025, Motion Record of the Receiver, Tab 2 (the “**Third Report**”).

2. The Receiver has agreed to defer the requested relief relating to the distribution of proceeds, this relief will now be returnable at a later date.

3. The Receiver is of the view that: (i) the process leading to the proposed Purchase Agreement for the Vigro Purchased Assets was fair and reasonable and completed in accordance with the court-approved SISP; and (ii) the Purchase Agreement represents the highest and best offer available in the circumstances for the Vigro Purchased Assets.

4. The Receiver respectfully submits that the Approval and Vesting Order should be approved. The Receiver is presently unaware of any opposition to the requested relief.

PART II—FACTS

Background

5. FTI Consulting Canada Inc. in its capacity as court-appointed receiver (the “**Receiver**”) was appointed receiver over the FCC Secured Property of Global Food and Ingredients Inc. and GFI Brands Inc. (collectively the “**Debtors**”) on May 30, 2024. On the same day, Richter Inc. was appointed by the Siena Lending Group Canada LLC (“**Siena**”) as receiver over certain other assets of the Debtors.²

6. Pursuant to an Intercreditor Agreement dated February 1, 2024 (the “**Intercreditor Agreement**”) between FCC and Siena, FCC and Siena agreed to their respective priorities in respect of their security over the assets of the Debtors. Pursuant to the Intercreditor Agreement, FCC has priority over the “**FCC Secured Property**”, consisting of, among other things

² Third Report at para. 20, CaseLines Master [A1038](#).

(capitalized terms as defined in the Intercreditor Agreement): all Equipment and fixtures, Intellectual Property, a certain insurance policy and the following Real Property on which the Debtors operated high-speed ingredient processing and storage facilities:

- (a) 100 Elevator Road, Zealandia Saskatchewan (the “**Zealandia Lands**”);
- (b) R.M. of Lajord No 128, Lajord Saskatchewan (surface parcel #111788219) (the “**Vigro Lands**”); and
- (c) 100 South Railway Avenue, Lajord No. 128, Saskatchewan (the “**Lajord Property**”).³

7. Prior to the receivership, the Debtors ceased all operations. The intention of this receivership is to conduct an orderly liquidation of the FCC Secured Property.⁴

SISP

8. The Court approved a sale and solicitation process (“**SISP**”) for the FCC Secured Property in the SISP Approval Order dated August 19, 2024.⁵ The SISP consisted of a broad two-phase process to market and solicit offers to purchase the FCC Secured Property.⁶

³ Third Report at para. 22, CaseLines Master [A1040](#).

⁴ Third Report at para. 23, CaseLines Master [A1040](#).

⁵ Third Report at para. 24, CaseLines Master [A1040](#).

⁶ Third Report at para. 25, CaseLines Master [A1041](#).

9. To ensure that time was not lost marketing the property, the Receiver had already started the marketing process the week of July 15, 2024, with the creation of a list of potential bidders and initial reach-outs.⁷

10. The key milestones and dates under the SISP are summarized in the following table:⁸

Milestone	Date(s)
Phase 1: Formal Marketing Process and Initial Due Diligence Period	July 15, 2024 – September 13, 2024
Phase 1 Bid Deadline	5:00 p.m. (Eastern Time) on September 13, 2024
Phase 2: Due Diligence Period for Selected Bidders	September 14, 2024 – October 4, 2024
Phase 2 Bid Deadline	5:00 p.m. (Eastern Time) on October 4, 2024
Court Approval of Successful Bid	Target the week of October 21, 2024
Outside Date	November 15, 2024

Phase 1

11. The Sale Agent with the oversight of the Receiver and assistance of the Key Consultants undertook the SISP in accordance with the terms therein.⁹ They reached out to a total of 225 parties in relation to the SISP opportunity.¹⁰ A total of 44 parties executed the NDA provided by the Receiver to obtain access to further details regarding the proposed opportunity.¹¹

⁷ Third Report at para. 26, CaseLines Master [A1041](#).

⁸ Third Report at para. 27, CaseLines Master [A1041](#).

⁹ Third Report at para. 28, CaseLines Master [A1041](#).

¹⁰ Third Report at para. 31, CaseLines Master [A1042](#).

¹¹ Third Report at para. 32, CaseLines Master [A1042](#).

12. By the Phase 1 Bid Deadline of September 13, 2024, ten letters of interest (“**LOIs**”) were received in various combinations for the three facilities: Zealandia, Lajord, and Vigro.¹² The Receiver, in consultation with the Sale Agent, reviewed the LOIs to determine whether they were Qualified Phase 1 Bids as per the terms of the SISP and whether they should be Selected Bidders moving on to participate in Phase 2.¹³

Phase 2

13. Nine of the ten parties who had submitted LOIs (the “**Selected Bidders**”) were invited to participate in Phase 2 of the SISP.¹⁴

14. Selected Bidders were given the opportunity to complete any remaining diligence ahead of the Phase 2 Bid Deadline. The Receiver worked with the Selected Bidders to enable them to perform the necessary diligence.¹⁵ The Receiver provided a draft Asset Purchase Agreement to be used as a template for any purchase agreements.¹⁶

Results of the SISP

15. By the Phase 2 Bid Deadline of October 4, 2024, the Receiver identified two Qualified Bids to move forward with: one for the Zealandia Lands and one for the Lajord Property.¹⁷

¹² Third Report at para. 34, CaseLines Master [A1042](#).

¹³ Third Report at para. 35, CaseLines Master [A1042](#).

¹⁴ Third Report at para. 36, CaseLines Master [A1043](#).

¹⁵ Third Report at para. 37, CaseLines Master [A1043](#).

¹⁶ Third Report at para. 38, CaseLines Master [A1043](#).

¹⁷ Third Report at para. 37, CaseLines Master [A1043](#).

16. On November 12, 2024, the Receiver obtained approval and vesting orders for the Zealandia Lands and for the Lajord Property.¹⁸

17. The closing conditions for the Zealandia Purchase Agreement have now been satisfied. The Zealandia Purchase Agreement closed as of November 29, 2024.¹⁹

18. The closing conditions for the Lajord Purchase Agreement have been satisfied. The Lajord Purchase Agreement closed as of January 30, 2025.²⁰

19. During the SISP a potential issue was identified relating to a potential encroachment in relation to the Vigro Lands, which was brought to the attention of all potential purchasers. No bids were received for the Vigro Lands. The Receiver continued to be in discussions with third parties with respect to a potential sale of the Vigro Lands, the processing facility thereon and the equipment therein.²¹

The Vigro Lands and the Third Approval and Vesting Order

20. Following the granting of the Approval and Vesting Orders for Zealandia Lands and Lajord Property, the Receiver continued to advance its discussions with third parties, including those identified by the SISP, to locate a purchaser for the Vigro Lands. The Receiver experienced

¹⁸ Third Report at para. 39, CaseLines Master [A1043](#).

¹⁹ Third Report at para. 43, CaseLines Master [A1044](#).

²⁰ The Receiver's Certificate for the Lajord Purchase Agreement was delivered and served upon the Service List on January 30, 2025. The executed Receiver's Certificate and proof of service are at CaseLines Master [A1129](#); Footnote 2 of the Third Report, CaseLines Master [A1045](#).

²¹ Third Report at para. 39, CaseLines Master [A1043](#).

challenges locating a purchaser due to concerns arising from the potential encroachment of the facility on the Vigro Lands over a neighbouring property.²²

21. In late November 2024, the Receiver received a bid from FoodLife Group Inc. (the “**Vigro Purchaser**”) and received a purchase agreement for the Vigro Lands (the “**Vigro Purchase Agreement**”).²³

22. The Vigro Purchaser proposes to purchase the following FCC Secured Property, as outlined in the Vigro Purchase Agreement:

- (a) the Vigro Lands;
- (b) Books and Records relating to Vigro Lands; and
- (c) Equipment and fixtures on the Vigro Lands (collectively, the “**Vigro Purchased Assets**”).²⁴

23. Among other things, the Vigro Purchase Agreement provides for the following:

- (a) the issuing and entering of the Approval and Vesting Order as a condition precedent to Closing;
- (b) at the Closing Time, the Receiver shall sell, assign, transfer, and convey to the Vigro Purchaser, and the Vigro Purchaser shall purchase and assume from the Receiver, all right, title, interest of the Debtors in, to and under the Purchased

²² Third Report at para. 47, CaseLines Master [A1046](#).

²³ Third Report at para. 48, CaseLines Master [A1046](#).

²⁴ Third Report at para. 50, CaseLines Master [A1047](#).

Assets described in Schedule “A” of the Vigro Purchase Agreement, free and clear of any and all Encumbrances except Permitted Encumbrances;

- (c) the Vigro Purchaser is acquiring the Vigro Purchased Assets on an “as is, where is” basis; and
- (d) from and after Closing, the Vigro Purchaser shall assume and be liable for the Assumed Liabilities, as defined in section 2.3 of the Vigro Purchase Agreement, which include all Liabilities under or in respect of the Permitted Encumbrances, the ownership, operation or use of the Purchased Assets from and after closing, and environmental and remediation obligations.²⁵

24. The Vigro Purchaser has paid the Deposit under the Vigro Purchase Agreement to the Receiver.²⁶ Upon the closing conditions being satisfied, including the issuance and entering of the Third Approval and Vesting Order, the Receiver shall issue the Third Receiver’s Certificate to the Court confirming that all conditions to Closing have been satisfied or waived.²⁷

Activities of the Receiver

25. The activities of the Receiver up until November 4, 2024, the date of the Second Report, have already been approved by this Court.

26. On this motion, the Receiver is seeking the approval of the Third Report and the Receiver’s conduct and activities described therein, which include, among other things:

²⁵ Third Report at para. 51, CaseLines Master [A1047](#).

²⁶ Third Report at para. 54, CaseLines Master [A1048](#).

²⁷ Third Report at para. 55, CaseLines Master [A1048](#).

- (a) posting and updating the Receiver's website with all public documents as it relates to the within proceeding;
- (b) paying the Key Consultants for services provided to the Receiver during the SISP, including making payments in accordance with the KCRP;
- (c) responding to inquiries from various stakeholders;
- (d) coordinating with the Siena Receiver in respect of various matters;
- (e) advancing the transactions contemplated by the Lajord Purchase Agreement and the Zealandia Purchase agreement and attending to pre-closing matters, including the negotiation of the Lajord Amending Agreement;
- (f) consulting with prospective purchasers for the Vigro Lands;
- (g) negotiating the Vigro Purchase Agreement;
- (h) reviewing, with FCC, the offers received for the FCC Secured Property;
- (i) attending to other administrative matters relating to these proceedings; and,
- (j) preparing the Third Report and the corresponding motion materials.²⁸

²⁸ Third Report at para. 67, CaseLines Master [A1053](#).

PART III – ISSUES AND THE LAW

The Issues

27. There are three issues on this motion, each of which the Receiver submits should be answered in the affirmative:

- (a) Should the Third Approval and Vesting Order be approved?
- (b) Should the sealing order be granted in respect of the Confidential Schedule?
- (c) Should this Court approve the Receiver's activities as described in the Third Report?

A. The Third Approval and Vesting Order and the Transactions Contemplated by the Purchase Agreement should be Approved

28. Pursuant to the SISP Approval Order, the Receiver was authorized and directed to conduct a SISP in respect of the FCC Secured Property. As described herein and the Third Report, the SISP has culminated in the proposed Vigro Purchase Agreement.

29. In reviewing a proposed sale of assets in the context of a receivership, a court must consider the factors set out by the Court of Appeal in *Royal Bank v. Soundair Corp.*²⁹

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;

²⁹ [1991 CanLII 2727 \(ON CA\)](#), 4 O.R. (3d) 1. [*Soundair*]

- (c) the efficacy and integrity of the process by which offers are obtained; and,
- (d) whether there has been unfairness in the working out of the process (the “*Soundair Principles*”).³⁰

30. In making this assessment, the court should generally uphold the business judgement of the Receiver overseeing the sale, and only reject the Receiver’s recommendation in the most exceptional circumstances, such as where those sales do not satisfy the *Soundair* principles.³¹

31. The Receiver respectfully submits that the *Soundair Principles* have been satisfied in respect of the Vigro Purchase Agreement:

- (a) **Significant efforts to obtain the best bids and no improvident actions.** The SISP was comprehensive and the FCC Secured Property was marketed broadly in accordance with the court-approved SISP. The Receiver contacted 225 parties in relation to the opportunity. 44 parties executed an NDA and 10 LOIs were received by the Phase 1 Bid Deadline. Nine out of the ten LOIs were invited to participate in Phase 2. The Receiver continued to engage in discussions and negotiations after the Phase 2 Bid Deadline to find a purchaser for the Vigro Lands. The Purchase Agreement represents the best agreement available, and in the Receiver’s view, further marketing efforts would not result in a superior transaction.³²

³⁰ *Soundair* at [para. 21](#), *Soundair* has been applied in a variety of cases, including *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#).

³¹ *Soundair* at [para. 21](#); *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) [Morawetz J.] at [paras. 45-66](#).

³² Third Report at paras. 31-36, CaseLines Master [A1042](#); Third Report at para. 58, CaseLines Master [A1049](#).

- (b) **The best interests of all of the stakeholders.** The Purchase Agreement provides for the best outcome in the circumstances for all stakeholders. Since the business of the Debtors is no longer operational, the purpose of this receivership is to conduct an orderly liquidation for the benefit of the economic stakeholders. Completion of the transactions set out in the Purchase Agreement represents the highest and best bid for the relevant assets and is expected to result in a material realization for the benefit of creditors.
- (c) **The sales process was run with efficacy and integrity.** The marketing process ran in accordance with the court-approved SISP and the Receiver ensured that all steps of the process were conducted with integrity. The Receiver has not received any objections or concerns regarding the SISP or the manner in which it was conducted. The timeline and terms of the SISP were approved in the SISP Order and the process was completed in accordance with those court-approved terms. The Receiver worked expeditiously to locate a purchaser for the Vigro Lands within two months after the Phase 2 Bid Deadline.
- (d) **The process to obtain the Vigro Purchase Agreement was fair.** The Receiver is not aware of any unfairness in the working of the SISP or the Vigro Purchase Agreement. As the Vigro Lands are subject to a potential encroachment issue, there have been in difficulties marketing and obtaining offers for the property. The Receiver believes the market has been well-canvassed and that the Vigro

Purchase Agreement represents the best agreement available for the Vigro Lands.³³

32. The Receiver is of the view that the Third Approval and Vesting Order is appropriate and represents the highest and best outcome identified for the Vigro Lands and should be approved.

B. The Sealing Order for the Purchase Agreement Should be Approved

33. The Receiver seeks an order sealing Schedule “D” to the Vigro Purchase Agreement (the “**Confidential Schedule**”), which includes the purchase price to be paid for the Vigro Purchased Assets (the “**Sealing Order**”). The redacted Purchase Agreement is attached to the Third Report.

34. The only information contained in the Confidential Schedule that is not contained in the redacted Purchase Agreement relates to the purchase price and economic terms of the transaction.

35. Pursuant to the *CJA*, the Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed, and not form part of the public record.³⁴

36. The Supreme Court in *Sherman Estates v. Donovan* sets out the test that must be met by an applicant for a sealing order. Such an applicant 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 to the identified interest because reasonably alternative measures will not prevent this risk; and,

³³ Third Report at para. 56, CaseLines Master [A1049](#).

³⁴ *Courts of Justice Act*, [R.S.O. 1990](#), c. C.43, [s. 137\(2\)](#).

- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.³⁵

37. Courts have acknowledged that there is a public interest in the “general commercial interest of preserving confidential information” and in maximizing recoveries in an insolvency.³⁶

38. The purchase price is commercially sensitive information that, if released, may jeopardize any subsequent attempts to market the Vigro Purchased Assets. This would impede the commercial interests of maximizing recoveries to the detriment of the stakeholders. As such, it is in the public interest to seal the Confidential Schedule.³⁷

39. The Receiver is not aware of any party that will be prejudiced if the information is sealed and, accordingly, believes that the proposed Sealing Order is appropriate in the circumstances.

C. The Activities of the Receiver as described in the Third Report should be Approved

40. The Court has the inherent jurisdiction to review the activities of a court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently, and not arbitrarily, to approve the activities set out in the applicable receiver’s report(s). This assessment is made on an objective basis.³⁸

³⁵ *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#), [2021] 2 SCR 75 at [para 38](#). [*Sherman Estate*]

³⁶ *Sherman Estate* at [para. 41](#); *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at [para. 84](#).

³⁷ *Sherman Estate* at [para. 41](#); *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](#).

³⁸ *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855](#), at [para. 54](#), citing *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Ct. J.) at paras. 3-5, aff’d [1996] O.J. No. 2806 (C.A.).

41. In *Target Canada*, this Court identified several good policy and practical reasons for monitors in *Companies' Creditors Arrangement Act* ("CCAA") proceedings to routinely seek court approval of their reports and activities, and for courts to grant such approvals. These include: (a) allowing the monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholder's concerns to be addressed; (c) enabling the Court to satisfy itself that the monitor's activities have been conducted in a prudent and diligent manner; (d) providing protection for the monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the monitor.³⁹

42. This Court has determined that these policy and practical reasons apply equally to receivership proceedings and motions seeking approval of a receiver's report and activities.⁴⁰

43. All of the Receiver's activities, as set out in the Third Report, were reasonable, necessary, and undertaken in good faith and in accordance with the Receiver's powers and duties as set out in the Appointment Order. The Receiver respectfully submits that the Third Report and the activities of the Receiver described therein should be approved.

³⁹ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras. 2, 22-23.

⁴⁰ *Hangfen Evergreen Inc., (Re)*, [2017 ONSC 7161](#) at para. 15.

PART IV– ORDER REQUESTED

44. For the reasons set out herein, the Receiver respectfully requests that this Court:
- (a) grant the Third Agreement and Vesting Order, which includes approval of the transaction contemplated by the Vigro Purchase Agreement;
 - (b) seal the Confidential Schedule, subject to further order of this Court; and
 - (c) grant the Ancillary Relief Order, which includes approval of the Third Report and the Receiver’s conduct and activities described therein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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SCHEDULE “A” – LIST OF AUTHORITIES

1. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#).
2. *Danier Leather Inc., Re*, [2016 ONSC 1044](#).
3. *Hanfeng Evergreen Inc. (Re)*, [2017 ONSC 7161](#).
4. *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855](#).
5. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#), 4 O.R. (3d) 1.
6. *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#), [2021] 2 SCR 75.
7. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).
8. *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#).
9. *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](#).

SCHEDULE “B” – TEXT OF STATUTES

Bankruptcy and Insolvency Act, [R.S.C. 1985](#), c. B-3

Assignment of agreements

84.1 (1) On application by a trustee and on notice to every party to an agreement, a court may make an order assigning the rights and obligations of a bankrupt under the agreement to any person who is specified by the court and agrees to the assignment.

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.

Courts of Justice Act, [R.S.O. 1990](#), c. C.43

Vesting orders

100 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.

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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Respondents

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

**ONTARIO
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(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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