



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00720526-00CL

DATE: 4 February 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: FARM CREDIT CANADA v. GLOBAL FOOD AND
INGREDIENTS INC. et al

BEFORE JUSTICE: STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Meena Alnajar	FTI	malnajar@mccarthy.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Rosenberg	Court appointed receiver FTI	Jeffrey.rosenberg@fticonsulting.com
Alexandra Teodorescu	Siena Receiver	ateodorescu@blaney.com

ENDORSEMENT OF JUSTICE STEELE:

1. FTI Consulting Canada Inc., in its capacity as court-appointed receiver over the FCC Secured Property of Global Food and Ingredients Inc. and GFI Brands, seeks two orders: (1) an approval and vesting order regarding the sale of the Vigro Lands; and (2) an ancillary order, which includes a sealing order and approval of the Receiver's activities as set out in the Third Report.
2. No one opposes the relief sought.
3. Counsel for the Sienna Receiver had reached out to the Receiver's counsel this morning regarding the sealing order. The proposed sealing order would seal the confidential schedule pending further order of the court. The Sienna Receiver requested that the confidential schedule become unsealed upon closing of the transaction but did not want to compromise the relief sought today. Accordingly, the Receiver will discuss the request with the purchaser and interested parties and anticipates seeking an amendment at a further motion.

Should the transactions contemplated by the purchase agreement and AVO be approved?

4. I am satisfied that the proposed transaction should be approved.
5. Further to the SISP Approval Order the Receiver was authorized and directed to conduct a SISP in respect of the FCC Secured Property. The SISP culminated in the proposed Vigro Purchase Agreement.
6. In *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), the Court of Appeal set out the factors for the Court to consider when determining whether to approve a proposed sale:
 - a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - b. The efficacy and integrity of the process by which offers are obtained;
 - c. Whether there has been unfairness in the working out of the process; and
 - d. The interests of all parties.
7. For the reasons set out at para. 31 of the Receiver's factum, I am satisfied that the *Soundair* principles have been satisfied in respect of the Vigro Purchase Agreement. Among other things, the SISP was comprehensive, and the property was marketed broadly in accordance with the court-approved SISP. Due to potential encroachment issues regarding the Vigro property, it was a lengthier process than the other two properties and there were difficulties in marketing and obtaining offers for the Vigro property. The Receiver's view is that further marketing efforts would not result in a superior transaction.

Should the Court approve the Receiver's Third Report and activities?

8. As is commonly done, the Receiver seeks court approval of its third report and the activities set out therein.

9. The Court has the jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports: *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).
10. The Court in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 22-23, identified several good policy and practical reasons for monitors in CCAA proceedings to routinely seek court approval of their reports and activities. These policy and practical reasons also apply in receivership proceedings where the receiver seeks approval of its report and activities: *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161, at para. 15.
11. I am satisfied that the activities of the Receiver set out in the Third Report were reasonable, necessary and undertaken in good faith pursuant to the Receiver's duties and powers and should be approved.

Should the Sealing Order be approved?

12. The Receiver requests that Schedule "D" to the Vigro Purchase Agreement be sealed pending further court order. The confidential schedule includes the purchase price to be paid for the Vigro assets and the economic terms of the transaction.
13. Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.
14. It is common to temporarily seal commercially sensitive material when assets are to be sold under a court process. 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: *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 41.
15. The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the "open court" principle. As noted, the confidential schedule contains details regarding the price and economic terms of the Vigro deal. If this information were released, it may jeopardize any subsequent attempts to market the Vigro assets if the transaction does not close. No stakeholder will be materially prejudiced by the requested sealing order, which applies to only a limited amount of information.
16. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53, requirements, as modified in *Sherman Estate*, at para. 38.
17. The Receiver is directed to provide the sealed confidential schedule to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential schedule can be physically sealed.
18. Orders attached.

