

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NFC ACQUISITION GP INC., NFC ACQUISITION CORP. AND
NFC LAND HOLDINGS CORP.**

**MOTION RECORD
(Returnable February 22, 2012)**

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NEW FOOD CLASSICS AND NFC ACQUISITION L.P. (THE “NFC ENTITIES”)**

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NFC ACQUISITION GP INC., NFC ACQUISITION CORP. AND
NFC LAND HOLDINGS CORP.**

**NOTICE OF MOTION
(Returnable February 22, 2012)**

BANK OF MONTREAL ("BMO") will make a motion to a judge presiding over the Commercial List, on Wednesday, February 22, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion will be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as **Schedule "A"**, *inter alia*:
 - (a) Abridging the time for service of the materials herein, if necessary, and validating service thereof;
 - (b) Granting BMO leave to bring a receivership application in respect of the NFC Entities (as defined below);
 - (c) Lifting the stay of proceedings in order to permit BMO to proceed with an application to appoint FTI Consulting Canada Inc. ("**FTI**") as receiver of all of

the property, assets, and undertaking of New Food Classics (“**NFC**” or the “**Company**”), NFC Acquisition L.P., NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp., and (collectively, the “**NFC Entities**”) pursuant to s. 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the “**BIA**”) and s. 101 of the Court of Justice Act, R.S.O. 1990, c. C-43 (the “**CJA**”).

- (d) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The NFC Entities are engaged in the business of food processing, serving major national retail and foodservice sales channels throughout Canada. NFC’s headquarters are located in Burlington, Ontario.
2. On January 17, 2012, the Honourable Mr. Justice Morawetz issued an Order (the “**Initial Order**”) pursuant to the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the “**CCAA**”) under Ontario Superior Court of Justice Commercial List Court File Number CV-12-95544-00CL which, *inter alia*, (i) stayed proceedings taken or that might be taken in respect of the NFC Entities and their Directors and Officers; (ii) authorized the NFC Entities to obtain and borrow debtor-in-possession financing from BMO under the DIP Credit Facility; (iii) approved the terms and provisions of the Sale Process and authorized the NFC Entities and the Monitor to Conduct the Sales Process; and (iv) appointed FTI Consulting Canada Inc. as the monitor, an officer of this Court, to monitor the business and financial affairs of the NFC Entities;
3. BMO is the senior-secured lender and the lender under the debtor-in-possession facility (“**DIP Lender**” and “**DIP Credit Facility**”, respectively), approved by this Honourable Court in the Initial Order;
4. BMO, the senior secured creditor of the NFC Entities, is seeking the appointment of the Receiver because (a) a material adverse change in the NFC Entities’ business has occurred

insofar as BMO has been advised of the resignation of the President and CEO of the NFC Entities and the resignation, *en masse*, of the Board of Directors of NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp., (b) the Sale Process approved by this Court in the Initial Order (the “**Sale Process**”) did not result in a going concern offer more favourable than the low end of projected recoveries under a liquidation scenario; (c) as of the close of business on February 17, 2012, the only remaining going concern offer required BMO to make further significant advances and to risk incurring material additional losses under the DIP Credit Facility (as defined below) if such offer was further pursued, and (d) the NFC Entities’ current financial circumstances seriously impair their viability and negatively impact the value of BMO’s collateral, as is set out in more detail below, in the Affidavits of Brian Cram on behalf of the NFC Entities, and in the Reports to Court of FTI in its capacity as the Monitor of the NFC Entities;

5. On February 20, 2012, BMO delivered to NFP and its counsel written notice of a Sales Process Default (as defined in the DIP Credit Facility) having occurred in accordance with the DIP Agreement. A Sales Process Default is a Specified Event of Default under the DIP Facility;

6. On Monday, February 20, 2012, BMO and its counsel were notified that the President and CEO of the NFC Entities and the Board of Directors of NFC Acquisition GP Inc., NFC Acquisition Corp., and NFC Land Holdings Corp. resigned, *en masse*, effective at 7:00 p.m. on February 20, 2012;

7. The DIP Credit Facility provides, *inter alia*, for BMO’s appointment of a receiver upon the occurrence of a Specified Event of Default (as defined in the DIP Credit Facility);

8. The NFC Entities are indebted and liable to BMO in an approximate amount totaling \$24,500,000.00 pursuant to, *inter alia*, a Second Amended and Restated Credit Agreement effective as of October 31, 2011, wherein Acquisition LP was the borrower and the remaining NFC Entities are guarantors, and the DIP Credit Facility;

9. The NFC Entities’ indebtedness to BMO and on general account is secured by, *inter alia*, a properly perfected security interest in all of the property, assets and undertakings of the NFC Entities;

10. The NFC Entities cannot meet their liabilities as they come due and do not have sufficient cash to continue to fund their operations, and are therefore, insolvent;
11. The appointment of the proposed Receiver is necessary and urgently required in order to secure the property and assets of NFC, which includes perishable food goods inventory, and to proceed with an orderly realization for the benefit of stakeholders;
12. The appointment of a receiver is in the interests of justice and is just, convenient, and necessary for the protection of NFC, its estate, and the interests of BMO and other creditors;
13. FTI has consented to act as the receiver in respect of the NFC entities;
14. BMO will be materially prejudiced if it is not permitted to proceed with the application to appoint a Receiver pursuant to section 243 of the BIA;
15. In view of the urgency of this application, it may not be possible to provide all interested parties with notice of this application;
16. The provisions of the CCAA;
17. Section 243 of the BIA;
18. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
19. Rules 1.04, 3.02, and 16.08 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and
20. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Application:

21. the Affidavit of L.M. Junior Del Brocco, sworn February 20, 2012;
22. the Third Report to Court of FTI Consulting Canada Inc., dated February 20, 2012;

23. the Second Report to Court of FTI Consulting Canada Inc., dated February 13, 2012;
24. the Pre-Filing Report of FTI Consulting Canada Inc., dated January 16, 2012;
25. the Affidavit of Brian Cram, sworn February 10, 2012;
26. the Affidavit of Brian Cram, sworn January 16, 2012;
27. the Consent of FTI Consulting Canada Inc. to act as Receiver; and
28. such further material as counsel may advise and this Honourable Court may permit.

DATE: February 21, 2012

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TO: THE SERVICE LIST

TAB A

Schedule "A"

Court File No. CV-12-9554-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

WEDNESDAY, THE 22nd DAY

JUSTICE)

OF FEBRUARY, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NFC ACQUISITION GP INC., NFC ACQUISITION CORP. AND
NFC LAND HOLDINGS CORP.

ORDER

THIS MOTION made by Bank of Montreal ("**BMO**") for an Order, *inter alia*:

- (a) Abridging the time for service of the materials herein, if necessary, and validating service thereof;
- (b) Granting BMO leave to bring a receivership application;
- (c) Lifting the stay of proceedings in order to permit BMO to proceed with an application to appoint FTI Consulting Canada Inc. ("**FTI**") as receiver of all of the property, assets, and undertaking of New Food Classics ("**NFC**" or the "**Company**"), NFC Acquisition L.P., NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp., and (collectively, the "**NFC Entities**")

pursuant to s. 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the “BIA”) and s. 101 of the Court of Justice Act, R.S.O. 1990, c. C-43 (the “CJA”);

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of L.M. Junior Del Brocco sworn February 21, 2012, the Affidavit of Brian Cram, sworn February 20, 2012, and January 16, 2012, and the exhibits thereto, and the Pre-Filing Report of FTI dated January 16, 2012, the Second Report to Court of FT dated February 13, 2012I, and the Third Report to Court of FTI dated February 21, 2012, First Report to Court, and the Appendices thereto, filed, and on hearing the submissions of counsel for BMO, counsel for the NFC Entities, and counsel for FTI, no one appearing for any other party although duly served as appears from the Affidavit of Service of Fiorella Sasso, sworn February 21, 2012;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
 2. **THIS COURT ORDERS** that leave be and is hereby granted to BMO to proceed with a receivership application in respect of the NFC Entities.
 3. **THIS COURT ORDERS** that the stay of proceedings in favour of the NFC Entities no longer operates in respect of BMO in order to allow BMO to proceed with a receivership application in respect of the NFC Entities.
-

Court File No. CV-12-9554-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
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ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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CORP. AND NFC LAND HOLDINGS CORP.

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

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION
(Returnable February 22, 2012)**

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Court File No. CV-12-9554-00CL

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ONTARIO
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