

Court File No. CV-23-00707205-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 27th
)
JUSTICE WILTON-SIEGEL) DAY OF MARCH, 2024
)

B E T W E E N:

FARM CREDIT CANADA

Applicant

- and -

**WHYTE'S FOODS INC./LES ALIMENTS WHYTE'S INC., MAISON
GOURMET INC., TRIAK CAPITAL INC./CAPITAL TRIAK INC., AND
MARIO SAROLI SALES 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****

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc. ("**FTI**") in its capacity as the Court-appointed receiver (FTI in such capacity, the "**Receiver**") of the undertaking, property and assets that constitute the FCC Secured Property (as defined in the Receivership Order) of Whyte's Foods Inc./Les Aliments Whyte's Inc., Maison Gourmet Inc., Triak Capital Inc./Capital Triak Inc., and Mario Saroli Sales Inc. (collectively, the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated February 15, 2024 (the "**Sale Agreement**") between the Receiver and Select Property Holdings (Ontario) Inc., and appended to the Second Report of the Receiver dated March 20, 2024 (the "**Second Report**"), as such Sale Agreement was subsequently assigned to 1000837498 Ontario

Inc. (the "**Purchaser**"), as assignee, pursuant to an Assignment and Assumption Agreement dated March 22, 2024, and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day by videoconference.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Milan Singh-Cheema sworn March 20, 2024 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary to effect the completion of the Transaction. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated October 6, 2023 appointing the Receiver (the "**Receivership Order**"); (ii) by the Order of the Honourable Justice Cavanagh dated October 6, 2023 appointing Ernst and Young as receiver over the assets that constitute the Trade Personal Property (as defined therein, the "**Wells Receivership Order**"); (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iv) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances,

easements and restrictive covenants listed on Schedule "C") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kent of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "B" hereto (the "**Real Property**") in fee simple.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors, or any of them, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors, or any of them;


the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent

preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that the purchase price contemplated by the Purchase Agreement shall be sealed and kept confidential until the completion of the Transaction.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Wilton-Siegel J.

Schedule "A" – Form of Receiver's Certificate

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RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 6, 2023 (the "**Receivership Order**"), FTI Consulting Canada Inc. was appointed as the receiver (in such capacity the "**Receiver**") of the FCC Secured Property (as defined in the Receivership Order) of Whyte's Foods Inc./Les Aliments Whyte's Inc., Maison Gourmet Inc., Triak Capital Inc./Capital Triak Inc., and Mario Saroli Sales Inc. (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated March 27, 2024, the Court approved the asset purchase agreement made as of February 15, 2024 (the "**Sale Agreement**") between the Receiver and Select Property Holdings (Ontario) Inc., as subsequently assigned to 1000837498 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Section 8, Section 10 and Section 12 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Section 8, Section 10 and Section 12 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [●] on [●], 2024.

**FTI Canada Consulting Inc. in its capacity as
Receiver of the FCC Secured Property, and
not in its personal or corporate capacity**

Per: _____

Name: Jeffrey Rosenberg

Title: Senior Managing Director

Schedule "B" - Encumbrances

PIN 00760-0121 (LT): 6800 Base Line, Wallaceburg

1. Instrument No. CK143391 registered April 6, 2018, being a Transfer from Agracity Crop & Nutrition Ltd. to Whyte's Foods Inc. ("**Whyte's Food**")
2. Instrument No. CK173090 registered May 19, 2020, being a Charge from Whyte's Foods in favour of Farm Credit Canada ("**Farm Credit**") in the original principal amount of \$18,217,500.
3. Instrument No. CK173091 registered on May 19, 2020, being a Notice of Assignment of Rents General from Whyte's Food in favour of Farm Credit.
4. Instrument No. CK173098 registered on May 19, 2020, being a Notice from Whyte's Food in favour of Farm Credit.
5. Instrument No. CK220637 registered on April 19, 2023, being a Notice from Whyte's Food in favour of Farm Credit.
6. Instrument No. CK221330 registered May 8, 2023, being a Charge from Whyte's Foods in favour of EJJ Capital Inc. in the original principal amount of \$4,400,000.

Schedule "C" – Permitted Encumbrances

PIN 00760-0121 (LT): 6800 Base Line, Wallaceburg

1. Instrument No. CH39033 registered November 8, 1947, being a Transfer Easement from H. J. Heinz Co. of Canada Ltd. To The Hydro-Electric Power Commission of Ontario.
2. Reference Plan 24R3832 deposited September 14, 1987.
3. Instrument No. 450420 registered September 28, 1987, being a Transfer from Nestle Enterprises Limited to Continental Can Canada Inc.

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Proceedings commenced in Toronto

APPROVAL AND VESTING ORDER

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