

**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  
CLOVER LEAF HOLDINGS COMPANY, CONNORS BROS. CLOVER LEAF  
SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA LIMITED,  
CONNORS BROS. HOLDING COMPANY AND CONNOR BROS. SEAFOODS  
COMPANY**

Applicants

**FACTUM OF THE APPLICANTS**  
(Motion returnable December 20, 2019)

**December 16, 2019**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Kevin Zych** (LSO #33129T)  
Email: [zychk@bennettjones.com](mailto:zychk@bennettjones.com)

**Sean Zweig** (LSO #57307I)  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Mike Shakra** (LSO # 64604K)  
Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

Tel: (416) 863-1200  
Fax: (416) 863-1716  
Lawyers for the Applicants

## FACTUM OF THE APPLICANTS

### PART I: INTRODUCTION

1. On November 22, 2019, Clover Leaf Holdings Company, Connors Bros. Clover Leaf Seafoods Company, K.C.R. Fisheries Ltd., 6162410 Canada Limited, Connors. Bros. Holding Company and Connor Bros. Seafoods Company (the “**Applicants**”) obtained an Initial Order which granted a stay of proceedings in favour of the Applicants and their directors and officers (the “**Stay of Proceedings**”) and appointed Alvarez & Marsal Canada Inc. as the monitor (the “**Monitor**”).
2. On November 25, 2019, the Applicants obtained an Amended and Restated Initial Order, approving, among other things, terms for debtor-in-possession financing and various charges over the property of the Applicants.
3. As further described herein, the Applicants are now seeking approval of a Bidding Procedures and Stay Extension Order, which includes approval to enter into a Stalking Horse APA, and a Second Amended and Restated Initial Order providing that the charges over the Applicants’ property rank in priority to all other encumbrances.
4. The Applicants, which carry on business in Canada and internationally through distributors in the Caribbean, specialize in the production and sale of shelf-stable seafood products and employ approximately 650 workers in Canada. The U.S. affiliates of the Applicants are referred to herein as “**Bumble Bee**” (and together with the Applicants, the “**Bumble Bee Group**”). Bumble Bee has filed for protection under Chapter 11 due to a number of financial pressures, including significant legal actions against Bumble Bee in the U.S., and has obtained similar relief in the U.S. to that granted to the Applicants under the CCAA.
5. On November 21, 2019, following two sale processes, the Applicants and certain other Bumble Bee Group entities entered into an asset purchase agreement (the “**Stalking Horse APA**”),

with certain affiliates of FCF Co. Ltd. (“**FCF**”), including Tonos US LLC as U.S. Buyer, Tonos 1 Operating Corp as Canadian Buyer (the “**Canadian Buyer**”) and Melissi 4 Inc. as Equity Buyer, for the sale of substantially all of Bumble Bee Group’s businesses and assets (collectively, the “**Bumble Bee Group Business**”). This outcome is the result of extensive consideration of options and consultation with the Bumble Bee Group’s secured lenders and follows significant efforts to attempt to restructure outside of insolvency proceedings.

6. The Applicants believe that the relief sought on this motion is in the best interests of all of their stakeholders and will result in their business being conveyed on a going concern basis, for maximum value and with minimal disruption. The relief sought on this motion is the next logical step to a successful and coordinated restructuring under the CCAA.

## **PART II: FACTS**

7. The facts with respect to this motion are more fully set out in the affidavit of Gary Ware, sworn December 11, 2019 (the “**Ware Affidavit**”). Capitalized terms not defined herein have the meaning ascribed to them in the Ware Affidavit.

### **B. The U.S. Proceedings**

8. On November 21, 2019, certain of the Applicants’ U.S. affiliates (collectively, the “**U.S. Debtors**”),<sup>1</sup> filed voluntary petitions (the “**Chapter 11 Proceedings**”) for relief pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended, in the United States Bankruptcy Court for the District of Delaware.

9. Concurrently, the U.S. Debtors filed several “first day motions” with the U.S. Bankruptcy Court. On November 22, 2019, the U.S. Bankruptcy Court heard such first day motions and

---

<sup>1</sup> The U.S. Debtors are Bumble Bee Parent, Inc.; Bumble Bee Holdings, Inc.; Bumble Bee Foods, LLC; Anova Food, LLC; and Bumble Bee Capital Corp.

substantially all of the relief sought by the U.S. Debtors was granted by the U.S. Bankruptcy Court between November 22 and 25, 2019.

10. Additional details in respect of the Chapter 11 Proceedings and the First Day Motions are available in the Declaration of Kent McNeil in Support of the Chapter 11 Petitions and First-Day Motions sworn November 21, 2019.

11. While the U.S. Debtors were granted relief similar to that granted to the Applicants, as there are separate CCAA and Chapter 11 proceedings in place for entirely distinct groups of companies (i.e. no Bumble Bee Group company has filed in both jurisdictions), each Court is acting as the sole and exclusive authority with respect to the entities before it and will be considering the relief sought in accordance with its own laws and procedures – even though the effectiveness of many relevant agreements is conditioned on approval from both Courts.

### **C. CCAA Orders**

12. As previously mentioned, on November 21, 2019, the Applicants obtained an Initial Order seeking very limited relief, mainly the appointment of the Monitor and the Stay of Proceedings.

13. On November 25, 2019, the Applicants obtained an Amended and Restated Initial Order, among other things:

- (a) approving the Applicants' ability to:
  - (i) borrow under a revolving asset-based debtor-in-possession credit facility; and
  - (ii) guarantee a debtor-in-possession term loan facility;
- (b) approving, but not requiring, the payment of pre-filing amounts owed to suppliers with the prior approval of the Monitor;
- (c) approving a key employee incentive plan;

- (d) granting the following charges over the property of the Applicants (each as defined in the Amended and Restated Initial Order):
    - (i) the Administration Charge;
    - (ii) the Directors' Charge;
    - (iii) the KEIP Charge;
    - (iv) the DIP Term Lenders' Charge;
    - (v) the DIP ABL Lenders' Charge; and
    - (vi) the Intercompany Charge;(collectively, the "**Charges**"); and
  - (e) extending the Stay of Proceedings until and including December 31, 2019.
14. The current motion by the Applicants before the Court seeks:
- (f) an Order (the "**Bidding Procedures and Stay Extension Order**"):
    - (i) authorizing the Applicants to execute the Stalking Horse APA, *nunc pro tunc*;
    - (ii) approving the bid made by the Canadian Buyer pursuant to the Stalking Horse APA as the Stalking Horse Bid (as defined below);
    - (iii) approving the Bidding Procedures (as defined below);
    - (iv) approving the Termination Fee and Termination Fee Charge (each as defined below); and
    - (v) extending the Stay of Proceedings until and including January 31, 2020; and
  - (g) a Second Amended and Restated Initial Order which, among other things, provides that the Charges rank in priority to all Encumbrances (as defined in the Second

Amended and Restated Initial Order), including the beneficiaries of such Encumbrances which were not previously provided with advance notice of the hearings in respect of the Initial Order and the Amended and Restated Initial Order.

#### **D. Pre-Filing Restructuring Efforts**

15. Prior to filing for protection under the CCAA and in the U.S., the Bumble Bee Group engaged in a number of different restructuring efforts. In or around December 2018, a sale of the Applicants' business in Canada was explored, as well as a potential recapitalization of the Bumble Bee Group's global business, with interested parties contacted and indications of interest received.<sup>2</sup> Houlihan Lokey Capital Inc. ("**Houlihan**"), the Bumble Bee Group's investment banker, conducted this initial sale process (the "**First Sale Process**"). In connection with the First Sale Process, Houlihan contacted nine potentially interested parties, all of which were strategic buyers. Four interested parties executed non-disclosure agreements and received a confidential information memorandum that provided a comprehensive overview of the Applicants' business.<sup>3</sup>

16. It was ultimately determined that it would not be feasible to implement a global recapitalization in the absence of settling the litigation against Bumble Bee in the U.S. The First Sale Process was then terminated.<sup>4</sup>

17. The Bumble Bee Group entered into an amendment of its credit facilities, culminating in a Restructuring Support Agreement on July 10, 2019, which outlines the support of a restructuring of the Bumble Bee Group, in connection with obtaining junior financing and settling litigation claims.

---

<sup>2</sup> Affidavit of Gary Ware sworn November 24, 2019 at para 24 [Second Ware Affidavit]; Affidavit of Gary Ware sworn December 11, 2019 at para 11 [Third Ware Affidavit].

<sup>3</sup> Third Ware Affidavit, *ibid* at para 22.

<sup>4</sup> Second Ware Affidavit, *supra* note 2 at para 24.

Despite significant efforts, the Bumble Bee Group was unable to raise junior financing and settle the pending litigation in the U.S. with a sufficient threshold of plaintiffs.<sup>5</sup>

18. In September 2019, a second more comprehensive sale process was undertaken (the “**Second Sale Process**”). In connection with the Second Sale Process, Houlihan contacted approximately 190 potentially interested parties, comprised of 66 strategic buyers and 124 financial buyers. Certain of the parties contacted as part of the Second Sale Process were already familiar with the Bumble Bee Group Business based on Houlihan’s previous efforts to raise financing. Approximately 65 parties executed non-disclosure agreements and received a confidential information memorandum that provided a comprehensive overview of the Bumble Bee Group Business.<sup>6</sup>

19. The Second Sale Process culminated in the Applicants and certain other Bumble Bee Group entities entering into the Stalking Horse APA with FCF.

#### **E. The Stalking Horse APA**

20. FCF is a global fisheries enterprise based in Taiwan and is a current supplier of seafood inputs to Bumble Bee (but not the Applicants). FCF intends to acquire the Bumble Bee Group Business (including the Applicants’ business) on a going concern basis for a purchase price of USD\$925.6 to USD\$930.6 million. FCF will acquire substantially all of the assets and business of both Bumble Bee and the Applicants, and the equity interests of certain foreign affiliates. The Stalking Horse APA contemplates assuming the employment of nearly all of the Bumble Bee Group’s employees, and maintains a business partner to a significant number of vendors and customers who have conducted business with the Bumble Bee Group for decades.<sup>7</sup>

---

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid*; Third Ware Affidavit, *supra* note 2 at para 23.

<sup>7</sup> Third Ware Affidavit, *ibid* at para 18.

21. The purchase price will be comprised of a cash payment of USD\$275 million, assumption of the outstanding U.S. Department of Justice fine of USD\$17 million, and new senior secured financing in the approximate amount of USD\$638.6 million. This consideration reflects the product of arms-length and good faith negotiations among the relevant parties.<sup>8</sup>

22. FCF indirectly holds a passive, minority equity interest in the Bumble Bee Group. Through certain of its affiliates, FCF owns an approximately 23% limited partnership interest in Big Catch 1 L.P., a limited partnership that is four layers above the Applicants' direct parent company, Clover Leaf Seafood S.à.r.l.<sup>9</sup>

23. FCF does not have any designees on the Special Restructuring Committees formed by the boards of CLHC, Bumble Bee Parent Inc. and Bumble Bee Foods or the boards of directors of any of the Applicants, the U.S. Debtors, their direct or indirect parent entities, or any other entity in the Bumble Bee Group corporate family. Bumble Bee and FCF have transacted business for many years, and continue to do so, on an arms'-length basis.<sup>10</sup>

#### **F. Termination Fee**

24. The Stalking Horse APA provides for a Termination Fee comprised of a break-up fee of USD\$27.75 million (3% of the purchase price) and expense reimbursement of up to USD\$2.5 million.<sup>11</sup> The Applicants are seeking approval of their obligation to pay their portion of the Termination Fee to be allocated to them under the Stalking Horse APA and the approval of a charge on their property as security for the payment of same (the "**Termination Fee Charge**").

---

<sup>8</sup> *Ibid* at para 20.

<sup>9</sup> *Ibid* at para 14.

<sup>10</sup> *Ibid* at para 15.

<sup>11</sup> *Ibid* at para 17.



25. The Termination Fee Charge will rank in priority to all Encumbrances, but subordinate to the Pre-Filing ABL Security, the Pre-Filing Term Loan Security and all of the Charges, except for the Intercompany Charge (all as defined in the proposed Second Amended and Restated Initial Order).<sup>12</sup>

26. The Applicants believe [and the Monitor has indicated that] the percentage of the purchase price used to calculate the Termination Fee is typical for a transaction of this type and size. The Monitor believes that the Termination Fee is reasonable in the circumstances and typical for a transaction of this size and complexity.<sup>13</sup> FCF is not prepared to proceed with the Stalking Horse APA if the Termination Fee and Termination Fee Charge are not approved.<sup>14</sup>

#### **G. The Bidding Procedures**

27. The Applicants are also seeking approval of certain Bidding Procedures which will govern the solicitation of higher and better offers for the Bumble Bee Group Business in the CCAA Proceedings and the Chapter 11 Proceedings. The Bidding Procedures set forth the process by which the Applicants and the U.S. Debtors, in consultation with certain Consultation Parties (as defined in the Bidding Procedures), and which includes the Monitor, intend to conduct a process for the sale of all or substantially all of the Bumble Bee Group Business (the “**Sale Process**”), which may include an auction.<sup>15</sup>

28. The Bumble Bee Group will consider global bids to acquire the Bumble Bee Group’s Business and individual bids to acquire only the Canadian Business or the U.S. Business. The Stalking Horse APA will act as the Stalking Horse Bid and shall be subject to higher or otherwise better offers received as part of the Sale Process. If a better and higher offer is received, the Bumble Bee Group

---

<sup>12</sup> *Ibid* at para 37.

<sup>13</sup> Second Report of the Monitor Alvarez & Marsal Canada Inc. at para 6.7(vi) [Second Monitor’s Report].

<sup>14</sup> Third Ware Affidavit, *supra* note 2 at para 38.

<sup>15</sup> *Ibid* at para 27.

may hold an auction. If no such offer is received, the Applicants will seek approval of the sale pursuant to the Stalking Horse APA.<sup>16</sup>

29. The bid deadline is 5:00 p.m. (EST) on January 2, 2020. If an auction is held, it would take place at 10:00 a.m. (EST) on January 10, 2020. To the extent the Bidding Procedures are revised, including with respect to these dates, a supplemental affidavit will be filed.<sup>17</sup>

30. Houlihan has been in contact, or attempted to contact, all parties that executed a non-disclosure agreement in connection with the First Sale Process and the Second Sale Process, to notify them of the Bidding Procedures.<sup>18</sup>

### **PART III: ISSUES**

31. The issues to be considered on this motion are whether the Court should:

- (a) approve the Bidding Procedures and Stay Extension Order, including:
  - (i) authorizing the Applicants to execute the Stalking Horse APA *nunc pro tunc*;
  - (ii) approving the Bidding Procedures;
  - (iii) approving the Termination Fee and Termination Fee Charge; and
  - (iv) extending the Stay of Proceedings to January 31, 2020;
- (b) approve the Second Amended and Restated Initial Order which provides the Charges rank in priority to all Encumbrances.

---

<sup>16</sup> *Ibid* at para 31.

<sup>17</sup> *Ibid* at para 33.

<sup>18</sup> *Ibid* at para 34.

**A. The Stalking Horse APA Should be Approved**

32. Approval of the Stalking Horse APA is only being sought at this stage for purposes of approving it as the stalking horse bid under the Bidding Procedures, and approving the Termination Fee. If the Stalking Horse APA is ultimately designated as the “Successful Bid”, further approval from this Court will be sought.

33. Stalking horse agreements facilitate sales by establishing a baseline price and deal structure for superior bids from interested parties, maximizing the value of a business for the benefit of its stakeholders and enhancing the fairness of the sale process. Stalking horse agreements have been approved concurrently with a sale process under the CCAA in other proceedings.<sup>19</sup>

34. In the present case, as described above, the Stalking Horse APA was the culmination of two separate sale processes, with significant efforts by Houlihan and the Bumble Bee Group to evaluate strategic alternatives. The Stalking Horse APA was negotiated extensively and at arm’s length and in good faith. It provides a strong starting point for the Bidding Procedures, and is intended to maximize value for the benefit of the Applicants’ stakeholders. The Monitor is supportive of the Stalking Horse APA’s approval.<sup>20</sup>

35. As noted, the Stalking Horse APA includes a Termination Fee, comprised of a break fee and an expense reimbursement. The Applicants are jointly and severally liable for the Termination Fee and therefore are seeking approval to pay their obligations in respect of the Termination Fee pursuant to section 7.1 of the Stalking Horse APA, and the associated Termination Fee Charge.

---

<sup>19</sup> *Nortel Networks Corp, Re* (2009), 179 ACWS(3d)265 at para 56 [*Nortel*], Applicants’ Book of Authorities at Tab 1; *Aralez Pharmaceuticals Inc*, (October 20, 2018) Toronto, CV-18-603054-00CL at para 6 (Order Re Bidding Procedures Approval), Applicants’ Book of Authorities at Tab 2.

<sup>20</sup> Third Ware Affidavit, *supra* note 2 at para 24; Second Monitor’s Report, *supra* note 13 at para 6.7.

36. Such payments have previously been approved by courts in the context of stalking horse agreements. These fees are intended to compensate stalking horse purchasers for the time, resources and risk taken in developing a stalking horse agreement. The fees also represent the price of stability, and thus some premium over simply providing for expenses may be expected. While the amount of such payments vary in each case, courts have recognized that break fees in the range of 3% and expense reimbursements in the range of 2% have been approved,<sup>21</sup> and there is an overall range of 1.8% to 5% of the value of the bid.<sup>22</sup> The Termination Fee in this case, which includes both the break fee and the expense reimbursement, is approximately 3.3% of the purchase price.

37. Agreeing to such payments is a matter of business judgment and therefore judicial deference is appropriate provided the decision falls within a range of reasonableness.<sup>23</sup>

38. The Termination Fee was the subject of arm's length negotiations, and is reasonable in light of the significant value of the Stalking Horse APA. FCF will not proceed with the Stalking Horse APA without approval of the Termination Fee and Termination Fee Charge, and the Monitor is supportive of the Termination Fee and Termination Fee Charge.<sup>24</sup>

39. The Applicants believe that the Stalking Horse APA, including the Termination Fee and associated Termination Fee Charge, are fair and reasonable in the circumstances.

40. As described above, FCF indirectly holds a passive, minority equity interest in the Bumble Bee Group. Through certain of its affiliates, FCF owns an approximately 23% limited partnership

---

<sup>21</sup> *Danier Leather Inc, Re*, 2016 ONSC 1044 at paras 41-42 [*Danier*], Applicants' Book of Authorities at Tab 3.

<sup>22</sup> *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd.*, 2012 ONSC 1750 at para 13, Applicants' Book of Authorities at Tab 4.

<sup>23</sup> *Danier*, *supra* note 21 at para 44, Applicants' Book of Authorities at Tab 3; *Brainhunter Inc* (2009), 183 ACWS (3d) 905 at para 20 [*Brainhunter*], Applicants' Book of Authorities at Tab 5; *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 40, Applicants' Book of Authorities at Tab 6.

<sup>24</sup> Third Ware Affidavit, *supra* note 2 at para 38; Second Monitor's Report, *supra* note 13 at paras 6.7(vi), 8.5, 10.1.

interest in Big Catch 1 L.P., a limited partnership that is three layers above the Applicants' direct parent company, Clover Leaf Seafood S.à.r.l. The Applicants have therefore considered whether FCF is a related person in the context of subsection 36(5) of the CCAA, which would give rise to additional factors to be considered if or when the Applicants return to court for approval of a sale to FCF. Subsection 36(5) provides that a person who is related to the company includes:

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).<sup>25</sup>

41. FCF is not a related person to the Applicants in the context of the above provision.

#### **B. The Bidding Procedures Should be Approved**

42. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement.<sup>26</sup>

43. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sale process:

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole "economic community"?

---

<sup>25</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 s 36(5) [CCAA].

<sup>26</sup> *Nortel*, *supra* note 19 at paras 47-48, Applicants' Book of Authorities at Tab 1; CCAA, *ibids.* 11, 36.

(c) Do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?

(d) Is there a better viable alternative?<sup>27</sup>

44. While not technically applicable at the sale process stage, the factors set out in subsection 36(3) of the CCAA have also been considered when deciding whether to approve a sale process:

(a) Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) Whether the monitor approved the process leading to the proposed sale or disposition;

(c) Whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) The extent to which the creditors were consulted;

(e) The effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.<sup>28</sup>

---

<sup>27</sup> *Nortel*, *ibid* at para 49, Applicants' Book of Authorities at Tab 1; *Brainhunter*, *supra* note 23 at para 13, Applicants' Book of Authorities at Tab 5; *Danier*, *supra* note 21 at para 23, Applicants' Book of Authorities at Tab 3.

<sup>28</sup> *U.S. Steel Canada Inc, (Re)*, 2015 ONSC 2523 at para 8, Applicants' Book of Authorities at Tab 7.

45. The Applicants submit that the Bidding Procedures provide an appropriate framework to obtain the best offer for the Bumble Bee Group Business which will maximize value for the Applicants' stakeholders. In consideration of the above criteria and factors, the Bidding Procedures and Sale Process should be approved as:

- (a) The Bumble Bee Group as a whole is insolvent and unable to continue its business in current circumstances. A sale will maximize value and allow the Bumble Bee Group, including the Applicants, to continue as a going concern for the benefit of all of its stakeholders, including its existing customers, suppliers and employees.
- (b) The sale will benefit the whole economic community, as the Stalking Horse APA sets a floor for other sale transactions and may contribute to a higher valuation, increasing the potential consideration to be received. The Bidding Procedures are designed and intended to solicit the highest and best bid for the Bumble Bee Group Business.
- (c) The Applicants' secured creditors have been consulted and involved throughout, and are supportive of the relief being sought on this motion.
- (d) The Stalking Horse APA and Bidding Procedures follow two sale processes, and significant discussions and negotiations with respect to potential alternatives. The Bidding Procedures, with the stability provided by the Stalking Horse APA, represent the best option in the circumstances, and the process leading to the Bidding Procedures was reasonable in the circumstances.

- (e) The Monitor is supportive of the approval of the Stalking Horse APA and the Bidding Procedures, and will continue to be involved as the Bidding Procedures progress. The Monitor is supportive of the relief being sought on this motion.
- (f) The effect of the Bidding Procedures will be to ensure the continuation of the Applicants' business on a going concern basis, and the maximization of value, for the benefit of the Applicants' creditors, employees and other stakeholders.
- (g) The purchase price under the Stalking Horse APA was the result of lengthy, good faith and arm's-length negotiations, following two sale processes which did not yield any superior offer, demonstrating a reasonable and fair purchase price. As the Stalking Horse APA is the floor for the Sale Process, the Applicants are confident the Bidding Procedures will result in the best sale option for the Bumble Bee Group Business.<sup>29</sup>

46. In light of the two pre-filing marketing processes that already occurred, and the fact that potential bidders have already been notified of the pending sale process, the Applicants believe the timeline in the Bidding Procedures is reasonable in the circumstances and will still yield the maximum value for the Bumble Bee Group Business. The Monitor is also of the view that the Applicants' assets and business were extensively and adequately marketed during the First Sale Process and Second Sale Process.<sup>30</sup> In addition, CCAA courts have approved sales without the solicitation of additional bids where there has been a fulsome pre-filing marketing process; the Applicants therefore believe their

---

<sup>29</sup> Third Ware Affidavit, *supra* note 2 at paras 20-23, 27-30, 35, 41, 49; Second Monitor's Report, *supra* note 13 at paras 6.4, 6.5, 6.7(i)-(viii), 10.1.

<sup>30</sup> Second Monitor's Report, *ibid* at para 6.7(iv).



course of action to attempt to solicit further bids will provide additional assurance that value has been maximized and ensure the best result for the Applicants' stakeholders.

47. For the above reasons, the Applicants submit that the Bidding Procedures should be approved.

### **C. The Second Amended and Restated Initial Order**

48. Under the Amended and Restated Initial Order, the Charges rank subordinate to all other existing security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (referred to herein as the Encumbrances) that were not served with the motion for the Amended and Restated Initial Order. The Applicants are now seeking that the order be amended to provide the Charges rank in priority to all Encumbrances.<sup>31</sup>

49. The CCAA provides that notice be provided to any secured creditors likely to be affected by a charge over the Applicants' property.<sup>32</sup> The persons holding or who could hold Encumbrances have been given notice of this motion, including relevant taxing authorities and representatives of the Applicants' employee association and pension plans.<sup>33</sup> Based on PPSA searches and real property title searches, the only beneficiary of a registered Encumbrance over which priority is sought is Xerox Canada Ltd. ("**Xerox**"), who provides two photocopy/printing machines to the Applicants.<sup>34</sup> Xerox has been served with the materials for this motion in accordance with the Rules of Civil Procedure.<sup>35</sup> The statutory requirements for granting the Second Amended and Restated Initial Order have been met.

---

<sup>31</sup> Except, in certain cases, with respect to the Pre-Filing ABL Security and the Pre-Filing Term Loan Security (each as defined in the Second Amended and Restated Initial order), where the priority waterfalls established in the Second Amended and Restated Initial Order shall govern.

<sup>32</sup> CCAA, *supra* note 25 s 36(2).

<sup>33</sup> Affidavit of Aiden Nelms sworn December 12, 2019 at paras 2-3 [Nelms' Affidavit].

<sup>34</sup> Third Ware Affidavit, *supra* note 2 at para 47.

<sup>35</sup> Nelms' Affidavit, *supra* note 33 at paras 2-3.

50. Paragraph 52 of the Amended and Restated Initial order provides that the beneficiaries of the Charges, including the DIP Lenders, are entitled to seek priority for their respective Charge over any Encumbrances in favour of any person that was not previously served with notice of the hearings in respect of the Initial Order and the Amended and Restated Initial Order.

51. This amendment with respect to the Charges was initially required by the DIP Lenders. The continued support of the DIP Lenders is necessary to the CCAA proceedings and is providing important stability during this time, ensuring the continued ongoing operations of the Applicants.

52. In the circumstances, the Second Amended and Restated Initial Order does not cause any material prejudice to the Applicants' stakeholders, and the Monitor is supportive of the amendment.<sup>36</sup>

#### **D. The Stay of Proceedings**

53. The Applicants are seeking an extension of the Stay of Proceedings until and including January 31, 2020.

54. In order to extend the Stay of Proceedings, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.<sup>37</sup> A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>38</sup>

55. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay of Proceedings be extended until January 31, 2020, as it will allow the Bumble Bee Group, including the Applicants, to complete the Sale Process and return to Court for approval of the Stalking Horse

---

<sup>36</sup> Third Ware Affidavit, *supra* note 2 at para 49; Second Monitor's Report, *supra* note 13 at paras 8.7-8.8.

<sup>37</sup> CCAA, *supra* note 25 s 11.02(3).

<sup>38</sup> *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14, Applicants' Book of Authorities at Tab 8; *Target Canada Co*, 2015 ONSC 303 at para 8, Applicants' Book of Authorities at Tab 9.

APA or another successful bid, which will ultimately preserve and maximize the value of the Applicants' business for their secured creditors and other stakeholders.

56. The Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA proceeding through the end of the proposed extension to the Stay of Proceedings.<sup>39</sup>

57. Since the granting of the Amended and Restated Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to complete a restructuring under the CCAA. The Applicants have also provided information to, and answered inquiries from, their various stakeholders and have contacted substantially all of their vendors and suppliers.<sup>40</sup>

58. The Applicants also continue to carry on their business in accordance with the Amended and Restated Initial Order, and none of the Applicants' stakeholders should suffer material prejudice if the extension of the Stay of Proceedings is granted. The Monitor is also supportive of the extension.<sup>41</sup>

#### **PART IV: RELIEF REQUESTED**

59. The Applicants request approval of the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order.

#### **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

December 16, 2019

---

Bennett Jones LLP

---

<sup>39</sup> Clover Leaf Holdings Company Cash Flow Forecast (Unaudited) at 1.

<sup>40</sup> Third Ware Affidavit, *supra* note 2 at para 43.

<sup>41</sup> Second Monitor's Report, *supra* note 13 at para 7.2.

## **SCHEDULE A – LIST OF AUTHORITIES**

### ***Cases Cited***

1. *Aralez Pharmaceuticals Inc*, (October 20, 2018) Toronto, CV-18-603054-00CL (Order Re Bidding Procedures Approval)
2. *BCE Inc v 1976 Debentureholders*, 2008 SCC 69
3. *Brainhunter Inc* (2009), 183 ACWS (3d) 905
4. *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd.*, 2012 ONSC 1750
5. *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60
6. *Danier Leather Inc, Re*, 2016 ONSC 1044
7. *Nortel Networks Corp, Re* (2009), 179 ACWS (3d) 265
8. *Target Canada Co*, 2015 ONSC 303
9. *U.S. Steel Canada Inc, (Re)*, 2015 ONSC 2523

## SCHEDULE B – STATUTES RELIED ON

### *Companies' Creditors Arrangement Act, RSC 1985, c C-36*

#### Section 11

##### **General power of court**

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

#### Section 11.02

##### **Stays, etc. – initial application**

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

#### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

### **Section 36**

#### **Restriction on disposition of business assets**

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

#### **Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

#### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

#### **Additional factors — related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Marginal note: Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

**Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**Restriction — employers**

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

**Restriction — intellectual property**

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

**IN THE MATTER OF THE *COMPANIES CREDITORS' ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLOVER LEAF HOLDINGS  
COMPANY, CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA  
LIMITED, CONNORS BROS. HOLDINGS COMPANY and CONNORS BROS. SEAFOODS COMPANY**

Court File No. CV-19-631523-00CL

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

Proceedings commenced in Toronto

**FACTUM OF THE APPLICANTS**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Kevin Zych** (LSO# 33129T)

**Sean Zweig** (LSO# 57307I)

**Mike Shakra** (LSO# 64604K)

Tel: 416-863-1200

Fax: 416-863-1716

Lawyers for the Applicants