

**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 TARGET CANADA CO., TARGET
CANADA HEALTH CO., TARGET CANADA MOBILE GP
CO., TARGET CANADA PHARMACY (BC) CORP., TARGET
CANADA PHARMACY (ONTARIO) CORP. TARGET
CANADA PHARMACY CORP., TARGET CANADA
PHARMACY (SK) CORP., AND TARGET CANADA
PROPERTY LLC.

RESPONDING FACTUM OF FRUITS & PASSION BOUTIQUES INC

November 25, 2016

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TO: Service List

PART I - OVERVIEW

1. Fruits & Passion Boutiques Inc. (“**F&P**”) files this factum in response to the motion by the Monitor for advice and directions regarding the filing of late claims, and respectfully requests that this Honourable Court authorize the Monitor to accept its claim for filing. F&P’s claim in the amount of \$216,000 was not filed due to inadvertence and F&P has acted in good faith. The filing of F&P’s claim will not cause any prejudice to the creditors or the process, and therefore should be permitted in this case.

PART II - FACTS

2. F&P is a subsidiary of a Korean company based in Seoul, South Korea, which manufactures and sells personal care products and cosmetics. F&P sold its products to Target and delivered those products to various locations in Ontario and Alberta as directed by Target.¹

3. Following the appointment of the Monitor in January 2015, F&P contacted the Monitor in an effort to reconcile the outstanding account receivable balance owing to it by Target. According to F&P’s records, an account receivable of \$216,867.48 is owing by Target to F&P. The Monitor informed F & P that Target’s records showed the amount of \$169,813.00 to be due and owing to F & P as of January 15, 2015. No backup documentation or other explanation was provided by the Monitor to justify why the amount showing on Target’s records was approximately \$47,000.00 lower than the amount claimed.²

¹ Affidavit of Phil Choi, sworn November 15, 2016 (“**Choi Affidavit**”), para. 3 and 4.

² Choi Affidavit, para 6.

4. On July 29, 2016, F & P contacted the Monitor to inquire as to the status of the account receivable owing to it by Target and learned for the first time of the Claims Procedure Order dated June 11, 2015 and the claims bar date established therein.

5. F&P did not receive a claim package or notice of the requirement to file a proof of claim prior to the claims bar date. In the summer of 2015, F & P moved its head office location and although it appears that the claim package was sent to its former office address, the package was not received.³

6. In August 2016, the Monitor informed F&P that its claim was barred and extinguished and therefore F&P took no further steps to pursue its claim until receipt of this Motion by the Monitor for advice and directions regarding the treatment of late claims.⁴

7. F&P has a valid claim for payment on account of goods sold and delivered to Target. F&P's failure to file the claim previously was entirely unintentional and accidental.⁵

PART III – ISSUES, LAW & AUTHORITIES

8. *Re Blue Range Resource Corp.*⁶ is widely cited as the governing judicial authority for the exercise of the Court's discretion to grant permission for the late filing of claims. In *Blue Range*, Justice Whittmann set out the following criteria to be considered in determining whether to grant permission for the late filing of claims:

³ Choi Affidavit, para 7.

⁴ Choi Affidavit, para. 8.

⁵ Choi Affidavit, para. 10.

⁶ *Blue Range Resource Corp.*, 2000 ABCA 285

- (a) Was the delay caused by inadvertence and if so, did the claimant act in good faith?
- (b) What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
- (c) If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing? and
- (d) If relevant prejudice is found which cannot be alleviated, are there any other considerations which may warrant an order permitting late filing?⁷

9. Inadvertence includes carelessness, negligence and accidents, and is unintentional.⁸

10. The fact that other creditors will receive less money if late claims are allowed does not constitute relevant prejudice. Allowing all legitimate creditors to share in the available proceeds is an integral part of the formal insolvency and restructuring process. The test for prejudice is whether the creditors, by reason of the late filings, lose a realistic opportunity to do anything that they otherwise might have done.⁹

11. Ultimately, in *Blue Range*, Justice Whittmann allowed the late filing of claims notwithstanding the fact that the meeting to vote on the Plan of Arrangement had already taken place, as he found that there would be no prejudice to other creditors or to the debtor company.¹⁰

12. In the case at bar, F&P asserted its claim within a reasonable time after receiving notice of the claims bar date. In addition, there is no evidence that F&P acted in bad faith. On the

⁷ *Blue Range, supra* at para. 26

⁸ *Blue Range, supra* at para 27

⁹ *Blue Range, supra* at para. 40

¹⁰ *Blue Range, supra* at para. 42

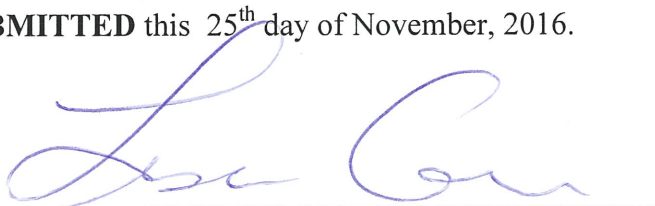
contrary, F&P's failure to file the Proof of Claim in a timely manner was entirely accidental and the result of its not having received a claims package or notice of the claims bar date. It appears that the claims package was misplaced or lost due to the relocation of F&P's head office during the summer of 2015 when the Claims Procedure Order was granted and claims packages were distributed.

13. There is no real prejudice which would result from admission of this late claim. The amount claimed is not material in terms of the total distribution to Target's creditors and the Monitor has reserved sufficient funds in order to permit payment of the claim, in full, should it be admitted and allowed.

PART V - ORDER REQUESTED

14. The Claimant therefore respectfully requests that this Court authorize the filing of its late claim.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of November, 2016.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Blue Range Resource Corp.*, 2000 ABCA 285

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EIGHTEENTH REPORT OF THE MONITOR ALVAREZ & MARSAL CANADA INC

Court File No. CV-15-10832-00CL

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

**RESPONDING FACTUM OF FRUITS & PASSION
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