

Clerk's Stamp

COURT FILE NUMBER 25-2642858

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

DOCUMENT **AFFIDAVIT OF NOLI TINGZON**
Sworn August 20, 2020

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AFFIDAVIT OF NOLI TINGZON
Sworn August 20, 2020

I, NOLI TINGZON, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the President of Olympus Food (Canada) Inc. ("**Olympus**" or the "**Corporation**"). As such I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, in which case I believe the same to be true.

Overview

2. On May 1, 2020, the Corporation filed a Notice of Intention to Make a Proposal (the "**NOI**") with the Official Receiver pursuant to section 50.4(1) of the *Bankruptcy and Insolvency*

Act (the “**BIA**”). BDO Canada Limited was appointed as the proposal trustee (the “**Proposal Trustee**”) under the NOI. The Corporation filed a cash flow statement with the Official Receiver on May 5, 2020.

3. On May 28, 2020, pursuant to the Order of the Honourable Justice A. M. Grosse, the time for Olympus to file a proposal was extended by a 45 day period to July 15, 2020, pursuant to section 50.4(9) of the BIA.

4. On June 16, 2020, pursuant to the Order of the Honourable Justice C. M. Jones, the time for Olympus to file a proposal was extended by an additional 45 day period to August 29, 2020, pursuant to section 50.4(9) of the BIA. On the same date, a claims solicitation process order was granted by this Honourable Court for the purpose of identifying the claims against Olympus (the “**Claims Solicitation Process**”). In accordance with the Claims Solicitation Process, any party with a Claim (as that term is defined in the Claims Solicitation Process) against Olympus was required to file their proof of claim with the Proposal Trustee by July 31, 2020 (the “**Claims Bar Date**”).

Background

5. On September 17, 2012, the Corporation purchased 65 Kentucky Fried Chicken (“**KFC**”), KFC/Taco Bell and KFC/Pizza Hut franchises in the province of Quebec. All of these franchise locations operated out of leased premises. In September 2018, the franchisor, Kentucky Fried Chicken Company Canada (“**KFCCC**”) notified the Corporation that it was in breach of the franchise agreement and demanded the closure or sale of 15 KFC and KFC/Taco Bell locations and the Corporation’s exit from the Quebec market before December 31, 2019.

6. In June of 2019, Olympus sold 33 of its locations to FMI Atlantic, Inc. (“**FMI**”). Then, in November of 2019, Olympus sold an additional 14 locations to FMI. As part of these sale transactions, Olympus, FMI and the respective landlords entered into assignment agreements for 46 of the 47 leased locations. For the final location, an assignment agreement between FMI, Olympus and the landlord, Le Carrefour Laval (2013) Inc. (“**Carrefour Laval**”), was not completed as the consent of Carrefour Laval could not be obtained.

7. The 22 KFC, KFC/Taco Bell and KFC/Pizza Hut locations that were not part of the sale transactions with FMI are not operating and have all been permanently closed.

8. Olympus has not operated any restaurants since December 30, 2019.

Formulation of a Proposal

9. As of the date of filing of the NOI, the Corporation's books and records indicated that it owed its unsecured creditors approximately \$17,413,007.12, including an unsecured claim of \$11,529,48.20 owing to a related party, Hi-Flyer Food (Canada) Inc. ("**Hi-Flyer**"), which operates KFC and KFC/Taco Bell franchises in Alberta and Manitoba.

10. The Corporation has limited assets comprised mainly of cash, accounts receivable of approximately \$136,350 (of which the Corporation anticipates some amount will be uncollectible) and used/abandoned restaurant equipment. Aside from the assets that would be available in a bankruptcy of Olympus, the Corporation's principal asset that would only have potential realizable value to its creditors in a proposal scenario is its corporate tax losses.

11. Olympus had approximately \$10 million of corporate tax losses as at December 31, 2019, but at this time their value is uncertain. Olympus has been in discussions with Hi-Flyer regarding a transaction which would allow Hi-Flyer to utilize the tax losses. The terms of the transaction have not yet been determined and more information about the transaction will be forthcoming later. The proceeds of the proposed transaction with Hi-Flyer would contribute to the pool of funds to be made available to the Corporation's unsecured creditors in a proposal.

12. The Corporation anticipates that, as part of the proposed tax loss transaction, Hi-Flyer will not file a claim in the proposal of the Corporation which would increase the funds available to the Corporation's other unsecured creditors. It is the Corporation's understanding, based on preliminary advice from their accountants, that the tax losses will have no value in the event of a bankruptcy and thus, the proposed transaction with Hi-Flyer and resulting proposal represent a better recovery for the creditors.

13. The viability of the proposed transaction between Hi-Flyer and Olympus will depend upon the resolution of certain claims that were filed against Olympus by the Claims Bar Date and the requisite number of creditors voting in favour of the proposal filed by Olympus.

Results of the Claims Solicitation Process

14. By the Claims Bar Date, 44 creditors had filed proofs of claims totalling \$16,595,448.83 in accordance with the Claims Solicitation Process. Olympus and the Proposal Trustee are working on resolving a number of claims that were filed which differ from the amounts reflected in Olympus' books and records. In addition, there are three significant claims filed by landlords of Olympus, that will need to be resolved before Olympus, in consultation with the Proposal Trustee, will be able to determine if it is able to make a viable proposal.

15. Two of the landlord claims relate to leased locations that were not included in the transactions with FMI and in respect of which the landlords had previously commenced legal proceedings against Olympus, namely:

- (a) Les Galeries D'Anjou Leaseholds Inc. who commenced proceedings against Olympus on April 15, 2019 for approximately \$1.4 million, comprised of claims for unpaid rent, accelerated rent and damages allegedly owing under the terms of the lease; and
- (b) Ontrea Inc. who commenced proceedings against Olympus on February 20, 2020 for approximately \$1.4 million, comprised of claims for unpaid rent, accelerated rent and damages allegedly owing under the terms of the lease.

16. The Proposal Trustee has requested additional information from both of these landlords in an attempt to evaluate these claims.

17. The other landlord claim relates to the lease with Carrefour Laval which Olympus disclaimed by Notice by Debtor Company to Disclaim or Resiliate an Agreement dated July 29, 2020. Carrefour Laval filed an application disputing the disclaimer on August 14, 2020. No affidavit materials were filed by Carrefour Laval in support of the application. Carrefour Laval's application was made returnable on August 26, 2020, concurrently with Olympus' stay extension application, however, without affidavit materials from Carrefour Laval, an adjournment is anticipated. Olympus has requested that the supporting affidavit material be filed as soon as possible so that Olympus is able to determine the basis for the dispute and consider its alternatives for dealing with this matter.

18. In addition to the landlord claims, after the Claims Bar Date, it was determined the Canada Revenue Agency (“**CRA**”) did not receive a Claims Package in accordance with the Claims Solicitation Process. While Olympus’ records do not show any amount outstanding to CRA, the failure to serve CRA was an oversight. The Proposal Trustee has been in discussions with CRA and understands that CRA may still need to complete a trust audit to confirm whether any amounts are outstanding. If a trust audit is required, CRA has indicated that at this time, it is unable to complete trust examinations due to the current COVID-19 restrictions which prevent its employees from attending company premises. The Proposal Trustee is continuing its discussions with CRA to determine how best to proceed.

Extension of Time to File a Proposal

19. The time to file a proposal expires on August 29, 2020. Olympus requests an extension of the time for filing a proposal to October 13, 2020, in accordance with section 50.4(9) of the BIA in order to work towards the resolution of the claims by the landlords and CRA and continue to work towards the formulation and filing of a proposal.

20. Since the NOI was filed on May 1, 2020, Olympus has taken the following steps:

- (a) exploring a transaction with Hi-Flyer which would provide funding for the proposal in addition to the cash on hand and collection of accounts receivable by Olympus during these proceedings;
- (b) working with the Proposal Trustee on a review of the status of the former leased premises;
- (c) working with the Proposal Trustee on the formulation and completion of the Claims Solicitation Process;
- (d) working with the Proposal Trustee on the resolution of certain claims filed by the Claims Bar Date;
- (e) working with the Proposal Trustee on the formulation of the proposal;
- (f) communicating with its creditors and remaining landlords; and

(g) disclaiming the leases for four restaurant locations and the former office premises in Quebec.

21. Olympus has acted in good faith and with due diligence since the NOI was filed and will likely be able to make a viable proposal if the extension applied for were granted. To the best of my knowledge, information and belief, none of the creditors of Olympus will be materially prejudiced if this Honourable Court grants the extension sought.


22. I make this Affidavit in support of an application for an Order extending the time for Olympus to file a proposal.

SWORN (OR AFFIRMED) BEFORE ME at)
Calgary, Alberta, this 20th day of August,)
2020.)

The deponent was not physically present)
before me, but was linked with me utilizing)
video technology. The process outlined in)
the Court of Queen's Bench of Alberta Notice)
to the Profession and Public for Remote)
Commissioning of Affidavits for use in Civil)
and Family Proceedings During the COVID-)
19 Pandemic (NPP#2020-02), dated March)
25, 2020, was followed.)



NOLI TINGZON



Commissioner for Oaths in and for the)
Province of Alberta)

Carole J. Hunter