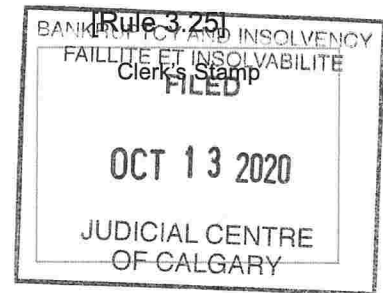


Form 10



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 October 13, 2020

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Carole Hunter
DLA Piper (Canada) LLP
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File No.: 101195-00001/CJH

AFFIDAVIT OF NOLI TINGZON

Sworn October 13, 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.

3. The time for Olympus to file a proposal has been extended on four occasions, with the final extension period expiring on October 30, 2020, pursuant to the Order of the Honourable Justice R. A. Neufeld.

Background

4. 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.

5. 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.

6. 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.

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

Formulation of a Proposal

8. 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.

9. The Corporation has limited assets comprised mainly of cash, accounts receivable of approximately \$122,790 (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.

10. 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. As part of the proposed transaction, Hi-Flyer has agreed to fund the professional fees of Olympus' counsel associated with the NOI proceedings.

11. 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.

12. The viability of the proposed transaction between Hi-Flyer and Olympus was dependent upon the resolution of a contested disclaimer of Olympus' lease with Carrefour Laval and the requisite number of creditors voting in favour of the proposal filed by Olympus.

The Carrefour Laval Disclaimer

13. On or about March 3, 2015 and June 11, 2015, Carrefour Laval and Olympus entered into a storage area agreement and a commercial lease, respectively (together, the "**Lease**"), in respect of the property situated as Storage Area No. SF217 and Store No. F007 at CF Carrefour Laval, 3035 Boulevard le Carrefour, Laval, QC H7T 1C8 (the "**Premises**").

14. On July 30, 2020, Olympus served Carrefour Laval with a Notice by Debtor Company to Disclaim or Resiliate an Agreement in respect of the Lease (the "**Disclaimer Notice**"). The Disclaimer Notice was served pursuant to section 65.2 of the BIA.

15. On August 14, 2020, The Cadillac Fairview Corporation Limited ("**CFC**"), as agent for Carrefour Laval filed an application on August 14, 2020 disputing the disclaimer and asserting that the Lease was assigned to FMI (the "**Disclaimer Application**"). On August 28, 2020, CFC served the supporting affidavit in respect of the Disclaimer Application on Olympus.

16. The Disclaimer Application was scheduled to be heard on October 14, 2020.

The Settlement Agreement

17. Olympus and Carrefour Laval have reached a settlement in respect of the Disclaimer Application. The settlement provides for:

- (a) the payment by Olympus to Carrefour Laval of the amount of \$47,632.00, which was the equivalent of two months' rent under the Lease;
- (b) the determination of Carrefour Laval's claim in the proposal based on the formula set out in section 65.2(4)(b)(i) of the BIA; and
- (c) the removal of scheduled equipment from the Premises by Olympus on or before October 30, 2020.

18. As a result of the settlement, the disclaimer of the Lease remains effective.

19. In addition, the settlement also provides that Carrefour Laval and two other landlords for which CFC acts as agent, namely, Les Galeries D'Anjou Leaseholds Inc. and Ontrea Inc. (collectively, the "**CFC Landlords**") will support the proposal described above, provided that the CFC Landlords receive a minimum aggregate distribution of \$150,000 thereunder. Based on the claims filed by the creditors of Olympus and the anticipated pool of cash available for distribution, Olympus believes that this level of distribution is achievable and represents at least a 16% recovery to the CFC Landlords and all of the other unsecured creditors of Olympus.

20. A copy of the settlement agreement between Olympus and the CF Landlords dated October 9, 2020 (the "**Settlement Agreement**") is attached hereto as Exhibit "A". The Settlement Agreement includes a provision that it is subject to approval by this Honourable Court by not later than October 14, 2020 or such later date as the parties may agree.


21. I make this Affidavit in support of an application for an Order approving the Settlement Agreement.

SWORN (OR AFFIRMED) BEFORE ME at)
Calgary, Alberta, this 13th day of October,)
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)

Exhibit

“A”

This is **EXHIBIT A**
referred to in the Affidavit of

NOLI TINGZON

Sworn before me on this 13 day
of October, 2020



Commissioner for Taking Affidavits

Carole J. Hunter

MINUTES OF SETTLEMENT

THESE Minutes of Settlement (the "**Agreement**") made effective this 9th day of October, 2020 (the "**Effective Date**") between:

**The Cadillac Fairview Corporation Limited, as agent for
Le Carrefour Laval (2013) Inc.
("Carrefour Laval")**

and

**The Cadillac Fairview Corporation Limited, as agent for
Les Galeries D'Anjou Leaseholds Inc.
("Galeries D'Anjou")**

and

**The Cadillac Fairview Corporation Limited, as agent for
Ontrea Inc.
("Ontrea")**

and

**Olympus Food (Canada) Inc.
("Olympus")**

(each a "**Party**" and collectively the "**Parties**")

WHEREAS:

- A. On or about March 3, 2015 and June 11, 2015, Carrefour Laval and Olympus entered into a storage area agreement and a commercial lease, respectively (together, the "**Lease**"), in respect of the property situated as Storage Area No. SF217 and Store No. F007 at CF Carrefour Laval, 3035 Boulevard le Carrefour, Laval, QC, H7T 1C8 (the "**Premises**").
- B. On May 1, 2020, Olympus filed a notice of intention to make a proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c.B-3, as amended (the "**BIA**"). BDO Canada Limited is the proposal trustee of Olympus (the "**Proposal Trustee**").
- C. On June 16, 2020, Olympus obtained an order from the Court of Queen's Bench of Alberta (the "**Court**") establishing a process for the solicitation and identification of claims against Olympus (the "**Claims Solicitation Order**"). In accordance with the terms of the Claims Solicitation Order, all parties with claims against Olympus were required to file a proof of claim with the Proposal Trustee by July 31, 2020.



- D. On July 30, 2020, Olympus served Carrefour Laval with a Notice by Debtor Company to Disclaim or Resiliate an Agreement in respect of the Lease (the "**Disclaimer Notice**"). The Disclaimer Notice was served pursuant to section 65.2 of the BIA.
- E. On July 31, 2020, claims were filed with the Proposal Trustee by (i) Carrefour Laval in the amount of \$1,501,058.73; (ii) Galeries D'Anjou in the amount of \$1,252,582.42; and (iii) Ontrea in the amount of \$1,389,042.22.
- F. On August 27, 2020, Galeries D'Anjou and Ontrea agreed to revise their claims to \$26,510.06 and \$424,697.77, respectively (the "**Revised Landlord Claims**").
- G. On August 14, 2020, Carrefour Laval filed an application with the Court disputing the Disclaimer Notice (the "**Disputed Application**"). The Disputed Application is scheduled to be heard on October 14, 2020 before the Honourable Justice B.E.C. Romaine.

AND WHEREAS the Parties wish to settle the claims in accordance with the terms set out herein.

NOW THEREFORE WITNESSETH that for and in consideration of the mutual covenants and acknowledgements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

Interpretation

- 1. Capitalized terms not otherwise in the body of this Agreement shall have the meanings ascribed to them in the Schedules attached hereto.

Settlement

- 2. The Parties hereby agree that Olympus shall pay to Carrefour Laval the amount of \$47,632.00, representing two months' rent payable under the Lease (the "**Settlement Amount**") by October 15, 2020. The Settlement Amount will be paid by way of wire transfer to "Gowling WLG (Canada) LLP, in Trust".
- 3. Carrefour Laval agrees that its claim against Olympus shall be calculated in accordance with the formula set out in section 65.2(4)(b)(i) of the BIA, which amount is \$458,894.73 (the "**Carrefour Laval Claim**"). The Carrefour Laval Claim, together with the Revised Landlord Claims, shall be referred to as the "**CF Landlord Claims**".
- 4. Following confirmation from counsel to Carrefour Laval that the Settlement Amount has been received, Carrefour Laval shall:
 - (a) allow Olympus access to the Premises for the purpose of removing the equipment set out in Schedule "A" hereto (the "**Equipment**"); and
 - (b) notify the Court, in writing, that the Disputed Application is withdrawn in accordance with terms of a settlement reached by the Parties.
- 5. Olympus shall remove the Equipment from the Premises on or before October 30, 2020. The removal of the Equipment from the Premises shall be undertaken in a professional manner and by parties qualified to remove such Equipment.

6. Olympus hereby agrees that the CF Landlord Claims shall receive a minimum aggregate distribution of \$150,000 in any proposal that is filed by Olympus, approved by the creditors and approved by the Court in the context of its proposal proceedings under the BIA (the "Proposal").

Restructuring Support Agreement

7. Provided that the Proposal meets requirements of paragraph 6 herein, each of Carrefour Laval, Galeries D'Anjou and Ontrea hereby covenants and agrees as follows:
 - (a) to use commercially reasonable efforts to support the consummation of the Proposal, including by:
 - (i) consenting to and voting in favour of the Proposal;
 - (ii) performing any commercially reasonable acts to facilitate the approval and implementation of the Proposal; and
 - (iii) casting votes, submitting proxies and/or supporting any application brought by the Proposal Trustee for the approval of the Proposal; and
 - (b) to refrain from taking or supporting any action that is intended or would reasonably be expected to impede, interfere with, delay or postpone the Proposal.

Court Approval

8. The Parties shall make all reasonable efforts to facilitate Olympus obtaining Court approval of this settlement by not later than October 14, 2020 or such later date as the parties may agree. If such approval is not granted, this Agreement shall be of no force or effect.

Representations and Warranties

9. Each Party represents that it has the full capacity to deliver and perform this Agreement and, where necessary, its actions hereunder have been duly and validly authorized by all necessary corporate action to do so.

General

10. The recitals together with the provisions enumerated herein shall constitute the Agreement.
11. The Parties acknowledge that this Settlement is the compromise of a disputed claim or claims and that the covenants contained herein are not to be construed as or deemed to be an admission of liability on the part of any of the Parties.
12. Each of the Parties acknowledges reading this Agreement, understanding the terms and consequences of this Agreement, and is aware of the legal and binding effect of this Agreement.

13. This Agreement is executed voluntarily and after sufficient opportunity for all parties to seek and obtain independent legal advice.
14. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors or assigns, heirs, executors and administrators.
15. Each of the Parties will promptly upon request sign and deliver all documents and take all action as may be necessary or desirable to effectively carry out the intent and purpose of this Agreement.
16. This Agreement shall be construed in accordance with and governed by the laws of the Province of Alberta.
17. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by all Parties.
18. This Agreement may be executed in any number of counterparts, including by portable document format (.PDF). Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**The Cadillac Fairview Corporation
Limited, as agent for Le Carrefour Laval
(2013) Inc.**

**The Cadillac Fairview Corporation
Limited, as agent for Les Galeries
D'Anjou Leaseholds Inc.**

Per:
Name: Danielle Lavoie
Title: SENIOR VICE PRESIDENT AND PORTFOLIO MANAGER

Per:
Name: Danielle Lavoie
Title: SENIOR VICE PRESIDENT AND PORTFOLIO MANAGER

Per:
Name: Robert Crépin
Title: Senior Director, Legal Affairs

Per:
Name: Robert Crépin
Title: Senior Director, Legal Affairs

**The Cadillac Fairview Corporation
Limited, as agent for Ontrea Inc.**

Per: 
Name: Danielle Lavoie
Title: SENIOR VICE PRESIDENT AND PORTFOLIO MANAGER

Olympus Food (Canada) Inc.

Per: 
Name: Noli Tingzon
Title: President

Per: 
Name: Robert Crépin
Title: Senior Director, Legal Affairs

SCHEDULE "A"
EQUIPMENT TO BE REMOVED FROM PREMISES

EQUIPMENT NAME	QUANTITY
Digital Menuboard	3
8 Head Gas Cookers (2 Units)	2
One Full Pot Gas Fryer (2 Units)	2
Gravy Steam Kettle	1
Undercounter Cooler	1
Ice Machine Air Cooled with Bin	1
LHH Refrigerator Reach-in	1
LR Reach-in Freezer	1
Breading/Sifting Table	1
Breading Accessories	1
LHH Heated Holding Cabinet	1
Gordita Grill	1
Vertical Conveyor Toaster	1
S/S Toaster Table	1
Sandwich Prep Refrig	1
Microwave 1700W	1
Wall Shelf for Microwave	1
2 Drawer Warmer	1
Fry Dump Station with Warmer	1
Fry Shake Table	1
Hand & Mop Sink incl. Faucet	1
Three Compartment Sink 72	1

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20" Breathing Sink	1
14x24 Wall Shelf Epoxy (2 Pcs)	2
Cup Dispenser Horizontal (2 Pcs)	2
Cup Dispenser Horizontal (2 Pcs)	2
Beverage Cabinet	1
S/S Wall Shelving 16" (2 Pcs)	2
Safe Depository Box	1

WEC