

COURT FILE NUMBER 25-2642858

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

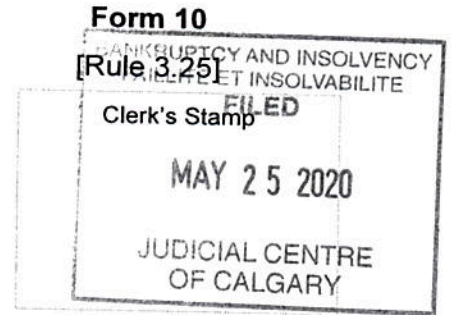
APPLICANT IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

DOCUMENT **AFFIDAVIT OF NOLI TINGZON**
Sworn May 22, 2020

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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File No.: 101195-00001/CJH



AFFIDAVIT OF NOLI TINGZON

Sworn May 22, 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.

Background

2. Olympus was incorporated on August 14, 2012 pursuant to the laws of the Province of British Columbia. The head office of Olympus is located at 908-53 Avenue N.E., Suite I, Calgary, AB T2E 6N9. Olympus is the wholly owned subsidiary of Trenova Holdings S.A.R.L.
3. 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. The franchises were purchased from Duff & Phelps Canada Restructuring Inc., in its capacity as court-appointed receiver of Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc., Kit Finance Inc. and Prizm LP (the "Receiver").
4. Pursuant to the terms of the asset purchase agreement entered into between Olympus and the Receiver, Olympus paid approximately \$4.29 million for the KFC franchises. As a result of the transaction, Olympus also took over 1,200 employees (including 118 unionized employees) and assumed approximately 50% of the accrued vacation pay for those employees up to a maximum amount of \$250,000.
5. The franchisor, Kentucky Fried Chicken Company Canada (formerly, YUM! Canada Inc.) ("KFCCC") consented to the transaction between Olympus and the Receiver and Olympus was granted the rights to operate the KFC, KFC/Taco Bell and KFC/Pizza Hut franchise locations in Quebec.

The Financial Difficulties and Restructuring Efforts

6. The majority of the locations acquired by the Corporation were situated in older commercial areas, dated buildings that were not upgraded or renovated for several years and had been experiencing operating losses for several years. In its desire to improve the business and customer and employee safety, the Corporation spent \$2 million in the first 18 months of operations on building improvements and equipment repairs. The Corporation also increased the salaries and wages of its employees, which had been frozen for two years.
7. In an attempt to boost sales, the Corporation opened and signed 10 year leases for four new mall stores (including the relocation of one existing store) in the food courts of the Les Galeries de La Capitale, Galeries D'Anjou, Carrefour Laval and Les Promenades St-Bruno shopping centres. These locations opened between May and September of 2015.

Unfortunately, the performance of these locations was negatively impacted by the closure of the anchor tenant in these malls, Target Canada and Sears in 2015 and 2017, respectively.

8. From 2013 to 2017, Olympus had annual sales in excess of \$60 million. In 2018, the annual revenue dropped below \$60 million. Despite its sales revenue, Olympus was an unprofitable business. The Corporation was, among other things, plagued by an ineffective French marketing campaign, a poor social media presence, the failure of the "Big Boss" sandwich line, troubles with the quality of operations at its unionized locations, further store closures and customer dissatisfaction with changes to the chicken-cut products. The Corporation's losses have been on a negative trend since 2016.

9. The lack of profitability impacted the Corporation's ability to undertake a costly three-year development plan requested by KFCCC and created tension between the Corporation and KFCCC. In September 2018, 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 its exit from the Quebec market before December 31, 2019. Thereafter, the Corporation worked cooperatively with KFCCC to locate new franchisees for the restaurants. Olympus also advertised the acquisition opportunity throughout Quebec but negotiations with purchasers were complicated by the presence of unions in several locations.

10. On or about March 30, 2019, Olympus notified landlords for some KFC franchise locations that it was required to cease the operations of those franchise locations and terminate the leases because of the loss of the legal right to continue such operations.

11. In June of 2019, Olympus sold 33 of its locations to FMI Atlantic, Inc. ("FMI"). Then, on in November of 2019, Olympus sold an additional 14 locations to FMI. Olympus utilized the sale proceeds for its working capital needs and ongoing payments to its suppliers and lenders.

12. In December of 2019, Olympus notified its landlords for the remaining KFC franchise locations that it was ceasing operations and terminating the leases. While some of the landlords agreed to terminate with or without indemnity, others refused as Olympus' financial situation was deteriorating. Olympus ceased operations at its remaining franchise locations on December 29, 2019.

13. Over the course of its seven years of operations, the Corporation was forced to close 22 KFC, KFC/Taco Bell and KFC/Pizza Hut locations due to lack of profitability and operational issues with the unions in place at several of those locations.

Legal Proceedings by the Landlords and Disclaimers

14. On April 15, 2019, Les Galeries D'Anjou Leaseholds Inc., one of the landlords, commenced proceedings against the Corporation for approximately \$1.4 million, comprised of claims for unpaid rent, accelerated rent and damages purported owing under the terms of the lease.

15. On February 20, 2020, Ontrea Inc., one of the landlords of an unsold KFC franchise location, commenced proceedings against the Corporation for approximately \$1.4 million, comprised of claims for unpaid rent, accelerated rent and damages purported owing under the terms of the lease.

16. On May 21, 2020, Olympus provided notices of disclaimer to the landlords of the remaining five KFC locations and the former office premises pursuant to section 65.2(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA"). In accordance with the terms of the notices, the disclaimers of the leases will become effective on June 20, 2020.

Extension of Time to File a Proposal

17. 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 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.

18. As of the date of filing 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 Foods (Canada) Inc. ("Hi-Flyer"), which operates KFC franchises in Alberta and Manitoba.

19. The Corporation's principal asset that has potential value to its creditors is its corporate tax losses which have an estimated value of more than \$10 million as at December 31, 2019. Olympus has been in discussions with Hi-Flyer regarding a transaction which would allow Hi-

Flyer to utilize the tax losses. The proceeds of that transaction would form the pool of funds available to the Corporation's unsecured creditors in the proposal. The Corporation anticipates that, as part of the tax loss transaction, Hi-Flyer will not file a claim in the proposal of the Corporation, thus materially increasing the funds available to the Corporation's other unsecured creditors.

20. The Corporation has, in addition to the tax losses, limited assets comprised mainly of cash, accounts receivable of approximately \$330,249 (of which the Corporation anticipates some amount to be uncollectible) and used/abandoned restaurant equipment. It is the Corporation's understanding 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.

21. The time to file a proposal expires on May 31, 2020. In order to continue to work towards the formulation and filing of a proposal, Olympus requests an extension of the time for filing to July 15, 2020, in accordance with section 50.4(9) of the BIA.

22. 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 the funding for the proposal;
- (b) working with the Proposal Trustee on the formulation of the proposal;
- (c) communicating with its creditors and remaining landlords; and
- (d) disclaiming the leases for five remaining restaurant locations and the former office premises in Quebec.

23. 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.


24. 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 22nd day of May, 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

Carol J. Hunter