



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

**COURT FILE
NO.:**

CV-25-00735458-00CL

DATE: February 26, 2025

NO. ON LIST: 3

**TITLE OF
PROCEEDING:**

JORIKI TOPCO INC. et al.

BEFORE:

OSBORNE, J.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Applicants seek various relief today, including:

- a. an approval and vesting order approving the Delta Facility Transaction contemplated by the asset purchase agreement dated January 31, 2025 between Happy Planet Foods, Inc. as buyer and Joriki Inc. as seller, together with corollary relief;
- b. an approval and vesting order approving the Toronto Facility Transaction contemplated by the asset purchase agreement dated February 20 2025 between Top Shelf Food and Beverage Corp. as buyer and Joriki Inc. as seller, together with corollary relief; and
- c. an Ancillary Relief Order:
 - i. extending the stay of proceedings to and including March 31, 2025;
 - ii. amending the Initial Order to include language requested by the Canada Revenue Agency;
 - iii. authorizing the Applicants to make certain distributions from the net proceeds of the Transactions, the liquidation of the Pickering facility and the remaining cash on hand to the Agent in respect of amounts are standing under the Senior Credit Agreement;
 - iv. approving the First Report of the Proposal Trustee and the Pre-Filing Report of the Monitor dated January 26, 2025, the First Report of the Monitor dated February 25, 2025, and the conduct and activities of the Proposal Trustee and Monitor described therein; and
 - v. a sealing order in respect of the confidential appendices to the First Report and Confidential Exhibit “B” to the affidavit of Brendan Wall sworn February 25, 2025.

[2] Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Reports, unless otherwise stated.

[3] The proposed relief is recommended by the Court-appointed Monitor and supported by the Senior Lenders. It is unopposed, save that the landlord in respect of the Delta, British Columbia facility, Joriki Inc., opposed the proposed order, which includes relief pursuant to section 11.3 of the *CCAA* in respect of the assignment of the lease.

[4] Counsel advised that they were close to reaching an agreement with respect to the proposed assignment but had not done so at the commencement of the hearing. Accordingly, I stood down the matter until the afternoon in order that the parties could resume discussions and attempt to reach an agreement.

[5] Upon resumption of the hearing, counsel advised that an agreement had indeed been reached. Accordingly, none of the relief sought today is opposed.

[6] The background to, and context for, this motion is fully set out in the materials. I have not repeated it all here. The Applicants, together with and supported by the Financial Advisor, undertook the Sale Process to solicit interest in a potential value-maximizing transaction. In the interim, the Applicant, secured incremental financing from the Senior Lenders and the customer to finance those efforts and provide interim liquidity to sustain operations.

[7] The Sale Process has been completed. The Financial Advisor proactively contacted a targeted group of 34 potential bidders, of which 24 executed non-disclosure agreements to receive access to the data room containing

due diligence information. Four parties submitted Indications of Interest and ultimately two of those parties submitted Letters of Intent by the Submission Date. The Financial Advisor also received an unsolicited inquiry from an industry participant expressing interest in the Toronto facility. Ultimately, the two proposed purchase agreements that are the subject of the approval motions today were selected.

[8] The proposed Transactions contemplate turn-key transactions that maximize value, providing for material benefits to certain employees of the Applicants, as well as former employees, customers, suppliers and their landlord. The Purchasers have advised that they expect to offer employment to nearly 100 current and former employees of Joriki Canada, representing a significant proportion of the pre-filing Canadian workforce. In addition, the buyer of the Toronto facility assets will recommence production for a number of customers.

[9] Each of the Transactions is on an “as is, where is” basis. Closing is anticipated in late February or early March pending Court approval. The Applicants and the Monitor believe and submit that further marketing efforts for the Applicants’ assets would not yield better results than the proposed Transactions, and the Applicants lack the liquidity to pursue further marketing efforts.

[10] Accordingly, the Monitor recommends the proposed Transactions. The Senior Lenders, who are expected to suffer a significant shortfall, have been consulted throughout the Sale Process and also support the Transactions.

[11] I am satisfied that the proposed Transactions should be approved. I have considered the factors set out in section 36(3) of the *CCAA* as well as the *Soundair Principles* and the factors set out by this Court in *Nortel Networks* relevant to a consideration of whether to authorize a sale under the *CCAA* in the absence of a plan. I am satisfied that the Sale Process was fair and reasonable in the circumstances, and that the proposed Transactions are in the best interest of stakeholders. While not determinative, the recommendation of the Monitor and the support of the Senior Lenders as fulcrum creditors reinforce this conclusion.

[12] I further observe that secured creditors who are likely to be affected by the relief sought have been given notice of this motion as required by section 36(2) of the *CCAA* and the Transactions meet the criteria under section 36(7) of the *CCAA* in that the Applicants have paid and will continue to pay all employee wages and compensation referred to in section 6(5)(5(a) and do not sponsor any registered pension plans, such that section 6(6)(a) is inapplicable.

[13] For all of these reasons, the Transactions are approved.

[14] I am also satisfied that the ancillary relief should be granted. The proposed stay extension is appropriate in that the time will be necessary to complete the Transactions and advance next steps in these proceedings, including completion of the Pickering liquidation. The Applicants have been acting and continue to act in good faith and with due diligence. The Monitor supports the stay extension and the cash flow forecast attached to the First Report as Appendix “B” reflects that there should be sufficient liquidity during the proposed extension period.

[15] I am also satisfied that the proposed amendment to the Initial Order as requested by the CRA is appropriate. The additional language is intended to address the potential gap in the existing order to dovetail with the relevant provisions of the *CCAA* regarding priority claims of the Crown.

[16] In addition, the proposed distributions to the Agent, subject to appropriate reserves, are appropriate and are approved pursuant to section 11 of the *CCAA*. The Monitor and its counsel are satisfied that the security granted in favour of the Agent is valid and enforceable and approval of distributions now will facilitate the timely repayment of a portion of the significant secured debt obligations owing to the Senior Lenders.

[17] In further addition, I am satisfied that the proposed sealing relief should be granted. Such relief is available pursuant to section 137(2) of the *Courts of Justice Act*, and I am satisfied that the criteria set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* have been satisfied here. The sealing relief is in effect only until further order of the.

[18] Public disclosure of the purchase prices prior to the closing of the Transactions would be significantly detrimental to any subsequent marketing and sale process if one were required in the event that either or both of the Transactions did not close and the Applicants were required to pursue alternative transactions. Such would clearly be detrimental to the maximization of value for stakeholders, reasonably alternative measures will not prevent the risk, and as a matter of proportionality, the benefits of sealing outweigh its negative effects.

[19] Finally, I am satisfied that the Reports and the activities of the Court officers described therein should be approved. The activities were reasonable, necessary, in accordance with the original mandate given to both the Proposal Trustee and the Monitor in the respective appointment orders, and have been accretive to the progress of these proceedings.

[20] The proposed draft approval and vesting orders are consistent with the Model Order of the Commercial List. Those orders and the ancillary relief order are appropriate, and they are approved.

[21] Orders to go in the form signed by me today which are effective immediately and without the necessity of issuing and entering.

A handwritten signature in green ink, reading "Osborn J.", with a comma at the end.