

**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 YATSEN GROUP OF COMPANIES INC., SAR REAL ESTATE INC. AND
THE COMPANIES LISTED IN SCHEDULE "A"**

Applicants

FACTUM OF THE APPLICANTS

Motion for Stay Extension Order
Returnable June 25, 2021

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PART I - INTRODUCTION

1. This factum is filed in support of a motion by Yatsen Group of Companies Inc., SAR Real Estate Inc. and the companies listed in Schedule "A" (collectively, the "**Applicants**") for an Order (the "**Stay Extension Order**"), among other things, extending the Stay Period (as defined below) to and including July 30, 2021.¹

2. The stay of proceedings in respect of the Applicants currently expires on June 30, 2021. The Applicants are seeking an extension of the Stay Period to July 30, 2021 to maintain continued stability for the Applicants while they work diligently and in good faith to pursue their restructuring efforts, including continuing to advance discussions with various landlords and working to advance a potential plan of compromise and arrangement pursuant to the *Companies'*

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Affidavit of Joseph McCullagh sworn June 17, 2021 (the "**McCullagh Affidavit**").

Creditors Arrangement Act (the “**CCAA**”). The Applicants are making meaningful progress in their negotiations with landlords and are working towards returning before this Court in the near term to seek additional relief to advance their restructuring process.

3. For the reasons set out herein, the Applicants respectfully submit that the relief requested is in the best interests of the Applicants and their respective stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested Stay Extension Order.

PART II – FACTS

A. BACKGROUND

4. The Applicants are comprised of 37 subsidiaries of Sarku Japan, the largest Japanese quick service restaurant chain in the United States, headquartered out of Markham, Ontario. The Applicants form a substantial part of the Company’s real estate segment, the primary role of which is to enter into leasing arrangements (the “**Leases**”) with various landlords and enter into occupancy or sublease arrangements with entities in the Company’s operations segment and third-party franchisees that operate the Restaurants out of such leased premises.

McCullagh Affidavit at para. 5; Motion Record returnable June 25, 2021 (the “**Motion Record**”), Tab 3.

5. The Company’s Business was significantly impacted by the COVID-19 pandemic, with extensive restaurant closures and greatly reduced revenue for the 2020 fiscal year. Following various government-mandated closures of the Applicants’ leased premises in March 2020, the Applicants ceased making lease payments in April 2020 in respect of substantially all of their Leases, resulting in the accumulation of rent arrears with respect to such Leases.

McCullagh Affidavit, at para. 6; Motion Record, Tab 3.

6. In light of their financial circumstances and the significant obligations relating to a number of unsustainable locations within their lease portfolio, as well as the actions and steps commenced by landlords against a number of the Applicants, the Applicants determined that it was necessary to seek protection under the CCAA in order to obtain stability for the Applicants while they seek to advance restructuring alternatives.

McCullagh Affidavit, at para. 8; Motion Record, Tab 3.

7. On January 25, 2021, this Court granted an order (the “**Initial Order**”), which, among other things, appointed Alvarez & Marsal Canada Inc. as monitor of the Applicants in the CCAA proceedings (the “**Monitor**”), and granted a stay of proceedings in respect of the Applicants, their business and their property until February 3, 2021 (the “**Stay Period**”).

McCullagh Affidavit, at para. 9; Motion Record, Tab 3.

8. On February 2, 2021, this Court granted an order amending and restating the Initial Order (the “**Amended and Restated Initial Order**”), which, among other things, extended the Stay Period to March 31, 2021. The Stay Period was subsequently extended by Order of this Court to June 30, 2021.

McCullagh Affidavit, at para. 10; Motion Record, Tab 3.

B. UPDATE ON RECENT ACTIVITIES

9. Since the commencement of the CCAA proceedings, the Applicants have been working in good faith, with the assistance of their advisors, to continue to review their various lease obligations, to review and assess their various strategic options and alternatives in connection therewith, and to advance discussions with various landlords in respect of such lease obligations.

McCullagh Affidavit, at para. 11; Motion Record, Tab 3.

10. To date the Applicants have disclaimed 30 Leases and three storage rental agreements that relate to three of the disclaimed Leases, and have vacated an additional 6 premises subject to Leases that expired on January 31, 2021.

McCullagh Affidavit, at para. 17-18; Motion Record, Tab 3.

11. At this time, the Applicants are party to 157 remaining Leases in aggregate and are current on their post-filing rent payments pursuant to such Leases and the Amended and Restated Initial Order. The full US\$3.1 million amount of the Rent Reserve continues to be held in escrow by the Monitor. No draws have been necessary under the Rent Reserve.

McCullagh Affidavit, at para. 17-18, 20; Motion Record, Tab 3.

12. The Applicants have identified a number of additional Leases that they believe are not currently viable absent a restructuring of the terms of such Leases and the Applicants are continuing to engage in discussions with the applicable landlords regarding potential amendments. To the extent that the terms of such Leases cannot be adequately restructured through a consensual arrangement, the Applicants may need to disclaim such additional Leases.

McCullagh Affidavit, at para. 21; Motion Record, Tab 3.

13. The Applicants, with the assistance of their advisors, have also been actively pursuing discussions and negotiations with various landlords in connection with outstanding lease arrears claims. The Applicants have worked closely with numerous landlords to advance agreements with respect to such landlords' claims against the Applicants and to seek sustainable arrangements in respect of the Applicants' go-forward lease obligations.

McCullagh Affidavit, at paras. 23-24; Motion Record, Tab 3.

14. To date, the Applicants have entered into agreements with certain landlords in connection with such landlords' claims against the applicable Applicants in respect of their outstanding lease obligations and have agreed with those landlords on amendments reflecting go-forward lease terms. The Applicants have also made significant progress in discussions with a number of other landlords and are working towards reaching additional consensual resolutions and returning before this Court in the near term to seek additional relief to advance their restructuring process.

McCullagh Affidavit, at para. 25; Motion Record, Tab 3.

15. Further background and facts relating to the requested relief are set out in the McCullagh Affidavit.

PART III - ISSUE AND THE LAW

16. The issue to be considered on this application is whether the Court should grant the requested Stay Extension Order.

A. THE TEST FOR AN EXTENSION OF THE STAY PERIOD

17. Section 11.02(2) of the CCAA provides the Court discretion to make an order extending the stay of proceedings granted in an initial order. Specifically, Section 11.02(2) states:

11.02(2) *Stays, etc. — other than initial application* – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[CCAA](#), Section 11.02(2).

18. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that:

(i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

[CCAA](#), Section 11.02(3).

B. IT IS APPROPRIATE TO EXTEND THE STAY PERIOD

19. The Applicants submit that an extension of the Stay Period to and including July 30, 2021 is appropriate in the circumstances given, among other things:

(a) the Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to these proceedings, including to, among other things, continue discussions and negotiations, and advance agreements, with various landlords in connection with outstanding lease arrears claims and potential amendments to existing lease terms to provide more sustainable arrangements in respect of the Applicants' go-forward lease obligations;

(b) the extension of the Stay Period to July 30, 2021 is necessary in order to maintain continued stability for the Applicants while they work diligently and in good faith to pursue their restructuring efforts, including continuing to advance their ongoing

discussions and negotiations with various landlords and advance a potential plan of compromise and arrangement pursuant to the CCAA;

- (c) the proposed extension of the Stay Period is a short extension of 30 days and the Applicants are working to return to Court in the near term to seek additional relief to advance their restructuring process;
- (d) the updated cash flow forecast covering the period until September 12, 2021 indicates that, taking into account the DIP Financing, the Applicants will continue to have sufficient funding during the requested extension of the Stay Period;
- (e) creditors will not suffer any material prejudice if the Stay Period is extended; and
- (f) the Monitor is supportive of the request to extend the Stay Period to and including July 30, 2021.

McCullagh Affidavit, at paras. 22-24, 26, 31, 33-34; Motion Record, Tab 3.

Third Report of the Monitor dated March 22, 2021, at s. 7.2 and Appendix “C”.

20. Accordingly, the Applicants submit that it is appropriate for this Court to extend the Stay Period to and including July 30, 2021.

PART IV- RELIEF REQUESTED

21. For all of the above-stated reasons, the Applicants respectfully request that this Court grant the relief sought in the proposed Stay Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 21, 2021

GOODMANS LLP
Goodmans LLP

SCHEDULE A - APPLICANTS

1. HEAP Japanese Food Inc.
2. KB Wisconsin Food Inc.
3. MT Security Square Food Inc.
4. SAR Buckland Food Inc.
5. SAR Coastland Food Inc.
6. SAR Coventry Food Inc.
7. SAR Dulles Expo Center Inc.
8. SAR First Colony Food Inc.
9. SAR Glenbrook Food Inc.
10. SAR Greenbrier Food Inc.
11. SAR Laurel Food Inc.
12. SAR Lloyd Food Inc.
13. SAR Oglethorpe Food Inc.
14. SAR Orange Park Food Inc.
15. SAR Oviedo Food Inc.
16. SAR Park Place Food Inc.
17. SAR Plymouth Food Inc.
18. SAR Ramsey Food Inc.
19. SAR Santa Rosa Food Inc.
20. SAR Security Square Food Inc.
21. SAR St. Charles Food Inc.
22. SAR Stafford Food Inc.
23. SAR Superstition Springs Food Inc.
24. SAR Tanforan Food Inc.

25. SAR Valley Plaza Food Inc.
26. SAR Westgate Massachusetts Food Inc.
27. SAR Willowbrook Food Inc.
28. SJ Arsenal Inc.
29. SJ Boynton Inc.
30. SJ Fox Run Inc.
31. SJ Lenox Food Inc.
32. SJ Macon Food Inc.
33. SJ Rosspark Food Inc.
34. SJ Savannah Food Inc.
35. SJ South Hills Food Inc.

SCHEDULE B – STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT

RSC 1985, c C-36, as amended

11.02(2)

Stays, etc. — other than initial application – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(3)

Burden of proof on application – The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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