

COURT FILE NUMBER 25-2642858
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*

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

DOCUMENT **SECOND REPORT OF THE PROPOSAL TRUSTEE, BDO CANADA LIMITED
JUNE 16, 2020**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**SECOND REPORT OF THE PROPOSAL TRUSTEE
BDO CANADA LIMITED
JUNE 16, 2020**

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INTRODUCTION

1. On May 1, 2020 (the “Filing Date”), Olympus Food (Canada) Inc. (“Olympus” or the “Company”) filed a Notice of Intention to Make a Proposal (the “NOI”) pursuant to the *Bankruptcy & Insolvency Act* (the “Act”). BDO Canada Limited consented to act as trustee (the “Proposal Trustee”) pursuant to the proceedings.
2. On May 4, 2020, the Proposal Trustee filed the following documents with the Office of the Superintendent of Bankruptcy (the “OSB”):
 - a. the Cash Flow Statement prescribed by S.50.4(2)(a) of the Act covering the period beginning May 1, 2020 through to July 25, 2020 (the “Initial Forecast”);
 - b. the *Trustee’s Report on Cash Flow Statement* as prescribed by S.50.4(2)(b) of the Act; and
 - c. the *Report on Cash Flow Statement by the Person Making the Proposal* as prescribed by S.50.4(2)(c) of the Act.
3. On May 28, 2020, the Court of Queen’s Bench of Alberta (the “Court”) granted an Order extending the time in which Olympus must file its proposal to its creditors to July 15, 2020 upon application by the Company. In connection with that application, the Trustee filed a report (the “First Report”) with the Court.
4. The purpose of this second report (the “Second Report”) is to provide an update to the Court with respect to the following:
 - a. The Company’s progress in respect of its preparation of a proposal and uncertainties it sees as necessary to resolve in order to assess the viability of being able to put forth a proposal to its creditors; and
 - b. Actual cash flows during the period May 17 to June 6, 2020;
 - c. The Company’s revised cash flow forecast for the period June 7 - August 29, 2020;
 - d. The Company’s restructuring activities;

- e. The Company's application for an Order to establish a claims process (the "Claims Process") to be completed prior to the formulation of the proposal and the Proposal Trustee's recommendation with respect thereto; and
- f. The Company's request for a further extension of the time required to file a proposal and a corresponding extension of the stay of proceedings (the "Stay") through to August 29, 2020 and the Proposal Trustee's recommendation with respect thereto.

TERMS OF REFERENCE

- 5. In preparing this Second Report, the Proposal Trustee has been provided with, and has relied upon unaudited financial information, certain books and records of Olympus and discussions with management ("Management") (collectively the "Information"). Except as described in this Second Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("GAAS") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of such information.
- 6. Some of the Information referred to in this Second Report consists of forecasts and projections. An examination or review of any financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
- 7. All monetary amounts noted herein are expressed in Canadian dollars.
- 8. Capitalized words or terms not defined herein are as defined in the First Report.

QUANTIFICATION OF CREDITOR CLAIMS

- 9. The creditor listing attached to the NOI (which was attached as Appendix "B" to the First Report) ("the Creditor List") listed over \$17 million owing to 183 creditors. The largest creditor, at approximately \$11.5 million, was Hi-Flyer, a related company.

10. In its First Report, the Proposal Trustee advised that it was not aware of any information which would suggest the amounts referred to in the Creditor List were materially incorrect. However, subsequent to the date of the First Report, the Company and Proposal Trustee become concerned that amounts owing to creditors, primarily landlords to former Company leased locations, may not be appropriately reflected in the books and records of the Company given the uncertainty surrounding such amounts due to the following:

- a. Olympus had not recorded any liabilities in respect of 39 of leases that were, prior to the Filing Date, assigned to FMI Atlantic, Inc. (“FMI”) pursuant to the sale transactions described in the First Report. However, upon further review and discussions with legal counsel to the Company, it appears that Olympus remains explicitly liable to landlords for obligations under certain leases, whereas other assignment agreements do not expressly release Olympus from its obligations.

In the case of two assigned leases, Olympus received correspondence from the landlords advising that FMI had failed to comply with the lease terms regarding payment of rent, and the resulting defaults had to be cured by May 25, 2020. Olympus did not pay the outstanding rent to these landlords and it is uncertain whether the defaults were satisfied by FMI, or alternatively whether they are still outstanding.

Due to its lack of ongoing day-to-day involvement in the assigned leases, Olympus may be unaware of other assigned leases under which FMI is in default; and

- b. Olympus has been contacted by counsel for landlords who indicated they may assert claims for payment of unpaid rent in respect of all or a portion of the remaining terms of two leases that were terminated prior to the Filing Date. After further review of historical leases, Olympus has advised that it considers its liability to have been settled with respect to other leases terminated prior to the Filing Date; however, there remains some possibility that other landlords will make similar claims.

11. As Olympus does not generally have access to information regarding FMI's compliance with the terms of assigned leases, nor the extent to which landlords have already mitigated losses with respect to terminated leases, Olympus is unable to estimate the potential claims of landlords. However, Olympus is concerned that the number and quantum of landlords' claims may be sufficient to impact its ability to put forth a viable proposal to its creditors.
12. The Proposal Trustee understands that, in addition to the assets available to its creditors upon a bankruptcy, additional proceeds may be made available to the creditors of Olympus in a proposal based on a potential amalgamation transaction between Olympus and Hi-Flyer whereby Hi-Flyer (post-amalgamation) would benefit from Olympus's tax losses (or certain of them).
13. However, the Proposal Trustee also understands that Hi-Flyer has advised Olympus that a condition of any proposal involving such an amalgamation will be that Hi-Flyer (post-amalgamation) is free from any liabilities of Olympus which currently exist.
14. As such, Olympus is making an application (the "Claims Process Application") to the Court for an Order setting out a Claims Process to be commenced immediately, including an order that bars any further claims from being made after July 31, 2020. Only after assessing the valid claims arising from the Claims Process does Olympus believe it will be in a position to determine the appropriateness of filing a proposal and the terms thereof. Therefore, Olympus is also asking for a further extension of the time to file a proposal to August 29, 2020.
15. The Proposal Trustee is of the view that the proposed Claims Process is appropriate in the circumstances as:
 - a. The notice, proof of claim and instruction letter that make up the claims package set out in the schedules to the proposed Claims Process Order (the "Claims Package") are similar to those typically provided by BDO Canada Limited in connection with claims procedures administered pursuant to the *Bankruptcy and Insolvency Act* (the "BIA");

- b. The Claims Process requires the Proposal Trustee to send a Claims Package to known creditors, including former landlords, by June 30, 2020 (the “Mailing “Date”). In addition, the Proposal Trustee will post a notice regarding the Claims Process on its website and in newspapers in Calgary and Montreal. The Proposal Trustee views this as appropriate means of notifying Olympus’s creditors and is compliant with creditor notification requirements under the BIA;
- c. The Claims Process provides for a claims bar date of July 31, 2020. The Proposal Trustee notes that this would provide creditors with 31 days’ notice to file a claim from the Mailing Date, which is a greater length of time than is typically afforded to creditors wishing to vote on a proposal at a meeting of creditors as the BIA rules require only that a proposal trustee send notice of the meeting of creditors (including proof of claim documents) at least 10 days prior to the meeting of creditors, which is required to be held within 21 days of the filing of the proposal. The Proposal Trustee also notes that it is not unusual for proposal terms to set out a claims bar date;
- d. The Claims Process allows the Proposal Trustee to send the Claims Package by mail, fax, or email based on the addresses contained in the Company’s books and records. The Proposal Trustee views this as reasonable in the circumstances. In particular, sending Claims Packages by email wherever applicable will result in faster delivery, thereby maximizing the amount of time available to parties to submit claims;
- e. The Proposal Trustee is conscious of the negative impact the COVID-19 pandemic has had on the ability of parties to process physical mail in a timely manner. The Proposal Trustee is of the view that the timelines set out in the Claims Process and the use of email as a transmission method will assist those working remotely to submit a claim prior to the claims bar date;

- f. The Claims Process expressly includes former landlords and tax-related claims, but excludes claims of secured creditors and claims related to the period after the Filing Date. This is commensurate with claims procedures normally undertaken within the context of a BIA proposal; and
- g. The uncertainty surrounding the number and quantum of landlords' claims is such that it may reasonably influence the negotiation of a potential proposal, and achieving greater certainty will assist the Proposal Trustee in formulating an opinion on the fairness and reasonableness of such a proposal.

FINANCIAL PERFORMANCE

16. In connection with Olympus's first application for an extension of the time to file a proposal, the Proposal Trustee provided an updated cash flow forecast for the period May 17, 2020 through to August 15, 2020 (the "Revised Forecast") which was attached as Appendix "C" to the First Report. A variance analysis of the Company's actual receipts and disbursements from May 17, 2020 to June 6, 2020 versus the corresponding period in the Revised Forecast is set out in the following table:

Olympus Food (Canada) Inc.			
Forecast to Actual Analysis			
For the period of May 17 - June 6, 2020			
	Actual	Forecast	Variance
<u>RECEIPTS</u>			
Collection of accounts receivable	29,564	0	29,564
<u>DISBURSEMENTS</u>			
Bank fees	(523)	(150)	(373)
Insurance	0	(2,158)	2,158
Occupation rent	(36,656)		(36,656)
Net cash flow	(7,615)	(2,308)	(5,307)
Opening cash	102,675	102,675	
Closing cash	95,059	100,367	(5,307)

17. Olympus experienced a deficit of \$7,615 over the period versus an anticipated deficit of \$2,308, for a negative variance of \$5,307 due to the following:

- a. Olympus received an refund of \$13,751 related to CNESST (a Quebec government occupational health and safety plan) during the period, which had not been anticipated;
- b. Olympus continues to experience unanticipated receipts of ongoing revenues from stores that have been sold to FMI, reducing the amount receivable from FMI by a further \$15,813;
- c. The Company made a payment of post-filing occupation rent in the amount of \$36,656. This stemmed from a demand by a landlord of a disclaimed lease for rent from the Filing Date to the effective date of the disclaimer. As the Company had not occupied the premises for several months, it had not forecast such a payment. However, the Proposal Trustee notes that the lease required Olympus to continue to pay rent while it remained in force.

18. The Company maintained a cash balance of \$95,059 as at June 6, 2020.

CASH FLOW FORECAST

19. Management has prepared a further updated cash flow forecast for the period June 7, 2020 through to August 29, 2020 (the “Further Updated Forecast”) which is attached as Appendix “A” to this Second Report.
20. A summary of the Further Updated Forecast is set out in the table below:

Olympus Food (Canada) Inc.	
Cash flow forecast	
For the period June 7 - August 29, 2020	
	Forecast
<u>RECEIPTS</u>	
Accounts receivable	42,035
Insurance claim	37,162
	<u>79,197</u>
<u>DISBURSEMENTS</u>	
Bank fees	(450)
Insurance	(2,518)
	<u>(2,968)</u>
Net Cash Flow	76,229
Opening cash	95,059
Closing cash	<u>171,288</u>

21. The Further Updated Forecast reflects positive cash flow of \$76,229 over the forecast period, leaving a forecast cash balance of \$171,288 at August 29, 2020.
22. The Company has determined that \$42,035 which has been held in its lawyer's trust account as a hold-back of proceeds from the pre-filing sale of locations to FMI can be released, such that it has forecast receipt of this amount.
23. The Further Updated Forecast also contemplates receipt of an insurance claim payment that had not been forecast in previous iterations of the forecast, as Olympus recently learned that its claim has been approved for settlement.
24. Disbursements forecast over the period include payment of an insurance premium that had previously been forecast to occur in an earlier week, as the payment had not yet been processed.
25. The Proposal Trustee is satisfied that the Further Updated Forecast is reasonable in the circumstances.

RESTRUCTURING EFFORTS

26. The Proposal Trustee is satisfied that Management has been acting with due diligence and in good faith towards ultimately presenting a proposal to its creditors. Since the date of our First Report, Management has:
 - a. continued to communicate with various creditors, including landlords, regarding the amounts displayed as owing to them in the creditor list and status of the proposal proceedings;
 - b. continued to investigate a potential transaction with Hi-Flyer whereby Hi-Flyer would obtain the benefit of Olympus's tax losses; and
 - c. formulated the proposed Claims Process, with the assistance of the Proposal Trustee, to address its concerns regarding the quantum of creditor claims.

PROFESSIONAL FEES

27. The Proposal Trustee and legal counsel to the Company have been provided retainers, or fee agreements by Hi-Flyer, therefore the payment of professional fees

have not been reflected in the Company's actual cash receipts and disbursements or the Further Updated Forecast as reported and discussed herein.

RECOMMENDATION

28. The Proposal Trustee is supportive of the Claims Process Application and the extension of the deadline to file a proposal to August 29, 2020, as these would provide Olympus with the necessary information and time it requires to formulate a viable proposal to its creditors.
29. The Proposal Trustee is satisfied that:
- a. Management continues to act in good faith and with due diligence with a view towards presenting a proposal to its creditors;
 - b. After completing the Claims Process, the Company will be in a better position to assess its ability to formulate a viable proposal; and
 - c. No creditor would be materially prejudiced if an extension is granted.

All of which is respectfully submitted this 16th day of June 2020.

BDO Canada Limited
in its capacity as the Proposal Trustee of Olympus Food (Canada) Inc.
and not in its personal capacity

Per:



Charla Smith
Vice President

Per:



Kevin Meyler
Senior Vice President

APPENDIX "A"
to the Second Report

OLYMPUS FOOD (CANADA) INC.
WEEKLY PROJECTED CASH FLOW

	Notes	Projected 1	Projected 2	Projected 3	Projected 4	Projected 5	Projected 6	Projected 7	Projected 8	Projected 9	Projected 10	Projected 11	Projected 12	Projected Total
		June 7 - 13	June 14 - 20	June 21 - 27	June 28 - July 4	July 5 - 11	July 12 - 18	July 19 - 25	1	Aug 2 - 8	Aug 9 - 15	Aug 16 - 22	Aug 23 - 29	
Beginning cash		95,059.29	92,541.34	171,738.47	171,738.47	171,588.47	171,588.47	171,588.47	171,588.47	171,438.47	171,438.47	171,438.47	171,438.47	95,059.29
Receipts	1													
Accounts receivable	2		42,035.42											42,035.42
Insurance claim	3		37,161.71											37,161.71
Disbursements	1, 4													
Insurance		(2,517.95)												(2,517.95)
Service charges		-	-	-	(150.00)	-	-	-	(150.00)	-	-	-	(150.00)	(450.00)
Ending cash		92,541.34	171,738.47	171,738.47	171,588.47	171,588.47	171,588.47	171,588.47	171,438.47	171,438.47	171,438.47	171,438.47	171,288.47	171,288.47

Assumptions:

- All stores are closed. Olympus has not had any operating stores since December 30, 2019, and all employees have been terminated. Therefore, there is no revenue being generated, there are no operating expenses, and remaining lease payments related to closed locations are reflected in the creditor list. Certain management employees are employed by a related entity, Hi-Flyer Food Canada Inc. ("Hi-Flyer"), and the amounts of these individuals salaries are funded by Hi-Flyer.
- Olympus's records reflect that it is owed approximately \$160,000 in respect of adjustments relating to sale of some of its locations in 2019. For conservatism, only amounts being released from a holdback that has been held in trust are forecast to be collected within the timeframe set out herein, although the company continues its efforts to collect these receivables.
- Hi-Flyer has been informed that its insurance company has approved a settlement for an insurance claim it had submitted in relation to a pre-filing loss, and therefore payment of the claim is anticipated to occur during the forecast period.
- With all locations closed, the only ongoing expenses are bank fees and a premium for insurance on disclaimed leases up to the disclaimer date. Hi-Flyer has provided a cash deposit to the Proposal Trustee to guarantee its professional fees, and will also be paying other professional fees (including legal counsel) on behalf of Olympus throughout the forecast period. Therefore, there are no professional fees reflected in the forecast.

Olympus Food (Canada) Inc.


Per:

11-Jun-20