

Court File No. CV-13-10331-OOCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 Canada Inc.

Applicant

- and -

Sun Pac Foods Limited

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O 1990, c. C. 43, AS AMENDED**

**SUPPLEMENT TO THE FIRST REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

January 17, 2014

TABLE OF CONTENTS

EXHIBITS

- A** Approval and Vesting Order
- B** Endorsement
- C** Letter from Menkes' counsel
- D** Photographs of the Ammonia Compressors
- E** Landlord Agreement

BACKGROUND

1. On January 9, 2014, the Honourable Mr. Justice D.M. Brown granted an Approval and Vesting Order (the "Approval and Vesting Order") with respect to, *inter alia*, a sale transaction contemplated in the Liquidation Agreement negotiated between the Receiver and Maynards. The Approval and Vesting Order is annexed hereto as **Exhibit "A"**.

2. While Mr. Justice Brown approved the Approval and Vesting Order, he ordered, with the consent of the Receiver, Maynards, Menkes and 852 to exclude the Ammonia Compressors (defined below) from the sale unless the respective parties reached an agreement with respect to same or until the issue is decided by further order of this court. A copy of the endorsement is annexed hereto as **Exhibit "B"**.

3. The service list, including Menkes, was served with the motion materials relating to the Approval and Vesting Order on January 3, 2014. However, Cliff Moss, Director of Leasing Administration for Menkes, accessed the Receiver's electronic data room where the Receiver's CIM resides on December 3, 2013.

THE AMMONIA COMPRESSORS

4. On January 8, 2014 at 6:22pm, the solicitors for Menkes sent an email to the Receiver's solicitors advising that Menkes was objecting to the sale of certain "freezer items". Menkes claims that the "freezer items" are fixtures or leasehold improvements and are not property of the Debtor. A copy of the said letter is annexed hereto as **Exhibit "C"**.

5. Menkes subsequently clarified that the “freezer items” over which they claimed an interest are the 12 Ammonia Compressors (“the “Ammonia Compressors”) referenced in Exhibit “I” of the Confidential Supplement to the First Report (page 251).

6. The Ammonia Compressors are connected to the freezers used at the Premises to preserve and store frozen juice products. Photographs of the Ammonia Compressors are annexed hereto as **Exhibit “D”**.

7. In July of 2013, Bridging entered into an Agreement of Landlord with Menkes (the “Landlord Agreement”) which provided, *inter alia*, that certain assets, as defined in Schedules “A” and “C” of the agreement, shall not be deemed fixtures or part of the real estate but shall be considered personal property. A copy of the Landlord Agreement is annexed hereto as **Exhibit “E”**.

8. It is Menkes position that the assets described in the schedules to the Landlord Agreement were not intended to include the Ammonia Compressors whereas it is 852’s position that the said compressors are included in the assets described in schedules “A’ and/or “C”.

All of which is respectfully submitted this 17th day of January, 2014.

**BDO CANADA LIMITED Court Appointed Receiver of
Sun Pac Food Limited**

Per:



Name: Gary Cerrato, CIRP

Title: Vice-President