2023 01G 3233
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Bankruptcy and Insolvency Act* R.S.C., 1985 c. B-3 as Amended (the "**BIA**"):

AND IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**");

AND IN THE MATTER OF an application of Big Erics Inc. ("**BEI**") and Terra Nova Old Port Foods Inc.("**TNOPFI**")

Estate Nos. 51-2962147 (TNOPFI)
51-2962148 (BEI

Court Nos. 24543 (TNOPFI)
24544 (BEI)

AFFIDAVIT

I, **Martine Langlois**, of the Regional Municipality of Halifax, in the County of Halifax, Province of Nova Scotia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Account Manager with the Special Accounts Management Unit, Eastern Canada, of the Bank of Montreal ("**BMO**") in Halifax, Nova Scotia and as such have personal knowledge of the matters hereinafter deposed to except where stated to be based upon information and belief and in such case, I do verily believe the truth of my statements.

2. I am responsible for the management of the accounts with BMO for BEI and TNOPFI. BEI and TNOPFI are hereinafter collectively referred to as the "**Borrowers**".

3. The Borrowers are indebted to BMO pursuant to certain credit facilities extended by BMO to the Borrowers as more particularly set forth at paragraph 6 in my Affidavit sworn on July 17, 2023 in the within matter.

4. I have reviewed the Affidavit of Nicole Myles Brooks sworn on September 17, 2023 in the within matter. At paragraph 25 of her Affidavit, she states that the BEI revolving credit facility with BMO was, "frozen at the outstanding balance of $4,931,000." However, the credit facility was not "frozen", but the available credit was capped and BEI, as well as TNOPFI, continue to have access and use of the Credit Facility #2- Corporate Mastercard and Credit Facility #3- Operating Line within the set limits.

5. At paragraph 8 of her Affidavit, Ms. Brooks states that BMO required TNOPFI to wind down its operations. The orderly winding up of TNOPFI's operations is the commercially reasonable process given the deteriorating financial condition of this entity. I understand that this process was fully supported by Grant Thornton, the Court appointed Monitor.

6. At paragraph 23, Ms. Brooks states that BEI circulated a draft Sale and Investment Solicitation Process ("**SISP**") to the Secured Parties, "for review and aims to finalize the SISP and seek approval of the Court in the coming weeks". It is my understanding that at the hearing before this Honorable Court on August 3, 2023, the Court scheduled September 22, 2023 as the date to approve the SISP, not a future date.

7. I am advised by BMO's solicitor, Mr. Anthony Tam, K.C. that following the Court hearing on August 3, 2023, he emailed Mr. Darren O'Keefe, solicitor for the Borrowers confirming that the hearing on September 22, 2023 was to approve the SISP and requested the draft SISP. A copy of the email is attached hereto as Exhibit "A".

8. I am advised by Mr. Tam, that at the Court hearing on August 25, 2023, he raised with the Court the concern of BMO that a draft had not yet been provided to BMO for consideration.

9. I am further advised by Mr. Tam that he had contacted Mr. O'Keefe by emails on September 6 and 12, 2023 requesting the draft SISP and Mr. O'Keefe replied on September 12 that it was not available but would advise on the timing and get back to Mr. Tam. A copy of the email exchange of September 12, 2023 is attached hereto as Exhibit "B".

10. BMO did not receive the draft SISP until September 17, 2023. At no time prior to receiving the draft SISP was BMO or its solicitors or advisors notified that BEI intended to seek approval of the draft SISP at a date later than September 22, 2023.

11. The draft SISP received on September 17, 2023 is not acceptable to BMO for the following main reasons:

    a) The SISP process is too complicated and the timeline from the start to completion is too long and drawn out. For example, the sending of solicitation letters to interested parties is not until November 30, 2023. The process to select a successful bidder consists of two complex phases of notification and selection with the first phase to select bidders by February 19, 2024 and a further selection by March 28, 2024. The selection of a successful bidder is not until April 15, 2024 and the completion of the entire process is not until May 31, 2024;

    b) The process is run by BEI and does not involve the Monitor or BMO for consultation or input; and

    c) The Borrowers have provided no cash flow or financial information to support the lengthy SISP process.

12. I am advised by BMO's solicitor, Mr. Geoffrey Spencer, that he submitted to Mr. O'Keefe by email on September 19, 2023 a revised draft SISP to address the concerns of BMO with respect to the proposed SISP.

13. BMO does not oppose a process that provides for the sale of the business and assets of BEI as a going concern so long as the process is reasonable in terms of timing and procedure and is supported by realistic cash flows.

14. BMO is currently in discussions with BEI in an effort to seek agreement on the form of a draft SISP that is commercially reasonable under the circumstances. The outcome of these discussions will determine BMO's position with respect to any extension of stay application. BMO therefore requests that the Borrowers' application for an extension of the stay of proceedings be adjourned for a period of one week in order to allow time for the parties to conclude their discussions with respect to the proposed SISP.

15. I make this Affidavit in support of BMO's request to adjourn the hearing of the extension application for a period of one week in order for the parties to conclude their discussions with respect to the proposed SISP.

SWORN TO BEFORE ME at the Regional Municipality of Halifax, in the County of Halifax, in the Province of Nova Scotia this 20th day of September, A.D., 2023)	
A Notary Public in and for the Province of Nova Scotia	Martine Langlois

BENJAMIN R. DURNFORD
Notary Public in and for the
Province of Nova Scotia

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51-2962148 (BEI

Court Nos. 24543 (TNOPFI)
24544 (BEI)

This is **Exhibit "A"** of the Affidavit of Martine Langlois sworn to before me this 20th day of September, 2023

A Notary Public in and for the Province of Nova Scotia

BENJAMIN R. DURNFORD
Notary Public in and for the
Province of Nova Scotia

BENJAMIN R. DURNFORD NOTARY PUBLIC NOVA SCOTIA

42150652

From: Tam, Tony <anthony.tam@mcinnescooper.com>
Sent: Thursday, August 3, 2023 1:04 PM
To: Darren O'Keefe <dokeefe@okeefesullivan.com>
Cc: Spencer, Geoffrey <geoffrey.spencer@mcinnescooper.com>; King, Meghan <meghan.king@mcinnescooper.com>; George Kinsman <George.C.Kinsman@parthenon.ey.com>; Sara Scott, P.Eng. - Stewart McKelvey (sscott@stewartmckelvey.com) <sscott@stewartmckelvey.com>; Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <Phil.Clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; Joe Thorne <joethorne@stewartmckelvey.com>
Subject: RE: BEI/TNOPFI - SISP

Darren,

Further to the hearing this morning, the Court set the hearing for the SISP approval on Sept. 22, 2023.

During our call on Tuesday, August 1, 2023, we understood that the draft SISP will be provided for our review by the middle of this month or shortly thereafter. As we discussed during the call, the SISP should not be complicated to put together given the involvement of the Noseworthy firm prior to the CCAA and the process has been underway for all intents and purposes. If we (the companies, BMO and Mezzanine Lender) can come to a consensus to the SISP, we see no reason why the SISP could not be submitted to the Court earlier than Sept. 22 for approval if it is by consent without a formal hearing. This will save cost and time and not have to wait till Sept. 22 to start the process. As you know, there is nothing in the CCAA that requires a formal Court blessing of a SISP. The formal requirement under the CCAA is only to the Court's approval of an actual sale out of the ordinary course. We are very concerned that time will be lost and costs prolonged if the process is not started until Sept. 22. In the interim, we trust Big Erics will continue with its efforts to find a buyer/investor and discussions with the current interested parties so time is not lost waiting for the completion of the SISP.

We look forward to receipt of the draft SISP.

Regards

Tony

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Estate Nos. 51-2962147 (TNOPFI)
51-2962148 (BEI

Court Nos. 24543 (TNOPFI)
24544 (BEI)

This is **Exhibit "B"** of the Affidavit of Martine Langlois
sworn to before me this 20th day of September, 2023

A Notary Public in and for the Province of Nova Scotia

BENJAMIN R. DURNFORD
Notary Public in and for the
Province of Nova Scotia

42150652

From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: Tuesday, September 12, 2023 12:51 PM
To: Tam, Tony <anthony.tam@mcinnescooper.com>
Cc: Clarke, Phil <Phil.Clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; sscott@stewartmckelvey.com; George.C.Kinsman@parthenon.ey.com; Melissa De Caria <mdecaria@okeefesullivan.com>
Subject: [EXTERNAL] RE: Big Eric's Inc. CCAA 2023 01G 3233

Tony,

The Companies will not have a draft for review by tomorrow. I will discuss with my client and get back to you with an update on timing.

Regards,

Darren D. O'Keefe
Partner, Lawyer | O'Keefe & Sullivan
P 709 700 0911 | **C** 709 699 3002
E dokeefe@okeefesullivan.com
80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7

From: Tam, Tony <anthony.tam@mcinnescooper.com>
Sent: Tuesday, September 12, 2023 12:49 PM
To: Darren O'Keefe <dokeefe@okeefesullivan.com>
Cc: Clarke, Phil <Phil.Clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; sscott@stewartmckelvey.com; George.C.Kinsman@parthenon.ey.com; Melissa De Caria <mdecaria@okeefesullivan.com>
Subject: RE: Big Eric's Inc. CCAA 2023 01G 3233

Darren,

Just following up to my message of September 6. Will the companies have a draft SISP by tomorrow for our review? As offered, we are prepared to participate in a call to discuss the intended process to provide comment/input before the formal draft.

Regards,

Tony

42150652