

Court File No. B-250152
Estate No. 11-3196702
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF UPMEALS FOOD INNOVATIONS LTD.**

APPLICATION RESPONSE

Application response of: Glenn Lim Lee and Susana Du

THIS IS A RESPONSE TO the notice of application of UpMeals Technologies Inc. ("**UpMeals**"), filed March 24, 2025.

The application respondents estimate that the application will take 2.5 hours.

Part 1: ORDER CONSENTED TO

The application respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: **NIL**

Part 2: ORDERS OPPOSED

The application respondents **oppose** the granting of the orders set out in paragraph 1 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in paragraphs **NIL** of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

Overview

1. This Application Response is made by Glenn Lee and Susana Du, judgment creditors of UpMeals. Both Mr. Lee and Ms. Du made short-term loans to UpMeals for which they have obtained judgments.

2. UpMeal's made two attempts to obtain an order allowing it 30-months to pay Ms. Du's judgment by instalments. UpMeals first applied on December 2, 2023 (the "**First Application**").
3. In response to the First Application, Ms. Du was willing to agree to a 12-month extension, but she opposed the lengthy payment plan sought by the defendant. On January 9, 2024, Justice Brongers issued reasons rejecting the relief sought by UpMeals. He held:

[32] In sum, on the evidence before me, I am not prepared to vary the default judgment beyond the significant modification to which Ms. Du has consented, namely, a provision that will not require UpMeals to pay the amounts owing under the judgment until 12 months from today. I am satisfied that such a deferral is in the interests of justice, and will assist in giving UpMeals an opportunity to ameliorate its financial situation, with a view to attempting to ensure that it has sufficient resources to pay the amounts it owes to Ms. Du.

[33] Finally, on consent, I will also order that monthly financial disclosure be provided by UpMeals to Ms. Du regarding the company's assets and liabilities. I trust that such disclosure will be of assistance going forward should issues arise again when UpMeals' obligation to pay Ms. Du's judgment debt becomes enforceable in one year's time.

Du v. UpMeals Technologies Inc., 2024 BCSC 2260, at paras. 32 and 33

4. The 12-month extension for payment issued by Justice Brongers expired on January 9, 2025.
5. On October 11, 2024, UpMeals obtained a stay of execution of Mr. Lee's judgment until January 9, 2025, so that payment on Mr. Lee's and Ms. Du's judgments would be in lockstep. Mr. Lee did not oppose this short extension of time but sought fulsome financial disclosure from UpMeals, which was ordered by Justice Morellato.
6. UpMeals applied on December 16, 2024 for an order allowing it to pay Ms. Du's judgment by instalments commencing 12 weeks after an order made on the application with further instalments at the same intervals as sought on the First Application with the final payment to be made 30 months after the date of the order made approving the payment plan.
7. At the same time, UpMeals applied for an order allowing it to pay Mr. Lee's judgment by instalments commencing 3 months following an order made approving the payment plan with the final payment being 18 months following the order.

8. Both applications were dismissed by the Honourable Justice Layton by oral reasons given December 24, 2024. Consequently, the stays that had been ordered expired on January 9, 2025. Justice Layton's Reasons have not yet been published.
9. No payments have been made to Ms. Du since Justice Bronger's order was made in January 2024, and the total judgment is now approximately \$620,000. Mr. Lee has only received interest payments from UpMeals since he obtained judgement after summary trial, and the entire the total owing is approximately \$245,000.
10. UpMeals is clearly insolvent with no prospect of pulling itself above water. Since the First Application, UpMeals has been sued by four other groups of creditors, with default judgments taken in three of the four proceedings. UpMeals also has a growing list of creditors who have not sued yet, and it owes almost \$1 million to the CRA in unpaid payroll taxes.
11. Less than a month after obtaining the short stay of Mr. Lee's judgment, UpMeals gave notice of a special meeting of shareholders to be held on November 22, 2024, to approve a corporate restructuring that will transfer IP assets to a newly incorporated affiliate UpMeals Systems Inc. ("**NewCo**") for no consideration. NewCo will not assume any liabilities of UpMeals. At the special meeting, the proposal was approved despite protests from shareholder who are also creditors, including Mr. Lee, because UpMeals' CEO and other founders hold a compelling majority of voting shares. UpMeals incorporated NewCo on the same day.
12. UpMeals' strategy on the previous application is transparent. It is seeking to hold off execution proceedings or bankruptcy long enough to complete the restructuring in the misguided belief that this will shield its IP Assets from creditors and preserve value for its founders. That is likely the motivation in the NOI proceeding, as well.
13. This application should be dismissed with costs.

Procedural History

14. On December 13, 2023, UpMeals filed the First Application seeking a 30-month payment plan for Ms. Du's default judgment.
15. In the First Application, UpMeals emphasized that a venture capital fund, First Tracks Capital ("**First Tracks**"), had prepared an offer sheet to provide much-needed financing to UpMeals on the condition that its debts to existing creditors be subject to a 3-year payment plan. UpMeals adduced an affidavit from First Tracks' representative, Michael Kline, in this regard.
16. On January 8, 2024, the First Application came on for a hearing before Justice Brongers. Ms. Du was willing to consent to 12-month stay of execution but opposed the order sought by UpMeals. On January 9, 2024, Justice Bronger delivered reasons for judgment dismissing the application.

17. Justice Brongers ordered a stay of execution of Ms. Du's judgment for 12 months, which is what Ms. Du was willing to consent to.
18. Mr. Lee's claim against UpMeals came on for a contested summary trial hearing on April 23, 2024, before Justice Kirchner who gave judgment on May 23, 2024.
19. On October 11, 2024, UpMeals sought and obtained a stay of execution of Mr. Lee's judgment until January 9, 2025—the same date that Ms. Du's judgment was stayed until.
20. Justice Layton heard the applications of UpMeals for orders allowing it to pay the Du Judgment and the Lee judgment by instalments on December 16, 2024. He reserved judgment until December 24, 2024, at which time he dismissed both applications mainly because the evidence indicated no possibility of UpMeals being able to make the first payments 3 months following orders approving the proposed payment schedules.

UpMeals has been sued by numerous creditors since December 2023

21. Subsequent to UpMeals' filing of the First Application, at least four other groups of creditors have filed lawsuits against UpMeals, and three have taken default judgments against the company. The claims and judgments of these other creditors exceed \$300,000. In addition, UpMeals has numerous creditors who have not yet filed lawsuits but are owed payment, including an individual shareholder who made short-term loans of \$100,000 that has gone unpaid and a key food supplier who is owed over \$100,000 for product.

UpMeals has approved a corporate restructuring to transfer IP assets to NewCo

22. On November 10, 2024, UpMeals gave notice to its shareholders of a special meeting to be held on November 22, 2024. The proposed resolutions were to approve a corporate restructuring that would establish a new parent company to be named UpMeals Enterprises Ltd. ("**ParentCo**") and a new "software-focused" subsidiary to be named UpMeals Systems Inc., ("**NewCo**"), to grow a new software sales business. The planned reorganization will require UpMeals to transfer its IP assets relating to the "UpMeals App" to NewCo for, apparently, no consideration. UpMeals would change its name to UpMeals Food Innovations Ltd.
23. On November 13, 2024, Mr. Lee submitted a number of questions to Mr. Munro about the proposed reorganization. Mr. Munro's responses make it clear that:
 - (a) the transfer of UpMeal's assets to NewCo will be without consideration;
 - (b) all of UpMeal's existing creditors and liabilities will remain with UpMeals—NewCo will not assume any creditors or liabilities; and,
 - (c) UpMeals may need to leaseback or licence the IP assets from NewCo following the reorganization (presumably for consideration).

24. On November 20, 2024, the respondents' counsel sent a letter to Mr. Munro putting UpMeals on notice that it viewed the proposed restructuring as a transparent attempt to transfer assets away from UpMeals to avoid its creditors and that it was a fraudulent conveyance.
25. On November 21, 2024, Mr. Munro responded asserting that the proposed restructuring was not a fraudulent conveyance because it involves the transfer of "non-revenue generating" assets.
26. On November 22, 2024, at the special meeting of the shareholders of UpMeals, the corporate reorganization was approved with 96.9% of the votes. Mr. Munro and a few other founders hold the vast majority of the voting shares.
27. The two new companies were incorporated and UpMeals' name change was done that same day.

Execution proceedings taken by Mr. Lee

28. Mr. Lee obtained a Writ of Seizure and Sale (the "**Writ**") from this honourable court on August 21, 2024.
29. Attempts by Mr. Lee to enforce the Writ were stayed by the order of Justice Morellato. Attempts to enforce his judgment were resumed following the expiry of the stay on January 9, 2025.
30. Mr. Lee engaged Accurate Court Bailiff Services Ltd. ("**Accurate Bailiff**") to take execution proceeding. Accurate Baillif delivered the Writ to various entities that it understood owed money to UpMeals. The Writ has not been delivered to any further debtors of UpMeals since March 10, 2025, the date of the filing of the NOI.

Part 5: LEGAL BASIS

31. UpMeals seeks a number of orders by its Notice of Application.
 - (a) An extension of 45 days for filing a Proposal;
 - (b) A declaration that Mr. Lee not continue to attempt to enforce the Writ of Seizure and Sale served prior to March 10, 2025, the date of the filing of the NOI; and
 - (c) The granting of an Administration Charge over the assets and undertaking of UpMeals in the amount of \$150,000 which would take priority over all other claims.

Extension of time for filing a Proposal

32. The factors to be considered for the extension of the time for making a Proposal are set out in subsection 50.4(9) of the *Bankruptcy and Insolvency Act* (“**BIA**”), which states as follows:

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and,

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

33. Mr. Munro in his Affidavit #1, made March 21, 2025, in support of this application, gives little evidence upon which this court can determine if the factors in Section 50.4(9) have been met.

First Affidavit of Andrew Munro made March 21, 2025 (“**1st Munro Affidavit**”)

34. In paragraph 18 the 1st Munro Affidavit, Mr. Munro deposes that the cash flow projections worked on with the Proposal Trustee assume that UpMeals customers will make payments on accounts that have arisen since the date of the filing of the NOI. No information regarding the amounts of these accounts or who the customers are is given.
35. In paragraph 19 of his affidavit, Mr. Munro highlights the need for UpMeals to collect receivables due since the date of the NOI.
36. From previous evidence given by Mr. Munro, it is clear that UpMeals cannot continue to operate as it has in the past. Mr. Munro gives no evidence that the financial situation in which UpMeals find itself will change at all in the near future.

37. The only financial information Mr. Munro provides in his affidavit is found at Exhibit "A", the two most recent financial statements of UpMeals for the years ended March 31, 2022, and March 21, 2023. Those financial statements are of no use in the present circumstances. However, they do show that even at those dates, UpMeals was hopelessly insolvent.
38. In his affidavit made in the Lee action and the Du action in support of the application for approval of a payment schedule, Mr. Munro deposed that, at any given time, UpMeals' bank account contains less than one-week operating expense and less than a truly viable level of liquidity. UpMeals must use all available revenue to meet payroll, rent and other essential business expenses.

Third Affidavit of Andrew Munro in Vancouver Registry No. S-236434,
made December 2, 2024, para. 8(f) (the "**Lee 3rd Munro Affidavit**")

39. Mr. Munro did attach as Exhibit "A" to the 3rd Munro Affidavit partial monthly balance sheets of UpMeals for the periods ending August 31, 2024, September 30, 2024, and October 31, 2024. Each of those month-end balance sheets further highlight the hopeless insolvency up UpMeals. Total liabilities greatly exceed asset value.
40. The present application is another in a series of applications by UpMeals to delay the inevitable, the failure of its business and its ultimate bankruptcy.
41. It is instructive that UpMeals does not produce more recent monthly financial statements to indicate that anything has changed since the 3rd Munro Affidavit was made.
42. The only evidence of change is the significant increase in unsecured debt. Mr. Munro deposes that the current unsecured debt is more than \$3.2 million.

1st Munro Affidavit, para. 4

43. In the last balance sheet in the Lee 3rd Munro Affidavit, as at October 31, 2024, the current indebtedness was a million dollars less than it apparently is now. The October 31, 2024, balance sheet shows current assets of \$1.181 million. Non-current assets have been redacted. Total liabilities are \$2.236 million.

Lee 3rd Munro Affidavit, Exhibit "A", page. 13

44. Also redacted are the liabilities between Total Credit Card and Deferred Revenue. On the Balance Sheet for the period ending October 31, 2023, between Total Credit Card and Deferred Liabilities is Payroll Liabilities including Payroll Deductions Payable of \$887,806.61.

First Affidavit of Andrew Munro, in the Du Action, Vancouver Registry No. S-235074
made December 13, 2023, at Exhibit "C" (p. 9) (the "**Du 1st Munro Affidavit**")

45. In the Lee 3rd Munro Affidavit, Mr. Munro fails to mention the then current amount of the Payroll Deductions Payable but simply states that there are amounts owing to Canada Revenue Agency.

Lee 3rd Munro Affidavit, para. 8(b)

46. It must be noted that no proposal shall be approved by the court without the consent of His Majesty, which does not provide for payment in full within 6 months after court approval of payroll deductions that were due at the time of the Notice of Intention.

BIA, s. 60(1.1)

47. Interestingly, under the heading “Other Matter” on page 19 of Exhibit “C” to the Du 1st Munro Affidavit, MNP notes that the net loss on negative working capital shown on the financial statements “indicate the existence of a material uncertainty that may cast significant doubt about the company’s ability to continue as a going concern.” The current financial situation should increase that significant doubt.

48. Justice Sewell of this Court has stated on an application to extend the time for making a proposal;

“in my view, a person seeking an extension of time with respect to preparing a proposal, an indulgence from the court, owes a duty of utmost good faith to make full disclosure of material facts and in particular not to put forward grounds for the extension which can I think fairly be characterized as misleading”

Romspen Investment Corporation v. Conian Developments (La Voda) Inc., 2020 BCSC 1222 at para. 20

49. A very large indebtedness to CRA which takes priority of all other creditors in a proposal has not been disclosed. In previous affidavits, that information was actually redacted. Mr. Munro has clearly not met (the duty of utmost good faith to make full disclosure of material facts”.

Continued Execution

50. Accurate Bailiff, on behalf of Mr. Lee, has served the Writ of Seizure and Sale on a number of debtors of UpMeals. Served with the Writ of Seizure and Sale was a Notice of Seizure. All Notices of Seizure were served prior to March 10, 2025, the date of the filing of the filing of the NOI.

51. Section 58 of the Court Order Enforcement Act provides:

Sheriff empowered to seize money and securities for money

58 A sheriff or other officer to whom a writ of execution is directed must seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money, belonging to the execution debtor, and may and must pay and deliver to the execution creditor any money or bank notes that are seized, or a sufficient part of it and must hold any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money as security for the amount directed by the writ of execution to be levied, or as much of it as has not been otherwise levied and raised, and the sheriff or other officer may sue in his or her own name for the recovery of the sums secured by it, if and when the time of payment of it has arrived.

52. Accurate Bailiff has done everything that can be done to seize and take any money belonging to UpMeals still in the hands of its debtors and merely awaits delivery of the monies held the debtors of UpMeals upon which the Writ of Seizure was served. There is nothing further for Accurate Bailiff to do but await payment of the money. Where the creditor or the creditors' representative has done everything it could to obtain payment prior to the date of the NOI, the monies owed are no longer the property of UpMeals and Section 69(1)(a) of the *BIA* is not applicable.

Careen Estate v. Quinlan Brothers Ltd., 2004 NLSCTD 132, paras. 32 and 40

53. The debtors of UpMeals upon which the Notice of Seizure was served should pay any monies owing to UpMeals to Accurate Bailiff as representative of Mr. Lee.
54. The authorities relied upon by the applicant are not applicable to the issues before this Honourable Court.
55. *British Columbia Enterprise Corp. v. Springall* deals with the attempt to seize property by way of a Writ of Seizure and Sale that is exempt from seizure. The seizure was not disallowed because of the inability to seize a "payable". The court determined that the debtor was entitled to a declaration that the income from the fund in question was exempt from seizure.

British Columbia Enterprise Corp. v. Springall, 1999 CanLII 5700, at para. 15

56. The applicant argues that allowing the seizure to continue would be inconsistent with the single proceeding model described by the Supreme Court of Canada in *Peace River Hydro Partners v. Petrowest Corp.* Mr. Lee was entitled to seize property of UpMeals up to the date of the NOI. He did so. The single proceeding model commences its effect when the proceeding under the *BIA* is implemented by the filing of the NOI. The issue for this court to determine is whether to execution proceedings brought by Mr. Lee by way of the Writ

of Seizure and Sale were effectively completed prior to the stay of proceedings taking effect. There is no inconsistency with the single proceeding model.

Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41

Should an Administration Charge be Ordered?

57. If the extension sought is granted, it is not inappropriate for an Administration Charge to be granted. However, the amount sought is too much. The Cash Flow Forecast of UpMeals includes payment to the professionals who would have the benefit of the Administration Charge of \$125,000 collectively during the extension period. An Administration Charge of \$50,000 would be appropriate.

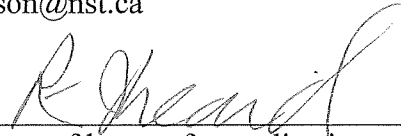
Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Tony Meulenaar, made TBD
 2. Affidavit #1 of Rick Pearson, made December 9, 2024.
 3. Affidavit #5 of Glenn Lim Lee, made December 6, 2024.
 4. Affidavit #3 of Andrew Munro, made December 2, 2024.
 5. Affidavit #1 of Andrew Munro, made December 13, 2023.
 6. Notice of Application of UpMeals in S235074, filed December 13, 2023.
 7. Affidavit #1 of Michael Kline in S235074, made December 12, 2023.
 8. The pleadings and applications filed herein.
- X The application respondents have filed in this proceeding a document that contains the application respondents' address for service.
- The application respondents have not filed in this proceeding a document that contains an address for service.

The application respondents' ADDRESS FOR SERVICE is:

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Date: 26/MAR/2025



Signature of lawyer for application respondents
Peter J. Reardon

THIS APPLICATION RESPONSE is prepared by Peter J. Reardon of the firm of Nathanson, Schachter & Thompson LLP whose place of business and address for service is 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone: (604) 662-8840, and email: preardon@nst.ca and rpearson@nst.ca.