

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. and Terra Nova Old Port Foods Inc.

Estate Nos. 51-2962147 (Terra Nova Old Port Foods Inc.)  
51-2962148 (Big Erics Inc.)

Court Nos. 24543 (Terra Nova Old Port Foods Inc.)  
24544 (Big Erics Inc.)

INTERLOCUTORY APPLICATION  
(*Inter Partes*)

| SUMMARY OF CURRENT DOCUMENT                        |                                                                                                                                                                           |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Court File Number(s)                               | 2023 01G 3233                                                                                                                                                             |
| Date of Filing Documents                           | January 17, 2025                                                                                                                                                          |
| Name of Filing Party or Person:                    | The Monitor, Grant Thornton Limited                                                                                                                                       |
| Application to which Document being filed relates: | Application seeking a final distribution to creditors and to terminate the CCAA proceeding pursuant to the <i>Companies' Creditors Arrangement Act</i> , RSC 1985, c C-36 |
| Statement of Purpose in Filing:                    | To commence the application                                                                                                                                               |

OVERVIEW

1. The Monitor, Grant Thornton Limited, seeks an order:
  - (a) abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1986*, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;
  - (b) pursuant to Section 11 of the CCAA, directing that the service on the service list set out in **Schedule A** hereto is sufficient for the purposes of this application;

- (c) permitting the Monitor to file the HST and corporate tax returns with CRA for BEI for the periods subsequent to the Closing Date;
- (d) for a final distribution to creditors;
- (e) Approving the fees and disbursements of the Monitor and its legal counsel from May 25, 2024 to December 31, 2024, as well as an estimate of fees and disbursements to complete the final administration of this proceeding, as set out in the Monitor's Eleventh Report, dated January 17, 2025;
- (f) Terminating the various court-ordered charges;
- (g) Granting an order discharging the Monitor and terminating these CCAA proceedings; and
- (h) for such further and other relief as counsel may advise and this Court deems just.

#### **FACTS**

2. For the purpose of this application, the Monitor relies on:

- (a) Proposed Monitor's Pre-Filing Report, dated July 17, 2023;
- (b) Monitor's First Report, dated July 25, 2023;
- (c) Monitor's Second Report, dated September 20, 2023;
- (d) Monitor's Third Report, dated December 15, 2023;
- (e) Monitor's Fourth Report, dated January 19, 2024;
- (f) Monitor's Fifth Report, dated February 22, 2024;

- (g) Monitor's Sixth Report, dated March 18, 2024, and Supplement to the Monitor's Sixth Report, dated March 19, 2024;
  - (h) Monitor's Seventh Report, dated April 11, 2024;
  - (i) Monitor's Eighth Report, dated June 21, 2024;
  - (j) Monitor's Ninth Report, dated August 9, 2024;
  - (k) Monitor's Tenth Report, dated October 11, 2024; and
  - (l) Monitor's Eleventh Report, dated January 17, 2025.
3. The Applicants were granted an Initial CCAA Order on July 18, 2023. On July 28, 2023, the Court granted an Amended and Restated Initial Order ("**ARIO**").
  4. On October 25, 2023, the Court approved a SISP. The ultimate result of that SISP was an Asset Purchase Agreement, dated April 12, 2024, pursuant to which the assets of Big Eric's were sold to 94747 Newfoundland and Labrador Inc. (the "**Purchaser**"). The transaction was approved by an Asset Vesting Order of this Court, dated April 16, 2024 (the "**AVO**").
  5. The Asset Purchase Agreement closed on May 10, 2024, as confirmed by Monitor's Certificate No. 1.
  6. Following the closing, a number of disputes arose with respect to the transaction, which were ultimately settled between the parties with the assistance of the Monitor.
  7. The Purchaser paid the post closing purchase price adjustments according to the Asset Purchase Agreement which was confirmed by the Monitor's Certificate No. 2 issued on November 1, 2024.

8. On October 25, 2024, the stay of proceedings was further extended to January 31, 2025.

#### **Update on Pension Plans**

9. The Monitor has assisted Manulife and the Superintendent of Pensions regarding the wind-up of BEI and TNOF's pensions plans. The Monitor has been required to do so because there are no employees left in either company to do so.
10. The Superintendent of Pensions has suggested that a new plan administrator be appointed to facilitate the wind-up. The suggestion of the Superintendent of Pensions is to have Manulife appointed as plan administrator.
11. The Monitor has agreed with that position. The Monitor does not have the authority, nor the books and records, to accurately facilitate a wind-up.
12. The Monitor's view is that the wind-up of the plan does not affect the other relief sought in this application nor the request to be discharged, as the Monitor has no authority with regard to the pension plans.

#### **HST Returns**

13. Since the transaction closing, there are no employees left to prepare outstanding HST returns for the months of April 2024 to the date of the Eleventh Report.
14. With the books and records available to it and the approval of BEI's sole remaining director, the Monitor filed HST returns for April and May 2024.
15. The Monitor has also prepared prospective HST returns for the other outstanding months. BEI will have incurred ITCs with regards to the professional fees charged for these CCAA proceedings. However, as these professional fees were incurred after the transaction closing, the Monitor seeks limited powers to file BEI's outstanding HST returns and

corporate tax returns with CRA from June 2024 onwards, until the conclusion of these CCAA proceedings, in order to capture the ITCs.

### **Final Distribution**

16. Following the resolution of the post-closing disputes in October 2024, the Monitor in consultation with BMO prepared a notice to all creditors of the Monitor's intention to seek approval of a final distribution. Previously, BMO had opposed a formal claims process and such relief was not granted by the Court.
17. Notice of the pending final distribution motion was sent to all known creditors in November 2024. As of the date of this filing, the Monitor has received 31 proofs of claim, of which 6 have been identified as priority claims ahead of BMO, as well as statutory super-priority claims for BEI including Service Canada following the Monitor's administration of the WEPP orders, and the various court ordered priority charges including the administrative charge, the directors and officers charge, and the KERP charge.
18. In addition there is a super-priority claims for TNOPFI from Service Canada following the Monitor's administration of the WEPP orders.
19. Details of the proofs of claim received and the Monitor's assessment are set out in the Eleventh Report. The Monitor intends to provide this application and its Eleventh Report to all creditors in the event that any creditor with a proof of claim should disagree with the Monitor's assessment or wish to otherwise speak to the proposed distribution.

### **Approval of Fees and Disbursements**

20. The fees and activities of the Monitor and its counsel through the period from July 18, 2023 to May 24, 2024 were approved on October 25, 2024.

21. Since that time, the Monitor has:

- (a) Participated and assisted in discussions amongst the stakeholders to resolve post-closing disputes;
- (b) Assisted with sourcing a purchaser for certain disputed assets, which led to the vesting order dated December 12, 2024, further assisting in the resolution of the disputes;
- (c) Prepared for, and attended, various court hearings in relation to the post closing disputes;
- (d) Various communications with creditors regarding concluding these CCAA proceedings;
- (e) Provided notice to all known creditors of BEI of a final distribution to be made and requesting any priority claim be filed with the Monitor;
- (f) Corresponded with creditors regarding claims received by the Monitor;
- (g) Corresponded with Manulife and the Superintendent of Pensions regarding the wind-up of the companies' pensions;
- (h) Compiled the outstanding HST returns of BEI from April 2024 to December 2024;
- (i) Maintained the Monitor's case management website: and
- (j) Prepared its Eleventh Report.

22. The fees and disbursements of the Monitor and its legal counsel for the period from May 25, 2024 to December 31, 2024 are set out in the Eleventh Report. The Eleventh Report

also includes an estimate of the Monitor and its legal counsel's costs to complete the final administration of this proceeding.

23. The Monitor submits that those fees are reasonable in light of the complexity of the issues raised in this proceeding and the work involved through the period noted above through to termination.

#### **Terminating CCAA Proceeding**

24. With the completion of the steps above, the Monitor is of the view that the objectives of this CCAA proceeding will be met and a termination order is appropriate.

#### **RELIEF SOUGHT**

25. The Monitor requests an order:
- (a) abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1986*, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;
  - (b) pursuant to Section 11 of the CCAA, directing that the service on the service list set out in **Schedule A** hereto is sufficient for the purposes of this application;
  - (c) permitting the Monitor to file the HST and corporate tax returns with CRA for BEI for the periods subsequent to the Closing Date;
  - (d) for a final distribution to creditors;
  - (e) Approving the fees and disbursements of the Monitor and its legal counsel from May 25, 2024 to December 31, 2024, as well as an estimate of fees and disbursements to complete the final administration of this proceeding, as set out in the Monitor's Eleventh Report, dated January 17, 2025;
  - (f) Terminating the various court-ordered charges;

(g) Granting an order discharging the Monitor and terminating these CCAA proceedings; and

(h) for such further and other relief as counsel may advise and this Court deems just.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 17<sup>th</sup> day of January, 2025.



**Joe Thorne**  
STEWART MCKELVEY  
Suite 1100, Cabot Place  
100 New Gower Street  
St. John's, NL A1C 6K3

Telephone: 709.570.8850  
Facsimile: 709.722.4565  
Email: joethorne@stewartmckelvey.com

**Solicitors for the Monitor, Grant Thornton  
Limited**

**TO: THE SERVICE LIST**

**ISSUED** at St. John's, in the Province of Newfoundland and Labrador this \_\_\_\_\_ day of January, 2025.

---

**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. and Terra Nova Old Port Foods Inc.

Estate Nos.    51-2962147 (Terra Nova Old Port Foods Inc.)  
                     51-2962148 (Big Erics Inc.)

Court Nos.     24543 (Terra Nova Old Port Foods Inc.)  
                     24544 (Big Erics Inc.)

**NOTICE**

You are hereby notified that the foregoing application will be made to the judge presiding in Chambers at the Court House at St. John's, Newfoundland and Labrador on \_\_\_\_\_, the \_\_\_\_\_ day of January, 2025 at the hour of 10 o'clock in the forenoon or so soon thereafter as the application can be heard.

**TO:     THE SERVICE LIST**

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. and Terra Nova Old Port Foods Inc.

Estate Nos. 51-2962147 (Terra Nova Old Port Foods Inc.)  
51-2962148 (Big Erics Inc.)

Court Nos. 24543 (Terra Nova Old Port Foods Inc.)  
24544 (Big Erics Inc.)

**AFFIDAVIT**

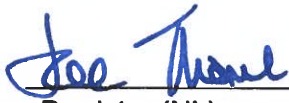
| SUMMARY OF CURRENT DOCUMENT                        |                                                                                                                                                                           |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Court File Number(s)                               | 2023 01G 3233                                                                                                                                                             |
| Date of Filing Documents                           | January 17, 2025                                                                                                                                                          |
| Name of Filing Party or Person:                    | The Monitor, Grant Thornton Limited                                                                                                                                       |
| Application to which Document being filed relates: | Application seeking a final distribution to creditors and to terminate the CCAA proceeding pursuant to the <i>Companies' Creditors Arrangement Act</i> , RSC 1985, c C-36 |
| Statement of Purpose in Filing:                    | To support the application                                                                                                                                                |

I, **PHIL CLARKE, CPA, CA, CIRP, LIT**, of the City of Halifax, in the Province of Nova Scotia, make oath and say:

1. I am a Partner with Grant Thornton Limited, the Monitor for the Applicants in this proceeding. As such, I have personal knowledge of the facts set out in this affidavit.
2. I have reviewed the facts set out in this application and affirm that they are true to the best of my knowledge, information, and belief.

3. I make this affidavit in support of the Monitor's application to make a final distribution to creditors, to terminate the CCAA proceedings, and other relief, and for no other purpose.

**AFFIRMED** before me via audio-visual technology in accordance with the *Alternate Witnessing of Documents Act*, in St. John's, Newfoundland and Labrador, this 17<sup>th</sup> day of January, 2025:



Barrister (NL)



---

**PHIL CLARKE, CPA, CA, CIRP, LIT**

3. I make this affidavit in support of the Monitor's application to make a final distribution to creditors, to terminate the CCAA proceedings, and other relief, and for no other purpose.

**AFFIRMED** before me via audio-visual technology in accordance with the *Alternate Witnessing of Documents Act*, in St. John's, Newfoundland and Labrador, this 17<sup>th</sup> day of January, 2025:

\_\_\_\_\_  
Barrister (NL)

  
\_\_\_\_\_  
PHIL CLARKE, CPA, CA, CIRP, LIT