

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF an application of
Big Erics Inc. and Terra Nova Old Port Foods
Inc.

AND IN THE MATTER OF the *Companies'*
Creditors Arrangement Act R.S.C., 1985 c. C-
36 as amended

**NINTH REPORT OF GRANT THORNTON LIMITED,
IN ITS CAPACITY AS MONITOR
UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36
OF BIG ERICS INC. AND TERRA NOVA OLD PORT FOODS INC.**

August 9, 2024



**Grant Thornton Limited,
Court-Appointed Monitor**

Suite 300 – 15 International Place
St. John's, NL A1A 0L4

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INTRODUCTION

1. On July 11, 2023, Big Erics Inc. (“**BEI**” or “**Vendor**”) and Terra Nova Old Port Foods Inc. (“**TNOPI**”) (collectively as, the “**Companies**”) made an application to the Supreme Court of Newfoundland and Labrador (the “**Court**”) to convert previously filed Notices of Intention to Make a Proposal (“**NOIs Proceedings**”) to proceedings under the *Companies’ Creditors Arrangement Act*, RSC, 1985, c. C-36, as amended (“**CCAA Proceedings**”). On July 18, 2023, the Court issued an order (the “**Initial Order**”) and Grant Thornton Limited (“**GTL**”) was appointed as Monitor (in such capacity, the “**Monitor**”) for the Companies.
2. Pursuant to the Initial Order, amongst other things, all creditors were stayed from commencing or continuing any proceedings against the Companies until, and including, July 28, 2023 (“**Stay of Proceedings**”), or until such date as the Court may by subsequent order direct. The Stay of Proceedings was further extended by multiple orders, most recently, to November 1, 2024 by an order issued on June 26, 2024 (“**June 2024 Stay Extension Order**”).
3. On October 25, 2023, the Court issued a sales and investment solicitation process order (“**SISP**” and “**SISP Order**”) which directed and empowered Noseworthy Chapman (the “**SISP Advisor**”) to administer a SISP in the CCAA Proceedings. The SISP was completed by way of an asset purchase agreement between 94747 Newfoundland and Labrador Inc. (“**94747**” or the “**Purchaser**”) and BEI (the “**APA**”). The APA was approved by the Court on April 16, 2024 and the transaction subsequently closed on May 10, 2024.
4. On January 15, 2024, the Court issued an order declaring that the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 (“**WEPP**”), applies to TNOPI in conjunction with the *Wage Earner Protection Program Regulations*. The declaration was a requirement of Service Canada as communicated to the Monitor.
5. On June 26, 2024, the Court issued the June 2024 Stay Extension Order which primarily provided for an extension of the Stay of Proceedings to November 1, 2024. A copy of the June 2024 Stay Extension Order is attached hereto as **Appendix “A”**.
6. Also on June 26, 2024, the Court heard submissions from the various stakeholders regarding the Monitor’s application for various relief. Following this hearing, the Monitor

and BMO have filed with the Court the following draft orders on consent of the parties that appeared at the hearing:

- (a) Order for a declaration that WEPP applies to BEI in conjunction with the *Wage Earner Protection Program Regulations*. The declaration is a requirement of Service Canada as communicated to the Monitor. A copy of this draft BEI WEPP order as submitted to the Court for approval is attached hereto as **Appendix “B”**;
 - (b) A procedural order setting filing and hearing dates for, among other things, a motion regarding disputes arising from the APA and for security for costs of that motion (“**Draft Procedural Order**”), a copy of which is attached hereto as **Appendix “C”**; and
 - (c) An order approving the closing of the Companies’ BMO bank accounts, with the balance in the accounts to be transferred to the Monitor (“**Draft BMO Account Closure Order**”), a copy of which is attached hereto as **Appendix “D”**.
- 7. The Draft Procedural Order set forth the hearing dates and associated filing deadlines for a hearing on security for costs to be held on September 18, 2024 and primarily the Monitor’s application to seek the Court’s assistance to address disputes regarding the APA to be heard on October 24 and 25, 2024.
 - 8. The Monitor’s application to have activities, fees and disbursements of the Monitor and its legal counsel approved is also to be heard on September 18, 2024. The Monitor anticipates filing an updated application on this matter to encompass the activities, fees and disbursements of the Monitor and legal counsel through to August 31, 2024.
 - 9. Once the disputes with 94747 have been resolved, the Monitor will then request direction from the Court on how it should proceed with a proposed distribution of the SISP sale proceeds to any Priority or Restructuring Claimant, ahead of any distribution to BMO, who is the first ranking secured creditor. The claims and creditor groups that rank ahead of BMO include, but is not limited to, the Administrative Charge, the Directors and Officers Charge, the KERP, the WEPP Claim from Service Canada, and the significant unpaid post filing payables pursuant to the ARIO.
 - 10. On July 2, 2024, 94747 filed an objection to the form of order associated with the Monitor’s amended notice of application for security for costs, providing its own suggested revisions to the Draft Procedural Order. A copy of this objection is attached hereto as **Appendix “E”**.

11. On July 10, 2024, the Monitor's counsel filed with the Court the amended notice of application for security for costs.
12. This ninth report of the Monitor (the "**Ninth Report**"), as well as the previous reports of the Monitor and all other relevant information in respect of these CCAA Proceedings and the previous NOIs Proceedings has been made available to stakeholders on the Monitor's case website at www.GrantThornton.ca/BigEricks. Readers are encouraged to read the preceding reports of the Monitor, the materials filed with the Court in relation to the applications and the orders of the Court, to provide additional information on these CCAA Proceedings.

PURPOSE OF THE NINTH REPORT

13. The purpose of the Ninth Report is to provide the Monitor's estimate of its own costs and legal costs in support of the application for security for costs, pursuant to the Draft Procedural Order. The Monitor has prepared this Ninth Report solely for this purpose and has not included any other updates with regards to the Companies.

TERMS OF REFERENCE

14. In preparing this Ninth Report, the Monitor has relied upon unaudited internal financial statements, certain other financial information and financial projections of the Companies, discussions with management of the Companies ("**Management**") and its legal advisors, discussions with the SISP Advisor, and financial information provided by other stakeholders (collectively, the "**Information**"). While the Monitor has reviewed the Information for reasonableness and believes that the information provides a fair summary of the transactions and underlying financial position as reflected in the documents of the Companies, the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian Generally Accepted Auditing Standards.
15. Some of the Information used in preparing this Ninth Report consists of forward-looking information. The Monitor cautions that such information is based on assumptions about future events and conditions that are not yet ascertainable. The actual results with respect to the forward-looking information and the variations thereof could be significant.

16. In the course of its mandate, the Monitor has assumed the integrity and truthfulness of the Information and explanations presented to it by Management, directors of the Companies', and other stakeholders, within the context in which the Information was presented. To date, nothing has come to the Monitor's attention that would cause it to question the reasonableness of these assumptions. The Monitor requests that Management, directors and other stakeholders bring to its attention any significant matters which were not addressed in the course of the Monitor's specific inquiries. Accordingly, this Ninth Report is based solely on the Information (financial or otherwise) made available to the Monitor by the Companies, Management and other stakeholders.
17. The Ninth Report has been prepared for the use of this Honourable Court and the Companies' stakeholders as general information relating to the Companies and these CCAA Proceedings, and to assist the Court in determining whether to grant the relief sought by the Monitor. Accordingly, the reader is cautioned that this Ninth Report may not be appropriate for any other purpose. The Monitor does not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Ninth Report contrary to the provisions of this paragraph.
18. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meaning given to them in the Initial Order and subsequent orders granted by the Court, as well as the preceding reports of the Monitor.

MONITOR'S APPLICATION FOR SECURITY FOR COSTS

19. As stated in the eighth report of the Monitor (the "**Eighth Report**"), the Monitor is seeking assistance from the Court to (i) resolve the various post closing disputes that have arisen between 94747 and BEI, the Monitor and BMO, (ii) obtain outstanding reporting due from 94747, and (iii) direct 94747 to pay the amounts owing to BEI pursuant to the APA.
20. The Monitor is of the view that security for costs is appropriate given:
 - (a) 94747 was newly incorporated for the purposes of acquiring certain assets of BEI pursuant to the APA. There is no evidence that 94747 has the financial capacity to remit payment to BEI for costs or otherwise, should the Monitor's application be successful. This view is supported by 94747's own communications. Counsel for

- 94747 have indicated that the dispute has “created significant cashflow issues” and that 94747 is in “breach of its loan agreement with its lender”, Sallyport Commercial Finance, ULC (“**Sallyport**”) as outlined in an email to BEI and the Monitor on May 21, 2024, attached hereto as **Appendix “F”**;
- (b) The costs of the litigation are being borne by the creditors. The creditors of BEI should not be out of pocket should 94747 be unsuccessful in its claim for a reduction in the Purchase Price; and
 - (c) 94747 has defaulted on multiple payment milestones pursuant to the APA, including
 - (i) payment of the agreed AR Reconciliation Amount net of the Customer Deposit Reconciliation Amount, (ii) the June 9, 2024 Inventory Payment in the amount of \$75,000 pursuant to paragraph 3.2 (c) of the APA, (iii) the second \$75,000 payment due 60 days after the Closing Date pursuant to paragraph 3.2 (c) of the APA (“**July 10, 2024 Inventory Payment**”); and (iv) Transitional Purchases to June 4, 2024.
21. As detailed in the Eighth Report, the Monitor is of the view that 94747 is in default of the APA. No payments or additional information has been received since the Eighth Report.
22. The Monitor has prepared an updated summary, consistent with the issues as noted within the Eighth Report, which lists and quantifies the various disputes. The summary includes all known disputes summarized into either undisputed, disputed or requiring further support from 94747 to be submitted to the Monitor for review. The purpose of the summary is to outline to stakeholders that no matter the outcome of the hearing on October 25 and 26, 2024 on the disputed amounts in the APA, 94747 will owe funds to the estate of BEI, and reporting on items to BEI and the Monitor. This summary is also attached hereto as **Appendix “G”**:

Ninth Report to the Court submitted by Grant Thornton Limited
In its capacity as Court-Appointed Monitor of BEI and TNOPI
August 9, 2024

Description	Owed by 94747	Credit to 94747	Outstanding from (to) 94747	Disputes
Monitor's View of Post Closing Undisputed Funds				
Purchase Price Adjustments				
Accounts Receivable Reconciliation Amount - APA 3.4 (b)	\$ 84,052.33	-	\$ 84,052.33	-
Customer Deposits Reconciliation Amount - APA 3.4(c)	-	(47,990.53)	(47,990.53)	-
Inventory Purchase Price - APA 3.4(a)	-	(53,790.07)	(53,790.07)	-
Total Amount of Purchase Price Adjustments	84,052.33	(101,780.60)	(17,728.27)	-
Inventory Payment Schedule - APA 3.2 (c)				
June 9, 2024 Inventory Payment	75,000.00	-	75,000.00	-
July 9, 2024 Inventory Payment	75,000.00	-	75,000.00	-
August 8, 2024 Inventory Payment	75,000.00	-	75,000.00	-
Total Amount of Inventory Payment Schedule	225,000.00	-	225,000.00	-
Transitional Purchases - APA 3.2 (d) & 6.7 (d)				
Transitional Purchases owing as of June 4, 2024	219,672.20	-	219,672.20	-
Transitional Purchases Deposit Credit Claimed Twice	40,688.40	-	40,688.40	-
Two Transitional Purchases Received by 94747	24,357.03	-	24,357.03	-
Undisputed or Previously Acknowledged Transitional Purchases	284,717.63	-	284,717.63	-
Total Undisputed/Previously Acknowledged Amounts due from Purchaser	\$ 593,769.96	\$ (101,780.60)	\$ 491,989.36	-
Transitional Purchases - Update or Support Required from Purchaser				
Transitional Purchases - APA 3.2 (d) & 6.7 (d)				
40 Transitional Purchases on closing, excluded by 94747	\$ 188,265.99	-	\$ 188,265.99	-
Transitional Purchase Credits claimed by 94747	13,787.08	-	13,787.08	-
Transitional Purchases to be Received	216,206.04	-	216,206.04	-
Transitional Purchases Due from Purchaser (Support Required)	\$ 418,259.11	-	\$ 418,259.11	-
Total Owed by 94747	\$ 1,012,029.07	\$ (101,780.60)	\$ 910,248.47	-
Amounts Held by the Monitor in Trust				
Credit Card/Shopify (Post-Closing) - May 10 to 22	-	\$ (110,732.74)	\$ (110,732.74)	-
Trade Accounts Receivable - May 23 to 28	-	(99,307.13)	(99,307.13)	-
Trade Accounts Receivable - May 29 to June 7	-	(63,086.91)	(63,086.91)	-
Post Closing Amounts Held by the Monitor	-	(273,126.78)	(273,126.78)	-
Amounts Within BMO Operating Line				
Post Closing Amount on account of the Purchaser - Jun 10 to Jul 17	-	(113,719.81)	(113,719.81)	-
Net Owed by 94747	\$ 1,012,029.07	\$ (488,627.19)	\$ 523,401.88	-
94747 Claims and Disputes				
Deposits within BEI's BMO Operating Line				
Pre-Closing Credit Card/Shopify Amounts - APA 6.6(e)	-	-	-	\$ 24,254.71
Total Disputed Amount of Deposits Operating Line	-	-	-	24,254.71
94747's Inventory Dispute				
Expired and in stock	-	-	-	209,339.00
Inventory not in possession of BEI	-	-	-	9,255.00
Expired and damaged stock in warehouse	-	-	-	31,246.67
Expired Chemicals Claim	-	-	-	148,814.00
St. John's Movement Claim	-	-	-	\$NIL
Racking Claim	-	-	-	35,000.00
Total 94747's Inventory and Capital Assets Dispute	-	-	-	433,654.67
Total 94747 Claims and Disputes	-	-	-	\$ 457,909.38
Grand Net Total	\$ 1,012,029.07	\$ (488,627.19)	\$ 523,401.88	\$ 457,909.38
Summary				
Total Undisputed or Previously Acknowledged Amounts due from 94747			\$ 491,989.36	
Total Update/Support Required for Transitional Purchases due from Purchaser			418,259.11	
Total Owed by 94747 Pursuant to APA			\$ 910,248.47	
Less: Amounts Held by Monitor			(273,126.78)	
Less: Post Closing Amounts within BMO Operating Line			(113,719.81)	
Net Owed by 94747			\$ 523,401.88	
94747 Claims and Disputes			(457,909.38)	

23. The Monitor notes the following totals, with further details as described herein this Ninth Report:
- (a) **Total Undisputed or Previously Acknowledged Amounts due from Purchaser – \$491,989.36** – It is the Monitor's view that this is the net amount owed by 94747 which is undisputed amongst the parties (being acknowledged as agreed by 94747, or based on the 94747 own position);
 - (b) **Transitional Purchases due from 94747 – \$418,259.11** – This amount is the sum of the Transitional Purchases that are either disputed by 94747 as not owing, or for which the reporting on the Transitional Purchases has not been received by the Monitor from 94747;
 - (c) **Post Closing amounts held in trust by the Monitor – \$273,126.78** – This is the total of post closing cash receipts held in trust on account of the 94747. The \$110,732.74 being retained by the Monitor with the consent of 94747;
 - (d) **Post Closing amounts with the BMO Operating Line – \$113,719.81** – This is the total post closing receipts on account of post closing collection of accounts receivable or post closing sales in the BMO Operating Line;
 - (e) **Net Owing by 94747 – \$523,401.88** – This is the net amount owing should BEI's position, supported by the Monitor and BMO, be affirmed and 94747's claims dismissed, net of cash held in trust by the Monitor and the amount still in the BMO Operating Line; and
 - (f) **Total 94747 Claims and Disputes – \$457,909.38** – The sum of all disputes and credits claimed against the Purchase Price as advanced by 94747.
24. In addition to the above, there is a total of \$8,615.88 in the BMO Operating Line that has not been accounted for in the above noted analysis. As at the date of this report supporting documentation for the amounts has not been provided by 94747 to the Monitor for review and include in its analysis.
25. The Monitor is of the view that if the Court affirms the position of BEI, supported by the Monitor and BMO, and 94747 is unsuccessful in all its claims, the amount due from 94747 is \$910,248.47 (net \$523,401.88 if you apply the funds held by the Monitor and the funds in the BMO Operating Line against the balance owing). If the Court determines that 94747

is successful in all its claims, 94747 will still owe BEI \$65,492.50 (\$523,401.88 - \$457,909.38). This calculation excludes the Transitional Purchases due from 94747 as that reporting from the 94747 as required by the APA is outstanding.

26. Since the date of the last report, 94747 has not made any of the required post-closing payments owed to BEI pursuant to the APA. The Monitor is of the view that 94747 continues to be in default of the APA.
27. The Monitor's estimate for the purpose of the application for security for costs against 94747 is \$103,298.75 ("**Security for Cost Amount**") being \$68,798.75 for the Monitor and \$30,066.00 for the Monitor's legal counsel, detailed as follows on a full indemnity basis:

Description	Hours	Total
Monitor's Fees and Disbursements		
Monitor's Report - Initial Report on APA Disputes	31	\$ 10,975.00
Review 94747 Submissions	31	10,975.00
2nd Monitor's Report - Reply to 94747 Submissions	31	10,975.00
Preparation for hearing	15	6,375.00
Attend two day hearing on October 25 and 26, 2024	25	11,125.00
Communications and discussions with counsel	16	6,400.00
Travel and disbursements		3,000.00
Subtotal Total		\$ 59,825.00
HST		8,973.75
Total Monitor Fees and Disbursements		\$ 68,798.75
Monitors Legal Counsel		
Review and prepare Monitor's Report for contested hearing	8	\$ 3,320.00
Prepare memorandum of fact and law	5	\$ 2,075.00
Review responding affidavits and memorandums of fact and law from all parties	10	\$ 4,150.00
Prepare for and attend 2 day hearing	30	\$ 12,450.00
Communication with Monitor and parties	10	\$ 4,150.00
Subtotal Total		\$ 26,145.00
HST		3,921.00
Total Monitor legal counsel Fees and Disbursements		30,066.00
Grand Total		\$ 98,864.75

28. Assumptions on the above noted estimate are as follows:
 - (a) Monitor expects that it will have to prepare and file another report in advance of the hearing on October 25 and 26, 2024;

- (b) 94747 has advised the Monitor that it expects to provide to the Monitor, and file with the Court, a report commissioned by 94747 on the dispute from their advisors, together with an expert report on the condition of the chemicals. The Monitor anticipates that it will have to both review 94747's filings and prepare a further report in response to the filings;
 - (c) Prepare for and attend the two-day hearing on October 25 and 26 2024; and
 - (d) Communicate with counsel for the Monitor, BEI, BMO, the 94747 and other stakeholders up to the hearing date.
29. The Monitor understand that BMO and BEI will be making independent submissions on the security for costs application.
30. The Monitor has prepared the below outline of the various outcomes of the application for security for costs, as discussed during the hearing on June 26, 2024.

Success of the Monitor's Application for Security for Costs

31. The Monitor is of the view that, should the Court grant an order against 94747 for security for costs, 94747 will be obligated to remit payment to the Court prior to 94747 proceeding with the APA dispute hearing on October 25 and 26, 2024.
32. The Monitor is further of the view that payment of the Security for Costs Amount should be made forthwith. The Monitor recommends to the Court that a payment of any security for costs amount be ordered to be made no later than **September 25, 2024 at 5:00 p.m. NL time** (1 week following the hearing on the application for security for costs).
33. The date of the hearing for the Monitor's application for security for costs is September 18, 2024, and the Draft Procedural Order for the APA dispute has filing deadlines for the Monitor, 94747 and other parties as early as October 4, 2024.
34. Should 94747 remit to the Court the Security for Costs Amount, the application for the Court's determination of the APA disputes would continue as scheduled.
35. Should 94747 fail to remit payment to the Court for the Security for Costs Amount by the date ordered by the Court, the Monitor intends to seek an order from this Court for payment of all funds owing under the APA for the total amount due from 94747 in the amount of \$910,248.47, to set off the \$488,627.19 held by the Monitor and the amount in the BMO Operating Line, and to pursue the collection of the net amount owing of \$523,401.88.

Failure of the Monitor's Application for Security for Costs

36. Should the Court dismiss the Monitor's application for security for costs, the application for the Court's determination of the APA disputes would continue as scheduled on October 25 and 26, 2024, with no change to any filing deadlines as set out in the Draft Procedural Order.

Failure of 94747 to File an Objection to the Monitor's Application for Security for Costs

37. Should 94747 fail to file any objection to the application for security for costs by the specified timelines as noted in the Draft Procedural Order, the Monitor would be of the view that the Security for Costs Amount be ordered against 94747 in the amount of \$103,298.75.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of August 2024.

**GRANT THORNTON LIMITED, SOLELY IN ITS CAPACITY AS MONITOR OF
BIG ERICS INC. AND TERRA NOVA OLD PORT FOODS INC.
AND NOT IN ITS CORPORATE OR PERSONAL CAPACITY**



Phil Clarke, CPA, CA, CIRP, LIT
Senior Vice President

Ninth Report to the Court submitted by Grant Thornton Limited
In its capacity as Court-Appointed Monitor of BEI and TNOPI
August 9, 2024

Appendix A

June 2024 Stay Extension Order

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.)

ORDER

UPON IT APPEARING THAT the Monitor, Grant Thornton Limited, has applied for an order for an extension of stay of the proceedings;

AND UPON READING the materials filed by the Monitor, including the Monitor's Eighth Report, dated June 25, 2024;

AND UPON HEARING the submissions of Joe Thorne, counsel for the Monitor; Darren O'Keefe, counsel for the Applicants; and such other counsel as may appear;

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 16 of the Amended and Restated Initial Order dated July 28, 2023, as amended from time to time, is hereby further extended up to and including November 1, 2024.
3. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

Dated at St. John's, this 26 day of June 2024



COURT OFFICER

Ninth Report to the Court submitted by Grant Thornton Limited
In its capacity as Court-Appointed Monitor of BEI and TNOPI
August 9, 2024

Appendix B

Draft BEI WEPP Order

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.)

ORDER

UPON IT APPEARING that the Monitor, Grant Thornton Limited, has applied for an order pursuant to section 5(5) for a declaration under the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 (the "**WEPPA**") and the CCAA;

AND UPON READING the materials filed by the Monitor, including the Monitor's Eighth Report, dated June 25, 2024;

AND UPON HEARING the submissions of Joe Thorne, counsel for the Monitor; Darren O'Keefe, counsel for the Applicants; Geoff Spencer, counsel for the Bank of Montreal; Joshua Santimaw, counsel for 94747 Newfoundland and Labrador Inc.; and such other counsel as may appear;

IT IS ORDERED THAT:

1. Pursuant to subsections 5(1)(b)(iv) and 5(5) of WEPPA, Big Erics Inc. meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and Big Erics Inc.'s collective former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.

DATED at St. John's, Newfoundland and Labrador, this _____ day of June, 2024.

Ninth Report to the Court submitted by Grant Thornton Limited
In its capacity as Court-Appointed Monitor of BEI and TNOPI
August 9, 2024

Appendix C

Draft Procedural Order

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**");

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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.)

ORDER

UPON IT APPEARING THAT the Monitor, Grant Thornton Limited, has applied for an order for a Claims Identification Process, a declaration that the *Wage Earner Protection Program Act* applies to Big Erics Inc, approving the activities and fees of the Monitor and its counsel, and to adjudicate certain disputes regarding interpretation of the Asset Purchase Agreement, dated April 12, 2024;

AND UPON READING the materials filed by the Monitor, including the Monitor's Eighth Report, dated June 25, 2024;

AND UPON HEARING the submissions of Joe Thorne, counsel for the Monitor; Darren O'Keefe, counsel for the Applicants; Geoff Spencer, counsel for the Bank of Montreal; Joshua Santimaw, counsel for 94747 Newfoundland and Labrador Inc.; and such other counsel as may appear;

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Monitor's application to have the activities, fees, and disbursements of the Monitor and its legal counsel approved shall be set for a hearing on September 18, 2024.

3. **THIS COURT ORDERS** that the Monitor's application for an order for security for costs against 94747 Newfoundland and Labrador Inc. shall be heard for ½ day on September 18, 2024 at 2:30 p.m.;

- (a) The Monitor shall file and serve its Amended Notice of Application to seek an order for security for costs on or before July 10, 2024;
- (b) The Monitor and any other party shall file and serve any additional evidence on which they intend to rely on the application on or before August 7, 2024;
- (c) 94747 Newfoundland and Labrador Inc. shall file and serve any responding evidence on which it intends to rely on the application on or before August 23, 2024;
- (d) The Monitor shall file and serve its moving memorandum of fact and law on or before August 28, 2024;
- (e) Any party intending to file a memorandum of fact and law in support of the application shall file and serve on or before August 28, 2024;
- (f) 94747 Newfoundland and Labrador Inc. shall file and serve its responding memorandum of fact and law on or September 11, 2024;
- (g) The Monitor shall file and serve its reply memorandum of fact and law, if any, on or before September 13, 2024.

4. **THIS COURT ORDERS** that, subject to the determination of the application set out in paragraph 3 of this Order, the Monitor's application to compel 94747 Newfoundland and Labrador

Inc. to make payments under the Asset Purchase Agreement and for determination of amounts owing under that contract shall be heard for 2 days on October 24 and 25, 2024;

- (a) The Monitor, 94747 Newfoundland and Labrador Inc., and any other party shall file and serve any evidence on which it intends to rely on the application on or before October 4, 2024;
- (b) The Monitor and 94747 Newfoundland and Labrador Inc. shall file and serve their moving memorandums of fact and law on or before October 4, 2024;
- (c) Any other party intending to file a memorandum of fact and law in relation to the application shall file and serve on or before October 11, 2024;
- (d) The Monitor and 94747 Newfoundland and Labrador Inc. shall file and serve their responding memorandums of fact and law on or October 17, 2024.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

Ninth Report to the Court submitted by Grant Thornton Limited
In its capacity as Court-Appointed Monitor of BEI and TNOPI
August 9, 2024

Appendix D

Draft BMO Account Closure Order

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

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

ORDER

BEFORE THE HONOURABLE JUSTICE MACDONALD

UPON READING the Application of the Monitor, Grant Thornton Limited (the “**Monitor**”)

AND UPON READING the Monitor’s Eighth Report, and the material filed by counsel;

AND UPON HEARING Sara Scott and Joe Thorne, on behalf of the Monitor, Geoffrey Spencer on behalf of the Bank of Montreal, Darren O’Keefe on behalf of BEI and TNOPFI, Joshua Santimaw on behalf of 94747 Newfoundland and Labrador Inc., and Christopher Isnor on behalf of Imagination Capital Inc. and Myles & Company Inc.

IT IS THIS DAY ORDERED THAT:

1. All bank accounts of BEI and TNOPFI held at the Bank of Montreal shall be closed upon issuance of this Order and any funds in those accounts shall be transferred by the Bank of Montreal to the Monitor, to be held by the Monitor pending further order of this court.

DATED AT St. John's, in the Province of Newfoundland and Labrador, and effective this day
of June, 2024.

Ninth Report to the Court submitted by Grant Thornton Limited
In its capacity as Court-Appointed Monitor of BEI and TNOPI
August 9, 2024

Appendix E

94747's Objection to the Draft Procedural Order



DELIVERY VIA:
COURIER

FILE REFERENCE:
174956

Halifax Regional
Municipality

99 Wyse Road, Suite 600
Dartmouth
NS Canada B3A 4S5

Correspondence:
P.O. Box 876
Dartmouth Main
NS Canada B2Y 1G0

T 902.469.9500
F 902.463.7500
www.boyneclarke.ca



A Worldwide Network
of Quality Law Firms

Joshua J. Santimaw
Direct Dial: (902) 460-3451
Facsimile: (902) 463-7500
E-mail: jsantimaw@boyneclarke.ca

July 2, 2024

The Honourable Justice Alexander MacDonald
Supreme Court of Newfoundland and Labrador
309 Duckworth Street
St. John's, NL
A1C 5M3

Justice MacDonald:

**Re: In the Matter of the Big Erics Inc. and Terra Nova Old Port Foods Inc.
2023 01G 3233**

We act for the Purchaser in the above-referenced proceeding.

The Monitor has prepared and circulated a procedural order regarding the application for security for costs and the Asset Purchase Agreement.

This Honourable Court ordered that the Monitor must file an Amended Application regarding security for costs. The Purchaser provided its comments as regards the draft form of order which were rejected by the Monitor.

The comments sought the Monitor, and any other party seeking security for costs, to provide that amount of security to the Monitor so it would be pled in the amended application.

As a result of the amount not being plead, the Purchaser objects to the form of order as presented.

Rule 29.02 (2) of the Rule of Supreme Court, 1986 states, in part that the applicant shall set out the nature of the relief or order claimed, but it shall not be necessary to claim for general or other relief or for costs and shall attach a copy of the proposed order.

The importance of the application is for the applicant to state the precise order sought, the grounds to be argued, and the precise relief sought. See, *Moreau-Berube v. New Brunswick*, 1999 CarswellNB 340, (1999), 217 N.B.R. (2d) 230 (NBCA) at para. 4.

The Purchaser should be aware of the amount each party may be seeking for security when the application is filed. The affidavit will provide the evidentiary support for the precise relief sought.

Fairness is a hallmark of the litigation process, and it would be unfair to have the Purchaser not know the case it must meet until the parties file their affidavit on August 7, 2024, as set out in the order.

This Honourable Court ordered written submissions, if any, should be filed one week before the security for costs hearing. No party requested to file a reply/rebuttal submission, so no order was made allowing the same. Thus, the reply/rebuttal submission operative paragraph submitted by the Monitor should not be included in the procedural order.

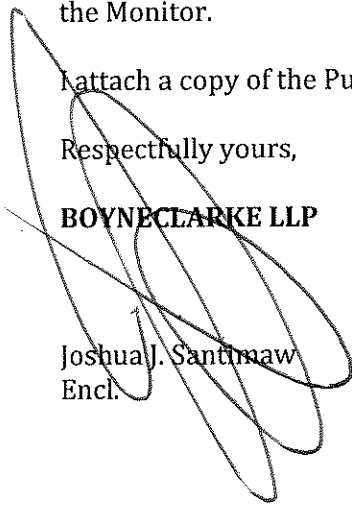
The Purchaser submits the following order as an alternative to the order proposed by the Monitor.

Attach a copy of the Purchaser's marked up and clean order.

Respectfully yours,

BOYNECLARKE LLP

Joshua J. Santimaw
Encl.



CASE VIEWS:

Source

All-Canada Weekly Summaries

H Moreau-Bérubé v. New Brunswick

1999 CarswellNB 340 | Court of Appeal of New Brunswick | New Brunswick | August 9, 1999 (Approx. 6 pages)

1999 CarswellNB 340, [1999] NBJ No. 336, 217 NBR (2d) 230, 555 APR 230, 91 ACWS (3d) 343

**Her Majesty the Queen in Right of the Province of New Brunswick
(Respondent) Appellant and Jocelyne Moreau-Bérubé (Applicant)**

Respondent

JCA mag

Judgment: August 9, 1999

Audience: August 6, 1999

File: 180/99/CA

Lawyer: *Mr. Cedric L. Haines, QC*, for appellant.*Me Anne E. Bertrand and Me Paul A. Bertrand*, for respondent.

Subject: Civil Practice and Procedure

Original

Go to

als of this

case

RELATED RESOURCES

Canadian Guide to Uniform Legal Citation

FIND OTHER CONTENT RELATED TO THESE LEGAL TOPICS

CIV.XXIII.12.b Civil practice and procedure — Practice on appeal — Staying of proceedings pending appeal — Stay of execution

JDG.I.5.d Judges and courts — Appointment, removal, disqualification, and discipline of judges and other court officers — Disqualification for bias — Miscellaneous

JDG.IV.1 Judges and courts — Justices, magistrates, and provincial courts — Nature of offices and courts

JDG.XVI.3.h.iv Judges and courts — Jurisdiction — Superior courts — Appellate court — Miscellaneous

Related Abridgment Classifications

Civil practice and procedure

XXIII Practice on appeal

XXIII.12 Stay of proceedings pending appeal

XXIII.12.b Stay of execution

Judges and courts

I Appointment, removal, disqualification, and discipline of judges and other court officers

I.5 Disqualification for bias

I.5.d Miscellaneous

Judges and courts

IV Justices, magistrates, and provincial courts

IV.1 Nature of offices and courts

Judges and courts

XVI Jurisdiction

XVI.3 Superior courts

XVI.3.h Appellate court

XVI.3.h.iv Miscellaneous

Summary

Practice --- Practice on appeal — Staying of proceedings pending appeal — Stay of execution

Judges and courts --- Jurisdiction — Jurisdiction of superior courts — Jurisdiction of appellate Court — General

Judges and courts --- Appointment, removal and disqualification of judges — Disqualification for bias — Judges

Judges and courts --- Justices, magistrates and provincial courts — Nature of offices and courts — Provincial Courts

Table of precedents

Cases considered by *Drapeau JCA* :

Allsco Building Products Ltd. v. UFCW, Local 1288P (1998), (sub nom. *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288P*) 207 NBR (2d) 102, (sub nom. *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288P*) 529 APR 102, 50 CLRBR (2d) 152 (NBCA) — referred to

Canada (Minister of Citizenship & Immigration) v. Tobias, 118 CCC (3d) 443, 151 DLR (4th) 119, 10 CR (5th) 163, 131 FTR 230 (note), [1997] 3 SCR 391, 40 Imm. LR (2d) 23, 14 CPC (4th) 1, 1 Admin. LR (3d) 1, 218 NR 81 (SCC) — referred to

Ruffo v. Quebec (Judicial Council), (sub nom. *Ruffo v. Judicial Council*) 130 DLR (4th) 1, (sub nom. *Ruffo v. Judicial Council*) 190 NR 1, (sub nom. *Ruffo v. Judicial Council*) [1995] 4 SCR 267, (sub nom. *Ruffo v. Judicial Council*) 33 CRR (2d) 269, 35 Admin. LR (2d) 1 (SCC) — referred to

Statutes considered:

Provincial Court Act, RSNB 1973, c. P-21
Generally — referred to

Rules considered:

Rules of Court, NB Reg. 82-73
R. 37.03 — referred to
R. 62.26 — considered
R. 62.26(3)(b) — considered
R. 62.26(3)(c) — considered

MOTION by respondent Crown for judicial stay of execution of judgment pending hearing of respondent's appeal from judgment quashing decision of Governor in Council withdrawing applicant's appointment to provincial court bench; COUNTER-MOTION by applicant in recusal of Court of Appeal and for order compelling transfer of appeal proceedings to reconstituted panel of Court of Queen's Bench.

JCA flag :

1 The appellant seeks, by way of motion, a stay of execution of the judgment. She relies on rule 62.26 of the *Rules of Procedure*. The respondent objects to my jurisdiction to hear this motion and seeks an order preventing the Court of Appeal from hearing the appeal from the decision rendered at first instance.

2 The appeal challenges a judgment rendered by Angers J. of the Court of Queen's Bench declaring null and void the recommendation of the Judicial Council that Judge Moreau-Bérubé be dismissed and the order of the Lieutenant Governor in Council revoking and annulling, dated April 15, 1999, the appointment of the judge as a judge of the Provincial Court.

Motions for Recusal

3 The respondent sent a letter to the Court of Appeal stating her opposition to the Court of Appeal's jurisdiction to hear the appeal and to my jurisdiction to hear the appellant's motion. At the hearing, I reluctantly allowed the respondent to present her motions without a Notice of Motion with supporting affidavit.

4 I take this opportunity to point out again the importance of the Notice of Motion. Indeed, this document requires the applicant to specify the order he seeks, the grounds to be discussed and the references to the statutory provisions, including the rules of procedure, which are relevant. Furthermore, it requires the applicant to list the documentary evidence that he intends to use at the hearing of the motion. Compliance with the rule governing the content of Notices of Motion, namely rule 37.03, requires the applicant to ensure the jurisdiction of the court, to think about the issues he wishes to submit to it, to work out his arguments and to clearly identify the expected result.

5 As far as I understood her oral motion, the respondent requested: (1) that I order the Court of Appeal not to hear the appeal, and (2) that I order the Chief Justice of the Court of Queen's Bench to constitute a tribunal consisting of three judges of his court to hear the appeal. Obviously, a judge of the Court of Appeal, sitting alone, has no jurisdiction to make such orders. I therefore dismissed this motion forthwith.

6 The respondent also argued that I should recuse myself from the appellant's motion on the grounds that a reasonable apprehension of bias arose from the fact that my colleague, the Chief Justice of New Brunswick, is the Chair of the Judicial Council. I also dismissed this motion *pronto*, as it is without legal merit. Let me explain, if only briefly.

7 It is important to remember that the Chief Justice of New Brunswick is only "*primus inter pares*" within the Court of Appeal. See *Canada (Minister of Citizenship & Immigration) v. Tobias*, [1997] 3 SCR 391

(SCC) at para. 99 and *Ruffo v. Quebec (Judicial Council)*, [1995] 4 SCR 267 (SCC) at para. 59. Although his administrative decisions have an impact on the functioning of the court and, by extension, on the judges who compose it, the Chief Justice exercises no power over me that could, in the eyes of a reasonable and well-informed person, call into question my impartiality. A reasonable and well-informed observer would understand that I have nothing to gain by not deciding according to my conscience. I would add that the respondent's attorneys were not circumspect when they argued otherwise.

Motion under Rule 62.26

8 The prerequisites for obtaining an order staying the execution of a judgment are set out in Rule 62.26. Most recently, in *Allisco Building Products Ltd. v. UFCW, Local 1288P* (1998), 207 NBR (2d) 102 (NBCA), my colleague Turnbull J. provided a thorough analysis of the principles that courts have adopted to guide them in the exercise of their discretion in this area. It is therefore unnecessary to repeat them here. I am of the view that the appellant has satisfied the requirements of Rule 62.26. Accordingly, I order that the execution of the judgment rendered by Angers J. at first instance be stayed until the appeal is heard and determined.

9 I consider, however, that the order of stay of execution must be subject to the following conditions: (1) all proceedings within the appellant's jurisdiction as a party to the appeal must be completed in order for the appeal to be entered on the list of cases before the Court of Appeal for hearing in October 1999 and, (2) in the absence of an order of the Court providing otherwise, this stay will lapse if the appellant fails to comply with the obligations imposed on it by this decision.

10 During the argument, the possibility was raised of attaching an additional condition to the suspension order, namely requiring the appellant to pay the respondent, pending the determination of the appeal, the salary to which judges of the Provincial Court are entitled. I do not have to decide whether such a condition would be appropriate in this case. Indeed, I am of the opinion, for the reasons that follow, that I do not have the jurisdiction to impose such an obligation on the appellant.

11 My jurisdiction in this matter is circumscribed by rules 62.26(3) (b) and (c). I am of the opinion that rule 62.26(3) (b) is inapplicable in this case since there is no reason to believe that, in the absence of a stay order, the respondent risks losing the benefits of the judgment. Furthermore, I consider that rule 62.26(3) (c) does not authorize me to disregard the *Provincial Court Act*, R.S.N.B. 1973, c.P.-21. Although this rule of procedure allows for the imposition of any conditions deemed necessary to prevent the respondent from suffering prejudice, it does not authorize a judge to disregard the relevant legislative provisions.

12 The suspension of the execution of the judgment rendered by Angers J. means that the order of the Lieutenant Governor in Council is in force. However, the respondent is not a judge of the Provincial Court as long as that order has the force of law. The respondent is therefore not, at this time, entitled to receive the salary that the *Provincial Court Act* reserves for judges of that court. I am forced to conclude that I cannot compel the appellant to pay the respondent a salary that cannot be paid to her under the *Provincial Court Act*.

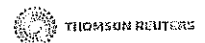
Device

13 The respondent's motions are dismissed and the appellant's motion is granted, all without costs. I direct the appellant to draw up a formal order for my signature.

Motion granted; counter-motion dismissed; execution stayed.

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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.)

ORDER

UPON IT APPEARING THAT the Monitor, Grant Thornton Limited, has applied for an order for a Claims Identification Process, a declaration that the *Wage Earner Protection Program Act* applies to Big Erics Inc, approving the activities and fees of the Monitor and its counsel, and to adjudicate certain disputes regarding interpretation of the Asset Purchase Agreement, dated April 12, 2024;

AND UPON READING the materials filed by the Monitor, including the Monitor's Eighth Report, dated June 25, 2024;

AND UPON HEARING the submissions of Joe Thorne, counsel for the Monitor; Darren O'Keefe, counsel for the Applicants; Geoff Spencer, counsel for the Bank of Montreal; Joshua Santimaw, counsel for 94747 Newfoundland and Labrador Inc.; and such other counsel as may appear;

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Monitor's application to have the activities, fees, and disbursements of the Monitor and its legal counsel approved shall be set for a hearing on September 18, 2024.

3. **THIS COURT ORDERS** that the Monitor's application for an order for security for costs against 94747 Newfoundland and Labrador Inc. shall be heard for ½ day on September 18, 2024 at 2:30 p.m.;

(a) The Monitor shall file and serve its Amended Application in which it is seeking an order for, *inter alia*, security for costs on or before July 10, 2024.

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(b) Any other party that is seeking security for costs shall provide the Monitor with the amount of its claim so it can be included in the Amended Application referenced herein;

(c) The Monitor and any other party shall file and serve any additional evidence on which it intends to rely on the application on or before August 7th, 2024;

(d) 94747 Newfoundland and Labrador Inc. shall file and serve any responding evidence on which it intends to rely on the application on or before August 23rd, 2024;

(e) The Monitor shall file and serve its moving memorandum of fact and law on or before August 28, 2024;

(f) Any party intending to file a memorandum of fact and law in support of the application shall file and serve on or before September 4th, 2024;

(g) 94747 Newfoundland and Labrador Inc. shall file and serve its responding memorandum of fact and law on or September 11, 2024;

(h) The Monitor shall file and serve its reply memorandum of fact and law, if any, on or before September 13, 2024.

4. **THIS COURT ORDERS** that, subject to the determination of the application set out in paragraph 3 of this Order, the Monitor's application to compel 94747 Newfoundland and Labrador Inc. to make payments under the Asset Purchase Agreement and for determination of amounts owing under that contract shall be heard for 2 days on October 24 and 25, 2024;

- (a) The Monitor, 94747 Newfoundland and Labrador Inc., and any other party shall file and serve any evidence on which it intends to rely on the application on or before October 419, 2024;
- (b) The Monitor and 94747 Newfoundland and Labrador Inc. shall file and serve their moving memorandums of fact and law on or before October 43, 2024;
- (c) Any other party intending to file a memorandum of fact and law in relation to the application shall file and serve on or before October 119, 2024;
- (d) The Monitor and 94747 Newfoundland and Labrador Inc. shall file and serve their responding memorandums of fact and law on or October 17, 2024.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

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 "**CCA**");

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.)

ORDER

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AND UPON READING the materials filed by the Monitor, including the Monitor's Eighth Report, dated June 25, 2024;

AND UPON HEARING the submissions of Joe Thorne, counsel for the Monitor; Darren O'Keefe, counsel for the Applicants; Geoff Spencer, counsel for the Bank of Montreal; Joshua Santimaw, counsel for 94747 Newfoundland and Labrador Inc.; and such other counsel as may appear;

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Monitor's application to have the activities, fees, and disbursements of the Monitor and its legal counsel approved shall be set for a hearing on September 18, 2024.

3. **THIS COURT ORDERS** that the Monitor's application for an order for security for costs against 94747 Newfoundland and Labrador Inc. shall be heard for ½ day on September 18, 2024 at 2:30 p.m.;

- (a) The Monitor shall file and serve its Amended Application in which it is seeking an order for, *inter alia*, security for costs on or before July 10, 2024;
- (b) Any other party that is seeking security for costs shall provide the Monitor with the amount of its claim so it can be included in the Amended Application referenced herein;
- (c) The Monitor and any other party shall file and serve any additional evidence on which it intends to rely on the application on or before August 7, 2024;
- (d) 94747 Newfoundland and Labrador Inc. shall file and serve any responding evidence on which it intends to rely on the application on or before August 23, 2024;
- (e) The Monitor shall file and serve its moving memorandum of fact and law on or before August 28, 2024;
- (f) Any party intending to file a memorandum of fact and law in support of the application shall file and serve on or before August 28, 2024;
- (g) 94747 Newfoundland and Labrador Inc. shall file and serve its responding memorandum of fact and law on or September 11, 2024;

4. **THIS COURT ORDERS** that, subject to the determination of the application set out in paragraph 3 of this Order, the Monitor's application to compel 94747 Newfoundland and Labrador

Inc. to make payments under the Asset Purchase Agreement and for determination of amounts owing under that contract shall be heard for 2 days on October 24 and 25, 2024;

- (a) The Monitor, 94747 Newfoundland and Labrador Inc., and any other party shall file and serve any evidence on which it intends to rely on the application on or before October 4, 2024;
- (b) The Monitor and 94747 Newfoundland and Labrador Inc. shall file and serve their moving memorandums of fact and law on or before October 4, 2024;
- (c) Any other party intending to file a memorandum of fact and law in relation to the application shall file and serve on or before October 11, 2024;
- (d) The Monitor and 94747 Newfoundland and Labrador Inc. shall file and serve their responding memorandums of fact and law on or October 17, 2024.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

Appendix F

Email from 94747's Counsel on May 21, 2024

Fw: 947 funds with BMO

Hines, Corey <Corey.Hines@ca.gt.com>

Tue 7/30/2024 3:30 PM

To: Hines, Corey <Corey.Hines@ca.gt.com>

**CAUTION: EXTERNAL EMAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST
DO NOT ENTER YOUR GT PASSWORD ON ANY EXTERNAL EMAIL REQUEST**

From: Kelly Powell <KPowell@boyneclarke.ca>

Sent: May 21, 2024 5:18 PM

To: 'Clarke, Phil' <Phil.Clarke@ca.gt.com>; 'Cory.Hines@ca.gt.com' <Cory.Hines@ca.gt.com>

Cc: Lauren Dalton <ldalton@haroldsnow.ca>; Inayat Wadiwala <iwadiwala@bigerics.com>; David Boyd <davidboyd.resolve@gmail.com>; Stuart Palliser <spalliser@bigerics.com>; Trevor Melendy <tmelendy@haroldsnow.ca>; 'sscott@stewartmckelvey.com' <sscott@stewartmckelvey.com>; 'joethorne@stewartmckelvey.com' <joethorne@stewartmckelvey.com>; Joshua Santimaw <JSantimaw@boyneclarke.ca>; Kathleen O'Reilly <koreilly@boyneclarke.ca>

Subject: RE: 947 funds with BMO

Hi Cory and Phil,

Our understanding is that there is approx. \$175K in BEI's BMO account which continues to grow on a daily basis (the "Funds").

I write further to Cory's recent conversations with Inayat regarding the Funds due to the Purchaser, the Reconciliation Statement and related matters. Please note that the Purchaser has instructed its staff not to provide any further information to you until the Funds matter is dealt with.

Pursuant to the Section 6.6(e) of the APA, the Vendor and/or the Monitor have a mandatory obligation to provide the Funds to the Purchaser within 2 business of receipt. We understood that the payment of the Funds was in the works last week.

The initial portion of these Funds was due Tuesday May 14. The object of this proceeding was for the business to continue as a going concern and this delay in payment is preventing same.

Specifically, the absence of the Funds has created a significant cashflow issue for the Purchaser which is in contravention of the APA and should not be occurring. Further, the Purchaser is now in breach of its loan agreement with its lender, Sallyport Commercial Finance ("SCF"), as a result of the delay in payment of the Funds.

Attached please find the Direction to Pay which directs the Monitor to pay the AR Payment (defined therein) to SCF and details the bank account information for SCF in Schedule "A" thereto. We hereby demand that the Funds be wired forthwith to SCF accordingly.

Please note that the Direction to Pay is limited to Accounts Receivable. Therefore, if any of the Funds do not constitute Accounts Receivable, please advise so that separate payment arrangements of same to the Purchaser can be coordinated.

Finally, the Reconciliation Statement, which we understand is still being finalized, is a separate and distinct issue, and should not prevent the transfer of the Funds now.

Regards,
Kelly

Kelly J. Powell

Lawyer – Business Law Team

T 902.469.9500 **F** 902.463.7500

Direct Dial: 902.460.3458

Assistant: Kathleen O'Reilly

T 902.469.9500 ext. 209

Email: koreilly@boyneclarke.ca



99 Wyse Road, Suite 600
P.O. Box 876, Dartmouth Main
Dartmouth, NS B2Y 3Z5
www.boyneclarke.ca

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From: Trevor Melendy <tmelendy@haroldsnow.ca>

Sent: May 21, 2024 4:00 PM

To: Joshua Santimaw <JSantimaw@boyneclarke.ca>; Kelly Powell <KPowell@boyneclarke.ca>

Cc: Lauren Dalton <ldalton@haroldsnow.ca>; Inayat Wadiwala <iwadiwala@bigerics.com>; Phil Clarke <Phil.Clarke@ca.gt.com>; David Boyd <davidboyd.resolve@gmail.com>; Stuart Palliser <spalliser@bigerics.com>

Subject: 947 funds with BMO

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Josh,

Now up to 175k.....BMO are making more excuses to not send our money.

Josh, are you able to get before Sandy McDonald asap? We have not received a penny from the BMO account

Trevor Melendy

President

70 Portugal Cove Rd, St. John's, NL A1B 2M3

Tel: 709-754-0330 | Fax: 709-754-0356 | Cell: 709-685-5556



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Appendix G

Summary of the Disputes Arising from the APA

Description	Owed by 94747	Credit to 94747	Outstanding from (to) 94747	Disputes
Monitor's View of Post Closing Undisputed Funds				
Purchase Price Adjustments				
Accounts Receivable Reconciliation Amount - APA 3.4 (b)	\$ 84,052.33	-	\$ 84,052.33	-
Customer Deposits Reconciliation Amount - APA 3.4(c)	-	(47,990.53)	(47,990.53)	-
Inventory Purchase Price - APA 3.4(a)	-	(53,790.07)	(53,790.07)	-
Total Amount of Purchase Price Adjustments	84,052.33	(101,780.60)	(17,728.27)	-
Inventory Payment Schedule - APA 3.2 (c)				
June 9, 2024 Inventory Payment	75,000.00	-	75,000.00	-
July 9, 2024 Inventory Payment	75,000.00	-	75,000.00	-
August 8, 2024 Inventory Payment	75,000.00	-	75,000.00	-
Total Amount of Inventory Payment Schedule	225,000.00	-	225,000.00	-
Transitional Purchases - APA 3.2 (d) & 6.7 (d)				
Transitional Purchases owing as of June 4, 2024	219,672.20	-	219,672.20	-
Transitional Purchases Deposit Credit Claimed Twice	40,688.40	-	40,688.40	-
Two Transitional Purchases Received by 94747	24,357.03	-	24,357.03	-
Undisputed or Previously Acknowledged Transitional Purchases	284,717.63	-	284,717.63	-
Total Undisputed/Previously Acknowledged Amounts due from Purchaser	\$ 593,769.96	\$ (101,780.60)	\$ 491,989.36	-
Transitional Purchases - Update or Support Required from Purchaser				
Transitional Purchases - APA 3.2 (d) & 6.7 (d)				
40 Transitional Purchases on closing, excluded by 94747	\$ 188,265.99	-	\$ 188,265.99	-
Transitional Purchase Credits claimed by 94747	13,787.08	-	13,787.08	-
Transitional Purchases to be Received	216,206.04	-	216,206.04	-
Transitional Purchases Due from Purchaser (Support Required)	\$ 418,259.11	-	\$ 418,259.11	-
Total Owing by 94747	\$ 1,012,029.07	\$ (101,780.60)	\$ 910,248.47	-
Amounts Held by the Monitor in Trust				
Credit Card/Shopify (Post-Closing) - May 10 to 22	-	\$ (110,732.74)	\$ (110,732.74)	-
Trade Accounts Receivable - May 23 to 28	-	(99,307.13)	(99,307.13)	-
Trade Accounts Receivable - May 29 to June 7	-	(63,086.91)	(63,086.91)	-
Post Closing Amounts Held by the Monitor	-	(273,126.78)	(273,126.78)	-
Amounts Within BMO Operating Line				
Post Closing Amount on account of the Purchaser - Jun 10 to Jul 17	-	(113,719.81)	(113,719.81)	-
Net Owing by 94747	\$ 1,012,029.07	\$ (488,627.19)	\$ 523,401.88	-
94747 Claims and Disputes				
Deposits within BEI's BMO Operating Line				
Pre-Closing Credit Card/Shopify Amounts - APA 6.6(e)	-	-	-	\$ 24,254.71
Total Disputed Amount of Deposits Operating Line	-	-	-	24,254.71
94747's Inventory Dispute				
Expired and in stock	-	-	-	209,339.00
Inventory not in possession of BEI	-	-	-	9,255.00
Expired and damaged stock in warehouse	-	-	-	31,246.67
Expired Chemicals Claim	-	-	-	148,814.00
St. John's Movement Claim	-	-	-	\$NIL
Racking Claim	-	-	-	35,000.00
Total 94747's Inventory and Capital Assets Dispute	-	-	-	433,654.67
Total 94747 Claims and Disputes	-	-	-	\$ 457,909.38
Grand Net Total	\$ 1,012,029.07	\$ (488,627.19)	\$ 523,401.88	\$ 457,909.38
Summary				
Total Undisputed or Previously Acknowledged Amounts due from 94747	\$ 491,989.36			
Total Update/Support Required for Transitional Purchases due from Purchaser	418,259.11			
Total Owing by 94747 Pursuant to APA	\$ 910,248.47			
Less: Amounts Held by Monitor	(273,126.78)			
Less: Post Closing Amounts within BMO Operating Line	(113,719.81)			
Net Owing by 94747	\$ 523,401.88			
94747 Claims and Disputes	(457,909.38)			