

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM) TUESDAY, THE 12th
)
JUSTICE GILMORE) DAY OF JANUARY, 2021
)

BETWEEN:

ROYNAT INC.

Applicant

- and -

TAMTAN INC. and 1308963 ONTARIO LIMITED (o/a EZ FOOD GROUP)

Respondents

ORDER

THIS MOTION, made by msi Spergel Inc. ("**Spergel**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of the Respondents, TamTan Inc. and 1308963 Ontario Limited (o/a EZ Food Group) ("**1308**"), was heard on July 29, 2020 and January 11, 2021 virtually via Zoom videoconference as a result of the COVID-19 crisis, with Endorsements released on July 30, 2020, August 6, 2020, August 13, 2020, January 11, 2021 and January 12, 2021.

ON READING the Notice of Motion, the Third Report of the Receiver dated July 15, 2020 (the “**Third Report**”), the Supplement to the Third Report of the Receiver dated July 18, 2020, the Second Supplement to the Third Report of the Receiver dated December 17, 2020 (the “**Second Supplement**”), and the Third Supplement to the Third Report dated January 6, 2021 (collectively, the “**Reports**”), the affidavit of Philip H. Gennis sworn July 15, 2020 and the affidavit of Sam Rappos sworn July 15, 2020 (collectively, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver and such other counsel listed on the Counsel Slips, no one else from the service list appearing although served as evidenced by the affidavits of service filed with the Court;

SERVICE

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

BANKRUPTCY OF 1308

2. **THIS COURT ORDERS** that the Receiver is hereby empowered, authorized and directed to file an assignment in bankruptcy in the name of and on behalf of 1308. The Receiver is hereby authorized and directed to take such steps and execute such documents as may be necessary or desirable to complete the filing of the assignment in bankruptcy.

3. **THIS COURT ORDERS** that the Receiver is authorized and empowered to nominate msi Spergel Inc. to act as trustee in bankruptcy of 1308 (the “**Trustee**”).

4. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel in connection with the 1308 bankruptcy proceeding, in the amount of \$30,000 (the “**Bankruptcy Holdback**”), shall be satisfied from the Morningside Proceeds. The Receiver shall transfer the Bankruptcy Holdback to the Trustee following its appointment as a third-party deposit in accordance with the rules and directives of the Office of the Superintendent of Bankruptcy. In the event that funds still remain in the Bankruptcy Holdback at the time of the completion of the 1308 bankruptcy proceeding, the Trustee shall transfer such funds to the Seized Property Management Directorate (“**SPMD**”).

GENERAL HOLDBACK

5. **THIS COURT ORDERS** that the Receiver shall establish a holdback of \$100,000 (the “**General Holdback**”) from the net sale proceeds of 1405 Morningside Avenue, Toronto, Ontario owned by TamTan (the “**Morningside Proceeds**”). The following amounts shall be satisfied from the Holdback:

- (a) \$30,738.88 to Roynat Inc. on account of the funds borrowed by the Receiver with respect to the 1308 receivership proceeding in accordance with paragraph 22 of the Order of The Honourable Mr. Justice McEwen dated October 16, 2019;
- (b) reasonable legal fees and disbursements incurred by Central Ontario Dairy Distributing Inc. (“**Ontario Dairy**”) from October 23, 2019 to the completion of the 1308 bankruptcy proceeding; and
- (c) if necessary, the fees and disbursements of the Trustee and its counsel in connection with the 1308 bankruptcy proceeding in excess of the Bankruptcy Holdback.

6. **THIS COURT ORDERS** that the Receiver shall transfer to the Trustee whatever funds remain in the General Holdback at the time the Receiver intends to file its discharge certificate in accordance with paragraph 11 below. In the event that funds still remain in the General Holdback at the time of the completion of the 1308 bankruptcy proceeding, the Trustee shall transfer such funds to the SPMD.

FEES AND DISBURSEMENTS

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, including those set out in the Reports and the Fee Affidavits and all fees and disbursements of the Receiver and its counsel incurred to date and to be incurred up to the date of the Receiver's discharge, are hereby approved. The Receiver is authorized to make payment of such fees and disbursements from the Morningside Proceeds.

DISTRIBUTION TO SPMD

8. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute the Morningside Proceeds, less the amount and the fees and disbursements of the Receiver and its counsel incurred up to the date the Receiver files its discharge certificate in accordance with paragraph 11, the amount of the General Holdback, and the amount of the Bankruptcy Holdback, to the SPMD.

APPROVAL OF R&D STATEMENTS

9. **THIS COURT ORDERS** that the Statements of Receipts and Disbursements of the Receiver, appended as Appendix "7" to the Third Report and appended as Appendices "3" and "4" to the Second Supplement, be and are hereby approved.

APPROVAL OF THE REPORTS

10. **THIS COURT ORDERS** that the Reports, and the conduct and activities of the Receiver as set out in the Reports, be and are hereby approved.

DISCHARGE AND RELEASE

11. **THIS COURT ORDERS** that, upon the Receiver filing a certificate certifying that it has completed the administration of the estates, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Respondents, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour msi Spergel Inc. in its capacity as Receiver.

12. **THIS COURT ORDERS AND DECLARES** that msi Spergel Inc. is hereby released and discharged from any and all liability that msi Spergel Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of msi Spergel Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, msi Spergel Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

13. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.


