

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-058759-206

DATE: September 4, 2020

PRESIDING : L'HONORABLE MARTIN CASTONGUAY

IN THE MATTER OF THE RECEIVERSHIP OF:

ALIMENTS ALASKO INC. / ALASKO FOODS INC.

- and -

ALASKO FOODS LLC

Debtors

- and -

PNC BANK CANADA BRANCH (being the name under which PNC Bank, National Association carries on business in Canada),

Petitioner

- and -

RAYMOND CHABOT INC. (Jean Gagnon, CPA, CA, CIRP, LIT, designated person)

Receiver

RECTIFIED ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

JC 00C9

- [1] **ON READING** the Petitioner's Motion to Appoint a Receiver (the "**Motion**") pursuant to Article 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Petitioner's attorney and Jean Gagnon, of Raymond Chabot Inc., the proposed Receiver;
- [4] **SEEING** that Petitioner has served the Debtors with the required notices pursuant to the terms of Article 244 of the BIA, as well as the prior notices of the exercise of a hypothecary right (sale under judicial authority) (together, the "**Notices**"),
- [5] **SEEING** that all delays to correct the events of default set out in the Notices have expired, without such events of default being corrected;
- [6] **SEEING** that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtors;

WHEREFORE THE COURT:

- [7] **GRANTS** the Motion;

SERVICE

- [8] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

APPOINTMENT

- [9] **APPOINTS** Raymond Chabot Inc. (Jean Gagnon, CPA, CA, CIRP, LIT, designated person), trustee, to act as receiver (the "**Receiver**") to the Property of Aliments Alasko Inc. / Alasko Foods Inc. and Alasko Foods LLC (the "**Debtors**") until one of the following events comes to pass:
- (a) the sale of all the Property; or
 - (b) the issuance of any order by the Court terminating the mandate of the Receiver;
- [10] **DECLARES** that this order (the "**Order**") and its effects shall survive the filing by the Debtors of a notice of intention to make a proposal or of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtors pursuant to the terms of the *Companies Creditors Arrangements Act* (the "**CCAA**") or the bankruptcy of the Debtors, unless the Court orders otherwise.

RECEIVER'S POWERS

[11] AUTHORIZES the Receiver to exercise the following powers:

11.1 Powers related to the possession of the Property

AUTHORIZES the Receiver to take possession of all of the property of each Debtor, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in (the "**Property**") and to exercise the following powers listed hereinafter in the place and stead of the Debtors in respect of the Property;

11.2 Powers related to the preservation of the Property

- (a) all the powers necessary for the preservation and for the protection of the Property;
- (b) all the powers necessary to control the Property, the places of business and the premises occupied by the Debtors;
- (c) all the powers necessary to grant the Receiver access, at all times, to the places of business and to the premises of the Debtors, to the Property, and to change the locks granting access to such premises and places of business of the Debtors;
- (d) all the powers necessary to grant the Receiver access to all the accounting records of the Debtors, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (e) all the powers necessary to undertake an analysis of the Debtors' Records;

11.3 Powers related to the Debtors' operations

- (f) carry on, all or any part of the Debtors' operations;
- (g) exercise all powers that would otherwise be exercised by the board of directors, including the power to make a voluntary assignment in bankruptcy on behalf of the Debtors;
- (h) all the powers necessary to control the Debtors' receipts and disbursements;
- (i) all the powers necessary to collect all the accounts receivable and all the other claims of the Debtors and to transact in respect of same, as well as to sign any document for this purpose;
- (j) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the

Debtors, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtors' operations;

- (k) all the powers necessary to use any and all accounts of the Debtors with financial institutions and payment processors (the "**Accounts**") for the purposes of conducting and continuing the business and operations of the Debtors;
- (l) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (m) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (n) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (o) to settle, extend or compromise any indebtedness owing to the Debtors;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) all the powers to enter into agreements in connection with any property owned or leased by the Debtors;
- (s) to file an assignment in bankruptcy or a notice of intention on behalf of the Debtors, or to consent to the making of a bankruptcy order against the Debtors;
- (t) to file proceedings under the Companies' Creditors Arrangement Act;
- (u) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and

11.4 Powers related to the disposition or sale of the Property

- (w) all the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtors, to transact in that regard, and to

- sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
- (x) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
- [12] **ORDERS** the Receiver to determine by no later than September 9, 2020, at 5PM, which is the best option and offer for the assets of the Debtors, between those of Commensal group's, NIMESK North America's, or any group involving Franck Scarfo, or any other party that may put in a bid that date (the "**Selected Bidder**");
- [13] **AUTHORIZES** the Receiver to retain the services of the Selected Bidder or representatives designated by it in order to assist the Receiver in its functions and preserve the value of the Debtors' business and ensure a proper transition of the Debtors' business to the Selected Bidder;
- [14] **ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Debtors' Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
- [15] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;
- [16] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;
- [17] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court;

FUNDING THE RECEIVERSHIP

- [18] **AUTHORIZES** the Receiver, in the name of and on behalf of the Debtors, to be at liberty and empowered to borrow from the Petitioner, by way of written request (in a form and manner satisfactory to the Petitioner) to the Petitioner from time to time such monies as the Receiver may consider necessary or desirable in order to preserve the value of the Debtors' business and ensure a proper transition of the Debtors' business to the Selected Bidder with such borrowings to constitute indebtedness of the Debtors to the Petitioner, it being understood that such borrowings shall be funded at the sole discretion of the Petitioner and shall be repaid in full upon demand. Such borrowings and any interest thereon shall be

secured by the existing security granted by the Debtors in favour of the Petitioner (Exhibits R-1, R-3, R-4);

- [19] **DECLARE** that any advance made pursuant to paragraph 18, and any interest thereon shall be deemed to be advances to the Debtors, secured by the Petitioner's security, pursuant to the Security Documents as such term is defined in paragraph 10 of the Motion, as "Obligations", as such term is defined under the Second Amended and Restated Credit and Security Agreement;

DEBTORS' DUTIES

- [20] **ORDERS** the Debtors, their past and present directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtors, as well as to the Records;
- [21] **ORDERS** the Debtors, their past and present directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [22] **ORDERS** the Debtors not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the authorization of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTORS AND THE PROPERTY

- [23] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [24] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtors without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

- [25] **ORDERS** that any person having an oral or written agreement with the Debtors, as well as any supplier of goods or services to the Debtors is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue to use the Debtors' current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtors

or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

EMPLOYEES

[26] **AUTHORIZES** the Receiver to continue to engage the services of the Debtors' employees or former employees until the Receiver, acting for and on behalf of the Debtors, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*;

PROTECTION OF PERSONAL INFORMATION

[27] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver.

LIMITATION OF LIABILITY

[28] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 11 of this Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;

[29] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;

[30] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

FEES

[31] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a

charge and security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$100,000 (the "**Administration Charge**");

- [32] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;
- [33] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtors' Property present and future;
- [34] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of any of the Debtors and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of any of the Debtors and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order and the granting of the Administration Charge do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtors;
- [35] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

GENERAL

- [36] **ORDERS** that the exhibits R-11, R-13, R-19, R-19.1, R-20 and R-21 (the "**Exhibits Under Seal**") be placed under seal in the records of the Superior Court of Québec and that they not, without the Court's prior authorization, be disclosed, published, or disseminated, directly or indirectly, with the exception of excerpts cited by the Court in its judgment on the Application;
- [37] **ORDERS** the office and registry (*greffe*) of the Superior Court of Québec to deny access to the Exhibits Under Seal to members of the public and lawyers not directly involved in the present Court file;
- [38] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;

- [39] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [40] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;
- [41] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtors' and the Receiver's counsel and to any other party who may request such delivery;
- [42] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Petitioner and the Receiver and has filed such notice with the Court;
- [43] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [44] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [45] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Receiver shall be the foreign representative of the Debtors. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;
- [46] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and

any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[47] ORDERS the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

Montréal, le 4 septembre, 2020



L'Honorable Martin Castonguay