

COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO

2018 MAR -7 PM 3:43

I. JEAN MECKSTROTH
CLERK OF COURTS

PAUL MASTRONARDI,

Plaintiff,

-v-

LUIS CHIBANTE, et al.,

Defendants.

) Case No. 2017-CV-144

)

) Judge Pepple

)

)

) DEFENDANT LUIS CHIBANTE'S

) MEMORANDUM IN OPPOSITION TO

) RECEIVER'S MOTION TO APPROVE

) NOTE AND SECURITY

)

On February 23, 2018, the Receiver filed a Motion to Approve Note and Security seeking retroactive authorization of his action causing the GFF Entities to enter into a lending transaction that he incorrectly views as consistent with the Court's prior orders setting the contours of post-receivership funding. Defendant Luis Chibante objects to the Motion because the secured lending transaction subject to the Receiver's motion is plainly prohibited by the loan agreements that the Court approved on November 1, 2017 and January 29, 2018. Alternatively, the Motion should be denied since the transaction is not authorized under prior court orders addressing post-receivership funding because it was unnecessary (and not used) for financing GFFE's ongoing operations or meeting its payment obligations to the primary secured lender, Bank of Montreal.

Without notice to the parties, and purportedly pursuant to this Court's January 29, 2018 Order Sustaining Motion to Approve Revised Loan Agreement, the Receiver borrowed \$2 million Canadian (approximately \$1,550,000 US), by far the largest such loan taken since the inception of the Receivership, from 617855 Ontario Limited ("617885 Ontario"), an entity affiliated with Plaintiff Paul Mastronardi, and used the borrowed money to pay off a pre-receivership unsecured loan that Mr. Mastronardi's grandparents made to an entity not before the Court, "Golden Fresh Farms LLP". Even assuming that Mastronardi's grandparents would be

able to someday prove that Golden Fresh Farms LLP was a misnomer for the Golden Fresh Entities, the Receiver's pay-off of the Plaintiff's grandparents' unsecured pre-receivership loan by obtaining a loan from a different affiliate of Plaintiff and securing that with a lien on corporate assets while similarly situated pre-receivership unsecured creditors remain unpaid is not permissible under the Court's prior rulings.

The good news is that there is an easy fix available to the Court and the creditors of the Receivership estate who have been prejudiced. The Court can return the GFF Entities to the status quo that existed before the transaction by denying the Motion, thereby placing 617885 Ontario in the shoes of its affiliate, the Mastronardi grandparents, before the transaction -- an unsecured pre-receivership creditor required to prove its claim through a court-approved claim process as part of the winding up of GFFE. Alternatively, the Court may order the Receiver to unwind the transaction.¹

I. FACTUAL BACKGROUND

A. Appointment of Receiver and Litigation Stay

On September 29, 2017, the Court appointed Jim Thieman as receiver (the "Receiver") of Golden Fresh Farms Holdings, Inc. ("GFF Holdings"). That same entry stayed all actions against GFF Holdings or involving any of its property, which includes Golden Fresh Farms Enterprises, LP ("GFFE"), pending further Court order. *See* Sept. 29, 2017 Journal Entry – Granting

¹ The Receiver has stated that "the grounds for [his] motion will be presented in more detail in a reply memorandum following receipt of any objections to [the] motion." Motion at 4. But there is no basis for a movant to reserve the right to make new and affirmative arguments in a reply brief in support of the relief requested in the opening motion. This briefing protocol is well-settled. The purpose of a reply brief is to give the party seeking relief an opportunity to respond to argument made in opposition, and not to raise new arguments in support of the relief requested. As the Ohio Supreme Court noted, "a party may not advance new arguments in its reply brief." *State v. Spaulding*, 151 Ohio St. 3d 378, 2016-Ohio-8126. The Receiver had the opportunity to offer grounds for his position in his motion brief, and in fact did so. To the extent new arguments are raised, Chibante requests an opportunity to respond to them in writing with a sur-reply.

Continuance, Appointing Receiver and Setting Hearings. No subsequent Court order has lifted the stay. (GFF Holdings and GFFE will be referred to collectively as the “GFF Entities.”)

B. The 2017 Financing Motion and Loan Agreement

Shortly after his appointment, the Receiver filed a Motion to Approve Loan Agreement, and attached a proposed loan agreement that he had negotiated with Mastronardi and the Bank of Montreal (the “2017 Financing Motion”). *See* Docket, Oct. 25, 2017. In that motion, the Receiver represented that GFFE “requires funding beyond that available through it[s] lender, the Bank of Montreal” and will need “funding on a periodic basis (usually weekly) for the next six to eight weeks so that it may continue operations.” 2017 Financing Motion at 1. The 2017 Financing Motion also represented that “funds are needed for critical expenses, including payroll, payment for contract labor, utilities (gas, electric, water), as well as for payments to the Bank of Montreal and others.” *Id.* at 2. The 2017 Financing Motion identified the post-receivership lender as 617885 Ontario, an entity affiliated with Paul Mastronardi.

The Court granted the 2017 Financing Motion on November 1, 2017. In its order, the Court stated that “continued funding [is] necessary and appropriate for the ongoing operations of the Receivership [and the GFF Entities]”. The Court also “approve[d] the Loan Agreement” that was attached to the 2017 Financing Motion (the “2017 Loan Agreement”), with certain modifications reflected in the order including, among other things, restricting collateral to cash proceeds of agricultural sales. *See* Nov. 1, 2017 Order at 1.²

Pursuant to the 2017 Loan Agreement as modified by the Court’s order, “the Receiver and the [GFF] Entities may borrow from [617885 Ontario] funds for the operation of the [GFF] Entities.” *See* 2017 Loan Agr., attached to 2017 Financing Motion at 2, section 1. Notably, the

² The Receiver attached the 2017 Loan Agreement to the 2017 Financing Motion. *See* Docket, Oct. 25, 2017. The November 1, 2017 Order approved the 2017 Loan Agreement with slight modifications.

2017 Loan Agreement explicitly prohibits use “of the borrowings for payments to, directly or indirectly, (a) the partners, shareholders, officers, and/or directors of the Entities or any affiliates . . . of the foregoing” *See* Loan Agr. at 3, section 7. Loans made under the 2017 Loan Agreement are considered an administrative expense of the receivership secured by “all monies received by the Receiver from the sale of agricultural products” Nov. 1, 2017 Order at 1.

C. The 2018 Financing Motion and Loan Agreement

On January 23, 2018, the Court dissolved GFF Holdings, and conditionally dissolved GFFE. *See* Jan. 23, 2018 Amended Order. The Receiver filed a motion with the Court on January 29, 2018 styled as a Motion for Immediate Approval of Loan Agreement. *See* Docket, Jan. 29, 2018 (the “2018 Financing Motion”). The 2018 Financing Motion sought approval for non-substantive changes to the 2017 Loan Agreement to conform to the Court’s January 23rd order that, among other things, changed the Receiver’s status. As to the new loan agreement placed before the Court, the Receiver stated that “there are no substantive changes” from the 2017 Loan Agreement. 2018 Financing Motion at 1. The Receiver represented that “funds are needed immediately.” *Id.* at 2.

The reason for the expedited nature of the motion was that, “although it has not been necessary to borrow any money since November 30, 2017, a substantial semi-annual principal payment is due to the Bank of Montreal on February 1, 2018” (i.e., 3 days later, thus presumably necessitating expedited relief). *Id.* at 2. The proposed use of the money to pay BOM and avoid a payment default to the primary secured lender was no issue, of course, because all parties consented that post-receivership borrowing from the Mastronardi affiliate under the 2017 Loan Agreement to pay BOM was necessary to permit ongoing operations, and would need no further

Court approval. *See* 2017 Financing Motion at 1 (disclosing borrowed money used for operations and to pay Bank of Montreal, the secured pre-receivership lender); *see also* 2018 Financing Motion at 2 (same). There was no disclosure of any intention to borrow money to pay an alleged unsecured pre-receivership obligation to Mastronardi's grandparents, and there certainly was no time pressure or impeding deadline to do so.

The Court granted the 2018 Financing Motion, specifically finding that "the prospect of continued funding is necessary and appropriate for *the ongoing operations* of the Receivership [and the GFF Entities]." Jan. 29 Order Sustaining Motion to Approve Revised Loan Agreement, at 1 (emphasis supplied).

D. The Unauthorized Loan to Pay a Pre- Receivership Unsecured Debt

In February 2018, Chibante discovered that the Receiver may have authorized a series of transactions whereby the GFF Entities (or one of them) borrowed approximately \$2 million (Canadian) from 617885 Ontario to pay in full an unsecured loan purportedly made by Mastronardi's grandparents in May 2016 to "Golden Fresh Farms LLP" (the "Affiliate Transaction").³ Through counsel, Chibante asked the Receiver about the accuracy of this information. The Receiver confirmed that he caused the GFF Entities to enter into the Affiliate Transaction, and that the loan from 617855 Ontario is evidenced by a secured promissory note executed by one or both of the GFF Entities. Mr. Chibante did not receive advance notice of these transactions or an opportunity to object, and neither were the other parties to the best of his knowledge.

Chibante's counsel informed the Receiver that the Affiliate Transaction appeared to be prohibited and/or unauthorized, but requested additional materials to make an informed analysis.

³ The Mastronardi Grandparent Note is an exhibit to the Receiver's Motion.

A copy of counsel's letter to the Receiver is attached as Exhibit A. The Receiver's Motion to Approve Note and Security followed.

II. ARGUMENT

A. The Affiliate Transaction Violates the 2017 and 2018 Loan Agreements

The Court should deny the Motion because the Affiliate Transaction is specifically identified as a prohibited transaction under the plain language of the Loan Agreements. *See, e.g., Frederick C. Smith Clinic, Inc. v. Savage*, 3d Dist. Marion No. 9-12-40, 2013-Ohio-748, ¶ 12 (court must apply "the plain language of the document."). Alternatively, assuming for argument's sake only that it is not specifically prohibited, borrowing money on a secured basis to pay a pre-receivership unsecured loan is not authorized under the Loan Agreements or Court orders.⁴

1. The Plain Language of the Loan Agreements Prohibits the Affiliate Transaction.

The use of the borrowed funds to pay off the Mastronardi Grandparent Note is explicitly prohibited by the plain language of the Loan Agreements. Section 7 of both Loan Agreements states that the Receiver and the GFF Entities "*shall not* utilize any of the borrowings for payments to, directly or indirectly . . . (a) the partners, shareholders, officers, and/or directors of the Entities *or any affiliates* . . . of the foregoing . . ." *See* Loan Agrs. at 3, Section 7 (emphasis added). Thus, the 2017 and 2018 Loan Agreements expressly prohibit any payment to Mastronardi's grandparents because they are affiliated with Mastronardi, a limited partner of GFF Enterprises and an officer and shareholder of GFF Holdings. The Court is required to

⁴ At this stage, it is unclear whether the Receiver executed the 2018 Loan Agreement, or caused the GFF Entities to undertake the Affiliate Transaction under the 2017 Loan Agreement. But that nuance is of no moment since the two agreements are the same in all substantive respects. Because of this uncertainty and the substantial similarity among the two agreements, they are interchangeably referred to in this section as the "Loan Agreements".

enforce this plain contractual language. *See Smith*, 2013-Ohio-748, ¶ 12; *see also Guy v. City of Steubenville*, 7th Dist. Jefferson No. 99-JE-12, 2001-Ohio-3174, 2001-Ohio-3511 (“It is a well-settled principle of law that the use of the word ‘shall’ in a statute or contract connotes a mandatory obligation.”).

Because the Affiliate Transaction violates a plain term of both Loan Agreements, the Court should return the GFF Entities to the same place they would have been but for the Affiliate Transaction by ordering that either 617885 Ontario be treated as a pre-receivership unsecured creditor, or that the receiver unwind the Affiliate Transaction.

2. The Affiliate Transaction is Not Authorized Under the Loan Agreements.

The Court may alternatively deny the Receiver’s Motion because the Affiliate Transaction was not authorized by the Loan Agreements or the Orders approving them. Both authorized the Receiver to borrow money to the extent necessary for ongoing operations. The Affiliate Transaction, however, did not fund ongoing operations. Rather, it converted an unsecured pre-receivership loan to Plaintiff’s grandparents into a secured obligation of the GFF Entities. Using funds borrowed pursuant to the Loan Agreements and related Court Orders to pay pre-receivership unsecured debt falls outside of the operational purpose behind the need for post-receivership secured funding.

When seeking this Court’s permission to borrow money, the Receiver has always stressed that priority treatment for post-receivership loans was necessary to induce financing to fund GFFE’s ongoing operations or to avoid a default in its payment obligation to BOM. *E.g.*, 2017 Financing Motion at 1 (needs “funding on a periodic basis (usually weekly) for the next six to eight weeks so that it may continue operations” and avoid payment default to BOM); 2018 Financing Motion at 2 (funding needed to make “a substantial semi-annual principal payment” to

BOM). Likewise, the Court's orders approving the Loan Agreements were based on a specific finding that post-receivership secured borrowing was necessary to finance operations until GFFE would begin to cash flow in the fall of 2017. *E.g.*, Jan. 29, 2018 Order at 1 (finding that "funding is necessary and appropriate for the ongoing operations . . .").

The unmistakable purpose of the post-receivership lending with secured priority status is specifically expressed in the Loan Agreements and the Court's orders. Both the 2017 and 2018 Loan Agreements explicitly provide that the GFF Entities "may borrow from the Lender funds for the operation of the [GFF] Entities." See *e.g.*, 2017 Loan Agr. at 2, Section 1 (emphasis added). The proceeds from the Affiliate Transaction, however, were not used to fund GFFE's ongoing operations or avoid a potentially catastrophic payment default to BOM. Instead, the proceeds of the Affiliate Transaction were used to prefer a pre-receivership unsecured creditor and the lender, both affiliated with the Plaintiff, by paying off an unsecured loan that was made to the GFF Entities prior to appointment of the Receiver, a purpose not authorized by the Court orders approving the Loan Agreements, nor by the plain terms of the Loan Agreements. Consequently, a Mastronardi-affiliated, unsecured pre-receivership creditor is now being improperly preferred over other similarly situated creditors.

One of those similarly situated creditors is Golden Acre Farms, a Canadian company that Chibante operates and in which he has an ownership interest. Prior to the Court's entry of the Order approving the 2017 Loan Agreement, Chibante's counsel contacted the Receiver to ask if he would consent to Golden Acre Farm's pre-receivership loans, which were used to fund the ongoing operations of the GFF Entities during the period immediately preceding the Receiver's appointment, being treated *pari passu* with the post-receivership loans of 617885 Ontario used for that same purpose. The Receiver refused to advocate for that position, but has now

affirmatively taken steps to cause Mastronardi's grandparent's pre-receivership unsecured loan to be paid off with the proceeds of secured borrowing by the GFF Entities. No other creditors, including entities affiliated with Chibante, have received reciprocal preferential treatment. This is both unfair and improper under the Loan Agreements.

Moreover, it is contrary to what the parties and the Court discussed when the 2017 Loan Agreement was addressed and approved at the November 1, 2017 pretrial conference. At that time the Court stated that the purpose of post-receivership loans was "to keep this thing afloat." Nov. 1, 2017 Hrg. Tr. at 54 (an excerpt of the pretrial transcript is attached as Exhibit B). Moreover, the Court specifically stated that lenders who made unsecured loans to the company prior to the Receivership "are going to have to submit whatever documentation to the Receiver and eventually to the Court upon dissolution and winding up and we can address those issues then." *Id.* at 56. The Affiliated Transaction has taken this question from the Court and "address[ed] those issues" outside the context of dissolution and wind-up.

Remarks at the hearing are consistent with the Receiver's motions, the Loan Agreements and the Court's Orders - although post-receivership loans to fund operations would be secured consistent with the terms set out in the amended court order that was under consideration, pre-receivership loans to the GFF Entities will remain unsecured and be dealt with at a later date upon the sale of the GFF Entities. *See id.*, at 54-56.

Based on this alternative ground, the Court should deny the Motion.

B. The Receiver's Justifications for the Affiliate Transaction are Unpersuasive.

In his motion, the Receiver offers two justifications in support of the Affiliate Transaction, neither of which are covered under the Loan Agreements or relevant Court orders, and are otherwise unpersuasive.

First, the Receiver implies that the Affiliate Transaction avoided litigation threatened by

the Mastronardi grandparents. Motion at 2-3 (noting that the grandparents retained counsel who contacted the Receiver about the note). But any threat by counsel to enforce the Mastronardi grandparents' demand through litigation was a hollow one. Put simply, the Mastronardi grandparents cannot enforce the promissory note through litigation without violating the September 29, 2017 Court Order staying all litigation against the GFF Entities. At most they would be entitled to make a claim under such procedures as this Court may provide. *See* Ohio Rev. Code Ann. Sec. 1701.89(A)(2) (dissolution statute providing court authority to establish procedures for "[t]he presentation and proof of all claims and demands against the corporation . . ."). If they proved their claim, the Mastronardi grandparents would get paid the same percentage of their unsecured debt as other similarly situated unsecured creditors.

The Receiver has also suggested that the Affiliate Transaction was advantageous because the Mastronardi grandparents agreed to waive a couple of months of interest in connection with the promissory note. *Id.* at 3. But this concession—waiving a relatively small amount of unsecured interest—is neither beneficial nor fair when weighed against the price: converting the Mastronardi grandparents' unsecured claim into a secured administrative claim in favor of Mastronardi's family that could have been paid under the same priority as all other unsecured pre-receivership claims. This is especially troubling where the unsecured promissory note may very well be subject to valid defenses.⁵

⁵ For example, the obligor under the Mastronardi Grandparent Note is "Golden Fresh Farms LLP"—not the GFF Entities—providing a straightforward defense to a claim on a note. At a minimum, the holders of the Note would bear the burden of proof that it reflects a liability of the GFF Entities in either a Court-sanctioned proceeding as part of a windup of operations, or through litigation if the Court lifts the stay in place through the Court's September 29, 2017 Order.

III. CONCLUSION

For the foregoing reasons, the Receiver's Motion to Approve Note and Security should be denied, putting 617885 Ontario in the same place as the Mastronardi grandparents before the Affiliate Transaction--unsecured pre-receivership creditors. This remedy is fair because the principal of the Mastronardi grandparent's loan has been paid in full by a loan from 617885 Ontario. The status quo prior to the Affiliate Transaction would be preserved by replacing one unsecured Mastronardi affiliate with a different, but related, Mastronardi affiliate with an opportunity to prove the validity of the claim through the receivership's wind-up process. Alternatively, the Court should order the Receiver to unwind the Affiliate Transaction.

Respectfully submitted,

/s/ Michael L. Scheier

Michael L. Scheier (0055512)
Jacob D. Rhode (0089636)
Melissa A. Schaub (0093352)
KEATING MUETHING & KLEKAMP PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
mscheier@kmklaw.com
jrhode@kmklaw.com
mschaub@kmklaw.com
Phone: (513) 579-6400
Fax: (513) 579-6457

Attorneys for Defendant Luis Chibante

CERTIFICATE OF SERVICE

I hereby certify I served a true and accurate copy of the foregoing on this 7th day of March, 2018 upon the following via electronic mail:

Kraig E. Noble (0010383)
Noble, Montague & Moul, LLC
146 E. Spring St.
St. Marys, Ohio 45885
knoble@nmmlawyers.com

Marion H. Little, Jr. (0042679)
Matthew S. Zeiger (0075117)
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
little@litohio.com
zeigerm@litohio.com

Attorneys for Plaintiff

James L. Thieman
Faulkner, Garmhausen, Keister & Shenk
Courtview Center – Suite 300
100 South Main Avenue
Sidney, Ohio 45365
jthieman@fgks-law.com

Receiver

Thomas J. Potts
Faulkner, Garmhausen, Keister, & Shenk
Courtview Center – Suite 300
100 S. Main Street
Sidney, OH 45365
tpotts@fgks-law.com

Attorney for the Receiver

Paige L. Ellerman
A.J. Webb
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, OH 45202
pellerman@fbtlaw.com
awebb@fbtlaw.com

Attorneys for Bank of Montreal

Michael Burton
Jauert & Burton LLP
103 S. Blackhoof Street
P.O Box 1957
Wapakoneta, OH 45895
mburton@jauertburton.com

Attorney for 1797540 Ontario, Inc.

Robert M. Zimmerman
Dinsmore & Shohl LLP
1900 First Financial Center
255 East Fifth Street
Cincinnati, OH 45202
robert.zimmerman@dinsmore.com

Attorney for Mastronardi Produce Limited

/s/ Michael L. Scheier

Michael L. Scheier

8238176

MICHAEL L. SCHEIER
DIRECT DIAL: (513) 579-6952
FACSIMILE: (513) 579-6457
E-MAIL: MSCHEIER@KMKLAW.COM

Exhibit A

February 21, 2018

Via E-Mail Only (jthieman@fgks-law.com)

James L. Thieman Esq.
Faulkner, Garmhausen, Keister & Shenk
Courtview Center, Suite 300
100 S. Main Avenue
Sidney, Ohio 45365

Re: Payment of Demand Promissory Note in favor of Olindo & Dorothy Mastronardi

Dear Jim:

I came to understand last week that you authorized a series of transactions whereby the Golden Fresh Entities (or one of them) borrowed approximately \$2 million (Canadian) from 617885 Ontario Limited to pay an unsecured promissory note in favor of Paul Mastronardi's grandparents for a loan made to "Golden Fresh Farms LLP," an entity that is unfamiliar to me (the "Mastronardi Grandparent Note"). You told me that the loan from 617855 Ontario is evidenced by a secured promissory note executed by one or both of the GFF Entities. None of the parties to the case were given advance notice of these transactions, or an opportunity to object (the transactions are collectively called the "Affiliate Transactions").

I am writing to advise you of my client's view that the information you have so far provided to us raises a concern that the Affiliate Transactions were not authorized under any existing court order, were not necessary for the continuing operations of the Golden Fresh Entities, and violate a specific provision of the loan agreement with 617885 Ontario that the Court approved on November 1, 2017. Our reason for concern is detailed below.

1. The Affiliate Transactions are not Authorized under the Loan Agreement

On November 1, 2017, the Court granted a motion to approve a loan agreement so that the receivership estate and the GFF Entities can borrow funds that are "necessary and appropriate for the ongoing operations of the Receivership, [and the GFF Entities]." Nov. 1, 2017 Order Sustaining Motion to Approve Loan Agreement, at 1. My client did not negotiate or draft the terms of the Loan Agreement that was attached to your motion.

The form loan agreement that the Court approved specifically states that the GFF Entities "may borrow from the Lender funds for the operation of the Entities." Loan Agr. at 2, section 1. The "Lender" under the loan agreement is 617885 Ontario Limited, an entity associated with Paul Mastronardi. Loans made under the agreement are considered an administrative expense of

the receivership estate that may also be secured by a general security agreement and mortgage in favor of the Lender. *Id.*

The Loan Agreement not only specifies that the borrowings are to be used to fund continuing operations, but also explicitly bars use of borrowed funds for certain purposes. Pertinent to the Mastronardi Grandparent Note, the loan agreement prohibits use "of the borrowings for payments to, directly or indirectly, (a) the partners, shareholders, officers, and/or directors of the Entities or any affiliates . . . of the foregoing" Loan Agr. at 3, section 7.

Putting aside for now that the obligor under the Mastronardi Grandparent Note was neither of the GFF Entities, and assuming for purposes of this letter that the Mastronardi grandparents can prove that the GFF Entities are obligated under the note, the borrowed funds were not used to fund ongoing operations. The proceeds of the Affiliated Transactions were used to pay off a pre-receivership unsecured loan, a purpose which is not authorized under either the Court order approving the loan agreement, or the loan agreement. In fact, the use of the borrowed funds to pay Paul Mastronardi's grandparents is specifically prohibited under the loan agreement because they are affiliated with a limited partner of Enterprises, who is also an officer and shareholder of Holdings. *See* Loan Agr. at 3, section 7.

Moreover, the Affiliate Transactions that you have authorized have effectively converted an unsecured pre-receivership loan (that appears to have been made to an entity known as Golden Fresh Farms LLC) into a secured obligation of the GFF Entities. Effectively, you caused a series of transactions that preferred an affiliated unsecured pre-receivership creditor over other similarly situated creditors.

One of those similarly situated creditors is Golden Acre Farm, a Canadian company that Mr. Chibante operates and in which he has an ownership interest. Prior to the court's entry of the order approving the loan agreement, we asked if you would consent to Golden Acre Farm's pre-receivership loans, which were used to fund the ongoing operations of the GFF Entities, being treated *pari passu* with the post-receivership loans of 617885 Ontario. You refused to advocate that position, but you have affirmatively taken steps to cause Paul Mastronardi's grandparents' pre-receivership unsecured loan to be paid off with the proceeds of secured borrowing by the GFF Entities.

2. The Mastronardi Grandparents were Stayed from Taking any Action to Enforce their Demand Promissory Note

In your email to me, you stated that the Mastronardi grandparents engaged counsel who contacted you. Implied is that you paid the principal in full to avoid collection litigation. But the Court order appointing you stayed all litigation against the GFF Entities. The Mastronardi grandparents could not enforce the promissory note without violating the court order. Moreover, the Mastronardi Grandparent Note appears to be subject to defenses, and paying the principal in full does not reflect such defenses.

You also state that the Mastronardi grandparents waived an unidentified amount of accrued interest under their demand note. The Mastronardi Grandparent Note bore no interest

James L. Thieman Esq.
February 21, 2018
Page 3

unless the principal remained outstanding for 60 days after demand. You indicated that demand was made sometime in November 2017, so interest arguably began to accrue at 3% per year only last month. Regardless of the amount, though, a deal that relieves the GFF Entities of an obligation to pay an unknown amount of interest (that too is unsecured) is neither beneficial nor fair when weighed against the price – preferring a pre-receivership unsecured creditor affiliated with a party over other unsecured creditors and encumbering the GFF Entities with secured debt that was not necessary to continued operations.

Additionally, even if you view the interest waiver and the avoidance of litigation as advantages that support your actions, it would require a motion and opportunity to object since the basis for the Affiliated Transactions falls outside of existing authority to provide any type of priority status to the Lender, and is a payment outside of the ordinary course of business.

*

*

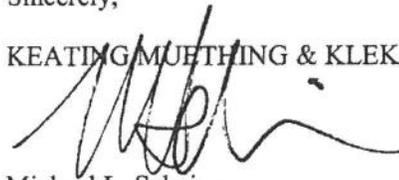
Jim, you, Mr. Chibante and I have worked well together through this difficult period. We recognize your diligence in performing the receivership duties. Our position is no reflection on your general performance, and we hope to resolve this consensually. One way to attempt to resolve our concerns and objection is to advise me of any misunderstanding I have or facts I am unaware of, and to provide me with all relevant documents. These include transactional documents and correspondence between or among you and (i) counsel for the Mastronardi grandparents, and/or (ii) Paul Mastronardi and his counsel, and/or (iii) 617885 Ontario or its counsel, and (iv) any other material that you believe would be useful for us to consider.

Alternatively, we ask that you take action to unwind the Affiliated Transactions, or move the Court for *nunc pro tunc* approval of them with a period for parties to review documents and object.

We, of course, reserve all of our rights in regard to the Affiliated Transactions.

Sincerely,

KEATING MUEHTHING & KLEKAMP PLL



Michael L. Scheier

c: Mr. Luis Chibante

ret

8219390.1

Exhibit B

1 priority over the other. It certainly is no equitable
2 concept that, "Oh, I put in my money first, so I get paid
3 back first." That's not what I understand the law to be,
4 and nor do I believe there's a legal basis for that sort of
5 granting of a priority. You want priority, if you have a
6 security agreement, go file it with the Secretary of State
7 and perfect the security interest, then maybe they have
8 something to talk about.

9 THE COURT: And I think you are correct about one thing.
10 I've jumped the gun in talking about priorities. I'm
11 APPROVING THE LOAN PURSUANT TO THE APPLICATION AND THE TERMS
12 OF THE LOAN, which include the GRANTING OF THE SECURITY
13 INTEREST. Mr. Thieman, satisfactory?

14 MR. THIEMAN: Oh yes, Your Honor.

15 THE COURT: Now, in terms of future loans, I'm hearing
16 both parties indicate that they're willing to advance,
17 through various other third parties, additional monies to
18 keep this thing afloat. I will approve those, but I want
19 counsel,- I want counsel for the Receiver and for the
20 Receiver, as you do that, you have to sort out those
21 security interests. In other words, make it clear in the
22 agreements you make for future money advanced that those are
23 on par. You follow what I'm saying, Men?

24 MR. LITTLE: I believe I do, Your Honor.

25 MR. SCHEIER: Yes, Sir, I understand what you're saying.

1 THE COURT: With respect to this money that's previously
2 out there, if it comes to a fight, which it may never come
3 to a fight because if there's enough money, you know,
4 depending on what you're overall circumstances is, you don't
5 have to worry about it. I'll deal with that or somebody
6 will deal with that at some point in time in the future
7 maybe. In the meantime, I've approved their loan, give them
8 their security interest.

9 MR. THIEMAN: Well, I think we'll be able to sign that
10 agreement here today. We have a proposed order for you.

11 THE COURT: And I assume the bank really is not a
12 signatory, but they sure have an interest in it and they
13 want to know what it's about.

14 MR. THIEMAN: They are a signatory, they're approving
15 signatory.

16 THE COURT: Ah, good. That makes sense. Okay.

17 MR. THIEMAN: But I need money tomorrow. That's future
18 money.

19 THE COURT: Okay. So I'll let you folks talk about that
20 future money and I will, upon application, - but I will ask
21 that simply submit an entry approving it signed by both Mr.
22 Little and Mr. Scheier.

23 MR. THIEMAN: For future?

24 THE COURT: For future.

25 MS. ELLERMAN: And, Your Honor, just for clarification, -

1 THE COURT: And, of course, the bank.

2 MS. ELLERMAN: --, we just, - the bank wants to put on record
3 that this is the first we're hearing about the prior
4 advances, the prior four hundred thousand dollars
5 (\$400,000.00) being included.

6 THE COURT: You were aware of the prior six hundred
7 thousand?

8 MS. ELLERMAN: Absolutely, yes. And we agreed to everything
9 that we've talked about here.

10 THE COURT: And I haven't really addressed the four
11 hundred thousand. It seems to me Mr. Scheier and his client
12 are going to have to submit whatever documentation to the
13 Receiver and eventually to the Court upon dissolution and
14 winding up and we can address those issues then.

15 MS. ELLERMAN: Understood. Thank you, Your Honor.

16 THE COURT: I'm not ruling on that four hundred thousand,
17 I'm just suggesting if you've got a claim submit it and
18 eventually, upon litigation in winding up, if it comes to
19 that, we'll have to deal with it. Now, you've got between
20 now and the 7th, - the 7th is going to be a hearing on the
21 dissolution. You've got between now and the 7th to come to
22 an agreement on the terms of the dissolution or else I'll
23 put on the order of the dissolution with the terms that the
24 Court deems fit after hearing your presentations concerning