

IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO

2018 MAR -9 AM 10: 51

PAUL MASTRONARDI,

Plaintiff

vs.

LUIS CHIBANTE, et al.

Defendants.

: Case No. 2017 CV 0144
:
: JUDGE FREDERICK D. PEPPE
:
: **MASTRONARDI PRODUCE**
: **LIMITED'S MEMORANDUM IN**
: **OPPOSITION TO RECEIVER'S**
: **MOTION TO APPROVE NOTE AND**
: **SECURITY**

I. JEAN MECKSTROTH
CLERK OF COURTS

Third-party intervenor Mastronardi Produce Limited ("MPL") hereby submits its Memorandum In Opposition to the Receiver's Motion to Approve Note and Security (the "Motion"):

I. INTRODUCTION

The Receiver's Motion seeks to convert prior unsecured debt into a secured debt even though the new loan provides no new funding for business operations of Golden Fresh Farms Enterprises, L.P. ("GFFE"), offers no new value to GFFE, and unfairly prefers Plaintiff Paul Mastronardi ("Paul Jr.") and his affiliates at the expense of all other unsecured creditors, including MPL. As such, the proposed loan is not authorized under the November 1, 2017 Loan Agreement (as amended, the "Loan Agreement") or January 29, 2018 Order Sustaining Motion to Approve Revised Loan Agreement (the "Order"). Indeed, this loan is little more than a shell game - transforming one party's pre-receivership unsecured loan into a secured position in exchange for no added value. The Court should reject Paul Jr.'s attempt to so benefit himself at the expense of GFFE and its other unsecured creditors, and the Court should deny the Receiver's Motion.

II. FACTUAL BACKGROUND

In the interest of brevity, MPL incorporates by reference herein the factual background set forth in Defendant Luis Chibante's March 7, 2018 Memorandum In Opposition to Receiver's Motion to Approve Note and Security.

III. LAW AND ARGUMENT

A. The proposed loan transaction provides no new value to GFFE and is not used to fund GFFE's ongoing operations; thus, it is not permitted by the Loan Agreement.

According to the Receiver, Olindo and Dorothy Mastronardi, Paul Jr.'s grandparents, loaned two million Canadian dollars to a Golden Fresh entity in May 2016.¹ (Motion at 2). The note (the "Grandparents' Note") was unsecured. (*See id.*, Ex. A). In November 2017, Paul Jr.'s grandparents apparently demanded payment of the Grandparents' Note. (*Id.*). By this time, the Receiver had been appointed and was well aware of several other third-party claimants and creditors of GFFE. Also, the Court had already issued a comprehensive stay preventing any litigation against GFFE. (September 29, 2017 Order). Thus, Paul Jr.'s grandparents' demand for payment was in violation of the Court's stay, or, at a minimum, not much of a threat.

Apparently, however, Paul Jr., through his affiliated entity 617885 Ontario Limited ("617885 Ontario"), offered to loan the money to GFFE to pay his grandparents and remove this empty threat of litigation. (*Id.* at 2-3). The Receiver acquiesced, and now asks this Court to approve the granting of a security interest to 617885 Ontario, transforming a previously unsecured Mastronardi-family debt into a secured Mastronardi-family debt, superior to the unsecured claims of MPL and others.

¹ The loan was to "Golden Fresh Farms, LLP." That entity does not exist. The Receiver claims the loan was really to GFFE. (Motion at 2).

GFFE gains nothing from this transaction. GFFE previously owed an unsecured debt to Paul Jr.'s grandparents. Now, GFFE owes a secured debt to Paul Jr.'s affiliated company, 617885 Ontario. No new investment or working capital has been provided to GFFE. GFFE's cash flow issues are not improved. No genuine threat of litigation is avoided, since the stay ordered by the Court prevented Paul Jr.'s grandparents from taking any steps to collect their debt. Instead, what is being funded is simply paying off an old, unsecured debt in exchange for incurring a new, secured debt – a transaction benefitting only Paul Jr. and his family at the expense of similarly situated creditors.

Such a transaction is inconsistent with the letter and spirit of the Loan Agreement and this Court's Order. In that Order, the Court granted a motion to approve the revised Loan Agreement because "the prospect of continued funding is necessary and appropriate for the ongoing operations of the Receivership [and GFFE]." (Order at 1). In addition, the Loan Agreement approved by the Court allowed the Receiver and GFFE to "borrow funds" from 617885 Ontario "for operation of the entities." (Loan Agreement, § 1). The proposed loan transaction does not serve these ends. It provides no funding "for the operation of the entities" and will not aid "ongoing operations of the Receivership." It merely pays off an existing debt in preference to countless other unsecured claims. Accordingly, the proposed loan transaction is improper and should not be approved by the Court.

B. The proposed loan transaction is expressly barred by the Loan Agreement because it benefits an affiliate of Paul Jr.

Setting aside the fact that the Receiver's Motion seeks approval of a loan that adds no value to GFFE, the proposed loan to 617885 Ontario is expressly barred by the Court's Order. The loan agreement not only specifies that the borrowed money is to be

used solely to fund continuing operations, but it also expressly bars the use of such funds for certain purposes:

The Receiver and the 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* or legal counsel of the foregoing

(*Id.* at § 7).

Here, the proposed transaction uses borrowings from an affiliated entity (617885 Ontario) for payments to a third party (Paul Jr.'s grandparents) affiliated with one of GFFE's partners (Paul Jr.). While this may be advantageous for Paul Jr. and his family since they receive a windfall – a free security interest – this series of transactions is the precise kind of situation Section 7 of the Court-approved Loan Agreement was designed to prevent. Paul Jr. and his affiliates may not enrich themselves from the Receivership estate while disadvantaging similarly-situated unsecured creditors. As a result, the loan is improper.

IV. CONCLUSION

For the foregoing reasons, this Court should deny the Receiver's Motion to Approve Note and Security.

Respectfully submitted,



Robert M. Zimmerman (0079584)

Andrew B. Cassady (0092413)

DINSMORE & SHOHL LLP

1900 First Financial Center

255 East Fifth Street

Cincinnati, Ohio 45202

Phone: (513) 977-8200

Fax: (513) 977-8141

Email: robert.zimmerman@dinsmore.com

andrew.cassady@dinsmore.com

**Attorneys for Intervening Defendant
Mastronardi Produce Limited**

CERTIFICATE OF SERVICE

I hereby certify on this 9th day of March, 2018, a copy of the foregoing was sent by

email to the following:

Kraig E. Noble, Esq.
NOBLE, MONTAGUE & MOUL, LLC
146 East Spring Street
Saint Marys, Ohio 45885
knoble@nmmlawyers.com

Marion H. Little, Jr., Esq.
ZEIGER, TIGGES & LITTLE LLP
41 South High Street
3500 Huntington Center
Columbus, Ohio 43215
little@litohio.com

Attorneys for Plaintiff
Paul Mastronardi

James L. Thieman, Esq.
FAULKNER, GARMHAUSEN,
KEISTER & SHENK
100 South Main Avenue
Sidney, Ohio 45365
jthieman@fgks-law.com

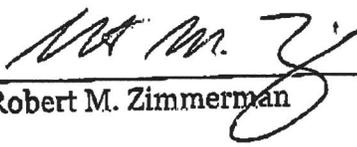
Receiver

Michael L. Scheier, Esq.
Jacob D. Rhode, Esq.
KEATING MUETHING & KLEKAMP PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
mscheier@kmklaw.com
jrhode@kmklaw.com

Attorneys for Defendant
Luis Chibante

Paige L. Ellerman, Esq.
FROST BROWN TODD LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
pellerman@fbtlaw.com

Attorneys for Intervenor
Bank of Montreal


Robert M. Zimmerman

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RECIPIENT INFORMATION:

NAME OF COURT: COURT OF COMMON PLEAS

FAX NUMBER: 419-739-6768

SENDING PARTY INFORMATION:

NAME: ROBERT M. ZIMMERMAN

SUPREME COURT REGISTRATION NO. 0079584

OFFICE/FIRM: DINSMORE & SHOHL LLP

ADDRESS: 255 EAST FIFTH STREET, SUITE 1900, CINCINNATI, OH 45202

TELEPHONE NUMBER: (513) 977-8200

FAX NUMBER: (513) 977-8141

E-MAIL ADDRESS: Robert.zimmerman@dinsmore.com

CASE INFORMATION:

TITLE OF CASE: PAUL MASTRONARDI V. LUIS CHIBANTE, ET AL.

CASE NUMBER: 2017 CV 0144

TITLE OF DOCUMENT: MASTRONARDI PRODUCE LIMITED'S MEMORANDUM IN
OPPOSITION TO RECEIVER'S MOTION TO APPROVE NOTE AND SECURITY

JUDGE: FREDERICK D. PEPPE

FILING INFORMATION:

DATE OF FAX TRANSMISSION: MARCH 9, 2018

NUMBER OF PAGES (INCLUDING THIS PAGE): 7

