AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

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JEAN MECKSTROTH
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF AUGLAIZE COUNTY, OHIO

PAUL MASTRONARDI	)	CASE NO. 2017 CV 0144
	)	
Plaintiff,	)	JUDGE PEPPLE
	)	
vs.	)	
	)	RECEIVER'S MOTION TO APPROVE
LUIS CHIBANTE, et al.	)	NOTE AND SECURITY
	)	
Defendants.	)	

Loan Agreements, Promissory Notes, and Security Agreements

On November 1, 2017, the Court issued an "Order Sustaining Motion to Approve Loan Agreement". The Order was approved and signed by counsel for all parties.

Pursuant to that Order, the Receiver, Golden Fresh Farms Holdings, Inc. ("Holdings"), and Golden Fresh Farms Enterprises, L.P. ("Enterprises") entered into an Loan Agreement with 617885 Ontario Limited with an effective date of November 2, 2017, and a General Security Agreement and Open-End Mortgage with 617885 Ontario Limited dated November 13, 2017.

Thereafter, 617885 Ontario Limited made a series of loans to the Receiver, Holdings, and Enterprises, which funds were used for the business.

On January 23, 2018, the Court issued an Order that resulted in the withdrawal of Holdings as the General Partner of Enterprises, dissolved both Holdings and Enterprises, and named the undersigned to also serve as the Receiver for Enterprises. This change in status and capacities to act rendered the above-described agreements obsolete. Because of the need for additional borrowing, on January 29, 2018, the Receiver moved the Court to approve a Revised

Loan Agreement. The Revised Loan Agreement made changes to comply with the effect of the Order of January 23, 2018, but no substantive changes.

On January 29, 2018, the Court issued an Order approving the Revised Loan Agreement. Like the Order of November 1, 2017, the Order provided that funds could be borrowed from and security provided to 617885 Ontario Limited.

Pursuant to that Order, on January 30, 2018, the Receiver, Holdings, and Enterprises signed two Subordinated Promissory Notes. The first Note was in the amount of $175,000, which sum was used to supplement existing funds held by Enterprises to make a substantial semi-annual payment due to the Bank of Montreal that was due the following day.

The second Note was in the amount of $2,000,000 Canadian Dollars. That sum was borrowed to pay a Promissory Note from Olindo and Dorothy Mastronardi dated May 6, 2016. (Exhibit A) The Promissory Note was issued by Olindo and Dorothy Mastronardi to "Golden Fresh Farms LLP". (That name is a misnomer. The Controller confirms that the funds were received and the obligation was carried on the books of Enterprises). The Promissory Note provided that it was payable within 120 days of receipt of a written demand, that it bore no interest until such demand was made, and that interest at the rate of 3% per annum would begin to accrue upon the date of demand until the date of payment. On September 11, 2017, a Notice of Demand (dated September 5, 2017) was delivered to Paul Mastronardi and Luis Chibante, which made the Promissory Note payable January 9, 2018. (Exhibit B)

The Promissory Note was not timely paid and became in default. Olindo and Dorothy Mastronardi retained counsel, who contacted the undersigned after default seeking payment of the Promissory Note. That circumstance was brought to the attention of counsel for Plaintiff, and thereafter to the attention of 617885 Ontario Limited, who proposed to loan the money to

pay the Promissory Note. All the other Notes issued to 617885 Ontario Limited provided for an interest rate of 5%, with a default rate of 10%. The Promissory Note provided for interest at the rate of 3%. The Receiver expressed an interest in borrowing the funds provided the interest rate remained at 3%, making the loan revenue neutral, and Olindo and Dorothy Mastronardi proposed to forgive past due interest on the Promissory Note if it were satisfied. Interest had accrued from date that the demand was made, September 11, 2017. On January 30, 2018, a Note was executed to 617885 Ontario Limited, and the funds were paid to Olindo and Dorothy Mastronardi. Interest at the rate of 3% from September 11, 2017 through the date of payment, which was a period of about five months, totaled about $25,000 (Canadian Dollars) was forgiven. The Promissory Note was fully satisfied. (Exhibit C)

Matter at Issue

All loans made pursuant to the November 2, 2017 Loan Agreement were secured. Likewise, the Court's Order of January 29, 2018 provided for security to 617885 Ontario Limited for all loans on or after that date.

Pursuant to the Court's Order of January 29, 2018, 617885 Ontario Limited prepared a proposed Mortgage Modification, which was an updated version of the previous Security Agreement dated November 13, 2017. The draft of the Mortgage Modification contained several errors and misstatements. Those were called to the attention of the drafter, and corrections were made. Early this week, the Receiver received what was to be the final draft of the Mortgage Modification and anticipated signing it. It has not been signed because, prior to its execution, the Receiver received a letter from counsel for Defendant Chibante presenting various objections to the loan to pay the Promissory Note of Olindo and Dorothy Mastronardi, and the creation of a security interest.

The objections of Defendant Chibante are best presented by his counsel, but the letter included a request to unwind the transaction, or, in the alternative, a request to move for approval of the transaction.

The Receiver moves the Court to issue an Order approving the loan of the $2,000,000 (Canadian Dollars) for the Promissory Note of Olindo and Dorothy Mastronardi. The grounds for this motion will be presented in more detail in a reply memorandum following receipt of any objections to this motion, but, in summary, the Receiver submits the following:

1. Borrowing funds for the use of Holdings and Enterprises by the Receiver is permitted under Revised Code § 2735.04;

2. The funds were borrowed to pay an obligation of Enterprises, which obligation was carried on the books of Enterprises, and was not outside the business operations of the Receivership.

3. The Mastronardi's had retained counsel, and payment of the Promissory Note avoided an obligation to pay past due interest of approximately $25,000 (Canadian Dollars).

4. The Note was revenue neutral with regard to the applicable interest rate of 3%.

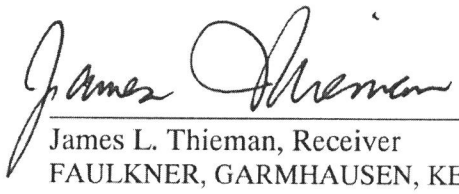
5. All parties consented to the Order of November 1, 2017, and no parties objected to the Motion and proposed Order of January 29, 2018.

6. Despite substantial borrowings (consisting of 12 previous Notes) since the formation of the Receivership, all with 617885 Ontario Limited, no previous objections by any party have been to such Notes;

7. The Receiver has no reasonable sources of funding other than 617885 Ontario Limited, notwithstanding solicitation of lending from Defendant Chibante and a request for an extension of its credit line from the Bank of Montreal;

8. Under the circumstances, it is unreasonable to expect any lender to accept terms that do not include a security interest. Consistent with this, the Court's Orders have specifically permitted such security.

The Receiver moves the Court to approve the issuance of the Note to satisfy the Mastronardi Promissory Note, and to approve a Mortgage Modification that allows security for all loans from 617885 Ontario Limited on or after the date of its Order of January 29, 2018.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent by email and regular U.S. mail this 23rd day of February 2018 to the following:

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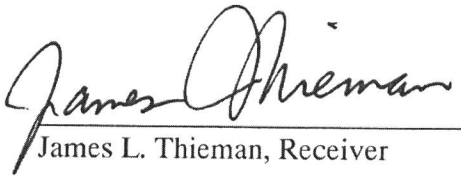

James L. Thieman, Receiver

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EXHIBIT A

PROMISSORY NOTE

Amount: $2,000,000.00

FOR VALUE RECEIVED the undersigned ***GOLDEN FRESH FARMS LLP*** promises to pay to ***OLINDO MASTRONARDI*** and ***DOROTHY MASTRONARDI (the "Lenders")as joint tenants upon a joint account*** the principal sum of Two Million Dollars ($2,000,000.00) (Canadian) bearing no interest.

The said principal sum or any portion thereof shall, at the discretion of the Lenders, be payable ON DEMAND. Payment in full of the amount demanded shall be due within sixty ~~(60)~~ days of receiving written demand, failing which interest shall accrue on the amount demanded at the rate of six per cent (~~6~~%) per annum from the date of demand to the date of payment.

DATED at Kingsville, Ontario this 6th day of May, 2016.

GOLDEN FRESH FARMS LLP

Per: _____
Louise Chibante

Per: _____
Paul Mastronardi

We have the authority to bind the corporation.

EXHIBIT B

NOTICE OF DEMAND

To: Golden Fresh Farms LLP

WHEREAS OLINDO MASTRONARDI and DOROTHY MASTRONARDI loaned to GOLDEN FRESH FARMS LLP the principal sum of TWO MILLION DOLLARS ($2,000,000.00) which indebtedness was secured by a Promissory Note dated the 6th day of May, 2016, a copy of which is attached hereto and marked as Schedule "A".

AND WHEREAS the said OLINDO MASTRONARDI and DOROTHY MASTRONARDI wish to make demand for re-payment of the Loan.

The undersigned, OLINDO MASTRONARDI and DOROTHY MASTRONARDI hereby demand payment in full of the principal sum of TWO MILLION DOLLARS ($2,000,000.00) secured by a Promissory Note dated the 6th day of May, 2016.

DATED at Leamington, Ontario this 5th day of September, 2017.

Olindo Mastronardi

Dorothy Mastronardi

Dorothy Mastronardi

EXHIBIT PAGE 01 C

NOTICE OF CANCELLATION OF NOTE

WHEREAS, on or about May 6, 2016, Golden Fresh Farms Enterprises, L.P. issued a promissory note in favor of Olindo Mastronardi and Dorothy Mastronardi (the "Promissory Note").

WHEREAS, the Promissory Note was payable upon demand and a demand was previously made. If the payment was not made in full within a certain number of days of receipt of the written demand, interest accrues thereafter on the outstanding balance.

WHEREAS, payment has been made on said Promissory Note, and the undersigned cancels the Promissory Note and waives all accrued interest.

Olindo Mastronardi
Olindo Mastronardi

Dorothy Mastronardi
Dorothy Mastronardi

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