

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE) TUESDAY, THE 16TH DAY
JUSTICE CAVANAGH)) OF JANUARY, 2024

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
THE GOOD FAT CO. LTD.**

ORDER

THIS MOTION, made by The Good Fat Co. Ltd. (“**GFC**”), was heard this day via Zoom judicial video conference.

ON READING the Motion Record of GFC, including the Affidavit of Eric Kimmel sworn January 12, 2024 and the exhibits thereto (the “**Kimmel Affidavit**”), on reading the First Report to the Court (the “**Report**”) of Richter Inc. (“**Richter**”), in its capacity as proposal trustee (the “**Proposal Trustee**”) in GFC’s *Bankruptcy and Insolvency Act* (the “**BIA**”) proposal proceedings (the “**Proposal Proceedings**”), and on hearing the submissions of counsel for GFC, and counsel for the Proposal Trustee, counsel for 1000747000 Ontario Inc. (the “**DIP Lender**”) and no one else appearing although properly served as appears from the affidavit of Christine Doyle, sworn January 12, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF TIME

2. **THIS COURT ORDERS** that the time for the filing of a proposal by GFC is hereby extended in accordance with section 50.4(9) of the *BIA* by a period of forty-five (45) days up to and including March 17, 2024.

DIP FINANCING

3. **THIS COURT ORDERS** that GFC is hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance GFC's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$200,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the DIP Loan Agreement between GFC and the DIP Lender, dated as of January 9, 2024 (the "**DIP Loan Agreement**").

5. **THIS COURT ORDERS** that GFC is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lender

pursuant to the terms thereof, and GFC is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Loan Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on all of GFC’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 15 and 17 hereof.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the *BIA*:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon five (5) days notice to GFC and the Proposal Trustee, may exercise any and all of its rights and remedies against GFC or the Property under or pursuant to the DIP Loan Agreement, the Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to GFC and set off and/or consolidate any amounts owing by the DIP Lender to GFC against the obligations of GFC to the DIP Lender under

the DIP Loan Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against GFC and for the appointment of a trustee in bankruptcy of GFC; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of GFC or the Property.

8. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by GFC in these Proposal Proceedings or any plan of arrangement or compromise filed by GFC under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA"), with respect to any advances made under the Definitive Documents.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, counsels to the 2023 Noteholders (as such term is defined in the Kimmel Affidavit) and counsel to GFC shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by GFC as part of the costs of these Proposal Proceedings. GFC is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to GFC on a monthly basis.

10. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its

legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

11. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and GFC's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these Proposal Proceedings. The Administration Charge shall have the priority set out in paragraphs 15 and 17 hereof.

DIRECTORS' INDEMNIFICATION AND CHARGE

12. **THIS COURT ORDERS** that GFC shall indemnify the directors and officers of the GFC against obligations and liabilities that they may incur as directors or officers of GFC after the commencement of the within Proposal Proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

13. **THIS COURT ORDERS** that the directors and officers of GFC shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 12 of this Order. The Directors' Charge shall have the priority set out in paragraphs 15 and 17 herein.

14. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the

benefit of the Directors' Charge, and (b) GFC's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

15. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

- (a) First – Administration Charge;
- (b) Second – Directors' Charge; and
- (c) Third – DIP Lender's Charge.

16. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

17. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

18. **THIS COURT ORDERS** that, except as otherwise expressly provided for herein, or as may be approved by this Court, GFC shall not grant any Encumbrances over any Property that

rank in priority to, or *pari passu* with, any of the Charges, unless GFC also obtains the prior written consent of the Proposal Trustee, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

19. **THIS COURT ORDERS** that the DIP Loan Agreement, the Definitive Documents and the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by: (a) the pendency of these Proposal Proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy, interim receivership or receivership order(s) issued pursuant to *BIA*, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the *BIA*; (d) any application pursuant to the *CCAA* or any order made pursuant to such application; (e) the provisions of any federal or provincial statutes; or (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds GFC, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by GFC of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from GFC entering into

the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by GFC pursuant to this Order, the DIP Loan Agreement, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

APPROVAL OF REPORT

20. **THIS COURT ORDERS** the First Report, and the actions, conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved; provided, however, that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

SERVICE AND NOTICE

21. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL “<https://www.richter.ca/insolvencycase/the-good-fat-co-ltd.>”.

22. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, GFC and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to GFC's creditors or other interested parties at their respective addresses as last shown on the records of GFC and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof; (b) if delivered by personal delivery or facsimile transmission, on the date so delivered; and (c) if sent by ordinary mail, on the third business day after mailing.

23. **THIS COURT ORDERS** that GFC, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to GFC's creditor or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

24. **THIS COURT ORDERS** that GFC or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT ORDERS** that nothing in this Order shall prevent Richter from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of GFC, GFC's business or the Property.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist GFC, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and provide such assistance to GFC and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist GFC and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that each of GFC and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within Proposal Proceedings for the purpose of having these Proposal Proceedings recognized in a jurisdiction outside Canada.

28. **THIS COURT ORDERS** that any interested party (including GFC and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

29. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

 Digitally signed by
Mr. Justice
Cavanagh

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE GOOD FAT CO. LTD.

Court File No: BK-24-03026717-0031
Estate File No: 31-3026717

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Brookfield Place
181 Bay St, Suite 1800
Toronto, ON M5J 2T9

Steven Graff (LSO# 31871V)
Tel: (416) 865-7726
Email: sgraff@airdberlis.com

Sam Babe (LSO #49498B)
Tel: (416) 865- 7718
Email: sbabe@airdberlis.com

Lawyers for The Good Fat Co. Ltd.