



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: BK-23-00208658-OT31 DATE: March 25, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: Oragin Foods Inc.

BEFORE: Mr. Justice H. J. Wilton-Siegel

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|---------------------|
| Fred Tayar | Tobias Ihde | fred@fredtayar.com |
| Colby Linthwaite | | colby@fredtayar.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|-------------------|---------------------------|
| Asim Iqbal | Oragin Foods Inc. | aiqbal@millerthompson.com |

Other:

| Name of Person Appearing | Name of Party | Contact Info |
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| Miranda Spence | KPMG Inc. | mspence@airdberlis.com |

ENDORSEMENT:

The applicant, Tobias Ihde (the “Applicant”), seeks a bankruptcy order in respect of Oragin Foods Ltd. (the “Debtor”) under s. 43 of the *Bankruptcy and Insolvency Act* (the “BIA”).

The only asset of the Debtor is its shares in a wholly owned subsidiary, Oragin Garage Ltd. (“Subco”), which is also insolvent. Subco has filed a notice of intention to make a proposal under the *BIA* (the “NOI Proceedings”). On March 14, 2024, Steele J. approved a sales process in the NOI Proceedings for the sale of all of the assets of Subco (the “Sales Process”). The final bid deadline under the sales process is April 12, 2024 unless otherwise extended in accordance with the terms of the Sales Process (such deadline being referred to as the “Final Bid Deadline”). The Applicant opposed the Sales Process at the hearing before Steele J. on March 14, 2024 seeking an adjournment of the hearing or an immediate bankruptcy of Subco. Steele J. rejected the requests in granting approval of the Sales Process.

In the present proceeding, the Debtor does not defend the Applicant’s application for a bankruptcy order in respect of the Debtor. Accordingly, a bankruptcy order shall issue in respect of the Debtor without objection.

However, the Debtor, Subco and Subco’s wholly owned subsidiaries (collectively, the “NOI Debtors”) seek either: (1) a temporary stay of the Applicant’s application until the Final Bid Deadline; or (2) a bankruptcy order subject to terms temporarily preventing the trustee in bankruptcy of the Debtor from taking steps that would interfere with, terminate or delay the Sales Process.

The NOI Debtors say that the proposal trustee of Subco demonstrated at the hearing before Steele J. that an immediate bankruptcy would result in nil recovery for unsecured creditors and that a going concern sale provided the only possibility of any recovery for creditors. They say that the Debtor and its creditors have no economic interest in Subco and should not be able to drain financial resources of Subco by litigating over control of the insolvency process of Subco. The NOI Debtors say the balance of prejudice favours either (1) a stay of the bankruptcy application pending the Final Bid Deadline at which time the value, if any, of the assets of Subco will be determined and thereby the parties who have an interest in such assets or (2) a grant of the bankruptcy order on terms preventing any action by the trustee that would nullify the Sales Process.

The parties agree that any proceedings to terminate the NOI Proceedings would require an application before Steele J. in those Proceedings. The NOI Debtors are prepared to address any such claim in the NOI Proceedings. Their principal concern in the present proceeding is that the purpose of the bankruptcy of the Debtor may be to put the trustee in bankruptcy of the Debtor in a position to assign Subco into bankruptcy utilizing its position as the shareholder of Subco.


I have some sympathy for the NOI Debtors. However, given that the bankruptcy order has issued, a stay of the Applicant’s application is not available to the NOI Debtors. I am also not persuaded that I have the jurisdiction to impose the terms to the bankruptcy order sought by the NOI Debtors. An order containing such terms effectively prevents the trustee of the Debtor from taking steps in the NOI Proceedings as well as taking actions outside of such proceedings.

I do not think that this Court has jurisdiction to impose conditions that directly or indirectly constitute an order in respect of the NOI Proceedings which are being supervised by another judge of the Superior Court. The jurisdiction of the Court to impose conditions with respect to the trustee’s actions outside the NOI Proceedings is more nuanced. As the Applicant’s counsel argues, such action is premature in that the trustee has not proposed to take any particular action at the present time. Any prejudice of the sort contemplated by the NOI Debtors would therefore appear to be speculative.

On the other hand, regardless of the Applicant’s interrelated objections regarding the amount of the Debtor’s debt claim against Subco, the issue of whether such debt was properly disclosed in the NOI Proceedings, and the statements to the Court regarding prior consultation with Subco’s creditors, none of which has been determined, the fundamental fact is that the Debtor has no economic interest in Subco. A trustee in bankruptcy is a court officer. The Court should assume that a trustee would not take any action of the sort feared by the NOI Debtors without a legitimate reason for doing so in its capacity as a creditor of Subco. As was observed in the hearing on

the present application, any action of the trustee in its capacity as the shareholder of Subco exhibiting bad faith on the part of the trustee would run the risk of an award against the trustee under section 37 of the *BIA* or otherwise.

Based on the foregoing, an order shall issue in the form attached.

A handwritten signature in black ink, appearing to read "Wilton-Siegel J.", is positioned above a horizontal line.

Wilton-Siegel J.

Date: March 26, 2024