

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 13<sup>TH</sup>

JUSTICE

*MEERUK*

)

)

DAY OF DECEMBER, 2016

B E T W E E N:

IN THE MATTER OF THE PROPOSAL OF PROSPERITY FOODS LTD.  
A COMPANY DULY INCORPORATED PURSUANT TO THE LAWS OF THE PROVINCE  
OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO

**ORDER**

(Administrative Charge)

**THIS MOTION**, made by Prosperity Foods Ltd. ("**Prosperity**"), for an Order pursuant to s. 64.2(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c.B-3 ("**BIA**") providing for an administrative charge securing the fees and disbursements of A. Farber & Partners Inc. (the "**Proposal Trustee**") and its counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Ira Day sworn December 5, 2016 and the Exhibits thereto and the First Report of the Proposal Trustee, and on hearing the submissions of counsel for Prosperity,

1. **THIS COURT ORDERS** that this Motion has been properly served and that this Motion is properly returnable today in Toronto and hereby dispenses with further service thereof;

2. **THIS COURT FURTHER ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, Dale & Lessmann LLP, counsel to Prosperity, Torkin Manes LLP (together, the "**Professional Group**"), shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the current and future assets, undertakings and properties of Prosperity, of every nature and kind whatsoever (including all real and personal property), and wherever situate including all proceeds thereof, (including but not limited to the proceeds of the sale of substantially all of the assets of Prosperity as authorized by this Court), as security for their professional fees and disbursements incurred at the standard rates and charges of the Professional Group, both before and after the making of this Order, with respect to and incidental to the proposal of Prosperity or related matters, including the reasonable fees and disbursements of the Professional Group incurred in preparation of the filing of the motion record filed on this motion.

3. **THIS COURT ORDERS** that the Proposal Trustee, its counsel and counsel for Prosperity shall all rank *pari passu* with respect to their relative priority pursuant to the Administrative Charge.

4. **THIS COURT ORDERS** that the Proposal Trustee and its counsel shall pass their accounts from time to time.

5. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected

subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

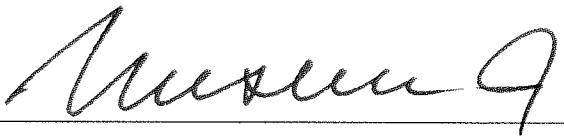
6. **THIS COURT ORDERS** that the Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any person, except the following claims, which shall retain such priority as they would at law, unaffected by this Order:

- (a) claims specified in ss. 81.3, 81.4, 81.5 of the BIA; and
- (b) any secured claim of The Toronto-Dominion Bank.

7. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Professional Group shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications or any deemed assignment into bankruptcy; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 which bind Prosperity, and notwithstanding any provision to the contrary in any agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by Prosperity of any agreement to which it is a party;

- (b) none of the Professional Group shall have any liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the creation of the Administration Charge; and
- (c) the payments made by Prosperity pursuant to this Order and the granting of the Administration Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

  
\_\_\_\_\_

IN THE MATTER OF THE PROPOSAL OF PROSPERITY FOODS LTD.,  
A COMPANY DULY INCORPORATED PURSUANT TO THE LAWS OF THE PROVINCE OF ONTARIO,  
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Court File No. 31-2195743

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(Administrative Charge)**

**TORKIN MANES LLP**

Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)  
jsimpson@torkinmanes.com  
Tel: 416-777-5413  
Fax: 1-888-587-9143

Tel: 416-863-1188  
Fax: 416-863-0305

Lawyers for Prosperity Foods Ltd.