

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE TORONTO-DOMINION BANK and  
TD EQUIPMENT FINANCE CANADA,  
a division of THE TORONTO-DOMINION BANK**

Applicants

- and -

**NOREAST FOODS LTD. and AERDON CONTINENTAL CORP**

Respondents

**APPLICATION UNDER** Section 47 of the *Bankruptcy and Insolvency Act*  
R.S.C. 1985, C. B-3, as amended

**AFFIDAVIT OF JACINTO JACK BORGES**

I, **JACINTO JACK BORGES**, of the City of Toronto in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am an account manager with the Financial Restructuring Group of the Applicant, The Toronto-Dominion Bank (“**TD**”), with carriage of the Respondents’ account at TD. As such, I have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.
3. To the extent that any of the information set out in this affidavit is based on my review of the Applicants’ documents, I verily believe the information in such documents to be true.

## **Background**

4. I am swearing this Affidavit in support of an Application by TD and TD Equipment Financing Canada (“**TDEF**”) seeking to appoint Albert Gelman Inc. (“**AGI**”) as interim receiver over the respondent Noreast Foods Ltd. (“**Noreast**”) pursuant to s. 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”).

5. On or about May 24, 2019, the Applicants issued their Notices of Intention to Enforce Security pursuant to s. 244 of the BIA to both Noreast and Aerdon Continental Corp. (“**Aerdon**”), together with demand letters seeking payment in full of the amounts owing under the various loans to Noreast by TD and TDEF (collectively, the “**Bank**”) set out below.

6. The monetary defaults in respect of the Bank’s loans to Noreast have not been remedied, and the Bank has not been provided with the required evidence that its security over the assets and undertaking of Noreast is not in jeopardy, or that the business operations of Noreast are sound. As a result, given the financial distress currently being experienced by Noreast, the Bank seeks the appointment of an interim receiver so as to obtain a better understanding of Noreast’s business operations and assess next steps with respect to the Bank’s security over Noreast.

## **The Respondents**

7. TD is incorporated pursuant to the laws of Canada. TDEF is the equipment financing division of TD.

8. Noreast is incorporated pursuant to the laws of Ontario. Bin Chen is an officer, director and the majority shareholder of Noreast. As detailed below, Christine Qun Xu has been a minority shareholder in Noreast since about November, 2017. Attached hereto and marked as **Exhibit "1"** to this affidavit is a copy of a Corporate Profile Report for Noreast dated May 5, 2019.

9. Aerdon is a holding company for Bin Chen, who is its sole officer and director. Attached hereto and marked as **Exhibit "2"** to this affidavit is a copy of a Corporate Profile Report for Aerdon dated May 22, 2019.

10. The registered office address for both Aerdon and Noreast set out in the Corporate Profile Reports for those companies is 51 Kentish Crescent, Scarborough, which I understand to be Bin Chen's residence.

11. Noreast is a manufacturer and distributor of soy milk and tofu, as well as distributor of kelp. It has been carrying on business since 2013. Noreast's customers mainly consist of Asian supermarkets (approximately 85%) and Asian restaurants. Bin Chen has advised TD that Noreast holds over 80% of the market share for tofu sales in the Greater Toronto Area. Noreast's tofu is packaged under several brands including Northeast, Guway, Sou Fresh and Sou Organic. Noreast currently operates out of a 32,000 square foot leased premises at 1170 Birchmount Road, unit 2, Toronto (the "**Leased Premises**"). Based on the Bank's records, Noreast has had anywhere between 7 and 20 employees.

12. When TD made the loans set out below to Noreast, it was carrying on business at three different locations in Toronto: 1220 Markham Road, Unit 2, 60 Weybright Court, Unit 5, and 705 Progress Road, Unit 33. Bin Chen has advised TD that Noreast is no longer carrying on business at any of those locations, and all Noreast operations have been consolidated at the Leased Premises.

### **The TD/TDEF Loans and Related Security**

13. On or about April 18, 2017, TD established a Demand Operating Facility in favour of Noreast in the amount of \$200,000.00 (the “**TD Operating Line**”), in conjunction with a Visa credit card facility in favour of Noreast with a credit limit of \$25,000.00 (the “**TD Visa Facility**”), as part and parcel of a \$600,000.00 equipment finance loan by TDEF to finance a new tofu production line. Attached hereto and marked as **Exhibit “3”** to this affidavit is copy of TD’s Demand Operating Facility Agreement with Noreast dated April 18, 2017 (“**DOFA**”).

14. Noreast and Aerdon both granted TD a security agreement (the “**TD Chattel Mortgage**”) over the new tofu production equipment (the “**Original TD Equipment**”). Attached hereto and marked as **Exhibit “4”** to this affidavit is copy of the TD Chattel Mortgage agreement dated April 19, 2017 (to TD’s knowledge, the Original TD Equipment ended up being in the name of Noreast only, and not the holding company Aerdon).

15. Noreast and Aerdon also each granted TD a general security agreement (the “**TD GSAs**”) over their assets and undertaking, save and except over the Klad Equipment (as defined below). Attached hereto and marked as **Exhibit “5”** to this affidavit is copy of the TD GSAs dated April 19, 2017.

16. On or about May 8, 2017, Noreast entered into separate loan agreement with TDEF directly for \$600,000.00 to finance the Original TD Equipment. The term of the loan was for 60 months, with monthly payments of \$11,189.96, at an interest rate of 4.48% *per annum* (the “**First TDEF Loan**”). Attached hereto and marked as **Exhibit “6”** to this affidavit is a copy of the First TDEF Loan agreement.

17. Noreast also gave TDEF a separate security agreement over the Original TD Equipment (the “**First TDEF Chattel Mortgage**”). Attached hereto and marked as **Exhibit “7”** to this affidavit is a copy of the First TDEF Chattel Mortgage dated May 8, 2017.

18. Bin Chen provided TD with a guarantee of the debts and obligations of Noreast and Aerdon. Noreast also guaranteed the debts and obligations of Aerdon to TD, and vice versa. Attached hereto and marked as **Exhibit “8”** to this affidavit is a copy of the unlimited guarantees of Bin Chen, Noreast and Aerdon given to TD (the “**TD Guarantees**”).

19. On or about June 28, 2018, the TD Operating Line was amended to increase the limit to \$300,000.00. Attached hereto and marked as **Exhibit “9”** to this affidavit is a copy of the amended DOFA.

20. On or about July 24, 2018, after purchasing additional tofu production equipment (the “**Additional TDEF Equipment**”) which Noreast valued at approximately \$3 million (including installation costs), Noreast entered into a second loan agreement with TDEF for \$2,823,510.58, for another five year term, at an interest rate of 5.36% per annum. The monthly payments were \$53,750.07 (the “**Second TDEF Loan**”). Attached hereto and marked as **Exhibit “10”** to this affidavit is a copy of the Second TDEF Loan agreement dated July 24, 2018.

21. The purpose of the Second TDEF Loan was to provide working capital to Noreast following its purchase and installation of the Additional TDEF Equipment. Noreast gave TDEF another security agreement, this time in respect of the Additional TDEF Equipment (the “**Second TDEF Chattel Mortgage**”). Attached hereto and marked as **Exhibit “11”** to this affidavit is a copy of the Second TDEF Chattel Mortgage dated July 24, 2018.

22. The proceeds from the Second TDEF Loan were going to be used by Noreast, for among other things, repayment of Noreast's Axiom Debt (as defined below), partial repayment of a portion of Noreast's shareholder loans from Christin Qun Zhu (see below), and to fund working capital requirements.

**Klad Rentals Incorporated and Axiom Leasing Inc.**

23. Noreast had entered into a lease (the "**Klad Lease**") with Klad Rentals Incorporated ("**Klad**") on or about October 1, 2016. Noreast had granted Klad a general security agreement over the equipment covered by the Klad Lease, and certain additional equipment (collectively, the "**Klad Equipment**"). The Klad Lease was assigned to Axiom Leasing Inc. ("**Axiom**"), and on or about April 23, 2018, Axiom issued a notice pursuant to section 63(4) of the *Ontario Personal Property Security Act* ("**PPSA**") in respect of the Klad Equipment. Axiom alleged over \$360,000.00 was owing under the Klad Lease, including interest and costs (the "**Axiom Debt**"). Attached hereto and marked as **Exhibit "12"** to this affidavit is a copy of Axiom's notice pursuant to section 63(4) of the PPSA dated April 23, 2018.

24. As set out in an Acknowledgement in favour of TD that Klad executed on May 3, 2017, Klad's security over Noreast was limited to the Klad Equipment. Attached hereto and marked as **Exhibit "13"** to this affidavit is a copy of the Acknowledgment executed by Klad on May 3, 2017, in favour of TD.

**Christine Qun Xu and 10519219 Ontario**

25. Prior to making the Second TDEF Loan, TD was advised that Bin Chen transferred approximately 18% of his shares in Noreast to Christine Qun Xu in or about November, 2017 (Bin Chen remained the only other shareholder in Noreast).

26. According to the Ontario PPSA registry, on or about November 22, 2017, Christine Qun Xu filed a PPSA registration against Noreast in respect of an alleged general security agreement allegedly securing a debt to her by Noreast of \$1 million (the “**Xu GSA**”). Attached hereto and marked as **Exhibit “14”** to this affidavit is a copy of the results of a PPSA search against Noreast dated May 22, 2019.

27. On December 12, 2017, 10519219 Canada Corp. filed a PPSA registration over Noreast’s “accounts” in respect of an “assignment by the debtors (Bin Chen and [Noreast]) to the secured party (10519219 Canada Corp.) of all debts and liabilities, present and future, of Christine Qun Xu owed to the debtors and all proceeds thereof”, allegedly securing a debt of \$500,000.00. Li-Zen Li is the director of 10519219 Canada Corp. Attached hereto and marked as **Exhibit “15”** to this affidavit is a copy of a Federal Corporation Information report for 10519219 Canada Corp.

28. TD did not subordinate any of its security (the TD Chattel Mortgage, the TD GSAs, the First TDEF Chattel Mortgage, and the Second TD Chattel Mortgage), to Christine Qun Xu (or to 10519219 Canada Corp., or for that matter anyone else other than Klad/Axiom).

### **Noreast's Bank Debts**

29. As of June 6, 2019, the amount owing under the TD Operating Line was \$610,939.00. The TD branch handling the Noreast account kept providing temporary approvals to increase the limit under the TD Operating Line, and it was never brought back under the authorized \$300,000.00 limit after February 21, 2019. Attached hereto and marked as **Exhibit "16"** to this affidavit is a copy of the account history for the TD Operating line to June 6, 2019.

30. As of May 21, 2019, the amount owing under the First TDEF Loan was \$402,838.56 and the amount owing under the Second TDEF Loan was \$2,795,003.64. The loan payments due in April and May 2019 under the First TDEF Loan have not been made. Attached hereto and marked as **Exhibit "17"** to this affidavit is a copy of the payout statements for the First TDEF Loan and the Second TDEF Loan as of May 21, 2019.

31. On or about May 13, 2019, TD made demand on the TD Operating Line. On or about May 24, 2019, the Banks' lawyers herein (Blaney McMurtry LLP) issued demands and related s. 244 notices under the BIA on behalf of the Bank to both Noreast and Aerdon in respect of the TD Operating Line, the TD Visa Facility, the First TDEF Loan and the Second TDEF Loan (the Bank also made demand under the TD Guarantees). Attached hereto and marked as **Exhibit "18"** to this affidavit is a copy of the TD demand for payment under the TD Operating Line made May 13, 2019, and the demands for payment made on May 24, 2019, with the related notices pursuant to s. 244 of the BIA made by Blaney McMurtry LLP on behalf of the Bank.



**Albert Gelman Inc.**

32. Pursuant to a letter executed by Noreast on or about May 22, 2019, (the “**AGI Engagement Letter**”), AGI was appointed as consultant “for the purpose of reviewing and assessing the assets, financial position, business and operations of [Noreast] and advising [the Bank] in connection with the Debtor’s indebtedness to [the Bank]. Attached hereto and marked as **Exhibit “19”** to this affidavit is a copy of AGI Engagement Letter executed by Noreast on or about May 22, 2019.

33. Noreast required one amendment to the Bank’s proposed AGI Engagement Letter. Specifically, Noreast amended section 3(d) under the heading “Debtor’s Acknowledgment, Agreement and Undertaking” by adding a phrase as highlighted below:

3. The Debtor undertakes to co-operate with the Consultant in completing this engagement and in that regard it shall:

...

d. arrange for its employees, officers, creditors, suppliers, investors, customers and any other stakeholder to meet with the Consultant to provide any information, analysis or explanation as required by the Consultant; and *need prior consent from debtor prior to contact any outside parties.*

**Noreast’s Operations**

34. I attended at the Leased Premises on May 14, 2019, at which time I was given a tour of the premises. Bryan Gelman of AGI attended at the Leased Premises on May 27, 2019. AGI provided Bin Chen with a series of questions on May 31, 2019, regarding, among other things, Noreast’s operations and finances, and only received initial answers to any of these questions on June 24,

2019 (as set out in paras. 41 and 42 below). Attached hereto and marked as **Exhibit “20”** to this affidavit is AGI’s email to Bin Chen dated May 31, 2019, and the follow-up emails since then regarding the status of his responses as of June 10, 2019.

35. I also delivered a series of questions to Bin Chen on June 5, 2019, regarding Noreast’s operations and finances, and they have yet to be answered. Attached hereto and marked as **Exhibit “21”** to this affidavit is a copy of my exchange of emails with Bin Chen on June 5, 2019.

36. The only financial information that Noreast and Bin Chen have provided TD and AGI since Bryan Gelman and I attended at the Leased Premises is a one page “Profit & Loss” statement for 2018, unaudited financials for 2015, 2016 and 2017, and a manually prepared schedule of accounts receivable as of April 30, 2019 (collectively, the “Confidential Information”), which are attached hereto and marked as **Confidential Exhibit “22”** to this affidavit.

#### **Accounts Receivable and Invoices**

37. I am advised by both Bryan Gelman and Adam Moskowitz of Platinum Asset Services that Bin Chen told them that a number of Noreast records, including purchase invoices, were destroyed in a recent flood at the Leased Premises. Attached hereto and marked as **Exhibit “23”** to this affidavit is a copy of sample Noreast invoice to its customers, as well as photographs of the Leased Premises that Mr. Gelman took on a recent attendance.

38. Through discussions with Bin Chen, Bryan Gelman learned that Noreast’s operations are manual in nature such that Noreast staff loads up its trucks with product each day, and its drivers drive around to Noreast’s customers, offering product for sale, delivering as required, issuing invoices on site, and collecting payments by cheque or cash. Notwithstanding the extent of

Noreast's sales, there is currently no bookkeeping software system in place to keep track of Noreast's sales and accounts receivables. Tabulation of the invoices rendered by Noreast, and payments collected by its drivers, has to be manually calculated. Bin Chen advised me that Noreast collects significant amounts of these receivables in cash.

### **Inventory/Appraisal**

39. AGI arranged for Platinum Asset Services to attend the Leased Premises on May 28, 2019, for the purposes of carrying out an inventory and appraisal of the equipment and assets located at the Leased Premises (the "**Initial Inspection**"). Platinum Asset Services attended again on June 4, 2019, to attempt to complete the Initial Inspection. Adam Moskowitz, the president of Platinum Asset Services, has advised me that the majority of the manufacturing equipment has been imported from China, that the control panels are in Chinese without an English toggle button, some of the equipment does not have serial numbers and much of the equipment appears to have loose fitting wiring that may not confirm with electrical safety code and may not be properly installed.

40. Bin Chen has taken the position that the AGI Engagement Letter does not allow Platinum Asset Services to contact manufacturers and/or resellers of the same or similar equipment. However, Mr. Moskowitz has advised me that Platinum Asset Services must do so in order to do the necessary research to appraise the equipment.

41. On June 12, 2019, Justice Chiappetta made an Order requiring, among other things, that Noreast and Aerdon produce for AGI a significant amount of financial information and documentation. Attached hereto and marked as **Exhibit "24"** to this affidavit is a copy of the Order of Justice Chiappetta made June 12, 2019, and the related Endorsement.

42. By way of email dated June 24, 2019, counsel for Noreast and Aerdon provided their clients' initial response to the Order of Justice Chiappetta made June 12, 2019. Attached hereto and marked as **Exhibit "25"** to this affidavit is a copy of the email from Howard Manis of Macdonald Sager Manis LLP, to the Bank's counsel and AGI, dated June 24, 2019 (save and except for the photos of the Leased Premises).

**Landlord**

43. The landlord of the leased premises is 1176726 Ontario Limited. Noreast has been in repeated arrears of its rent for the Leased Premises, and its June rent payment for \$34,276.01 was returned by TD (it was drawn on the TD Operating Line, which is already over its limit by over \$300,000.00).

44. AGI has consented to be appointed as interim receiver over Noreast.

45. This affidavit is sworn in support of the Bank's application for, among other things, an Order to appoint AGI as interim receiver over Noreast, and for no improper purpose.

**SWORN BEFORE ME**

at the City of Toronto,

in the Province of Ontario,

on June 24, 2019

A Commissioner for Taking Affidavits

Francis Michael DiNino, a Commissioner  
Etc., Province of Ontario, for the  
Toronto-Dominion Bank  
Expires May 13, 2020

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