

AMENDED THIS July 16/19 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À  
 RULE/LA RÈGLE 26 02 (A)  
 THE ORDER OF  
L'ORDONNANCE DU  
DATED / FAIT LE

Court File No. CV-19-00621751-00CL

C. Irwin  
REGISTRAR / GREFFIER  
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE  
ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

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 47 243 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**AMENDED NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Applicant. The claim made by the Applicant appears on the following pages.

**THIS APPLICATION** will come on for a scheduling hearing on **Wednesday, June 12, 2019, at 9:30 a.m.**, before a judge in Chambers at 330 University Avenue, 8<sup>th</sup> Floor, Toronto.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office

where the application is to be heard as soon as possible, but not later than 2:00p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date June 11, 2019 Issued by Alexandra Medeiros Cardoso  
Local Registrar

Address of 330 University Avenue, 8<sup>th</sup> Floor  
court office: Toronto, ON

**TO: NOREAST FOODS LTD.**  
51 Kentish Crescent  
Toronto, Ontario  
M1S 2Z3

**TO: AERDON CONTINENTAL CORP.**  
51 Kentish Crescent  
Toronto, Ontario  
M1S 2Z3

## APPLICATION

1. The Applicants The Toronto-Dominion Bank (“**TD**”) and TD Equipment Finance Canada Inc. (“**TDEF**”) (collectively, the “**Bank**”) make an application for an Order:
  - (a) if necessary, abridging the time for service of the Notice of Application and Application Record herein, validating service of the Notice of Application and Application Record, and dispensing with further service thereof;
  - (b) that the Respondent Noreast Foods Ltd. (“**Noreast**”) provide the Bank, Albert Gelman Inc. (“**AGI**”) and Platinum Asset Services Inc. (“**Platinum**”), and any other consultant or appraiser that AGI deems necessary, within twelve hours of any written request from any of them, with unrestricted access to the property municipally known as 1170 Birchmount Road, Unit 2, Toronto (the “**Leased Premises**”), for the purposes of assessing, and determining the value of, the equipment and machinery located at the Leased Premises;
  - (c) that Noreast and the Respondent Aerdon Continental Corp. (“**Aerdon**”) forthwith provide AGI with:
    - (i) a schedule, including serial numbers, of all the equipment and machinery currently located at the Leased Premises, and any and all equipment and machinery in the name of either or both Respondents located anywhere else other than the Leased Premises (collectively, the “**Equipment**”);
    - (ii) the purchase invoices for the Equipment and proof of payment;
    - (iii) weekly schedules setting out their sales and accounts receivable, with the required back-up information (the invoices rendered, and evidence of payments received);
    - (iv) weekly schedules setting out their expenses and accounts payable, with the required back-up information (the invoices received, and evidence of payments paid);
    - (v) any and all loan and/or lease agreements (and any related security agreements) between Klad Rentals Incorporated and the Respondents, or either of them;

- (vi) any and all loan and/or lease agreements (and any related security agreements) between Axiom Leasing Inc. and the Respondents, or either of them;
  - (vii) any and all loan and/or lease agreements (and any related security agreements) between Christine Qun Xu and the Respondents, or either of them;
  - (viii) any and all loan and/or lease agreements (and any related security agreements) between 10519219 Canada Corp. and the Respondents, or either of them;
  - (ix) any and all shareholder agreements involving the Respondents (or either of them) and Christine Qun Xu and/or Bin Chen;
  - (x) a schedule setting out how the proceeds of the Second TDEF Loan (as defined below) made to Noreast, were allocated by Noreast;
  - (xi) any and all banking records of the Respondents with the Royal Bank of Canada since April, 2017, to the current date;
  - (xii) any and all of the Respondents' records since April 2017, relating to employee payroll and the Canada Revenue Agency, including payroll accounts, payroll audits and names of auditors, HST and corporate tax, and tax refunds claimed by the Respondents or either of them;
  - (xiii) the Respondents' financial books and records since 2017;
  - (xiv) the lease for the Leased Premises;
  - (xv) proof that utility payments and the lease for the Leased Premises, are in good standing; and
  - (xvi) any remaining information and documentation not set out above, and requested in AGI's email to Bin Chen marked as Exhibit "20" to the affidavit of Jacinto Jack Borges of TD sworn in support of the Application herein;
- (d) declaring that there are no limitations on the parties that the Bank, AGI and/or Platinum can contact regarding the assessment, valuation and sale of the Equipment, including but not limited to vendors, manufacturers, appraisers, liquidators, and the landlord of the Leased Premises;
- (e) appointing AGI as ~~interim~~-receiver over Noreast and Aerdon, pursuant to s. 47 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**CJA**");

- (f) sealing from the public record and treating as confidential the financial information of Noreast marked as Confidential Exhibit “23” to the affidavit of Jacinto Jack Borges sworn in support of this Application (the “**Confidential Information**”), until further order of the Court; and,
- (g) such further and other relief as this Honourable Court deems just.

2. The grounds for the Application are:

**Background**

- (a) TD is incorporated pursuant to the laws of Canada. TDEF is the equipment financing division of TD;
- (b) Noreast is incorporated pursuant to the laws of Ontario, and is a manufacturer and distributor of soy milk and tofu located in Scarborough, that has been carrying on business since 2013. Its customers mainly consist of Asian supermarkets (approximately 85%) and Asian restaurants, and Noreast has advised TD that it holds over 80% of the market share of tofu sales in the Greater Toronto Area;
- (c) 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 November, 2017;
- (d) Aerdon is Bin Chen’s holding company. Bin Chen is the sole officer and director;
- (e) Noreast currently carries on business at a 32,000 square foot manufacturing facility located at the Leased Premises;

### **The Bank Loans and Related Security**

- (f) 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**”), as part and parcel of a \$600,000.00 equipment finance loan from TDEF to Noreast to finance a new tofu production line;
- (g) TD also established a Visa credit card facility in favour of Noreast, with a credit limit of \$25,000.00 (the “**TD Visa Facility**”);
- (h) Noreast and Aerdon granted TD a security agreement over the equipment to be financed by TDEF (the “**Original TD Equipment**”) as security for the TD Operating Line and the TD Visa Facility (the “**TD Chattel Mortgage**”);
- (i) Noreast and Aerdon also each granted TD a general security agreement (the “**TD GSA**”) over their assets and undertaking, save and except over the Klad Equipment (as defined below);
- (j) on or about May 8, 2017, Noreast entered into a separate loan agreement with TDEF 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% (the “**First TDEF Loan**”);
- (k) Noreast also gave TDEF a separate security agreement over the Original TD Equipment (the “**First TDEF Chattel Mortgage**”);
- (l) 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, and vice versa);
- (m) on or about June 28, 2018, the TD Operating Line was amended to increase the limit to \$300,000.00;

- (n) on or about July 24, 2018, Noreast entered into a second loan agreement with TDEF for \$2,823,510.58, for another 60 month term, at an interest rate of 5.36%. The monthly payments were \$53,750.07 (the “**Second TDEF Loan**”);
- (o) the purpose of the Second TDEF Loan was to provide working capital to Noreast following its purchase and installation of additional tofu production equipment (the “**Additional TDEF Equipment**”);
- (p) Noreast gave TDEF an additional security agreement in respect of the Additional TDEF Equipment (the “**Second TDEF Chattel Mortgage**”);

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

- (q) 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**”);
- (r) the Klad Lease was eventually assigned to Axiom Leasing Inc. (“**Axiom**”);
- (s) on or about April 23, 2018, Axiom issued its Notice pursuant to section 63(4) of the 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**”);

**Christine Qun Xu and 10519219 Canada Corp.**

- (t) on or about November 22, 2017, Christine Qun Xu acquired an 18% interest in Noreast, and filed a PPSA registration against Noreast in respect of a general security agreement allegedly securing a debt of \$1 million to Christine Qun Xu by Noreast;

- (u) on December 12, 2011, 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.;

### **The Bank's Security Position**

- (v) TD's security over Noreast was subordinated to Klad/Axiom, but the Axiom Debt was to be paid out from the proceeds of the Second TDEF Loan;
- (w) at least \$500,000.00 from the proceeds of the Second TDEF Loan were to be used to pay Noreast's debt to Christine Qun Xu;
- (x) TD did not subordinate its security to the Christine Qun Xu (or to 10519219 Canada Corp., or any other party other than Klad/Axiom);
- (y) as a result, TD's position is that it holds first ranking properly perfect security over the assets and undertaking of Noreast and Aerdon, including the Klad Equipment;

### **The Bank Debts**

- (z) 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;
- (aa) on or about May 24, 2019, the Bank issued its demands and related s. 244 notices under the BIA to both Noreast and Aerdon;
- (bb) Noreast has not made a payment on the First TDEF Loan in over two months;



(cc) as of June 6, 2019, the amount owing under the TD Operating Line is \$610,939.00, as temporary bulges to the TD Operating Line were not repaid;

**Albert Gelman Inc.**

(dd) pursuant to a letter executed by Noreast on or about May 22, 2019, (the “**AGI Engagement Letter**”), AGI was appointed by Noreast as consultant “for the purpose of reviewing and assessing the assets, financial position, business and operations of [Noreast] and advising [TD] in connection with the Debtor’s indebtedness to [TD]”;

(ee) Noreast required one amendment to TD’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**

(ff) AGI attended at the Leased Premises on May 27, 2019. It provided Bin Chen with a series of questions on May 31, 2019, regarding, among other things, Noreast’s operations and finances, but has yet to receive any answers to any of the questions;

- (gg) TD 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;
- (hh) the only financial information that Noreast and Bin Chen have provided TD and AGI 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);
- (ii) Noreast alleges that a number of records, including purchase invoices, were destroyed in a recent flood at the Leased Premises;
- (jj) through discussions with Bin Chen, Bryan Gelman of AGI 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. There is currently no bookkeeping system in place to keep track of Noreast's accounts receivables, other than manual tabulation of the invoices rendered by Noreast and payments collected by its drivers. Bin Chen advised the TD affiant herein (Jacinto Jack Borges) that Noreast collects significant amounts of these receivables in cash;
- (kk) AGI arranged for Platinum to attend the Leased Premises on May 28, 2019, to carry out an inventory and appraisal of the manufacturing equipment located at the Leased Premises, and for a follow-up attendance on June 4, 2019, to attempt to complete the inspection;
- (ll) among other things, the inspection revealed that the majority of the manufacturing equipment has been imported from China, that the control panels are in Chinese with no English toggle button, some of the equipment does not have serial numbers, and much of

the equipment appears to have loose fitting wiring which may not confirm with electrical safety code and may not be properly installed;

- (mm) Bin Chen has taken the position that the AGI Engagement Letter does not allow Platinum to contact the manufacturers and/or resellers of the same or similar equipment. However, Platinum must do so in order to appraise the equipment;
- (nn) Noreast has been in repeated arrears of its rent for the Leased Premises to its landlord 1176726 Ontario Limited. Noreast's rent payment for June, 2019, for \$34,276.01 was returned by TD for insufficient funds (it was drawn on the TD Operating Line, which was already over its limit by over \$300,000.00);
- (oo) Noreast is no longer depositing its receipts with TD, but TD is aware that it has a banking relationship with the Royal Bank of Canada;

**~~Interim Receiver~~**

- (pp) given ~~Noreast's market share, and~~ the financial distress currently being experienced by Noreast, it is just, convenient and in TD's interests for it to seek the appointment of an ~~interim receiver over Noreast and Aerdon so as to obtain a better understanding of Noreast's business operations and assess next steps with respect to Bank's security;~~
- (qq) the Bank' security provides for the appointment of a receiver upon default;
- (rr) AGI has consented to act as ~~interim~~ receiver of Noreast and Aerdon;
- (ss) if made public at this stage, the Confidential Information could potentially negatively affect Noreast's competitive position in the market, and the sale value of Noreast;
- (tt) the salutary effects of sealing the Confidential Information outweighs the deleterious effects of doing so;

- (uu) section 47 243 of the *BIA* and section 101 of the CJA;
  - (vv) Rule 3.02 of the *Rules of Civil Procedure*; and,
  - (ww) such further and other grounds as counsel may advise and this Honourable Court may accept.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Jacinto Jack Borges;
  - (b) the consent of AGI to act as ~~interim~~ receiver of Noreast and Aerdon; and,
  - (c) such further and other evidence as this Honourable Court may permit.

June 11, 2019

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Lawyers for the Applicants

**THE TORONTO-DOMINION BANK, ET AL.**  
Applicants

and

Court File No.

**NOREAST FOODS LTD., ET AL.**  
Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**AMENDED NOTICE OF APPLICATION**

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