

**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 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**

**AIDE MEMOIRE OF THE RECEIVER, ALBERT GELMAN INC.  
(Motion returnable October 31, 2024)**

1. Albert Gelman Inc. (“**AGI**”), in its capacity as court-appointed receiver (the “**Receiver**”), without security, of the assets, undertakings and property of Noreast Foods Ltd. (“**Noreast**”) and Aerdon Continental Corp. (“**Aerdon**” and, together with Noreast, the “**Debtors**”), and all proceeds thereof (collectively, the “**Property**”), is bringing a motion (the “**Motion**”) for an Order (the “**Discharge Order**”), among other things:

- (a) approving the Second Report of the Receiver, dated October 18, 2024 (the “**Second Report**”), and the activities of the Receiver described therein;
- (b) approving the Receiver’s Final Statement of Receipts and Disbursements;
- (c) approving the fees and disbursements of the Receiver and its counsel, Aird & Berlis LLP (“**A&B**”);
- (d) approving the distribution of the remaining proceeds available in the estate of the Debtors;
- (e) discharging AGI as Receiver and releasing AGI from any and all liability that the Receiver has or may hereafter have by reason of, or in any way arising from, the acts or omissions of AGI, while acting in its capacity as Receiver, except for any gross negligence or wilful misconduct on the Receiver’s part.

2. This Aide Memoire has been prepared to assist the Court at the hearing of the Motion.

## **BACKGROUND**

3. Noreast was a manufacturer of soy milk and tofu products, operating from rented premises in Scarborough and selling and delivering its products to supermarkets and restaurants. Aerdon was a holding company, wholly-owned by Noreast.<sup>1</sup>

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<sup>1</sup> Second Report of the Receiver, dated October 18, 2024, Motion Record at Tab 4, at [paras 15-16](#). [**Second Report**]

4. The Receiver was appointed by Order of the Honourable Justice Conway dated July 26, 2019 (the “**Receivership Order**”), upon the application of the Debtors’ primary secured creditor, The Toronto-Dominion Bank (“**TD Bank**”).<sup>2</sup>

5. On September 17, 2019, the Court issued an Order which approved, among other things, a liquidation agreement between the Receiver and Danbury Global Ltd. (“**Danbury**”) dated August 27, 2019 (the “**Liquidation Agreement**”).<sup>3</sup>

#### **APPROVAL OF ACTIVITIES AND FEES**

6. Upon completion of its duties, the Receiver is required by subsection 246(3) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, C. B-3, as amended (the “**BIA**”) to prepare a final report and a statement of accounts, containing the following information:

- (a) the Receiver’s final statement of receipts and disbursements;
- (b) details of the manner of distribution of the proceeds realized from the property of which the Receiver had taken possession or control; and
- (c) details of the disposition of any property of which the receiver had taken possession or control and that is not accounted for in the final statement of receipts and disbursements.<sup>4</sup>

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<sup>2</sup> [Receivership Order](#), Second Report, at Appendix A, Motion Record at Tab 4A.

<sup>3</sup> [Liquidation Order](#), Second Report, at Appendix B, Motion Record at Tab 4B.

<sup>4</sup> [Bankruptcy and Insolvency Act R.S.C. 1985, C. B-3, as amended](#), at [subsection 246\(3\) \[BIA\]](#); [Bankruptcy and Insolvency General Rules, CRC, c 368](#), at [section 127](#).

7. This Court has inherent jurisdiction to review and either approve or disapprove of the activities of its Court-appointed officer, the Receiver, after the fact.<sup>5</sup>

8. The Receiver has filed with the Court its Second Report and seeks approval of the same. Appended to the Second Report is the Receiver's final statement of receipts and disbursements for the period ending October 17, 2024 and the Receiver seeks approval of the same.<sup>6</sup>

9. Paragraph 2 of the proposed form of Discharge Order approving the Second Report and the Receiver's activities contains the limitation of reliance language generally required by the Court.<sup>7</sup>

10. The Receivership Order directs and empowers AGI to pass its accounts from time to time, and to include any necessary fees and disbursements of its legal counsel in the passing of its accounts.<sup>8</sup> AGI and its counsel, A&B, have accrued fees and expenses in their capacity as Receiver, or counsel thereto, which fees and expenses require the approval of this Court pursuant to the Receivership Order.

11. The fees and disbursements of the Receiver and its counsel are secured by the Receiver's Charge created by the Receivership Order, which Receiver's Charge is subordinate only to the following charges created by the *BIA*:

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<sup>5</sup> *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (OCJ Gen Div), at para. 3; affirmed by *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA).

<sup>6</sup> [Second Report; Receiver's Final Statement of Receipts and Disbursements](#), Second Report, at Appendix F, Motion Record at Tab 4F.

<sup>7</sup> Proposed Form of Discharge Order, Motion Record Tab 2, at [para 2](#).

<sup>8</sup> Receivership Order, at [para 20](#).

- (a) the subsection 14.06(7) charge for environmental damages, attaching to damaged real property;
- (b) the subsection 81.4(4) charge for unpaid wages, attaching to current assets; and
- (c) the subsection 81.6(2) charge for unpaid pension amounts, attaching to all assets.<sup>9</sup>

## **DISTRIBUTION**

1. The Receiver currently holds \$222,868 in its estate account.<sup>10</sup>
2. The Canada Revenue Agency (“**CRA**”) has set off (i) all deemed trust amounts owing by Noreast for unremitted deductions at source against (ii) HST refund amounts owed to Noreast.<sup>11</sup>
3. With the CRA deemed trust claims satisfied, the first ranking claim to the proceeds of the property (subject to some degree to the Receiver’s Charge) is a claim by Service Canada for \$24,672.59 in payments made to former employees of Noreast under the Wage Earner Protection Program.<sup>12</sup> This claim is subrogated to the employees’ secured claim under section 81.4 of the *BIA*.<sup>13</sup>
4. The second ranking claim to the proceeds of the property is that of TD Bank, whose approximately \$3.5 million claim is not expected to be satisfied.<sup>14</sup> The Receiver has obtained an opinion from independent counsel which confirms that TD Bank holds a valid, enforceable and properly perfected security interest in the Property.<sup>15</sup> Searches of the Ontario Personal Property

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<sup>9</sup> Receivership Order, at [para 19](#); *BIA* ss. [14.06\(7\)](#), [81.4\(4\)](#) and [81.6\(2\)](#).

<sup>10</sup> Second Report, at [para 22](#).

<sup>11</sup> *Ibid*, at [para 23](#).

<sup>12</sup> *Ibid*, at [para 24](#).

<sup>13</sup> *Wage Earner Protection Program Act, SC 2005, c 47, s 1*, at sections [36](#) and [36.1](#). [*WEPPA*]

<sup>14</sup> Second Report, at [para 25](#).

<sup>15</sup> *Ibid*.

Security Registration System show that TD Bank is the only creditor with registrations remaining against the Debtors pursuant to the *Personal Property Security Act* (Ontario).<sup>16</sup>

5. Subject to payment of the fees and disbursements of the Receiver and its counsel, the Receiver proposes to distribute:

- (a) \$24,672.59 to Service Canada; and
- (b) any remaining funds in its possession or that may, at a later date, come into its possession, to TD Bank, up to the amount of the Debtors' indebtedness to TD Bank.

## **DISCHARGE**

6. The Receiver has sold or realized upon the Property to the best of its ability, including through Danbury in accordance with the Court-approved Liquidation Agreement, and the administration of the Receivership of the Debtors has otherwise come to an end.

7. The Receivership Order provides that the Receiver shall incur no liability or obligations as a result of its appointment or the performance of its duties, save and except for (a) any gross negligence or wilful misconduct on its part, (b) its liability under the *BIA* for payment of super-priority wage and pension amounts or (c) its duties under *WEPPA*.<sup>17</sup> The *BIA* super-priority claims will be satisfied upon the making of the distribution to Service Canada and the Receiver has completed its duties under *WEPPA*.<sup>18</sup>

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<sup>16</sup> Affidavit of Service of Christine Doyle, at [Exhibit "H"](#).

<sup>17</sup> Receivership Order, at [para 18](#); *BIA*, at subsections [81.4\(5\)](#) and [81.6\(3\)](#); *WEPPA*, at [section 21](#).

<sup>18</sup> Second Report, at [s. 20\(o\)](#).

8. The discharge language in the proposed form of Discharge Order tracks the language in the Model Order, including the carve-out for negligence or wilful misconduct.<sup>19</sup>
9. The Receiver respectfully requests that this Court issue the Discharge Order including the relief summarized in paragraph 1 above.

Dated: October 30, 2024

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*Lawyers for Albert Gelman Inc., in its capacity  
as the court-appointed Receiver of Noreast  
Foods Ltd. and Aerdon Continental Corp.*

TO: **SERVICE LIST**

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<sup>19</sup> [Blackline of Proposed Discharge Order against Commercial List Model Discharge Order](#), Motion Record at Tab 3.

**SCHEDULE “A” TO AIDE MEMOIRE**

**Citations Without Hyperlinks**

*Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (OCJ Gen Div)

- see attached.

1993 CarswellOnt 216  
Ontario Court of Justice (General Division)

Bank of America Canada v. Willann Investments Ltd.

1993 CarswellOnt 216, [1993] O.J. No. 1647, 17 C.P.C. (3d) 296, 20 C.B.R. (3d) 223, 41 A.C.W.S. (3d) 662

**BANK OF AMERICA CANADA v. WILLANN INVESTMENTS  
LIMITED and CRANBERRY VILLAGE, COLLINGWOOD INC.**

Farley J.

Judgment: June 28, 1993

Docket: Doc. B22/91

Counsel: *Harry Underwood*, for receiver, Coopers & Lybrand Ltd.

*Stephen Schwartz*, for Prenor Trust Co. of Canada.

*Frank Bennett* and *John Spencer*, for Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario.

**Related Abridgment Classifications**

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

**Headnote**

Receivers --- Conduct and liability of receiver — General conduct of receiver

Receivers — Jurisdiction of court to approve activities and fees — Jurisdiction not requiring specific authorization in order establishing receivership — Court having inherent jurisdiction to review activities and fees of receiver.

Costs — Award of costs — Costs awarded against Crown for wasting court time with repeated adjournment requests and for failing to give advance notice of proposed jurisdiction challenge.

A receiver brought a motion for approval of its activities and fees as set out in two reports. The Crown raised an objection to the court's jurisdiction to hear the motion, arguing that there was nothing in the original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. The Crown argued that the court had jurisdiction only to pass the accounts and approve the fees of the receiver.

**Held:**

The receiver's activities and fees were approved.

The approval of the activities of a receiver, a court appointee and officer of the court, does not require specific words of authorization in the original order. The court has inherent jurisdiction to review and either approve or disapprove of the activities of a court-appointed receiver.

Creditors who take a reasonable position should not be punished by costs in the event they do not succeed. However, given the Crown's repeated requests for adjournments and resulting time wasted, the failure to give advance notice of the jurisdiction challenge and the late filings, an award of costs against the Crown was appropriate in this case.

**Table of Authorities**

**Cases considered:**

*80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd.*, [1972] 2 O.R. 280, 25 D.L.R. (3d) 386 (C.A.) — referred to

**Farley J.:**

1 This was a motion for an order approving the receiver's activities and fees (including the fees of its counsel) as set out in the receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid-morning today with no advance notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J.'s original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

2 I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993: see pp. 16-18). I again note that Mr. Bennett in his own text: F. Bennett, *Receiverships* (Carswell: Toronto, 1985), said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

3 It does not seem to me that approval of the activities of the receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however, such approval (if given) would be to the extent that the reports accurately summarized the material activities of the receiver. As to inherent jurisdiction, see *80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd.* (1972), 25 D.L.R. (3d) 386 (Ont. C.A.), at pp. 389-390.

4 I pause to note that it would be unusual and illogical that the receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

5 It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

6 I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

7 Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust, which will ultimately bear the cost, was supportive of the receiver. While "expensive", I found the fees in line with the complications and protraction of this receivership.

8 Costs were asked for in this instance. Mr. Bennett submitted that a cost award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position should not subject that creditor to a costs sanction. However, I view this day's events in a different light. In my view much time was wasted in

the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project.) Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions' request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time. Costs are awarded against the Crown payable forthwith to the receiver in the amount of \$1500 and Prenor Trust \$500.

*Order accordingly.*

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

Applicants

Respondents

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

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

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**AIDE MEMOIRE  
(Motion returnable October 31, 2024)**

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