

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE PROPOSAL OF
1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE
OF THE CITY OF SAULT STE. MARIE
IN THE PROVINCE OF ONTARIO

FIRST REPORT TO THE COURT
SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS TRUSTEE
UNDER THE PROPOSAL OF
1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE

January 21, 2022

I. INTRODUCTION AND BACKGROUND

1. On May 1, 2021, 1776690 Ontario Inc. cob The Country Way Health Food Store (“**Country Way**” or the “**Company**”) lodged with MNP Ltd. (“**MNP**” or the “**Proposal Trustee**”) a Proposal (the “**Proposal**”) pursuant to s.50.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP, acting in its capacity as Proposal Trustee, filed the Proposal with the Office of the Superintendent of Bankruptcy on May 3, 2021. The Company’s proposal proceedings are referred to herein as the “**Proposal Proceedings**”. A copy of the Proposal, the Company’s statement of affairs (“**SOA**”) and the Report of Trustee to the Creditors are attached as **Appendix “A”**, **Appendix “B”**, **Appendix “C”**, respectively. A copy of the Director’s resolution that authorized the Proposal Proceedings is attached as **Appendix “D”**.

2. Country Way is an Ontario corporation that operates a health food store in Sault Ste. Marie, Ontario from rented premises that are leased by a related company.
3. In November 2017, 2595418 Ontario Inc. (“**259 ON**”) acquired the shares of Country Way from two individuals (the “**Share Vendors**”). The \$2,200,000 purchase price for the shares, other than \$250,000, was financed by the Share Vendors. Under the terms of its agreements, including a Promissory Note, dated September 8, 2017, and a Share Purchase Agreement, dated August 7, 2017 (the “**SPA**” and collectively with the associated agreements, the “**Agreements**”) with the Share Vendors, 259 ON was required to make monthly payments to the Share Vendors of \$3,000 for October and November 2017, and then \$16,250 monthly from December 2017 until October 2027 and to make a final payment of \$10,250 on November 1, 2027. The obligations owing by 259 ON to the Share Vendors are secured by a pledge of the shares of Country Way that are owned by 259 ON. The Share Vendors do not have security over the Country Way and Country Way is not liable for the obligations owing by 259 ON to the Share Vendors. 259 ON has no assets other than the shares of the Country Way and 259 ON had been borrowing the money from the Country Way to make the monthly payments to the Share Vendors. 259 ON paid a total of \$765,570 to the Share Vendors as of April 23, 2021. As part of the Agreements, the Share Vendors executed a non-competition covenant restricting them from operating a similar business in the area for ten (10) years.
4. Country Way’s business has been severely impacted by the COVID-19 pandemic. In 2020, the Company’s gross monthly sales dropped by approximately 23% from pre-COVID levels. Because of the impact the pandemic had on its cash flows, the Company was unable to loan further monies to 259 ON to pay the Share Vendors and to service its debt obligations and to pay its suppliers and employees.
5. In response to the foregoing:
 - a. The Company commenced the Proposal Proceedings; and
 - b. on April 30, 2021, 2655396 Ontario Inc. (“**NumCo**”), a related corporation, filed an application pursuant to section 182 and 186 of the Ontario *Business*

Corporations Act (“**OBCA**”) for an arrangement (the “**Arrangement**”) involving itself and the Country Way,

as a means of: (i) stabilizing the Company; (ii) altering the Company’s share structure to sever the Company from 259 ON; and (iii) offering its creditors a dividend that would be higher than its creditors would receive in the event of a bankruptcy.

6. Information regarding the Proposal Proceedings has been posted to the Proposal Trustee’s case website (the “**Case Website**”) at <https://mnpdebt.ca/en/corporate/corporate-engagements/1776690-ontario-inc-aka-the-country-way-health-food-store>.

II. RESTRICTIONS

7. In preparing this Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the affidavit of Shonna Lynn Saari, an officer and director of NumCo and Country Way, dated April 26, 2021 (the “**Saari Affidavit**”) in connection with the Arrangement, the Company’s books and records, discussions with the Company’s management (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as specifically noted in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
8. The Proposal Trustee also bases its report on the Company’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice No. 9 (Cash Flow Statement). Certain of the information referred to in this First Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information

referred to in this First Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

9. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

III. PURPOSE OF THIS REPORT

10. The purpose of this Report (the “**First Report**”) is to:
 - a. Provide the Court with information in respect to the activities of the Company and the Proposal Trustee since the filing of the Proposal; and
 - b. provide the Proposal Trustee’s support for, and observations in respect of the Company’s request that the Court to grant an interim order (the “**Interim Order**”), *inter alia*:
 - i. authorizing that notice of the Arrangement involving the Company be included in the Proposal and be provided to the Company’s creditors by MNP providing only the creditors of Country Way with a copy of the Proposal as required by the BIA;
 - ii. amending the style of cause for the Proposal to include: **AND IN THE MATTER OF THE SECTION 182 AND 186 OF THE BUSINESS CORPORATIONS ACT, R.S.O. 1990 C. B. 16, AS AMENDED, AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 2655396 ONTARIO INC. AND INVOLVING 1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE**; and
 - iii. that the Arrangement shall be deemed to be approved if the Proposal is approved by the unsecured creditors of Country Way as required by the BIA.

IV. ACTIVITIES OF THE MONITOR

11. The Proposal Trustee has undertaken its statutory activities under the BIA, including attending a series of general meetings of creditors to consider the Company's creditors, each of which was adjourned to have the Court consider NumCo's application for the Interim Order. The general meeting of creditors is scheduled to reconvene on February 1, 2022.

V. FINANCIAL POSITION OF THE COMPANY

ASSETS

12. Country Way's assets are comprised of cash, inventory, furniture and store fixtures.

13. On the Date of the Proposal, the Company estimated the realizable value of its assets as follows:

Asset Description	Estimated Realizable Value (\$)
Inventory	54,000
Vehicles	12,000
Trade Fixtures	48,450
Total	114,450

14. Based on discussions with the Company's management, the current value of the inventory is consistent with the valuation on the SOA.

CREDITORS

Summary

15. Based on the SOA, the Company's liabilities are summarized as follow:

Liability Description	Estimated Liability (\$)
Secured	114,450

Preferred	Nil
Unsecured	458,385
Total	572,835

Secured Creditors

16. A search of the Ontario *Personal Property Security Act* (the “**PPSA**”) registry with a file currency of February 11, 2021, indicates that TNT Holdco Inc. (“**TNT**”), Toyota Credit Canada Inc. (“**Toyota**”) and Royal Bank of Canada (“**RBC**”) have each registered a secured interest against the Company.
17. Based on the SOA, the Company’s secured debt obligations to TNT and RBC (collectively, the “**Secured Creditors**”) total approximately \$262,082, of which approximately \$192,487 is due to TNT and \$69,595 is due to RBC.
18. Gowlings has provided the Proposal Trustee with an opinion confirming that, subject to certain standard assumptions and qualifications, that the TNT and RBC loans and security in respect of the Company are valid and enforceable as against the Company.
19. Pursuant to the terms of the Proposal, the Secured Creditors are unaffected creditors.

Unsecured Creditors

20. As noted above, the unsecured creditors are owed a total \$458,385, of which a total of \$219,632¹ is owed to the unaffected creditors. Of the remaining \$238,753 in potential unsecured claims, creditors having claims totaling \$181,965 have delivered voting letters indicating support for the Proposal and the Arrangement. While the Proposal and Arrangement remain subject to a formal vote at a general meeting of the Company’s

¹ Under the terms of the Proposal, Unaffected Creditors means the Secured Creditors and any amounts owing by the Company to RBC, including any amount owing to RBC pursuant to the Canada Emergency Business Account. The \$219,632 is comprised of the unsecured portions of the amounts owing to RBC and TNT being \$129,595 and \$90,037, respectively.

creditors, the Trustee is unaware of any creditor intending to vote to reject the Proposal and the Arrangement.

21. As noted previously, the Share Vendors are not creditors of the Company.

VI. THE SHARE PURCHASE AGREEMENT

22. As noted above, because of the impact the pandemic had on its cash flows, the Company was unable to loan further monies to 259 ON to pay the Share Vendors.

23. The Share Vendors filed an application with the Court seeking relief against 259 ON and others arising for 259 ON's failure to make certain payments under the SPA. On December 22, 2021, the Ontario Court of Justice ordered (the "**December 22nd Decision**"), *inter alia*:

- a. A declaration that 259 ON repudiated the SPA and its associated agreements by virtue of the respondents conduct between April-October 2020, which the Share Vendors accepted on or around October 14, 2020.
- b. A declaration that, in consequence of the acceptance of the repudiation, the Share Vendors' ongoing obligations under the Agreements, including the Share Vendors' obligations under the non-competition covenant, ceased as of the date of acceptance of the repudiation.
- c. Judgment against 259 ON for all amounts due and unpaid under the SPA and the Agreements up to the date of acceptance of the repudiation.
- d. A declaration that the respondents were in default as defined by the SPA by at least April 2021 by virtue of the payments not made up and including the payment due on April 1, 2021.
- e. A declaration that in consequence of the default, the Share Vendors are entitled to exercise all rights in the shares in the purchased business including voting rights.
- f. A declaration that, in consequence of the default, the Share Vendors are entitled to transfer to the inventory and tangible assets of the store at a price of \$0.

- g. Prejudgment interest on all amounts awarded under the preceding paragraphs.

A copy of the December 22nd Decision is attached as **Appendix “E”**.

VII. THE ARRANGEMENT

24. As noted in the Saari Affidavit, one of Country Way’s key objectives in the Proposal Proceedings is to reorganize Country Way’s capital structure as a means of, among other things, stabilizing Country Way’s business and enhancing its ability to repay its creditors.

25. A summary of the salient terms of the Arrangement are as follows:

- a) the Shareholders of NumCo and the Company shall have no right to vote on the Arrangement and no rights of dissent;
- b) the Arrangement shall be approved by the Unsecured Creditors at the Creditor Meeting to consider the Proposal;
- c) the Unsecured Creditors shall be in a single class for the purposes of voting on the Arrangement; and
- d) the Arrangement shall be accepted by the class of Unsecured Creditors by majority in number of the Unsecured Creditors who actually vote on upon the Arrangement at the Creditor Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Arrangement at the Creditors Meeting or by a voting letter.

26. If approved and implemented, the impact of this reorganization will be that the Company’s existing shares will be redeemed and cancelled such that: (i) the existing shareholders of the Company shall no longer be shareholders of the Company and shall have no rights as shareholders except the right to receive the amount payable by the Company to redeem the Class A Redeemable Shares and Class C Special Shares, and (ii) there shall be no remaining issued and outstanding shares of any class other than the new Class A Common Shares issued by the Company;

27. Under the Arrangement, the Company and NumCo shall be amalgamated into one entity (“**New Country Way**”) as follows:

- a) The name of New Country Way shall be its numbered name, but it shall carry on business as THE COUNTRY WAY HEALTH FOOD STORE;

- b) The By-laws and Articles for New Country Way shall be the same as the amended Articles for NumCo;
 - c) The issued and outstanding Class A Common Shares of the Company shall be cancelled without any repayment of capital in respect thereof; and
 - d) The stated capital of the Company shall be added to the stated capital of the NumCo.
28. The principal of NumCo has agreed to fund the costs of the Proposal and Arrangement as consideration for being issued the shares in the New Country Way. The costs of the Proposal Proceedings are approximately \$50,000 plus taxes.
29. If the Proposal and the Arrangement are accepted, NumCo shall apply for the Final Order at the same time as the Proposal Trustee applies for an Order approving the Proposal.

Comparison of the Arrangement/Proposal with a Liquidation in Bankruptcy

30. Given the potential impact of the Proposal and Arrangement on the Company's unsecured creditors and shareholders, the Proposal Trustee has considered whether the Proposal and Arrangement would be more beneficial to Country Way's stakeholders than a sale or otherwise realizing on the Property under a bankruptcy.
31. As noted above, the Company's assets consist primarily of its cash, inventory and store furnishings and equipment. In assessing the liquidation value of the Property, the Proposal Trustee assumes that if Country Way were to become bankrupt, Country Way's operations would be terminated, and its health food inventory and its store furniture and fixtures would be liquidated through a liquidation sale.
32. Realizing on Country Way's operating assets in a bankruptcy or receivership is potentially further complicated by the business operating out of rented premises that are leased by a related company. In a bankruptcy, the Trustee generally has unfettered access to the commercial premises for a three-month period. This would not apply if Country Way were bankrupt as the lease is not between the Country Way and the landlord. Similarly, in a receivership, the Receiver would not have control over the assignability of the lease. The lack of control over the lease would likely necessitate any purchaser considering an acquisition of the Company's business as a going concern to have to relocate the business.

Having to relocate the business would expose the business to a loss of customers, business interruption and the associated moving/relocation costs.

33. The December 22nd Decision provided an order that the Share Vendors are entitled to transfer to the inventory and tangible assets of the store at a price of \$0. However, Country Way's inventory and tangible assets are subject to the claims of the Secured Creditors.
34. Based on the cost value of the inventory and the limited store furniture and fixtures and the extent of the Company's obligation to the Secured Creditors, it appears likely that the Secured Creditors would suffer a significant shortfall in recovering their loan advances in the event of the Company's bankruptcy. Accordingly, the Proposal Trustee is of the view that the Proposal is likely to result in a better, and a more certain outcome for the Unsecured Creditors than a bankruptcy. The Proposal also provides for the continued employment of Company's employees and the preservation of business relationships with the Company's existing suppliers and customers.
35. The December 22nd Decision also entitles the Share Vendors to exercise all rights in the shares in Country Way including voting rights. Based on the information above, Country Way is insolvent inasmuch as the aggregate of its property is not sufficient to enable payment of all of its obligations. Accordingly, the terms of the Proposal and the Arrangement appear fair and reasonable given that the Share Vendors do not appear to have an economic interest in Country Way's business.

VIII. CONCLUSION AND RECOMMENDATION

36. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 10.

All of which is respectfully submitted on this 21st day of January 2022.

MNP LTD.,
in its capacity as Trustee acting in re: the Proposal of
1776690 Ontario Inc. cob The Country Way Health
Food Store

Per:

A handwritten signature in black ink, appearing to read "Sheldon Title", written over a light blue horizontal line.

Sheldon Title
Licensed Insolvency Trustee

Court No.: CV-21-00661436-00CL
Estate No. 31-2734289

IN THE MATTER OF THE PROPOSAL OF 1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE, OF THE CITY OF SAULT STE. MARIE, IN THE PROVINCE OF ONTARIO

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

FIRST REPORT TO THE COURT SUBMITTED BY MNP LTD., IN ITS CAPACITY AS TRUSTEE UNDER THE PROPOSAL OF 1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE

MNP LTD.
300-111 Richmond Street West
Toronto, ON M5H 2G4

Sheldon Title
Tel: (416) 263-6945
Fax: (416) 323-5242
Email: sheldon.title@mnp.ca

APPENDIX "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)

Estate Number:
Court File No.:

**AND IN THE MATTER OF THE PROPOSAL OF 1776690 ONTARIO INC. COB THE
COUNTRY WAY HEALTH FOOD STORE OF THE CITY OF SAULT STE MARIE IN
THE PROVINCE OF ONTARIO**

Court File No:

**AND IN THE MATTER OF SECTION 182 AND 186 OF THE BUSINESS
CORPORATIONS ACT, R.S.O. 1990 C. B.16, AS AMENDED, AND IN THE MATTER
OF A PROPOSED ARRANGEMENT OF 2655396 ONTARIO INC. AND INVOLVING
1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE**

**PROPOSAL AND PLAN OF ARRANGEMENT/REORGANIZATION OF
1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD
STORE**

1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE hereby submits the following Proposal and Plan of Arrangement/Reorganization to its Creditors pursuant to Part III of the BIA and pursuant to sections 182 of the OBCA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) **"2595 ON"** means 2595418 Ontario Inc.;
- (b) **"Administrative Fees and Expenses"** means the proper fees, expenses, including legal fees and disbursements, of the Trustee and the Debtor, including the fees and disbursements of Gowlings, on and incidental to the negotiation, preparation, presentation, consideration and implementation of the Proposal, and all proceedings and matters relating to or arising out of the Proposal;

- (c) “**Approval Order**” means an Order of the Court approving the Proposal pursuant to the BIA and the OBCA;
- (d) “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (e) “**Business Day**” means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (f) “**Canada Pension Plan**” means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (g) “**Certificates**” has the meaning ascribed by Article 6.1;
- (h) “**Claim**” means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date;
- (i) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (j) “**Creditor**” means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (k) “**Creditors’ Meeting**” means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (l) “**Creditors’ Meeting Date**” means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date, or as otherwise may be extended;
- (m) “**Debtor**” means 1776690 Ontario Inc. c.o.b. The Country Way Health Food Store and, where the context dictates, includes New Country Way;
- (n) “**Directors**” means the Debtor’s current directors;

- (o) “**Employee Creditors**” means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under paragraph [136(l)(d)] of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor’s business during the same period;
- (p) “**Employment Insurance Act**” means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (q) “**Gowlings**” means Gowling WLG (Canada) LLP;
- (r) “**Implementation Date**” means the date upon which the conditions set forth in Article 7.4 have been satisfied;
- (s) “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- (t) “**Inspectors**” means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;
- (u) “**Net Income**” means the profit or loss as reported in the unaudited financial statements for the year ending August 31st and is calculated as revenues minus all expenses, including:
 - (i) cost of goods sold;
 - (ii) all expenses related to the business including operations, selling, general and administrative expenses;
 - (iii) extraordinary items, including write-downs of inventories; and
 - (iv) income taxes
- (v) “**New Country Way**” means the company that will result from the amalgamation of the Debtor with NumCo;
- (w) “**NumCo**” means 2655396 Ontario Inc.;
- (x) “**OBCA**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended;
- (y) “**Official Receiver**” shall have the meaning ascribed thereto in the BIA;
- (z) “**Person**” means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;

- (aa) **“Preferred Creditors”** means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors.
- (bb) **“Proof of Claim”** shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting;
- (cc) **“Proposal”** means this proposal and plan of arrangement together with any amendments or additions thereto;
- (dd) **“Proposal Date”** means the date of the filing of the Proposal with the Official Receiver;
- (ee) **“Proven Claim”** of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (ff) **“Related Creditors”** means any company that is controlled by the Debtor or that controls the Debtor, including 2595 ON;
- (gg) **“Secured Creditor”** means a person, holding a valid and perfected mortgage, hypothec, pledge, charge or lien on or against the property or assets of the Debtor as security for a debt due or accruing due to the person from the Debtor;
- (hh) **“Source Deduction Creditors”** means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
 - (i) subsection 224(1.2) of the *Income Tax Act*;
 - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
 - (iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;
 - (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
 - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive

pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

- (ii) “**Trustee**” means MNP Ltd. or its duly appointed successor or successors;
- (jj) “**Unaffected Claims**” means any and all claims of Unaffected Creditors;
- (kk) “**Unaffected Creditors**” means the Secured Creditors and any amount owing by the Debtor to Royal Bank of Canada, including any amount owing to Royal Bank of Canada pursuant to the Canada Emergency Business Account;
- (ll) “**Unsecured Creditors**” means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (mm) “**Voting Letter**” shall mean the voting letter required by subsection 51(1) of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors’ Meeting.

1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day. Actions described herein shall occur and be deemed to occur in the order specified.

1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

1.6 Numbers

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

1.7 Currency

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

1.8 Statutory References

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.9 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

ARTICLE 2

CLASSIFICATION AND TREATMENT OF CREDITORS

2.1 Unaffected Creditors

This Proposal is not being made to Unaffected Creditors and does not impact Unaffected Claims. Unaffected Claims shall be dealt with in accordance with the agreements between the relevant Unaffected Creditor and the Debtor or as otherwise agreed between the relevant Unaffected Creditor and the Debtor.

2.2 Classes of Creditors

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

2.3 Related Creditors

The Related Creditors shall not be entitled to vote on the Proposal or receive a distribution under the Proposal. The Debtor shall, however, release and discharge the obligation owing by 2595 ON.

2.4 Secured Creditors

The Proven Claim of each Secured Creditor shall, at the option of the Secured Creditor, be paid and/or satisfied in accordance with the applicable agreement between the Secured Creditor and the Debtor or in accordance with such other arrangement as may be agreed between the Secured Creditor and the Debtor.

2.5 Administrative Fees and Expenses

The Administrative Fees and Expenses will be paid in full by the Shareholder of the New Country Way.

2.6 Preferred Creditors

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

2.7 Unsecured Creditors

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors will be paid and satisfied as provided by Article 7.

ARTICLE 3

PROCEDURE FOR VALIDATION OF CLAIMS

3.1 Filing of Proofs of Claim

Each Creditor must file a Proof of Claim as required by the BIA.

3.2 Allowance or Disallowance of Claims by the Trustee

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

ARTICLE 4

MEETING OF CREDITORS

4.1 Creditors' Meeting

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

4.2 Time and Place of Meeting

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

4.3 Conduct of Meetings

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

4.4 Adjournment of Meetings

The Creditors' Meeting may be adjourned in accordance with section 52 of the BIA.

4.5 Voting by Creditors

To the extent provided for herein, each Creditor will be entitled to vote to the extent of the amount that is equal to that Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with subsection 108(3) of the BIA. Related Creditors will not be entitled to vote at the Creditors' Meeting.

4.6 Approval by Creditors

The Proposal will be binding on the Unsecured Creditors and the Related Creditors in accordance with the BIA, if: (a) it is accepted by the class of Unsecured Creditors by a majority in the number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter; and (b) the Approval Order is made.

4.7 Appointment of Inspectors

At the Meeting of Creditors the Unsecured Creditors may appoint up to five (5) Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.

ARTICLE 5

OBCA ARRANGEMENT/REORGANIZATION

5.1 Definitions.

For the purposes of this Article 5, unless otherwise stated or unless the context otherwise requires:

- (a) **“Arrangement”** means the reorganization and arrangement of the Debtor and NumCo under sections 182 and 186 of the OBCA as set out in this Article 5 and in Schedule A together with any amendments or additions thereto;
- (b) **“Corporations”** means the Debtor and NumCo;
- (a) **“Final Order”** means an Order of the Court approving the Arrangement pursuant to section 182(5) of the OBCA;
- (c) **“Interim Order”** means the interim order of the Court pursuant to subsection 182(5) of the OBCA providing, *inter alia*, that: (i) the Shareholders shall have no right to vote on the Arrangement and no right(s) of dissent; (ii) the Arrangement shall be approved by the Unsecured Creditors at the Creditor Meeting on the Creditor Meeting Date; (iii) the Unsecured Creditors shall be in a single class for the purposes of voting on the Arrangement; and (iv) the Arrangement shall be accepted by the class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Arrangement (in person or by proxy) at the Creditors’ Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Arrangement (whether in person or by proxy) at the Creditors’ Meeting or by a Voting Letter; and
- (d) **“Shareholders”** means the shareholders of the Corporations.

5.2 Interim and Final Order

Not less than fifteen (15) days prior to the Creditor Meeting Date, NumCo shall apply to the Court for the Interim Order. If the Proposal is accepted, NumCo shall apply for the Final Order at the same time as the Trustee applies for an Order approving the Proposal.

5.3 Arrangement and Reorganization

On the Implementation Date, the following shall occur and be deemed to occur in the following order without any further act or formality and, except as otherwise noted in this **Article [5.3]** and in **Schedule [A]**, with each transaction or event being deemed to occur immediately after the occurrence of the transaction or event immediately preceding it:

- (a) The Articles for the Debtor shall be amended pursuant to sections 168 and 182(1) of the OBCA to:
 - (i) re-designate the Class A Common Shares as Class A Redeemable Shares, which Class A Redeemable Shares may be redeemed on payment of \$0.01 per share as more fully set out in Schedule A;
 - (ii) create a new class of shares consisting of an unlimited number of new Class A Common Shares, which new Class A Common Shares shall have the right to vote at all meetings of shareholders, except meetings at which only holders of a specified class of shares are entitled to vote, the right to receive dividends and the right to receive a distribution on the winding-up of the Debtor as more fully set out in Schedule A; and
 - (iii) make the Class C Special Shares redeemable at the option of the Debtor on payment of \$0.01 per share as more fully set out in Schedule A;
- (b) the new Class A Common Shares shall be issued by the Debtor as follows:
 - (i) Ryan Saari—100.
- (c) The Class A Redeemable Shares and the Class C Special Shares shall be redeemed and cancelled by the Debtor such that: (i) the existing shareholders of the Debtor shall no longer be shareholders of the Debtor and shall have no rights as shareholders except the right to receive the amount payable by the Debtors to redeem the Class A Redeemable Shares and Class C Special Shares, and (ii) there shall be no remaining issued and outstanding shares of any class other than the new Class A Common Shares issued pursuant to paragraph (b);
- (d) The Articles for the Debtor shall be amended to delete all reference to the Class A Redeemable Shares;
- (e) The Debtor and NumCo shall be amalgamated to create New Country Way as follows:
 - (i) The name of New Country Way shall be its numbered name, but it shall carry on business as THE COUNTRY WAY HEALTH FOOD STORE;
 - (ii) The By-laws and Articles for New Country Way shall be the same as the amended Articles for NumCo; and
 - (iii) The issued and outstanding Class A Common Shares of the Debtor shall be cancelled without any repayment of capital in respect thereof;
 - (iv) The stated capital of the Debtor shall be added to the stated capital of the NumCo; and

- (f) the Certificates shall be issued to the Unsecured Creditors as provided for by Article 6.1.

5.4 Binding Effect

This Arrangement will become effective at, and be binding at and after, the Implementation Date without further act or formality required on the part of any Person except as expressly provided herein.

ARTICLE 6

CREDITOR CERTIFICATES

6.1 Certificates

On the Implementation Date, immediately following the steps described in Article 5.3(a) to (e), each Unsecured Creditor will receive from the Debtor, in full and final satisfaction of their Claims, certificates (the "**Certificates**") with a face value equal to that Creditor's Claim as set forth in the Creditor's Proof of Claim or the Statement of Affairs, whichever is greater, subject to that Creditor's Claim being determined in accordance with Article 3. Once a Creditor's Claim becomes a Proven Claim a new Certificate shall be issued with a face value equal to that Creditor's Proven Claim if that Proven Claim is different from the amount set out on the Certificate originally issued to the Creditor.

ARTICLE 7

DISTRIBUTION

7.1 Secured Creditors

The Proven Claims of the Secured Creditor shall be dealt with as provided for in Article 2.3.

7.2 Payment of Employee Creditors

The Claims, if any, of the Employee Creditors shall be paid immediately after the making of the Approval Order using proceeds from the operation of the Debtor's business.

7.3 Payment of Source Deduction Creditors

Unless Her Majesty agrees otherwise, the Proven Claims, if any, of the Source Deduction Creditors shall be paid within six (6) months after the making of the Approval Order.

7.4 Payment of Certain Claims

Within sixty (60) days of the Implementation Date, the Debtor shall pay to each Preferred Creditor its Proven Claim in the priority established by the BIA.

7.5 Payment of Certificates

For each fiscal year ending August 31 for the five (5) years beginning for the year ended August 31, 2021, the Debtor will pay the greater of: (i) 20% of the aggregate value of the Certificates; or (ii) 40% per cent of the Net Income of the Debtor pro rata to Creditors based on and to reduce the amount owing under the Certificates, provided that no creditor is entitled to receive more than 100% of that Creditor's Proven Claim. Distributions will be made no later than 90 days after each of the five year-ends by November 30th of the following fiscal year, commencing November 30, 2021.

The Certificates will be fully paid and satisfied by the distribution of the amounts contemplated by this Article 7.5.

7.6 Levy

Payments to each Creditor made pursuant to Article 7.5 shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA, which amount shall be paid by the Debtor to the Office of the Superintendent of Bankruptcy. The Office of the Superintendent of Bankruptcy will receive a Certificate in respect of the amount payable in respect of levy.

ARTICLE 8

MISCELLANEOUS

8.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor and Related Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in section [50(14)] of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

8.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

8.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor and Related Creditor will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;

- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, and all of its, employees, agents, Directors, officers, shareholders, and current advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal; and
- (e) to have released the Trustee and all of its affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein.

8.4 Conditions to Proposal Implementation

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The making of the Interim Order;
- (b) The acceptance of the Proposal by the Unsecured Creditors; and

- (c) The making of the Approval Order and the Final Order, and the expiry of all applicable appeal periods.

8.5 Full Implementation

This Proposal will be fully implemented by the Debtor on delivery of the Certificates as provided by Article 6.

8.6 Effect of Proposal Generally

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

8.7 Further Actions.

Notwithstanding that the transactions and events set out in this Proposal shall occur and be deemed to occur in the order set out herein without any other additional act or formality, each of the Persons affected hereby shall make, do and execute, or cause to be made, done and executed all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by them in order to document or evidence any of the transactions or events set out herein.

8.8 Conduct of Debtor's Business

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.

ARTICLE 9

ADVOIDANCE OF TRANSACTION

9.1 Avoidance Proceedings

Section 95 to 101 of the BIA will not apply in respect of the Debtor and this Proposal.

ARTICLE 10

GENERAL

10.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

1776690 Ontario Inc.
79 Brock Street
Sault Ste. Marie, Ontario P6A 3B4
Attention: Ryan Saari
E-mail : ryansaari@me.com

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

- (c) if to the Trustee:

MNP Ltd.
300-111 Richmond Street West
Toronto ON M5G 2H4
Attention: Sheldon Title
Telecopier: 416-596-7894
E-mail : sheldon.title@mnp.ca

or to such other address, e-mail address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by e-mail or telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by e-mail or telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in the case of notice mailed as aforesaid, on the fifth (5th) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice

contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

10.2 Foreign Currency Obligations

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

10.3 Applicable Law

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

10.4 Non Severability

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect

10.5 Amendment.

Any amendment, modification, supplement or restatement to this Proposal may be proposed prior to or at the Creditor Meeting and if accepted at the Creditor Meeting a shall become part of this Proposal.

10.6 Deeming Provisions

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

EXECUTION PAGE

DATED at Sault Ste Marie, this 1st day of May, 2021.

1776690 ONTARIO INC.

Per: *Henna Scari*
Name:
Title:

I have authority to bind the corporation.

SCHEDULE A

1. Definitions.

Defined Terms in this Schedule have the meaning assigned by the Proposal dated [Date] April 2021.

10.7 Arrangement

On the Implementation Date, the following shall occur and be deemed to occur in the following order without any further act or formality with each transaction or event being deemed to occur immediately after the occurrence of the transaction or event immediately preceding it:

- (a) The Articles for the Debtor shall be amended pursuant to sections [168 and 182(1)] of the OBCA to:
 - (i) re-designate the Class A Common Shares of the Debtor as Class A Redeemable Shares, which Class A Redeemable Shares may be redeemed on payment of \$0.01 per share as follows:

1. CLASS A REDEEMABLE SHARES

- (a) The Class A Redeemable Shares shall as a class have attached thereto the following rights, privileges, restrictions, and conditions:
 - (i) the holders of Class A Redeemable Shares shall have the right to vote at all meetings of shareholders, except meetings at which only holders of a specified class of shares are entitled to vote;
 - (ii) the Class A Redeemable shares are redeemable at the option of the Debtor on payment of \$0.01 per share.

- (ii) create a new class of shares consisting of an unlimited number of new Class A Common Shares as follows:

1.A. CLASS A COMMON SHARES

- (a) The holders of Class A common shares shall be entitled, among other things:
 - (i) to vote at all meetings of shareholders, except meetings at which only holders of a specified class of shares are entitled to vote;
 - (ii) to receive dividends as and when declared by the Board of Directors of the Corporation out of the monies of the Corporation properly applicable to the payment of dividends;

(iii) subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of the Corporation, to receive the remaining property of the Corporation upon dissolution;

(iii) make the Class C Special Shares redeemable at the option of the Debtor on payment of \$0.01 per share as more fully set out in Schedule A as follows:

4. CLASS C SPECIAL SHARES

(a) Definitions

In these share conditions the following words and phrases shall have meaning as follows:

(i) "Redemption Amount" of each Class C Special Share means the sum of \$0.01;

(ii) "Redemption Price" of each Class C Special Share means the redemption amount; and

(b) Voting Rights

The holders of Class C Special Shares shall not be entitled to receive notice of or to vote at any meetings of shareholders.

(c) Redemption by Corporation

Subject to the Act, the Corporation may redeem the whole or any part of the issued Class C Special Shares on payment for each share to be redeemed of the Redemption Price.

(b) the new Class A Common Shares shall be issued by the Debtor as follows:

(i) Ryan Saari—100.

(c) The Class A Redeemable Shares and the Class C Special Shares shall be redeemed and cancelled by the Debtor such that: (i) the existing shareholders of the Debtor shall no longer be a shareholders of the Debtor and shall have no rights as a shareholders except the right to receive the amount payable by the Debtors to redeem the Class A Redeemable Shares and Class C Special Shares, and (ii) there shall be no remaining issued and outstanding shares of any class other than the new Class A Common Shares issued pursuant to paragraph (b);

- (d) The Articles for the Debtor shall be amended to delete all reference to: (i) the Class A Redeemable Shares;
- (e) The Debtor and NumCo shall be amalgamated to create New Country Way as follows:
 - (i) The name of New Country Way shall be "2655396 Ontario Inc." and shall carry on business as THE COUNTRY WAY HEALTH FOOD STORE;
 - (ii) The By-laws and Articles for New Country Way shall be the same as the amended Articles for NumCo; and
 - (iii) The issued and outstanding Class A Common Shares of the Debtor shall be cancelled without any repayment of capital in respect thereof;
 - (iv) The stated capital of the Debtor shall be added to the stated capital of the NumCo; and
- (f) the Certificates shall be issued to the Unsecured Creditors as provided for by Article 6.1.

10.8 Binding Effect

This Arrangement will become effective at, and be binding at and after, the Implementation Date without further act or formality required on the part of a Person except as expressly provided herein.

APPENDIX "B"

District of: Ontario
 Division No. 02 - Sudbury
 Court No.
 Estate No.

Original Amended

- Form 78 -
 Statement of Affairs (Business Proposal) made by an entity
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)

In the matter of the proposal of
 1776690 Ontario Inc. cob as The Country Way Health Food Store
 of the City of Sault Ste. Marie
 in the Province of Ontario

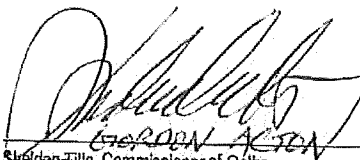
To the debtor:

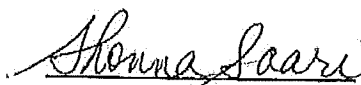
You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the filing of your proposal (or notice of intention, if applicable), on the 1st day of May 2021. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES (as stated and estimated by the officer)	ASSETS (as stated and estimated by the officer)
1. Unsecured creditors as per list "A"	1. Inventory
289,749.73	54,000.00
Balance of secured claims as per list "B"	2. Trade fixtures, etc.
168,635.21	0.00
Total unsecured creditors	3. Accounts receivable and other receivables, as per list "E"
458,384.94	Good
2. Secured creditors as per list "B"	0.00
114,450.00	Doubtful
3. Preferred creditors as per list "C"	0.00
0.00	Bad
4. Contingent, trust claims or other liabilities as per list "D"	0.00
estimated to be reclaimable for	Estimated to produce
0.00	0.00
Total liabilities	4. Bills of exchange, promissory note, etc., as per list "F" ...
572,834.94	0.00
Surplus	5. Deposits in financial institutions
NIL	0.00
	6. Cash
	0.00
	7. Livestock
	0.00
	8. Machinery, equipment and plant
	0.00
	9. Real property or immovable as per list "G"
	0.00
	10. Furniture
	48,450.00
	11. RRSPs, FRRIFs, life insurance, etc.
	0.00
	12. Securities (shares, bonds, debentures, etc.)
	0.00
	13. Interests under wills
	0.00
	14. Vehicles
	12,000.00
	15. Other property, as per list "H"
	0.00
	If debtor is a corporation, add:
	Amount of subscribed capital
	0.00
	Amount paid on capital
	0.00
	Balance subscribed and unpaid
	0.00
	Estimated to produce
	0.00
	Total assets
	114,450.00
	Deficiency
	#58,384.94

I, Shonna Saari, of the City of Sault Ste. Marie in the Province of Ontario, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of the affairs of the Corporation on the 1st day of May 2021 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)
 before me at the City of Sault Ste. Marie in the Province of Ontario, on this 1st day of May 2021.


 Sheldon Tille, Commissioner of Oaths
 For the Province of Ontario
 Expires MAULIER


 Shonna Saari

District of: Ontario
 Division No. 02 - Sudbury
 Court No.
 Estate No.

FORM 78 -- Continued

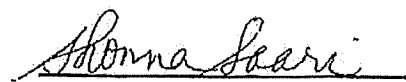
List "A"
 Unsecured Creditors

1776690 Ontario Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	Advanced Orthomolecular Research	3900 - 12 Street NE Calgary AB T2E 8H9	406.16	0.00	406.16
2	Assured Natural Distribution	104-3686 Bonneville Place Burnaby BC V3N 4T6	2,362.78	0.00	2,362.78
3	Bell Lifestyle Products	3164 Pepper Mill Court Mississauga ON L5L 4X4	8.73	0.00	8.73
4	Bioforce Canada	66 Boul. Brunswick Dollard Des Ormeaux QC H9B 2L3	260.62	0.00	260.62
5	Body Plus	1-130 McLevin Ave Toronto ON M1B 3R6	453.66	0.00	453.66
6	Boron Canada	1300 Rene Descartes St Bruno De-Montarville QC J3V 0B7	186.55	0.00	186.55
7	Business Development Bank of Canada 173042011	973 Balmoral Street Unit 201 Thunder Bay ON P7B 0E2	86,900.00	0.00	86,900.00
8	Business Development Bank of Canada 173042021	973 Balmoral Street Unit 201 Thunder Bay ON P7B 0E2	98,000.00	0.00	98,000.00
9	CanPrev Natural Health Products Ltd.	70 N Wind Pl Toronto ON M1S 3R5	5,653.30	0.00	5,653.30
10	CIBC Visa c/o TECHCOM Managed Services	6-6160 Hwy 7, PO Box 486 Woodbridge ON L4H 0R6	10,000.00	0.00	10,000.00
11	Cintas Canada Limited	PO Box 4372 Stn A Toronto ON M5W 0I2	206.25	0.00	206.25
12	Enbridge Gas Distribution - Ontario Attn: Back Office Collections Department	3401 Schmon Pkwy, PO Box 1051 Thorold ON L2V 5A8	423.55	0.00	423.55
13	Flora Manufacturing & Distributing	7400 Fraser Park Drive Burnaby BC V5J 5B9	583.05	0.00	583.05
14	Genuine Health	935-B Southgate Drive Guelph ON N1L 0B9	270.52	0.00	270.52
15	Health First Network	845 Harrington Court, Suite 100A Burlington ON L7N 3P3	5,510.11	0.00	5,510.11
16	Naka Herbs & Vitamins Ltd.	252 Brockport Dr Toronto ON M9W 5S1	575.80	0.00	575.80
17	Natural Factors Nutritional Prod.	1550 United Boulevard Coquitlam BC V3K 6Y2	3,543.71	0.00	3,543.71
18	Ontario Natural Food Company	5800 Keaton Crescent Mississauga ON L5R 3K2	2,159.63	0.00	2,159.63
19	Organic Connections Ltd.	PO Box 78 Windsor ON L0S 1V0	326.72	0.00	326.72
20	Prairie Naturals	56 Fawcett Road Coquitlam BC V3K 6V5	443.88	0.00	443.88
21	Prof	1995 Clark Blvd Brampton ON L6T 4W1	350.30	0.00	350.30
22	Puresource Inc. Attn: Teresa Egerton	5 - 5068 Whitelaw Road RR6 Guelph ON N1H 6J3	1,329.79	0.00	1,329.79
23	Purity Life Health Products	6 Commerce Crescent Acton ON L7J 2X3	3,493.81	0.00	3,493.81
24	Raw Elements Inc.	8473 Wellington Road 50 Rockwood ON N0B 2K0	460.23	0.00	460.23

01-May-2021

Date


 Shonna Saari

District of: Ontario
 Division No. 02 - Sudbury
 Court No.
 Estate No.

FORM 78 - Continued

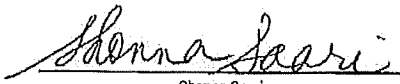
List "A"
 Unsecured Creditors

1776690 Ontario Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
25	RBC Ceba Visa	602 Queen Street East Sault Ste. Marie ON	60,000.00	0.00	60,000.00
26	RBC Royal Bank c/o BankruptcyHighway.com Attn: Razel Bowen 37632883001	PO Box 57100 Etobicoke ON M8Y 3Y2	0.00	50,000.00	50,000.00
27	RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen 4516070014010890	PO Box 57100 Etobicoke ON M8Y 3Y2	0.00	19,595.21	19,595.21
28	Regars Communications / CBV Collection	c/o FCT Default Solutions PO Box 2514, Stn B London ON N6A 4G9	446.55	0.00	446.55
29	Sault Ste. Marie PUC Inc.	500 Second Line East, PO Box 9000 Sault Ste. Marie ON P6A 6P2	543.69	0.00	543.69
30	Shaw Cable Systems Ltd. - Sault Ste. Marie Attn: Payment Solutions	900-1067 W Cordova St Vancouver BC V6C 3T5	335.38	0.00	335.38
31	St. Francis Herb Farm	29-2704 Dafee Rd Combermere ON K0J 1L0	157.95	0.00	157.95
32	Tallgrass Distribution Ltd.	201-375 W 5th Ave Vancouver BC V5Y 1J6	724.84	0.00	724.84
33	TNT Holdco Inc.	2 Sand Bar Lake Road Mulligan Bay ON P0M 1K0	0.00	90,037.00	90,037.00
34	Toyota Credit Canada Incorporated Attn: Anca, Bankruptcy Desk 5300368904	200 - 80 Micro Court Markham ON L3R 9Z5	0.00	9,003.00	9,003.00
35	Tree of Life Canada Inc.	6185 McLoughlin Road Mississauga ON L5R 3W7	749.62	0.00	749.62
36	UNFI Canada Grocery Central	8755 Keels St. Concord ON K4K 2N1	2,663.39	0.00	2,663.39
37	Waste Management of Canada Corporation Attn: Bankruptcy Department	2330 United Boulevard Coquitlam BC V3K 6S1	219.16	0.00	219.16
Total:			289,749.73	168,635.21	458,384.94

01-May-2021

Date


 Shonna Saari

District of: Ontario
 Division No. 02 - Sudbury
 Court No.
 Estate No.

FORM 78 - Continued

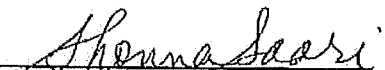
List "B"
 Secured Creditors

1776690 Ontario Inc.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
1	RBC Royal Bank c/o BankruptcyHighway.com Attn: Razel Bowen 37632883001	PO Box 57100 Etobicoke ON M8Y 3Y2	50,000.00	Business Assets - Stock In Trade - Inventory of health products Furniture - Furniture and Equipment	28-May-2019 28-May-2019	0.00 0.00		50,000.00
2	RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen 4516070014010890	PO Box 57100 Etobicoke ON M8Y 3Y2	19,595.21	Business Assets - Stock In Trade - Inventory of health products Furniture - Furniture and Equipment	28-May-2019 28-May-2019	0.00 0.00		19,595.21
3	TNT Holdco Inc.	2 Sand Bar Lake Road Mulligan Bay ON P0M 1K0	192,487.00	Business Assets - Stock In Trade - Inventory of health products Furniture - Furniture and Equipment	19-Sep-2017 19-Sep-2017	54,000.00 48,450.00		90,037.00
4	Toyota Credit Canada Incorporated Attn: Anca, Bankruptcy Desk 5300368904	200 - 80 Metro Court Markham ON L3R 9Z5	21,003.00	Motor Vehicles - Automobile - 2015 - Toyota - 4Runner - JTEBU5JR7F5221125	31-Oct-2017	12,000.00		9,003.00
Total:			283,085.21			114,450.00	0.00	168,635.21

01-May-2021

Date


 Shonna Saari

District of: Ontario
Division No. 02 - Sudbury
Court No.
Estate No.

FORM 78 - Continued

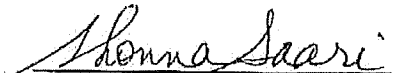
List "C"
Preferred Creditors for Wages, Rent, etc.

1776690 Ontario Inc.

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued	Amount of claim	Amount payable in full	Difference ranking for dividend
Total:					0.00	0.00	0.00

01-May-2021

Date


Shonna Saar

District of: Ontario
Division No. 02 - Sudbury
Court No.
Estate No.

FORM 78 -- Continued

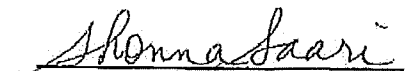
List "D"
Contingent or Other Liabilities

1776690 Ontario Inc.

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
Total:			0.00	0.00		

01-May-2021

Date


Shonna Saari

District of: Ontario
Division No. 02 - Sudbury
Court No.
Estate No.

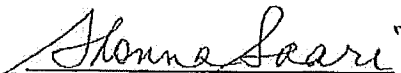
FORM 78 -- Continued

List "E"
Debts Due to the Debtor
1776590 Ontario Inc.

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
			Total:	0.00 0.00 0.00			0.00	

01-May-2021

Date


Shonna Saari

District of: Ontario
Division No. 02 - Sudbury
Court No.
Estate No.

FORM 78 - Continued

List "F"

Bills of Exchange, Promissory Notes, Lien Notes, Chattel
Mortgages, etc., Available as Assets

1776690 Ontario Inc.

No.	Name of all promissory, acceptors, endorsers, mortgagors, and guarantors	Address	Occupation	Amount of bill or note, etc.	Date when due	Estimated to produce	Particulars of any property held as security for payment of bill or note, etc.
Total:				0.00		0.00	

01-May-2021

Date


Shonna Saari

District of: Ontario
Division No. 02 - Sudbury
Court No.
Estate No.

FORM 78 - Continued


List "G"
Real Property or Immovables Owned by Debtor

1776890 Ontario Inc.

Description of property	Nature of debtor interest	In whose name does title stand	Total value	Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount)	Equity or surplus
Total:			0.00		0.00

01-May-2021

Date


Shonna Saari

District of: Ontario
 Division No. 02 - Sudbury
 Court No.
 Estate No.

FORM 76 - Concluded

List "H"
 Property

1776690 Ontario Inc.

FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade		Inventory of health products	0.00	54,000.00
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions			0.00	0.00
(d) Cash on hand			0.00	0.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture		Furniture and Equipment	113,950.00	48,450.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles		Automobile - 2015 - Toyota - 4Runner - JTEBU5JR7F5221125	0.00	12,000.00
(l) Taxos			0.00	0.00
(m) Other			0.00	0.00
			Total:	114,450.00

01-May-2021

Date

Shonina Saari
 Shonina Saari

Court No.

File No.

In the matter of the proposal of
1776690 Ontario Inc. cob as The Country Way -health
Food Store
of the City of Sault Ste. Marie
in the Province of Ontario

Form 78 (Bill C-12)
Statement of affairs (Business bankruptcy)

Trustee: Sheldon Title
License: 2278
Email: sheldon.title@mdp.ca

MNP Ltd. - Licensed Insolvency Trustee
300 - 111 Richmond Street West
Toronto ON M5H 2G4
Phone: (416) 596-1711 Fax: (416) 323-5242

APPENDIX "C"

District of Ontario
Division No. 09 - Toronto
Court No. CV-21-00661436-00CL
Estate No. 31-2734289

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY)**

**IN THE MATTER OF THE PROPOSAL OF
1776690 ONTARIO INC. COB THE COUNTRY WAY HEALTH FOOD STORE
OF THE CITY OF SAULT STE. MARIE
IN THE PROVINCE OF ONTARIO**

REPORT OF TRUSTEE TO THE CREDITORS
(Section 50(5) of the Bankruptcy and Insolvency Act)

Enclosed are the following documents:

- ♦ Notice of Proposal to Creditors;
- ♦ Proposal under Part III, Division I, of the *Bankruptcy and Insolvency Act* (the "BIA"), dated May 1, 2021 (the "Proposal") lodged with MNP Ltd. (the "Proposal Trustee") by 1776690 Ontario Inc. cob The Country Way Health Food Store ("Country Way" or the "Company") and filed with the Official Receiver on May 3, 2021;
- ♦ a statement of affairs, detailing the Company's assets and liabilities as May 1, 2021 ("SOA");
- ♦ a proof of claim form;
- ♦ a voting letter if you wish to vote in advance of the meeting; and
- ♦ a general proxy.

The following is an outline of the background and financial position of the Company, including relevant information that should be of assistance to the creditors in considering their position with respect to the Proposal.

In preparing this Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Company's books and records, discussions with employees and management and information from other third-party sources (collectively, the "Information"). Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

Capitalized terms used in this Report are the same as those referenced in the Proposal.

SECTION A - Background

Country Way is an Ontario corporation that operates a health food store in Sault Ste. Marie, Ontario from rented premises that are leased by a related company.

In November, 2017, 2595418 Ontario Inc. ("**259 ON**") acquired the shares of Country Way from two individuals (the "**Share Vendors**"). The \$2,200,000 purchase price for the shares, other than \$250,000, was financed by the Share Vendors. Under the terms of its agreements with the Share Vendors, 259 ON is required to make monthly payments to the Share Vendors of \$3,000 for October and November, 2017, then \$16,250 monthly from December, 2017 until October, 2027 and to make a final payment of \$10,250 on November 1, 2027. The obligations owing by 259 ON to the Share Vendors are secured by a pledge of the shares of Country Way that are owned by 259 ON. The Share Vendors do not have security over the Country Way and Country Way is not liable for the obligations owing by 259 ON to the Share Vendors. 259 ON has no assets other than the shares of the Country Way and 259 ON has been borrowing the money from the Country Way to make the monthly payments to the Share Vendors. 259 ON paid a total of \$765,570 to the Share Vendors as of April 23, 2021.

Country Way's business has been severely impacted by the COVID-19 pandemic. In 2020, the Company's gross monthly sales dropped by approximately 23% from pre-COVID levels. As a consequence of the impact the pandemic has had on its cash flows, the Company is no longer able to loan money to 259 ON to pay the Share Vendors and to service its debt obligations and to pay its suppliers and employees. Consequently, on May 3, 2021, the Company lodged its Proposal with the Trustee pursuant to the BIA. Just prior to the Company's Proposal filing, on April 30, 2021, 2655396 Ontario Inc. ("**NumCo**"), a related corporation, filed an application pursuant to section 182 and 186 of the Ontario *Business Corporations Act* ("**OBCA**") for an arrangement (the "**Arrangement**") involving itself and the Country Way. The above two (2) measures were taken as a means of: (i) stabilizing the Company; (ii) altering the Company's share structure to sever the Company from 259 ON; and (iii) offering its creditors a dividend that would be higher than its creditors would receive in the event of a bankruptcy.

SECTION B - Summary of the Proposal

This section contains a summary of the Proposal, the terms of which would be only be effective on such date that all of the following conditions are fulfilled or satisfied: the Court granting the Interim Order (as such term is defined below), the Proposal being accepted by the creditors and approved by the Court, in accordance with the provisions of the BIA (collectively the "**Implementation Date**").

As set out in the Proposal, the Proposal provides for the following:

- (i) **Secured Creditors** -will be paid in accordance with existing arrangements with Company, or as may be arranged with them, and are not affected by this Proposal;
- (ii) **Unaffected Creditors:**

- a. In addition to the Secured Creditors, Unaffected Creditors include any amount owing by the Company to Royal Bank of Canada ("RBC"), including any amount owing to RBC pursuant to the Canada Emergency Business Account ("CEBA");
 - b. The Proposal is not being made to Unaffected Creditors and does not impact Unaffected Claims;
- (iii) **Related Creditors** -shall not be entitled to vote on the Proposal or receive any distribution under the Proposal;
- (iv) **Administrative Fees and Expenses** -shall be paid in full by the Shareholder of the New Country Way (as such term is defined below);
- (v) **Employee Creditors** - the Proven Claims, if any, of the Employee Creditors who are owed a preferred claim for qualifying wages under subsection 136(1)(d) of the BIA (this does not include termination or severance pay owing), shall be paid immediately after Court approval of the Proposal in the ordinary course using proceeds from the operation of the Company's business;
- (vi) **Source Deduction Creditors** - Unless Her Majesty in Right of Canada or a Province agrees otherwise, the Proven Claims, if any, of Source Deduction Creditors shall be paid within six (6) months after Court approval of the Proposal using proceeds from operations. Based on the SOA, the Company does not have any obligation to Canada Revenue Agency in respect of unpaid source deductions.
- (vii) **Preferred Creditors** – Within sixty (60) days of the Implementation Date, the Debtor shall pay to each Preferred Creditors its Proven Claim in the priority established by the BIA. Based on the SOA, the Company does not have any preferred creditors.
- (viii) **Unsecured Creditors** –
 - a. On the Implementation Date, each Unsecured Creditor will receive from the Company, in full and final satisfaction of their Claims, a certificate (the "Certificate") with a face value equal to that Creditor's Claim as set forth in the Creditor's Proof of Claim or the SOA, whichever is greater, subject to that Creditor's Claim being determined as per the provisions of the BIA. Once a Creditor's Claim becomes a Proven Claim a new Certificate shall be issued with a face value equal to that Creditor's Proven Claim, if that Proven Claim is different from the amount set out on the Certificate, as originally issued to the Creditor.
 - b. For each fiscal year ending August 31 for the next five (5) years, beginning for the year ended August 31, 2021, the Debtor will pay the greater of: (i) twenty percent (20%) of the aggregate gross value of the Certificates based on the Proven Claims; or (ii) forty percent (40%) of the Net Income of the Debtor *pro rata* to Creditors based on and to reduce the amount owing under the Certificates, provided that no creditor is entitled to receive more than 100% of that Creditor's Proven Claim. Distributions will be made no later than ninety (90) days after each of the five year-ends or November 30th of the following fiscal year, commencing November 30, 2021.

- (ix) Any Claims against the Company by any Creditor that are also Claims against the directors and/or officers of the Company that relate to obligations of Company where the directors and/or officers are under any law liable in their capacity as directors and/or officers for the payment of such obligations shall be, upon Court approval of the Proposal and to the extent permitted by the BIA, released and forever discharged as against the directors and/or officers of the Company;
- (x) **Preferences and Transactions at Under Value** - Sections 95-101 of the BIA will not apply in respect of this Proposal; and

Application under s.182 of the Ontario Business Corporations Act

As noted above, NumCo. has filed an application for an interim order (the "Interim Order") under section 182 of the OBCA providing, *inter alia*, that:

- a) the Shareholders of NumCo and the Company shall have no right to vote on the Arrangement and no rights of dissent;
- b) the Arrangement shall be approved by the Unsecured Creditors at the Creditor Meeting to consider the Proposal;
- c) the Unsecured Creditors shall be in a single class for the purposes of voting on the Arrangement; and
- d) the Arrangement shall be accepted by the class of Unsecured Creditors by majority in number of the Unsecured Creditors who actually vote on upon the Arrangement at the Creditor Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Arrangement at the Creditors Meeting or by a voting letter.

If approved and implemented, the impact of this reorganization will be that the Company's existing shares will be redeemed and cancelled such that: (i) the existing shareholders of the Debtor shall no longer be shareholders of the Debtor and shall have no rights as shareholders except the right to receive the amount payable by the Debtors to redeem the Class A Redeemable Shares and Class C Special Shares, and (ii) there shall be no remaining issued and outstanding shares of any class other than the new Class A Common Shares issued by the Company;

Under the Arrangement, the Company and NumCo shall be amalgamated into one entity ("**New Country Way**") as follows:

- a) The name of New Country Way shall be its numbered name, but it shall carry on business as THE COUNTRY WAY HEALTH FOOD STORE;
- b) The By-laws and Articles for New Country Way shall be the same as the amended Articles for NumCo; and
- c) The issued and outstanding Class A Common Shares of the Company shall be cancelled without any repayment of capital in respect thereof;

- d) The stated capital of the Company shall be added to the stated capital of the NumCo.

Not less than fifteen (15) days prior to the Creditor Meeting Date, NumCo shall apply to the Court for the Interim Order. The application is scheduled to be heard on June 8, 2021. If the Proposal is accepted, NumCo shall apply for the Final Order at the same time as the Trustee applies for an Order approving the Proposal.

The above description of the Proposal is a summary only, and readers are cautioned that if there is inconsistency between this Report and the Proposal, the terms of the Proposal shall govern.

SECTION C - Financial Position and Causes of Difficulties

As noted above, the Pandemic has had a devastating effect on the retail industry, and more specifically the Company and its cash flows. The chart below reflects the Company's historical results.

	Year Ended August 31		
	2018	2019	2020
	\$	\$	\$
Sales	1,490,566	1,331,550	999,240
Cost of Sales	833,220	813,223	579,020
Gross Profit	657,346	518,327	420,220
Operating Expenses	464,048	408,948	377,410
Operating Income	193,298	109,379	42,810
Write-down of inventory	(85,499)	-	-
Forgiveness of debt (CEBA)			10,000
Income before Income taxes	107,799	109,379	52,810
Income taxes	15,270	13,890	6,626
Net Income for the period	92,529	95,489	46,184

The Company has and remains eligible to receive subsidies under the Canada Employee Wage Subsidy program being provided by the Federal Government. The Company has borrowed \$60,000 from RBC under the CEBA. Under the CEBA program, repaying the balance of the CEBA loan on or before December 31, 2022 may result in loan forgiveness of \$20,000. Given this and to enhance the Company's ability to fund its obligations under the Certificates, the Proposal provides for the RBC to be an Unaffected Creditor.

SECTION D - Interim Receiver

Not Applicable.

SECTION E - Identification and Evaluation of Assets

According to the SOA, the Company's assets and their estimated realizable value can be found in Section L of this Report.

SECTION F - Conduct of the Company

The conduct of the Company does not appear to be subject to censure.

SECTION G - Creditors' Claims

As per the SOA, the Company's creditors consist of:

Creditor Classifications	SOA Amount
Secured	\$114,450
Preferred	NIL
Unsecured	458,385
TOTAL	\$ 572,835

Notes:

- The Company advises that there are no amounts owing to the employees or other potential preferred creditors under Section 136(1) of the BIA.

Based on a search of the Ontario *Personal Property Security Act* registry with a file currency of February 11, 2021, the following parties are registered as having security against the Company's assets:

- a) TNT Holdco Inc. ("**TNT**")
- b) Toyota Credit Canada Inc. ("**Toyota**")
- c) RBC

TNT advanced 259 ON an amount of \$250,000 to apply towards the \$2.2 million purchase price to acquire the shares in the Country Way. Based on the SOA, TNT is owed approximately \$192,000. As additional security for TNT's advance to 259 ON, the Company gave a guarantee in favour of TNT, which guarantee granted TNT a security interest in the Assets (defined below).

RBC provides an operating line and credit card, each of which is secured against the Assets.

The Company and Toyota entered into a Retail Instalment Contract, dated October 23, 2017 in connection with the purchase of a used 2015 Toyota 4Runner. Based on the SOA, the vehicle is estimated to have a realizable value lower than the remaining obligation to Toyota.

SECTION H - Previous Business Dealings with the Company

MNP was initially engaged by the Company on January 20, 2021 as a consultant to assist the Company in reviewing its restructuring options.

SECTION I - Informal Meeting with Major Creditors

Since filing the Proposal, the Trustee and the Company has entered informal discussions with RBC and BDC.

SECTION J - Remuneration of Proposal Trustee

The Proposal contemplates the Proposal Trustee's fees and expenses related to the administration of the Proposal, including those of its and the Company's legal counsel, will be paid by the Shareholder of the New Country Way.

SECTION K - Other

Not applicable.

SECTION L - Statement of Estimated Realizations

As noted above, the Proposal provides each Unsecured Creditor will receive from the Company, in full and final satisfaction of their Claims, the Certificates. The Distributions will be made no later than 90 days after each of the five year-ends by November 30th of the following fiscal year, commencing November 30, 2021, with the Proposal contemplating the creditors receiving no more than 100% of their proven claims.

If the Proposal is rejected by the Creditors, the Company will be deemed bankrupt.

The SOA reflects the Country Way's assets consisting of its inventory and fixtures, furniture, and equipment (the "**Assets**"). The Company has estimated the realizable value of the Assets at \$102,450. The Company's secured obligations to TNT and RBC are approximately \$192,487 and \$69,595, respectively, and would hold a priority interest over the Assets and any realizations therefrom. Given the quantum of secured debts and having regard to the cost of realization and of administering the bankruptcy estate, in the event of the Company's bankruptcy, the Company's unsecured creditors would likely receive no recovery. At this time, the Proposal Trustee has not incurred the expense associated with obtaining an independent legal opinion on the validity or enforceability of the security granted by the Company to TNT and/or RBC.

Preferences and Transactions at Under Value

The Proposal provides that sections 95-101 are not applicable. Accordingly, and to assess the appropriateness of the inclusion of this clause, the Trustee has carried out a review of the Company's bank statements and cancelled cheques for the period beginning May 1, 2020 and ending on April 30, 2021 in order to enable it to be in a position to report to the creditors on any potential preferences or transfers at undervalue identified.. Based on its preliminary review of these records, nothing has come to the Proposal Trustee's attention that gives rise to any concerns respecting potential preference payments or transfers at undervalue.

SECTION M - Recommendations

Based on the above, the Proposal Trustee recommends the acceptance of the Proposal as the Proposal contemplates a higher and more likely distribution to the Unsecured

Creditors than in a bankruptcy. The Proposal would also provide for the continued employment of Company's current employees and the preservation of business relationships with Company's existing suppliers and customers.

SECTION N - Technical Requirements for a Successful Proposal

This Proposal will become effective only if it is accepted by a resolution of the Unsecured Creditors and approved by the Court. To obtain Creditor approval, a simple majority in the number of Unsecured Creditors voting, with this majority representing at least 2/3 of the dollar value of the Unsecured Creditors voting, must vote in favour of the Proposal. If the Unsecured Creditors do not accept the Proposal, then the Company will be deemed to have made an assignment in bankruptcy and a meeting of creditors in the matter of the bankruptcy will immediately take place.

If the Unsecured Creditors vote to accept the Proposal, Court approval of the Proposal must then be sought. If the Court does not approve the Proposal, the Company would be deemed to have made an assignment in bankruptcy and the Trustee of the bankruptcy estate will then call a meeting of creditors in the matter of the bankruptcy.

When completing the Proof of Claim form submitted herewith, Creditors should include all outstanding amounts as at May 3, 2021, the date of the filing of the Proposal. It is expressly noted and should be clearly understood that MNP Ltd., in its capacity as Proposal Trustee, assumes no personal liability for any claims that Creditors may have against the Company, filed, proven, deemed or otherwise, either before or after the filing of the Proposal.

Creditors may attend, in person or by proxy, the meeting to consider the Proposal, which will be held on **Thursday, May 20, 2021 at 11:00 a.m. (Toronto, Ontario Time) by video/telephone conference (via Microsoft Teams Meetings)**. To attend/join the meeting you may connect by the following:

[Teams: Video Conferencing](#)

[Click here to join the meeting](#)

[Telephone \(audio only\)](#)

1 877 252 9279, Passcode: 56651369

In order to participate and vote at the meeting, Creditors must file their claims in prior to the start of the meeting. Creditors who do not wish to attend or be represented at the meeting but who wish to vote, may forward their Proofs of Claim and voting letters by either email to sheldon.title@mnp.ca or fax to (416) 596-7894, to the Proposal Trustee so as to be received prior to 11:00 am (Toronto Time) on May 20, 2021.

Should you have any questions or comments on the Proposal or this report, please do not hesitate to contact the undersigned.

Dated at Toronto, Ontario, the 10th day of May, 2021.

MNP LTD.

Trustee acting *in re* the Proposal of
1776690 Ontario Inc. and not in its
personal or corporate capacity

Per:

A handwritten signature in black ink, appearing to read "Sheldon Title", written over the word "Per:".

Sheldon Title, CPA, CA, CIRP, LIT
Senior Vice-President

Encl.

APPENDIX "D"

RESOLUTIONS OF THE DIRECTOR

OF

1776690 ONTARIO INC., carrying on business as THE COUNTRY

WAY HEALTH FOOD STORE

OF THE CITY OF SAULT STE. MARIE, IN THE PROVINCE OF ONTARIO

(the "Corporation")

WHEREAS:

- A. The Corporation is in financial difficulties and is unable to meet its obligations as they generally become due; and
- B. The board of directors of the Corporation (the "Board of Directors"), in the exercise of its business judgement, has determined that it is in the best interests of the Corporation to commence proceedings (the "Proposal Proceedings") under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") and to file a Proposal to its creditors under Section 62(1) of the BIA (the "Proposal") and a Plan of Arrangement/Reorganization ("Plan of Arrangement") under the Ontario *Business Corporations Act*.

BE IT RESOLVED THAT:

1. The Corporation is hereby authorized to:
- (a) prepare and file the Proposal together with the required related documentation and a Plan of Arrangement;
 - (b) retain MNP Ltd. to act as Trustee under the Proposal Proceedings; and
 - (c) take such steps and actions within the Proposal Proceedings and Plan of Arrangement as are necessary or desirable to protect and advance the interests of the Corporation and to pursue such court orders, take such other steps and do all such things as may be deemed advisable by any officer or director of the Corporation;
2. Any one officer or director of the Corporation is authorized to execute and deliver on behalf of the Corporation all such other documents, agreements and instruments (including, without limitation, all documents, agreements and other instruments as are contemplated by the Proposal) (the "Ancillary Documents"), and to take all such other action as may from time to time be required or as such officer or director may determine is necessary or desirable to give effect to this resolution and to exercise the rights and perform the obligations of the Corporation under the Proposal Proceedings, Plan of Arrangement and the Ancillary Documents, such determination to be conclusively evidenced by the execution thereof of such officer or director; and
3. Notice of the calling of the meeting of the Board of Directors is waived.

SIGNATURES FOLLOW

THE FOREGOING RESOLUTIONS are hereby consented to by all of directors of the Corporation, as evidenced by the signature hereto in accordance with the provisions of the *Business Corporations Act* (Ontario) this 1st day of MAY, 2021.



Shonna Saari

Doc:#3764252v1

APPENDIX "E"

CITATION: Watts v. 2595418 Ontario Inc., 2021 ONSC 8439
COURT FILE NO.: C-28567-21 (Sault Ste. Marie)
DATE: 2021-12-22

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Tammy Watts and Brenda Frey

Applicants

– and –

2595418 Ontario Inc.

Respondent

)
)
) R. Reynolds, for the Applicants
)
)

)
) S. Shoemaker, for the Respondent
)
)

) HEARD via Zoom: November 23, 2021
)

DECISION ON APPLICATION

HENNESSY J.

[1] The Applicants, Tammy Watts and Brenda Frey, seek relief against the Respondents, Shonna Lynn Saari (“Ms. Saari”) and 2595418 Ontario Inc. (“259”), for non-payment of monthly purchase payments pursuant to a Share Purchase Agreement (“SPA”). The SPA arose in the context of the sale of a health food store from the Applicants to the Respondents in 2017. As part of the transaction, the Applicants undertook that they would not open a competing health food business.

[2] The Applicants ask for a declaration that the Respondents have repudiated the SPA, a declaration that they are no longer bound by the non-competition clause, and judgment for unpaid amounts under the SPA.

[3] The Applicants focused their submissions on a request for a finding that the Respondents have repudiated the SPA and that they are therefore entitled to relief flowing from that finding. The Respondents deny having repudiated the SPA and claim that the Applicants are not entitled to be relieved from the non-competition covenant because they have acted in bad faith. In the alternative, the Respondents submit that their contractual obligations have been frustrated by the COVID-19 pandemic and its associated government lockdowns. With respect to the issue of judgment and damages, the Respondents deny that Ms. Saari is personally liable under the SPA and, in any event, submit that a trial is required to determine the personal liability issue.

Background Facts

[4] The above referenced sale was structured as a share purchase transaction.

[5] The main documents outlining the obligations of the parties are contained in the SPA and its associated appendices. The SPA called for a down payment plus monthly payments of \$16,250 for ten years pursuant to a Promissory Note. Although the SPA was signed by Ms. Saari in her personal capacity, the title of the document notes that it is between the Applicants and Ms. Saari, "or as she may otherwise direct".

[6] Additional documents executed as part of the transaction include the Promissory Note, a Pledge of Shares, and an Escrow Agreement. Each of these additional documents were executed in 259's name.

[7] As part of the transaction, the Applicants executed a non-competition covenant restricting them from operating a similar business in the area for ten years.

[8] The Applicants relied on the monthly payments as their retirement income. In April 2020, the Respondents stopped making regular monthly payments but continued to operate the store. They began a pattern of making a single payment every third month.

[9] The Respondents followed this pattern of making payments every third month for the period between March-October 2020, by which time they had paid \$75,000 less than they would have had they continued to make monthly payments. The Respondents did not communicate any intention to rectify these missed payments. By January 2021, when this Application was commenced, the Respondents had missed \$113,750 in monthly payments. The Applicants considered the Respondents' lack of monthly payments to constitute a repudiation of the SPA and say that they also accepted that repudiation. As of the date this Application was argued, the Applicants submit that the Respondents' total arrears was \$254,000.

The Application

[10] The Applicants, relying on r. 14.05(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, seek a determination of rights based on an interpretation of the SPA. The Respondents do not take issue with this approach.

[11] More specifically, the Applicants seek a declaration that the Respondents have repudiated the SPA and that, consequently, the Applicants are no longer bound by the non-competition covenant. In addition, the Applicants seek judgment against the Respondents for all amounts unpaid up to the date of judgment and an order directing a trial to determine the damages to which the Applicants are entitled.

[12] If one or more issues on the Application cannot be fairly determined without a trial, the Applicants ask the court to direct that such issues proceed to trial subject to directions pursuant to r. 38.10: *Maurice v. Alles*, 2016 ONCA 287, 130 O.R. (3d) 452, at para. 33.

[13] I will commence my analysis by considering whether the Respondents' conduct constitutes repudiation. I will then consider whether the conduct of the Respondents entitles the Applicants to judgment. Finally, I will deal with the issue over personal liability against Ms. Saari.

Did the Respondents Repudiate the Agreement?

Law

[14] As LaForme J.A. noted in *Place Concorde East Limited Partnership v. Shelter Corporation of Canada* (2006), 270 D.L.R. (4th) 181 (Ont. C.A.), at para. 49: “[R]epudiation occurs by words or conduct that show an intention not to be bound by the contract.” The non-repudiating party can elect to accept the repudiation and, if so, the contract is terminated, meaning that all parties are relieved from further performance: *Place Concorde*, at para. 50.

[15] The test for repudiation is whether the party that renounces the agreement has acted in a way that would lead a reasonable person to conclude that the party does not intend to fulfil their part of the contract: *Wilson v. Graydon Hall Pizza & Catering Ltd.*, [1994] O.J. No. 25, at para. 43 (Gen. Div.), aff'd [1996] O.J. No. 1661 (C.A.).

[16] The question of whether a breach goes to the root of the contract and amounts to repudiation has been expressed as:

Does the occurrence of the event deprive the party who has further undertakings still to perform of substantially the benefit which it was the intention of the parties as expressed in the contract that he should obtain in consider for performing those undertakings? *Shelanu Inc. v. Print Three Franchising Corp.* (2003), 64 O.R. (3d) 533 (C.A.), at para. 114, citing *Hongkong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd.*, [1962] 1 All E.R. 474, [1962] 2 Q.B. 26 (C.A.), per Diplock L.J.

[17] Repudiation is also said to occur when the words or conduct of one party evince an intention to no longer be bound by the contract; where a party has broken a stipulation of major importance to the contract; where the entire foundation of the contract has been undermined; and where the very thing bargained for has not been provided. Behind all these expressions lies a notion of “substantial failure of performance”: *Place Concorde*, at para. 52.

[18] In addition, repudiation can occur even if there is no formal breach by a defendant. For example, courts have held that repudiation may arise in situations where a defendant attempts to impose new terms or conditions upon the plaintiff: see *Robert Bell Engine and Thresher Co. v. Farquharson* (1918), 39 D.L.R. 625 (Sask. App. Div.); *Philadelphia Eagles Inc. v. Armstrong*, [1952] 1 D.L.R. 332 (Man. K.B.).

[19] In *968703 Ontario Ltd. v. Vernon* (2002), 58 O.R. (3d) 215, at para. 16, the Court of Appeal for Ontario, citing Professor Waddams, identified five factors that provide guidance for determining whether or not repudiation has occurred:

- The ratio of the party's obligation not performed to the obligation as a whole

- The seriousness of the breach to the innocent party
- The likelihood of repetition of the breach
- The seriousness of the consequences of the breach; and
- The relationship of the part of the obligation performed to the whole obligation.

[20] The onus is on the party alleging repudiation to establish that the other party has repudiated the contract: *Dirm 2010 Inc. v Prestressed Systems Incorporated*, 2017 ONSC 2174, at para. 311.

The Applicants' Position

[21] The Applicants assert that the conduct of the Respondents amounted to repudiation of the SPA, that the Applicants accepted the repudiation, and that they were therefore entitled to treat the SPA as at an end, meaning they are freed from their obligations under the non-competition covenant. The Applicants point to the deliberate conduct of the Respondents since April 2020, firstly, by missing two of every three payments for three cycles and, then, by ceasing all payments as of January 2021. They note that all of this was done in the absence of any communication by the Respondents that they could or intended to rectify the missed payments or honour the terms of the SPA. The Applicants also note that the Respondents were obliged to deliver monthly financial statements, which they have not done since they ceased making regular payments.

[22] The Respondents made monthly payments as follows:

January 2020:	\$16,250
February 2020:	\$16,250
March 2020:	\$16,250
April 2020:	\$3,000
May 2020:	\$3,000
June 2020:	\$16,250
July 2020:	\$0
August 2020:	\$0
September 2020:	\$16,250
October 2020:	\$0
November 2020:	\$0
December 2020:	\$16,250
January 2021:	\$0
February 2021:	\$0

[23] At no time did the Respondents attempt to make-up their missed payments or bring the Promissory Note into good standing.

[24] When the Respondents stopped making the payments required under the SPA, the Applicants say that they were deprived of their retirement income and were unable to replace this lost income by opening a new store pursuant to the non-competition covenant.

[25] The Applicants assert that they elected to accept the repudiation and clearly communicated their position by letter from their counsel on October 14, 2020. In that correspondence, Applicants' counsel advised that, as of that date, the Applicants no longer considered themselves bound by the non-competition covenant.

The Respondents' Position

[26] The Respondents argue, firstly, that their conduct does not amount to repudiation. Secondly, they submit that they were not in a position of technical default under the SPA. This second argument seems to amount to a suggestion that repudiation is not available in the absence of a finding of a technical default.

[27] The Respondents rely on a term in the — unfortunately worded — SPA. The specific term on which they rely reads:

Promissory Note shall contain a provision that three (3) consecutive payments shall be considered default on the said note and the Purchaser shall have 60 days to pay the three (3) outstanding payments thereby putting the note in good standing.

[28] The Promissory Note reads:

It is agreed by the parties that three (3) consecutive non-payments shall constitute default on this note and 2595418 Ontario Inc. shall have 60 days to pay the three (3) outstanding payments to being [*sic*] this note into good standing.

[29] The Respondents submit that prior to March 2021, they did not miss three consecutive payments and that, by making every third payment, they were demonstrating an intention to be bound by the SPA.

[30] The Respondents also argue that the amount of total default is insignificant in comparison to the total consideration under the SPA and therefore does not amount to repudiation.

[31] The Respondents also submit that in or around late 2020 the Applicants demonstrated that they viewed their obligations under the SPA as at an end by taking steps to breach their non-competition obligation.

Analysis

[32] There is no debate that the Respondents have failed to honour the monthly payment schedule in the SPA, as well as their monthly obligation to provide financial statements. Nor is there any debate about what payments were made and when they were made or not made.

[33] The conduct of the Respondents amounted to a repudiation of the SPA when assessed against the factors outlined by the Court of Appeal in *Vernon*.

[34] The crux of the SPA was the sale of an ongoing retail business in exchange for monthly payments over ten years. The monthly payments constituted the Applicants' "retirement income". *Vernon's* first and fifth factors consider the ratio and the relationship between the part of the obligation not performed to the whole of the obligation. In this case, the relationship is strong, and the ratio is high. The obligation not performed was a monthly payment obligation. For six months in 2020, the Respondents failed to make a monthly payment. The sale was structured to provide a monthly income stream to the Applicants. For a significant portion of 2020, it did not achieve this purpose. The Applicants could not anticipate that this shortfall would either be replaced or rectified since it appeared that the Respondents had adopted an approach of making every third payment. In the circumstances, the Applicants were not obliged to wait years before they acted on the missed monthly payments. They are entitled to either certainty of payment or certainty that they are no longer restricted by the non-competition clause. Throughout this time, the Respondents operated the business and there was no interference with them doing so. I will address the Respondents' submission that the Applicants took steps to violate the non-competition clause below.

[35] The second and fourth factors are the seriousness of the breach and the seriousness of the consequences to the innocent party. As noted above, the Applicants suffered financially as a result of the missed monthly payments. The proceeds of sale from the SPA were meant to replace the Applicants' livelihood from operating the business. The interruption of their income stream, particularly when combined with the non-competition clause, had very serious consequences for the Applicants. They were essentially left without an income. By the end of 2020, the Respondents had failed to make nearly \$200,000 in monthly payments. This was a significant loss to the Applicants. They were substantially deprived of the fundamental benefit that was at the heart of the bargain. It would be unfair to the Applicants if the non-competition covenant continued to be in force in the face of the Respondents' non-payments.

[36] In the circumstances of this case, then, the missed payments were serious because they can be viewed as an attempt by the Respondents to re-write the terms of the SPA. This unilateral alteration of the SPA payment schedule had serious consequences for the Applicants.

[37] The third factor is whether there is a likelihood of repetition. Once the Respondents altered the payment schedule to the detriment of the Applicants, they continued this pattern of missing two of every three payments until they received legal notice asserting that their conduct amounted to repudiation. At no time did the Respondents suggest an intent or ability to make the regular monthly financial disclosure or payments. It was reasonable to conclude that the non-payments would be repeated and, indeed, they were.

[38] I disagree with the Respondents' position that by making a payment every third month for a period in 2020, they were displaying an intention to be bound by the SPA. It can only be said that by making payments every third month, without consent or agreement from the Applicants, the Respondents were demonstrating: (1) an intention to avoid being in technical default under the terms of the SPA and (2) an intention to ignore the fact that their payment obligation arose monthly as opposed to every three months.

[39] Indeed, if the Respondents' position is taken to its logical conclusion, they could have continued making payments every third month for the balance of the ten-year payment period and would never be in default. Their approach would thus result in them paying one-third of the outstanding purchase price. Not only would such an arrangement lack commercial sense, but it is also in conflict with the SPA's monthly payment schedule.

[40] As a result of their conduct, then, the Respondents were unilaterally imposing significantly different and reduced payment terms. By unilaterally imposing a new and reduced payment schedule — adverse to the interests of the Applicants — the Respondents were demonstrating that they had no intention of fulfilling a fundamental term of the SPA. The payment pattern of missing two out of every three payments was something totally different from that which the parties bargained. At the same time as the Respondents breached their monthly payment obligation, they also breached their financial production obligation, a sure sign that they were not attempting to show the Applicants their ability to pay. It would be unreasonable and unfair to expect the Applicants to be bound by their non-competition covenant in circumstances such as these.

[41] In summary, the evidence demonstrates a deliberate pattern of breaching the payment terms of the SPA in two respects: quantum and schedule. It also reveals an intention to proceed with the breach. The payment provisions are the core of the Respondents' responsibilities in return for acquiring an operating business and a promise by the Applicants not to compete. In return for a monthly income stream, the Applicants bargained away their right to compete and thus earn an income from a similar business. Once their income stream on the agreed schedule was interrupted, the bargain no longer held. In short, the Respondents' unilateral alteration of the monthly payment schedule — and the related two-third reduction of their required payments — went to the foundation of the SPA. The Applicants were thus entitled to end the agreement.

Was there a breach of the non-competition clause?

[42] The non-competition covenant prohibits the Applicants from carrying on a similar business alone or with others for ten years in the District of Algoma.

[43] The Respondents attempt to justify their failure to make regular monthly payments on the basis that the Applicants were attempting or intending to break their non-competition covenant. However, the evidence does not demonstrate a breach. The Applicants conceded that they took preliminary steps to investigate opening a competing store by contacting potential suppliers and commercial property owners. Ms. Saari states that she heard about these steps in and after November 2020, more than six-months after the Respondents had begun to miss payments. However, in March and April 2021 — when Ms. Saari was cross-examined — she was unable to produce any admissible evidence demonstrating that the Applicants had actually opened a store.

[44] For any action or statement to be relied upon as demonstrating repudiation, it must be clear, absolute, and certain: *Kalis v. Pepper*, 2015 ONSC 453, 38 B.L.R. (5th) 285, at para. 12. In this case, Ms. Saari has not adduced any evidence demonstrating that the Applicants “clearly”, “absolutely”, or “certainly” breached their non-competition clause. There is support for the Respondents’ submission that the Applicants’ violation of their non-competition clause constitutes repudiation on their behalf.

Was there a Default under the SPA?

[45] The Promissory Note includes the following provision:

It is agreed by the parties that three (3) consecutive non-payments shall constitute default on this note and 2595418 Ontario Inc. shall have 60 days to pay the three (3) outstanding payments to being [*sic*] this note into good standing.

[46] There is therefore an issue of whether the missed payments constitute default under the SPA as of October 2020 or April 2021. The issue here is whether the provision is interpreted simply by reference to the words “consecutive payments” or whether the provision should be read more broadly to take into consideration the new pattern of payments and non-payments adopted by the Respondents.

[47] Although the payment and non-payment pattern of the Respondents may not have amounted to a technical “default” under the SPA and the Promissory Note as of October 2020, this is a question that can be further explored at a trial. The contractual default provision provides protection for the purchasers, allowing them time to bring a default into good standing. In 2020, the Respondents had several opportunities to bring the agreement into good standing, particularly after receiving correspondence from the Applicants’ counsel in October 2020. In any event, the Respondents met the technical definition of default after they failed to make three consecutive payments for three consecutive months of January, February, and March 2021 and did not cure these non-payments within 60 days. They have not taken any steps to communicate an intention to rectify the defaulted payments, nor have they actually done so.

[48] The matter of whether default occurred as of October 2020 or April 2021 (60 days after the three consecutive missed payments) was not fully explored on the hearing of this Application, perhaps because of the time limitations provided to counsel to argue it. The evidence supports a finding that default occurred at the latest after three missed payments in January, February, and March 2021. As a result, the provisions of the SPA are triggered, providing the Applicants with the remedies outlined in s. 2.2 (vi) of the SPA.

[49] This issue of the timing of the default may be argued further at a trial with respect to the issue of Ms. Saari’s personal liability and damages.

Was the SPA Frustrated?

[50] In the alternative, the Respondents submit that the COVID-19 pandemic constitutes a frustrating event that relieves them of any payment obligations under the SPA.

[51] As the Court of Appeal for Ontario recently noted: “A contract is frustrated when – without the fault of either party – a supervening event alters the nature of a party’s obligations under the contract ‘to such an extent that to compel performance despite the new and changed circumstances would be to order [the party] to do something radically different from what the parties agreed to under [their] contract’”: *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited*, 2021 ONCA 201, at para. 225, citing *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58, [2001] 2 S.C.R. 943, at para. 55.

[52] In this case, the evidence showed that the store experienced decreasing sales in certain months of the pandemic and increased sales in other months of comparison. However, there was no government mandated closure of the store during the pandemic. The evidence is insufficient on this record to meet the test for frustration.

Issues of personal liability against Ms. Saari

[53] The Respondents take the position that Ms. Saari does not bear personal liability under the SPA. The SPA identifies the purchaser as “Shonna Lynn Saari (or as she may otherwise direct)”. Ms. Saari thus executed the SPA in her own name.

[54] There were, however, a number of documents exchanged between the parties at closing, including, as mentioned, a Promissory Note, a Pledge of Shares, an Escrow Agreement regarding the Pledge of Shares, and an Authorization of the Board of Directors of 259. The execution of agreements is done in the name of 259 by Ms. Saari, followed by the words, “I have authority to bind the Corporation.” The Promissory Note begins with the words: “WHEREAS 259 Ontario Inc. (the Purchaser) purchased” and is later followed by the words “FOR VALUE RECEIVED, 259 promises to pay to the order of Brenda Frey and Tammy Watts the sum of”.

[55] Other documents and correspondence between counsel refer to 259 as the Purchaser. There was also evidence that the Applicants sought a personal guarantee from Ms. Saari, but that this request was denied.

[56] The difference between the SPA and the other documents on closing and the correspondence between counsel raise evidentiary and credibility issues with respect to Ms. Saari’s personal liability.

[57] The issue of personal liability cannot be resolved on this Application and requires a trial. Pursuant to r. 38.10(b), the issue of personal liability and damages shall proceed to a trial: *Maurice*, at para. 33.

[58] Counsel are directed to seek a trial management conference as soon as possible to address timelines for the exchange of documents and affidavits, the number and scope of witnesses, and time limits on examinations.

[59] The trial shall proceed as directed by the judge presiding at the trial management conference. Counsel are encouraged to work on timelines for these steps as soon as possible.

Orders

[60] The evidence is conclusive that the Respondents have, by their conduct beginning in April 2020 and continuing through 2021, repudiated the SPA. The Applicants are therefore entitled to several declarations, as well as judgment against 259. More specifically, this court orders:

1. A declaration that 259 repudiated the SPA and its associated agreements by virtue of the personal and corporate Respondents conduct between April-October 2020, evidencing an intention to be no longer bound by the terms of the SPA and its related agreements, which the Applicants accepted on or around October 14, 2020.
2. A declaration that, in consequence of the acceptance of the repudiation, the Applicants' ongoing obligations under the Agreements, including the Applicants' obligation under the non-competition covenant, ceased as of the date of acceptance of the repudiation (i.e., on or around October 14, 2020).
3. Judgment against 259 for all amounts due and unpaid under the SPA and related agreements up to the date of acceptance of the repudiation, including the monthly payments due under the SPA of \$16,250 per month for the months of April, May (excluding amounts paid for those months), July, August, October, and November 2020, as well as January 2021 and up to the date of judgment.
4. A declaration that the Respondents were in default as defined by the SPA by at least April 2021 by virtue of the payments not made up to and including the payment due on April 1, 2021.
5. A declaration that in consequence of the default, the Applicants are entitled to exercise all rights in the shares in the purchased business including voting rights.
6. A declaration that, in consequence of the default, the Applicants are entitled to transfer to the inventory and tangible assets of the store at a price of \$0.
7. Prejudgment interest on all amounts awarded under the preceding paragraphs.

Costs

[61] The Applicants were substantially successful on this Application. The issue of personal liability of the Respondent Ms. Saari must be determined by a trial. The Applicants are entitled to their costs. If the parties are unable to reach an agreement on costs, counsel may make submissions to me through the Trial Co-Ordinator by January 15, 2022 for the Applicants and January 30, 2022 for the Respondents. Submissions shall be no more than two pages in length and shall be accompanied by a bill of costs.

[62] The parties and their counsel are strongly encouraged to take immediate steps to negotiate or mediate the implementation of the declarations above. The timing and logistical details of how to manage the transition called for under the agreement are best managed through negotiation and cooperation and the involvement of the parties who have worked in and are familiar with the business and the area in which it operates.

A handwritten signature in black ink, reading "P.C. Hennessy J". The signature is written in a cursive style with a large, stylized "J" at the end.

The Honourable Madam Justice P.C. Hennessy

Released: December 22, 2021

CITATION: Watts v. 2595418 Ontario Inc., 2021 ONSC 8439
COURT FILE NO.: C-28567-21 (Sault Ste. Marie)
DATE: 2021-12-22

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Tammy Watts and Brenda Frey

Applicants

– and –

2595418 Ontario Inc.

Respondent

DECISION ON APPLICATION

Hennessy J.

Released: December 22, 2021