

District of New Brunswick
Division No. 04 — Moncton
Court N. 24494
Estate No. 51-2531797

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MONCTON

IN THE MATTER OF the proposal of Zio's Pizza Kitchen under the *Bankruptcy and Insolvency Act R.S.C. 1985, c.C-3*

**SECOND AMENDED
PROPOSAL**

We, Zio's Pizza Kitchen Ltd., the above-noted Debtor, (hereinafter the "Debtor", or the "Company"), being insolvent, hereby submit the following proposal under Part III, Division I of the *Bankruptcy and Insolvency Act R.S.C. 1985, c.C-3*

**ARTICLE I
DEFINITIONS**

1.01 Definitions

In this Proposal, unless otherwise stated or unless the context otherwise requires, the following words and phrases shall have the indicated meanings:

"Act" means the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3* as amended;

"Administrative Fees and Expenses" means all proper fees and expenses of the Trustee incurred both before and after the filing by the Debtor of this Proposal pursuant to the *Act*

"Affected Claims" mean all Claims excluding Administrative Fees and Expenses;

"Affected Creditors" mean all Creditors having Affected Claims against the Debtor;

"Claim" means any right or claim of any Person against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor in existence on the Notice of Intention Date (or which has arisen after the Notice of Intention Date as a result of the termination, repudiation or non-performance by the Debtor of any lease or executory contracts), whether

liquidated, unliquidated, fixed, contingent, absolute, matured, unmatured, disputed, undisputed, asserted, unasserted, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown by guarantee, surety or otherwise, whether or not reduced to judgment, and whether or not such right is executory in nature (including any claims pursuant to any agreements containing rights to acquire shares of the Debtor);

"Court" means the Court of Queen's Bench of New Brunswick in Bankruptcy and Insolvency;

"Court Approval Date" means the date upon which the Court makes an order approving this Proposal;

"Court Approval Order" means the final order of the Court approving this Proposal in accordance with Section 60 of the Act;

"Creditors" means the Secured, Preferred and Unsecured Creditors of the Debtor;

"Debtor" means Zio's Pizza Kitchen Ltd.;

"Effective Date" means the next business day following (i) the later of the expiry of the appeal period with respect to the Court Approval Order, or (ii) in the event of an appeal of the approval of the Court Approval Order, the final disposition thereof and the expiry of the appeal period in respect of such disposition;

"Filing Date" means the date upon which this proposal is filed by the Debtor with the Official Receiver;

"Inspector" means any inspector appointed pursuant to Section 7.01 hereof;

"Notice of Intention Date" means July 8th, 2019, the date on which the Debtor filed a Notice of Intention to Make a Proposal with the Official Receiver in Halifax, Nova Scotia;

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, labour union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

"Preferred Claim" means a Claim enumerated in Section 136(1) of the Act;

"Preferred Creditor" means a Person holding a Preferred Claim, with respect to and to the extent of such Preferred Claim;

"Property" means the property, assets or undertakings of the Debtor;

"Proposal" means this Proposal of the Debtor, as may be amended or altered in accordance with the Act or the terms hereof;

"Proposal Fund" means the fund(s) created pursuant to and described in Article VI of this Proposal;

"Proven Claim" means in respect of a creditor, the amount of the Claim of such creditor finally determined in accordance with the provisions of the Act;

"Secured Claims" means all Claims which are secured by a mortgage, charge, lien, hypothec or other security validly charging or encumbering Property (including statutory and possessory liens);

"Secured Creditor" means a Person holding a Secured Claim, with respect to and to the extent of such Secured Claim;

"Source Deductions" means all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada), 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 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 any related interest, penalties or other amounts, where the sum (i) 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 (ii) 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.;

"Subsequent Creditor" means a Person as described in Section 4.07 hereof;

"Superintendent's Levy" means the levy payable to the Superintendent of Bankruptcy pursuant to Section 147 of the Act;

"Trustee" means MNP Ltd. in its capacity as trustee in respect of this Proposal;

"Unsecured Claim" means any Claim, other than a Secured Claim, Preferred Claim or Source Deductions; and

"Unsecured Creditor" means a Person holding an Unsecured Claim, with respect to, and to the extent of such Unsecured Claim.

ARTICLE II

PURPOSE, EFFECT AND CONDITIONS PRECEDENT

2.01 Purpose of this Proposal

This Proposal provides for a monetary payment that will be provided to the Trustee by the Debtor and distributed by the Trustee in accordance with the terms of this Proposal in full and final satisfaction of all Claims against the Debtor. The expectation of this Proposal is that all Creditors will derive a greater benefit from the distribution herein contemplated than would result from a forced liquidation of its assets.

2.02 Effect of Proposal

This Proposal Stays the actions of all Creditors against the Debtor, terminates or amends all existing contracts and agreements and provides terms on which all Claims will be fully and finally resolved and settled. This Proposal will, as of the Effective Date, be binding on the Debtor and all Creditors in the manner provided for in this Proposal and the Act.

2.03 Conditions Precedent

The implementation of this Proposal shall be conditional upon the fulfillment of all of the following conditions:

- a) The Proposal shall be approved by the Affected Creditors in accordance with the Act; and
- b) The Proposal shall be approved by the Court and all appeal periods with respect to the Court Approval Order shall have expired.

ARTICLE III CLASSES OF CREDITORS

3.01 Classes of Creditors

There shall be four classes of Creditors for the purpose of voting on the Proposal:

- a) Secured Claims of Creditors holding Real Property Mortgages and the New Brunswick Department of Finance as collector of taxes with respect to the portion of the real property tax that relates to the municipal tax levy, "**Class-A**"
- b) Secured Creditors with Chattel Mortgages, Lease Agreements, Rental Agreements, or other similar agreements. "**Class-B**"
- c) All Unsecured Creditors including Preferred Creditors, the Canada Revenue Agency with respect to claims for any Income Tax or HST, along with any applicable interest or penalties which were owing prior to the date of the Notice of Intention, and the New Brunswick Department of Finance as collector of taxes with respect to the portion of the real property tax that relates to the provincial tax levy "**Class-C**"
- d) Senior Secured creditors holding General Security Agreements, "**Class-D**"

ARTICLE IV TREATMENT OF CREDITORS' CLAIMS

4.01 Class-A

The claims of Class "A" creditors shall be paid on terms that are mutually agreeable between the Debtor and the creditors of this class. Payments to Class "A" creditors will be paid by the Debtor,

directly to Class "A" creditors from the cash flows resulting from the Debtor's ongoing operations and in accordance with the terms of existing agreements or any new agreements that may be negotiated.

4.02 Class-B

A Proposal Fund of \$32,425 shall be established for the benefit of the creditors holding Class "B" claims.

Periodic payments will be made to the Class "B" creditors over a term not to exceed five years from the date this proposal was filed.

The balance of Claims not fully paid pursuant to this section, can be submitted to the Trustee as an Unsecured Claim in Class "C".

A schedule of the cash payments expected to be made to each creditor in this class is detailed in the attached Schedule "B"

4.03 Class-C

A Proposal Fund of \$90,000 shall be established for the benefit of the creditors holding Class "C" claims. Periodic payments to individual Class "C" creditors will be made on a pro-rata basis from this Class C fund over a period of five years in full and final satisfaction of the claims.

A detailed list of the creditors estimated to be included in this class, and the estimated total cash payment to each individual creditor is detailed in the attached **Schedule "C"**

In order to provide for larger payments to creditors of this class, all Creditors related to the Debtor have agreed to waive their rights to receive a payment out of the Proposal Fund. This agreement shall be null and void, if the proposal is rejected and the debtor becomes Bankrupt.

In the event that Claims are filed that are disputed by the Debtor or the Trustee, the Trustee may elect to distribute an interim dividend to Creditors with Proven Claims. No distribution will be made on disputed Claims until they become Proven Claims.

4.04 Class-D

A Proposal Fund of \$234,990 shall be established for the benefit of the creditors holding Class "D" claims.

Periodic payments will be made to the Class "D" creditors over a term not to exceed five years from the date this proposal was filed.

The balance of Claims not fully paid pursuant to this section, can be submitted to the Trustee as an Unsecured Claim in Class "C".

A schedule of the cash payments expected to be made to each creditor in this class is detailed in the attached **Schedule "D"**

4.05 Source Deductions

The Debtor covenants and agrees that it shall, within six (6) months after Court approval of this proposal pay in full to Her Majesty in Right of Canada or a Province, all Source Deductions that were outstanding at the time of the filing of the Notice of Intention to make a Proposal.

There are not any outstanding Source Deductions at the time of filing the Notice of Intention to make a Proposal.

4.06 Preferred Claims

The Claims of all Preferred Creditors, if any, shall be paid in full in cash, without interest or penalty, and subject to the Levy, in priority to all claims of the Unsecured Creditors, to the extent provided for in section 136 of the BIA. For greater certainty, all payments payable to former or current employees of the Corporation which would be payable in priority under subsection 136(1) of the BIA if the Corporation were to become bankrupt, if any, will be paid within six (6) months from the Effective Date.

There are no known outstanding liabilities which would constitute a preferred claim.

4.07 Payments to Subsequent Creditors

(a) Amounts owed by the Debtor for goods and services actually provided to the Debtor after the Notice of Intention Date, excluding damages or other claims arising subsequent to the Notice of Intention Date, to and including the Effective Date, will be paid in the ordinary course of business according to normal credit terms, by the Debtor. Accordingly, subsequent creditors shall be unaffected by this Proposal in respect only of such amounts.

(b) The Debtor covenants and agrees that during the course of this Proposal, it will remit all HST payments and file HST returns due subsequent to the Notice of Intention Date, as required by the "Excise Tax Act."

(c) The Debtor covenants and agrees that during the course of this Proposal, it will remit all payroll deductions (employment insurance premiums, Canada Pension Plan contributions, and income tax) collected or withheld subsequent to the Notice of Intention Date, as required by the "Income Tax Act."

4.08 Further Disclaimer of Contracts

In order to permit the successful implementation of its Proposal, the Debtor reserves its right to disclaim, pursuant to its Proposal, any contract to which it is a party. Notice of the exercise of such right of disclaimer, with respect to contracts not previously disclaimed, repudiated or terminated by the Debtor as of the date of this Proposal, shall be given no later than seven (7) days prior to the vote of creditors on the Proposal. Any damages resulting from such disclaimer shall be Affected Claims, and creditors shall have the right to file a proof of claim therefore within sixty (60) days of the disclaimer.

ARTICLE V EXTINGUISHMENT OF CLAIMS

5.01 Extinguishment

Nothing in this Article V shall operate to extinguish the proven claims and security of the Class "A" creditors.

Upon implementation of this Proposal, all Affected Claims shall, as against the Debtor, be deemed to be fully and finally satisfied, settled and discharged.

From and after the implementation of this Proposal:

- a) No Person shall have any further right, remedy or claim against the Debtor in respect of all or any portion of an Affected Claim; and
- b) With the exception of the Canada Revenue Agency, no Person shall have any further right, remedy or claim against the directors or officers of the Debtor in respect of all or any portion of a Claim arising before the Filing Date and which relates to the obligations of the Debtor where the directors or officers are by law liable in their capacity as directors or officers for the payment of such obligations.
- c) Provided nothing herein shall release or discharge a Director from claims that:
 - (i) Relate to contractual rights of one or more Creditors arising from contracts with the Director; or
 - (ii) Are based on allegations of misrepresentation made by the Director to Creditors or of wrongful or oppressive conduct by the Director;

- d) All liens, certificates of pending litigation, executions, or other similar charges or actions or proceedings in respect of such Claims will have no effect in law or in equity against the property, assets and undertaking of the Debtor. Upon the implementation of the Proposal, any and all such registered liens, certificates of pending litigation, executions or other similar charges or actions brought, made or claimed by Affected Creditors will be and will be deemed to have been discharged, dismissed or vacated without cost to the Debtor and the Debtor will be released from any and all Claims of Affected Creditors, subject only to the right of Affected Creditors to receive distributions as and when made by the Trustee pursuant to this Proposal. This release shall have no force or effect if the Debtor goes bankrupt before the terms of the Proposal are performed.

ARTICLE VI PROPOSAL FUNDS

6.01 Class B Proposal Fund

The Debtor agrees to pay to the trustee, from its continued operations, \$540.42 a month for a period of 60 months, for a total of \$32,425 into the Proposal Fund available to the Class "B" creditors. A schedule of the estimated distribution of this fund is attached as **Schedule "B"**

6.02 Class C Proposal Fund

The Debtor agrees to pay to the trustee, from its continued operations, \$1,500 a month for a period of 60 months, for a total of \$90,000 into the Proposal Fund available to the Class "C" creditors. A schedule of the estimated distribution of this fund is attached as **Schedule "C"**

6.03 Class D Proposal Fund

The Debtor agrees to pay to the trustee, from its continued operations, \$3,916.50 a month for a period of 60 months, for a total of \$234,990 into the Proposal Fund available to the Class "D" creditors. A schedule of the estimated distribution of this fund is attached as **Schedule "D"**

ARTICLE VII INSPECTORS

7.01 Appointment of Inspectors

At the Creditors' Meeting, 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;

- (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them; and
- (c) approving the deferral of the payments set out in Section 6.01 and 6.02 by up to 30 days.

7.02 Referral of Decisions of Inspectors to the Court

Any decision, direction or act of the Inspectors may be referred to the Court by the Trustee and the Court may confirm, reverse or modify the decision, direction or act and make such order as it thinks just.

7.03 Discharge of Inspectors

The authority and term of office of the Inspectors shall terminate upon the discharge of the Trustee

ARTICLE VIII

TRUSTEE, CERTIFICATE OF COMPLETION AND DISCHARGE OF TRUSTEE

8.01 Proposal Trustee

MNP Ltd., shall be the Trustee pursuant to this Proposal and upon the making of distributions and the payment of any other amounts provided for in this Proposal, the Trustee will be entitled to be discharged from its obligations under the terms of this Proposal. The Trustee is acting in its capacity as Trustee under this Proposal, and not in its personal capacity and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business, liabilities or obligations of the Debtor, whether existing as at the Notice of Intention Date or incurred subsequent thereto.

8.02 Administrative Fees and Expenses

All the fees, expenses, legal fees and disbursements of the Trustee on and incidental to the Proposal and the proceedings arising out of the Proposal shall be invoiced to the Debtor on a monthly basis and paid from the Debtor's continued operations. Any invoices remaining unpaid for more than 30 days after issuance, will be paid from either the Class B ,Class C or Class D Proposal Funds, in priority to all Claims of Creditors of these Classes, and shall be a first charge on the consideration offered to the Creditors under the Proposal.

In addition to the fees and expenses that have already accrued, been invoiced or paid, the Trustee estimates that a further \$18,000 (the "additional fees") will be required to complete the administration of the proposal. The Trustee shall seek the approval of the inspectors prior to paying any of its additional fees that exceed \$18,000 from any of the proposal funds.

8.03 Certificate of Full-Performance and Discharge of Trustee

Upon the Trustee distributing the Proposal Fund to Affected Creditors, the terms of the Proposal shall be deemed to be fully performed and the Trustee shall provide a certificate to the Debtor and to the Official Receiver pursuant to Section 65.3 of the Act and the Trustee shall be entitled to be discharged.

ARTICLE IX GENERAL

9.01 Construction

In this Proposal, unless otherwise expressly stated or the context otherwise requires:

- a) The division of the Proposal into Articles and Sections and the use of headings are for convenience of reference only and do not affect the construction or interpretation of the Proposal;
- b) The words "hereunder", "hereof" and similar expressions refer to the Proposal and not to any particular Article or Section and references to "Articles" or "Sections" are to Articles and Sections of the Proposal;
- c) Words importing the singular include the plural and vice versa and words importing any gender include all genders;
- d) The word "including" means "including without limiting the generality of the foregoing";
- e) A reference to any statute is to that statute as now enacted or as the statute may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder;
- f) References to dollar amounts are to Canadian dollars unless otherwise specified; and
- g) References to times are Atlantic time.

9.02 Valuation

For purposes of proofs of claim, voting and Distributions, all Claims shall be valued as at the Notice of Intention Date, or as at the time of termination or repudiation with respect of Claims arising from the termination, repudiation or non-performance of any lease or executory contracts.

9.03 Successors and Assigns

The Proposal shall be binding upon and shall ensure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of each Affected Creditor and each and every other Person named in or subject to the Proposal.

9.04 Governing Law

The Proposal shall be governed by and construed in accordance with the laws of Province of New Brunswick and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.

Dated at Moncton, New Brunswick, this 4th day of December, 2019.

ZIO'S PIZZA KITCHEN LTD.



Sandro Speranza, President

I have the authority to bind the corporation



Witness