



ROPES & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704
WWW.ROPESGRAY.COM

February 17, 2012

David S. Elkind
T +1 212 841 0608
F +1 646 728 1504
david.elkind@ropesgray.com

BY E-MAIL

James E. Spiotto, Esq. ✓
James Heiser, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, IL 60603-4080

Gentlemen:

I am writing in response to your emails advising us that the Bank of Montreal ("BMO") would not produce Betsy Erdelyi and Erica Kuhlmann, two of its employees, for their Rule 2004 examinations and to the various grounds upon which you have now asserted that those witnesses would not be produced. I am also writing with regard to your document production. There is no basis for your refusal to comply with the requested Rule 2004 examinations, and your document production appears to be materially incomplete.

As you are aware, by Order dated February 9, 2011 (the "Rule 2004 Order"), United States Bankruptcy Judge Dennis Montali authorized John Sheahan and Ian Lock, as Liquidators of Cedenco JV Australia Pty Ltd, SK Foods Australia Pty Ltd, and SS Farms Australia Pty Ltd (the "Debtors"), to subpoena documents and take examinations relating, among other things, to the issues of the stock and debt claims asserted against the Debtors, the issues relating to who is the owner of the stock and debt, and the issues of whether the stock and debt were transferred by SK Foods LP. Pursuant to the Rule 2004 Order, in October, 2011, we served subpoenas calling for the production of relevant documents from BMO, and in November, 2011, we served subpoenas calling for the Rule 2004 examinations of Ms. Erdelyi and Ms. Kuhlmann. After months of delay, documents were finally produced to us during the second week of January, 2012. On January 10, you indicated to us that Ms. Erdelyi and Ms. Kuhlmann would be available to give their depositions during the week of January 30 and asked us which of the specific dates identified by you were agreeable. By email dated January 11, I advised you that we would take the depositions February 3 and 7, two of the dates identified by you. As the dates for the depositions approached, I asked for confirmation of those dates, and after a further lapse of time you demanded that both depositions be taken in a single day. Although we disagreed, we then acceded to your request so that the depositions could move forward and again asked you to confirm the date for the depositions. You then advised us that BMO would not produce the two witnesses at all.

There can be no doubt about the need for and appropriateness of the Rule 2004 examinations. Mr. Sheahan and Mr. Lock, as Liquidators of the Debtors, are charged with responsibility for looking into questions of who are the owners of the stock and claims against the Debtors. You have argued in your various emails to us that the stock and debt of the Debtors, which were foreign subsidiaries of SK Foods, were not transferred by SK Foods (or were not transferred prior to the SK Foods bankruptcy) and that BMO holds a security interest in the stock and debt. Similar claims have been filed by Brad Sharp, the Trustee of SK Foods, in the Australian liquidation proceedings. However, the documents which you have produced would appear to show just the opposite of what you claim. You have produced document after document which indicates that the stock and debt of the Debtors was transferred by SK Foods in late 2007, long before SK Foods' bankruptcy, with the full knowledge and consent of BMO. To cite only several examples:

- Emails between SK Foods and BMO dated September 21, 2007, refer to discussions between the company and the bank relating to exclusion of the foreign subsidiaries from the Credit Agreement because the foreign subsidiaries were being spun off (BMO-AU007615)
- A credit memo for SK Foods dated September 27, 2007, apparently transmitted after SK Foods indicated that it would be spinning off its foreign subsidiaries (including the Debtors), seeks approval to remove Foreign Subsidiaries from the Credit Agreement (BMO-AUS007188)
- An email from William Bishop dated December 18, 2007 refers to a summary of intercompany receivables and states, "You will note that I have purposefully not included the Foreign Group (Cedenco) activity as that has been spun off into a new trust." (BMO-AUS000243)
- An email dated August 8, 2008, refers to revised pro formas for SK Foods for 2007 reflecting the spin off of the foreign entities (BMO-AUS004600)
- A memo from Alvarez and Marsal, advisers retained by BMO, refers to the spin off of Cedenco in 2007. (BMO-AUS010804)
- An email from Erica Kuhlmann of BMO dated August 21, 2008, states that "Scott [Salyer] owns" the New Zealand entity which had been a subsidiary of SK Foods (BMO-AUS008523)
- Emails dated August 25, 2008 refer to a \$4.8 million partner distribution recognized by the bank reflecting the spin off of the Cedenco subsidiaries in 2007 (BMO-AUS009691), BMO-AUS009716 ("I also explained that this was included in the CC for the spin off of Cedenco")

- An email from Lauren Lavorato to Ms. Erdelyi, both employees of BMO, dated September 9, 2008, states:
“The audited financial statements for FY2007 say that SK Foods LP distributed all investments in foreign subsidiaries to its partners effective November 1, 2006 (Note 1)
Does our borrower have ownership of these foreign subsidiaries or no? Not currently.
. . . [T]he spin off of Cedenco and the related foreign entities was completed in FY2007 (per the above note). . . .” (BMO-AUS002745)
- Further emails pass along this very same information from BMO to members of the lender group. (e.g., BMO-AUS002269)
- BMO-AUS0001868 reflects the transfer of the foreign subsidiaries for the purpose of avoiding consolidation under FIN 46.
- An email from Ms. Lavorato of BMO dated February 18, 2009, to another member of the lender group states, “SK Foods spun out the Cedenco entities in late FY2007/early FY2008.” (BMO-AUS013248)

In the face of these and other materials produced to the Liquidators by BMO and others, there can scarcely be any dispute about the appropriateness of Rule 2004 examinations to look into the claims made by BMO and the SK Foods Trustee, since BMO's own documents appear to contradict those claims.

In refusing to produce your two witnesses at the last minute, BMO has advanced a number of contentions. Those contentions appear to be little more than an effort to prevent BMO employees from testifying as to the facts. You argue that the Bankruptcy Court in the SK Foods liquidation proceeding entered a preliminary injunction against the Salyer interests enjoining them from transferring the stock or debt. However, that argument provides no justification for BMO's refusal to comply with the Rule 2004 examinations. First, when claims are asserted against the Australian liquidation, the Liquidators have a responsibility to examine those claims and it is the ultimate function of an Australian court to adjudicate the legitimacy of those claims, if they are disputed. We understand that some other disputed issues relating to the claims are currently before an Australian court. Second, the Liquidators were and are not parties to the preliminary injunction proceeding. Third, the preliminary injunction issued by the court was a preliminary injunction, and it appears that the documents from BMO's files may never even have been provided to the Court. Fourth, regardless of where or in which courts the issues will ultimately be adjudicated and resolved, one essential function of Rule 2004 is to enable the liquidators to discover information relating to pending disputes and to assist the liquidators in deciding what positions they will or will not take in any such litigation. In the face of documents produced by BMO which appear to

ROPES & GRAY LLP

James E. Spiotto, Esq.

- 4 -

February 17, 2012

→ contradict your claims, and your last minute refusal to produce your witnesses, we cannot help but think that you simply do not want your witnesses to be examined.

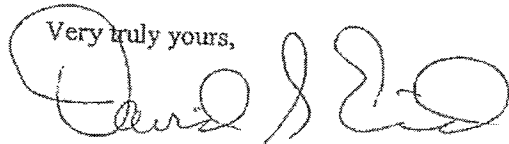
With regard to your client's document production, we have a number of concerns. First, you have not yet produced to us a privilege log indicating what documents have been withheld. Please do so. Second, it would appear to us that production has not been complete. For example:

- Documents produced by BMO indicate that, prior to approval of the Credit Agreement, SK Foods specifically discussed the spin off of the foreign subsidiaries, and BMO, as agent, sought approval for the transfer of the stock of SK Foods' foreign subsidiaries and removal of that stock from the collateral base. The documents likewise indicate that that approval was obtained. (See above) Yet you have produced no memos reflecting the approval of that request, no communications to the lender group about the request, and no documents communicating to SK Foods that the request for approval was granted.
- It is inconceivable that BMO, as agent, did not provide reports or updates to the lender group. Reports or summaries should have been provided at the time the Credit Agreement was entered into and thereafter, and should have set forth, among other things, what assets were or were not in the collateral base and any significant facts affecting the loans or collateral, such as transfers of the stock or debt of the foreign subsidiaries. None of these documents have been produced, and it is hard to believe that no such reporting was done.
- It does not appear that BMO has produced relevant documents called for by the requests posted on the Intralinks site. If you have searched the interlinks site and produced such documents, please advise us.
- In addition, Mr. Sheahan's and Mr. Lock's Australian counsel, in his letter to you dated February 10, has identified documents which appear not to have been produced.

It is surely in the best interests of all parties to allow the Australian liquidation proceedings to move forward. BMO's actions have obstructed that effort. We request (1) that BMO produce the two witnesses without further delay and (2) that BMO provide to us its privilege log and supplemental production with all relevant documents not produced to date.

Thank you.

Very truly yours,



David S. Elkind