NO. S2011355
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TARIQ WAHEED and 0923063 B.C. LTD.

PLAINTIFFS

AND:

JM FOOD SERVICES LTD., FRESHSLICE HOLDINGS LTD., RFSP EQUIPMENT & OPERATING INC., A&M ENTERPRISE LTD., 1015214 B.C. LTD., RF FRANCHISING INC., and THE TRUSTEES OF THE FRSHSLICE FAMILY TRUST

DEFENDANTS

APPLICATION RESPONSE

Application Response of: the Defendants

THIS IS A RESPONSE TO the Notice of Application of the Plaintiffs, filed September 3, 2026.

The Application Respondent estimates that the application will take 30 minutes.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms:

NIL

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1, 2, 3.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in Part 1 of the Notice of Application:

NIL

Part 4: FACTUAL BASIS

1. The plaintiffs seek in their application orders that the Receiver forthwith pay the following amounts:

   a. $790,161.16 to D.W. Grunder Law Corporation in trust for the plaintiffs on account of the judgment and costs owing by JM Food;

   b. The Receiver retain in trust the sum of $50,000 on account of costs pursuant to paragraph 39 of the Receivership Order;

   c. The Receiver retain in trust the sum of $100,000 to "defray costs of the receivership"; and

   d. The Receiver retain in trust the sum of $25,000 on account of the plaintiffs' costs relating to the execution of the Receivership Order and the applications before this Honourable Court.

2. On December 1, 2023, in this action and further to an earlier judgment made on April 11, 2019 (the "**2019 Judgment**"), the Court made a declaration that the transfer of property by JM Food Services Ltd. ("**JM Food**") to the corporate defendants was a fraudulent conveyance pursuant to the *Fraudulent Conveyance Act*, RSBC 1996, c. 163 ("**FCA**") and the *Fraudulent Preference Act*, RSBC 1996, c. 164 ("**FPA**"), and, therefore, of no force of effect. Reasons for judgment is indexed at 2023 BCSC 2113 (the "2023 Judgment").

3. The property that was held to have been transferred from JM Food to certain of the defendants included contractual rights to sell pizza dough, small-wares, and franchise (the "**Property**") without due consideration such that the transfers constituted a fraudulent conveyance and fraudulent preference.

4. At the trial of the action, the Court made the following orders:

   a. A declaration that the transfer of the property by the defendant, JM Food Services, to each or any of the defendants was a fraudulent conveyance within the meaning of the *FCA*, and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.

   b. A declaration that the transfer of the property was a fraudulent preference within the meaning of the *FPA* and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.

   c. An order that the plaintiffs are entitled to pursue their just and lawful remedies as judgment creditors against the defendant, JM Food Services, as if it were still the legal and beneficial owner of the transferred property to the same extent as it was before the transfer of the property.

[*2023 Judgment, para 164*]

5. These orders were made as the trial judge held that property was transferred by JM Food to certain of the other defendants without consideration.

6. The plaintiffs did not seek and the Court did not make any determination as to the value of any of the property that was transferred by JM Food without valid consideration. For example, there was no evidence tendered regarding the valuation of the contractual rights that were transferred by JM Food.

7. This conclusion is reflected in the Order After Trial that the parties had entered following the trial.

8. The Order After Trial confirms the following orders by the trial judge:

    a. A declaration that the transfer of the property by the defendant, JM Food, to each or any of the defendants was a fraudulent conveyance within the meaning of the *FCA*, and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.

    b. A declaration that the transfer of the property was a fraudulent preference within the meaning of the *FPA* and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food.

    c. The plaintiffs are entitled to pursue their just and lawful remedies as judgment creditors against the defendant, JM Food, as if it were still the legal and beneficial owner of the transferred property to the same extent as it was before the transfer of the property.

    d. The plaintiffs are awarded their costs on scale B.

9. Further, the trial judge noted the following and declined to make any order as to the following:

    a. An injunction restraining the defendants from disposing of or encumbering their interest in the property;

    b. No submissions were advanced in support of a declaration that the defendants hold the property in trust for the plaintiff.

10. Also, at trial, the plaintiffs sought for judgment against the defendants jointly and severally for the sum of $563,049.95 (which was the outstanding amount on the 2019 Judgment). The trial judge held that there was no such basis of liability for such an order. To the extent

that such basis could be found in tort, the Court of Appeal has disposed of a claim for in tort directly affiliated with a fraudulent conveyance.

[2023 Judgment, at para. 166]

11. In summary, the plaintiffs were successful in obtaining:

    a. declarations that property transferred by JM Food Services to the defendants constituted a fraudulent conveyance and a fraudulent preference such that the transfers are of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.

    b. plaintiffs are entitled to pursue their just and lawful remedies as judgment creditors against the defendant, JM Food, as if it were still the legal and beneficial owner of the transferred property to the same extent as it was before the transfer of the property.

12. The plaintiffs did not obtain any judgment award as against any of the other defendants.

13. On September 1, 2026, the defendants filed an application seeking an order approving the posting of $900,000 with the Receiver as security and granting an interim injunction restraining them from disposing of any property not related to the day-to-day operations of the defendants' businesses, and a 60-day stay of the Receivership Order. This application is going to be heard together with the plaintiffs' application.

14. The receiver's report notes the following:

    a. As a result of the closing or freezing of multiple bank accounts held by the defendants, the receiver "has taken possession and control of $**4,548,905.72**" [*Receiver's 1st Report, p. 8, para 18*];

    b. A calculation of the amount owing by JM Food Services for the judgment, costs and interest as of August 20, 2026 in the amount of $**790,161.16**.

15. The plaintiffs did not seek nor obtain a judicial determination of the value of the assets transferred as at the time of the fraudulent transfer.

16. In any event, it is submitted there is no urgency to the plaintiffs' application if the defendants post $900,000 as security as set out above.

Part 5: LEGAL BASIS

1. The Defendants rely on provisions of the *FCA* and the *FPA*.

2. Effecting a fraudulent conveyance/preference is not a tort itself. The declarations of fraudulent transfers made by the Court pursuant to the FCA and FPA do not directly

translate into an order that the transferees shall pay the outstanding amount under the 2019 Judgment to the plaintiffs in place of the transferor.

2023 Judgment, at para. 166, citing *Chan v. Stanwood,* 2002 BCCA 474 at paras. 37-39; *Stene v. White Caste Ventures Inc.*, 2022 BCCA 29 at para. 49; *Chan v. Stanwood et al.*, 2001 BCSC 378 at para. 49, aff'd 2002 BCCA 474

3. Where the assets fraudulently transferred, the claim is against the value of the assets at the time of the transfer.

Old North State Brewing Company v. McJannett et al, 2001 BCSC 12 ("*Old North*"), at para. 36.

4. Any transfer back of assets would involve an accounting between the transferor and the transferee relating to the issue of whether the transferee had increased the value of the assets after they were transferred.

Old North, supra, at para. 38

Part 6: MATERIAL TO BE RELIED ON

1. Pleadings filed herein;
2. Such other materials as counsel made advise.

☒ The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

☐ The Application Respondent has not filed in this proceeding a document that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

Dated at the City of Vancouver, in the Province of British Columbia, this 7th day of September, 2026.

B. Martyniuk
Lindsay Kenney LLP
Solicitors for the Application Respondents

This Application Response is filed by B. Martyniuk, of the law firm of Lindsay Kenney LLP, whose place of business and address for delivery is 1500 - 401 West Georgia Street, Vancouver, British Columbia, V6B 5A1