

**ONTARIO
SUPERIOR COURT OF JUSTICE BANKRUPTCY COURT
SPECIAL APPOINTMENT SCHEDULING FORM**

IN THE MATTER OF (THE NAME OF THE BANKRUPT)
In (City/Township/Region), Ontario

DATE MOTION FILED: June 14, 2024

**PLEASE NOTE: THIS FORM MUST BE COMPLETED AND RETURNED TO THE
BANKRUPTCY COURT OFFICE PRIOR TO A SPECIAL APPOINTMENT BEING SCHEDULED.**

The purpose of this form is to provide the Registrars in Bankruptcy with information to Assess the readiness of the case for hearing, estimate the probable length of the hearing, and to establish a fixed hearing date.

The Moving Party is expected to attempt to consult with all concerned parties and to seek their assistance with the information to be provided.

Please provide a Brief factual overview and nature of relief sought:

The Trustee appeals from certain decisions of Emily Beckerman, Official Receiver, Office of the Superintendent of Bankruptcy (the "OR"), made during the first meeting of creditors of Organic Garage (Canada) Ltd. (the "Bankrupt") on June 6, 2024, at which the OR was the Chairperson, (the "First Meeting").

Party	Name	Telephone	Fax No.	email
Trustee	Zeifman Partners Inc.			aar@zeifmans.ca ; sma@zeifmans.ca
Lawyer for Trustee	Fred Tayar & Associates P.C.			colby@fredtayar.com
Bankrupt				
Lawyer for Bankrupt				
OSB	Emily Beckerman			Emily.Beckerman@ised-isde.gc.ca
Lawyer for OSB				
Other (Specify)				

1. Parties' current **best estimate in minutes for complete hearing of matter:** 2 hours
2. **Percentage estimate of resolution by parties prior to hearing** _____
3. Case type:
 - Bankrupt's discharge application []
 - Motion []
 - Specify relief sought/type of motion: _____
 - Taxation of Statement of Receipts and Disbursements []
 - Taxation of Legal Bill(s) []
 - Trustee's Discharge Application []
 - Other: _____ []
4. Is any party self represented? YES **NO**
5. Is a translator required? YES **NO** Language _____
6. Is oral testimony of any nature required? YES **NO**
7. If the long hearing relates to a motion:
 - Have all motion materials been prepared? YES **NO**
 - If not, when will the materials be served? YES NO within 10 days of case conference
 - Are cross examinations expected? YES NO
 - Have all undertakings and/or refusals been answered? YES **NO**
 - By what date will examinations be completed? _____
 - Are any interlocutory motions required? YES **NO**
 - If so, have they been booked? YES NO
 - Please specify date: _____

Will factums be required? **YES** NO
 If so, have they been exchanged? YES **NO**
 If not, please specify date of anticipated exchange: _____ in accordance with the *Rules*

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8. Are any pre-hearing examinations required? YES **NO**
 If so, please specify the date agreed upon and booked: _____
 Are transcripts available? YES NO
 If not, please specify when transcripts will be available: _____

9. IF Oral Examinations before the Registrar are anticipated please complete the following table:

Witness name	Party calling witness	Length of direct examination	Length of cross examination	Length of re-direct	Total length

I HEREBY CERTIFY THAT ON BEHALF OF THE MOVING PARTY I HAVE ACCURATELY ANSWERED ALL OF THE QUESTIONS AND THAT I HAVE CONSULTED WITH ALL OTHER LAWYERS/PARTIES FOR THE PURPOSE OF COMPLETING THIS FORM.

Date: July 5, 2024



Signature: _____

Print Name: _____

FOR COURT USE ONLY:

ENDORSEMENT:

Date: _____

 Registrar

July 31, 2024

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Sara Quinn-Hogan, DOJ for OSB
Colby Linthwaite for Creditor, Zeifman, Trustee in Bankruptcy of Oragin Foods Inc.
Adrienne Ho for KPMG, Trustee of Bankrupt, Organic Garage

Adjourned to a Case Conference before me by Zoom on August 22nd at 9:30 when Ms. Spence and Mr. Peterson are back from vacation and can get some instructions relating to the discussion today.

There seem to be two issues that I raised with the parties.

There is the procedural issue relating to the voting at the first meeting of creditors, and whether the Creditor having on or about June 14, 2024 Appealed the Chair's decision(s) at the June 6, 2024 First Meeting of Creditors under s.108 and 109(6), made the second "First Meeting of Creditors" on July 10, 2024 where the "Two step" (under s.108(3) and 109(6)) process for voting by related creditors was employed, a nullity, as was asserted by Mr. Linthwaite, Oragin having already appealed the chair's decision under s.109(6) from the first meeting.

If Mr. Linthwaite is right, the second meeting where the Creditor did vote on inspectors, but not the confirmation of the Trustee, did not confirm the appointment of the Trustee or the Inspectors.

The second is the Substantive issue as to why the voting for inspectors and confirmation of the Trustee is consequential and why the claim of Oragin was alleged being rejected for voting, other than the 100% ownership of the Bankrupt by the Parent Oragin Foods.

If this is really about the validity, quantification and priority of distribution to Oragin under its claimed approximate \$11 Million claim, under s.137 or because of accounting or other quantification and set off issues, or for some other reason, those are substantial issues as it appears at present that Oragin has a claim that approximately 3/4 of all proven claims, and dealing with those issues for both the purposes of the vote AND for the purposes of determining the claim and its priority in payment of dividends through the disallowance process would seem to be a better use of time.

Ms. Quinn-Hogan asserted that the second meeting "fixed" the problem by implementing the s.108(3)/s.109(6) "two-step" voting, but it really didn't because whatever is the enforceability, priority or quantification issue asserted in relation to the Oragin claim, that issue would still have to be finally determined to deal with the outcome of the vote at either meeting on a substantive basis, if the issue is more than the undisputed fact that the Parent was the 100% owner of the Bankrupt sub.

For the purposes of having a hearing date for something to be determined, I have set aside November 21st for the full day for a hearing of either the voting issue, or the allowance/disallowance issue, or a little bit of both, so that there is both a time horizon and Court availability.

At the August 22nd Case Conference we can decide what is to be heard, for how long, and on what materials timetable.



ASSOCIATE JUSTICE ILCHENKO

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August 22, 2024

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Eric Peterson and Sara Quinn-Hogan, DOJ for OSB
Colby Linthwaite for Creditor, Zeifman, Trustee in Bankruptcy of Oragin Foods Inc. ("Zeifman")
Miranda Spence for KPMG, Trustee of Bankrupt, Organic Garage
Pritesh Patel LIT and Broderick Lomax LIT for KPMG

As one of the two reasons for the Decision of the Chair under appeal by the Zeifman is the validity of the claim filed by the Zeifman as Trustee of the Bankrupt parent Oragin, in addition to the alleged related status of Oragin to the Bankrupt as the parent corporation, the issue of the appeal from the vote cannot be separated from the issue of the allowance or disallowance of the Oragin claim or priority.

Accordingly, I will hear both the Appeal already filed by Zeifman from the Chair's decision at the June 6th, hearing, and any appeal from the disallowance by the Trustee of the Oragin Proof of Claim, at the same time for a full day on November 21, 2024 by Zoom.

In order to regularize that appeal from the Chair's decision, and the position of Zeifman that the appeal of the chair's decision in the June 6 meeting makes the second meeting where the Trustee was confirmed and inspectors appointed a nullity until the appeal is disposed of, Mr. Linthwaite and Ms. Spence can confer as how procedurally that issue that was raised after the Appeal by Zeifman under s.109(6) can be regularized and added for determination, either by an amended Notice of Appeal by Zeifman or a Cross-Appeal by KPMG.

Given the possible implications of that issue, the entirety of this matter needs to be determined expeditiously in order that both the Bankruptcy Estates being administered by KPMG and Zeifman can proceed.

- 1) I would ask that the OSB accelerate the s.161 examination of the Designated Person for the Bankrupt to be completed by September 13th and the s.161 Report to be completed and sent to KPMG and its counsel by September 20th. I would expect that KPMG and its counsel would also provide a copy of that s.161 Report to Zeifman and its counsel.
- 2) That should allow sufficient time for the Trustee to serve a disallowance of the Zeifman Oragin Proof of Claim by October 1, if the Trustee chooses to do so.
- 3) If the Disallowance proceeds, Zeifman is to serve its Appeal from Disallowance by October 4, and their supporting evidence for the Appeal by October 18.
- 4) KPMG, and the OSB to serve their responding Materials by November 1.
- 5) Zeifman to serve its Factum by November 8
- 6) Trustee and OSB to serve responding facta by November 15.

If the parties settle, or run into issues I will make myself available to assist at a 9:30 appointment, if the parties contact me through the Bankruptcy Court Office.



ASSOCIATE JUSTICE ILCHENKO

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November 21, 2024

Appeal heard on first issue of Appeal from Trustee's disallowance.

I would ask that the Appellant Trustee Zeifman provide its revised factum and/or compendium, whichever it wishes to file, if possible by December 7, 2024.

I would also ask counsel for Respondent Trustee or the Zeifman Trustee, to provide any BDC loan and security documentation if it is ever located.

Second portion of Appeal on Chair's decision at Meeting(s) of Creditors adjourned sine die pending determination of first issue.

A handwritten signature in black ink, consisting of a series of overlapping, sweeping lines that form a stylized, elongated shape.

ASSOCIATE JUSTICE ILCHENKO