

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

COUNTRY FRESH HOLDING
COMPANY, INC., *et. al.*¹

Debtors.

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Case No.: 21-30574

Jointly Administered

**TRUSTEE’S EXPEDITED MOTION FOR TURNOVER OF
FUNDS PURSUANT TO 11 U.S.C. § 543 AND ORAL COURT ORDER**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

***** Expedited consideration is requested as soon as the Court’s calendar will allow.**

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO

¹ The Debtors in these Chapter 7 cases and the last four digits of each Debtors’ taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors’ principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Janet S. Northrup, the Chapter 7 Trustee (the “**Trustee**”) of the bankruptcy estate of Country Fresh Holding Company, Inc *et. al.* (“**Debtors**”), the debtors in the above-styled Chapter 7 case, files this *Trustee’s Expedited Motion for Turnover of Funds Pursuant to 11 U.S.C. § 543 and Oral Court Order* and would show the Court as follows.

Summary of Relief Requested

1. In connection with the *Trustee’s Emergency Motion To Operate Pursuant to 11 U.S.C. § 721 Effective as of June 21, 2021* [Docket No. 736] heard by this Court on June 30, 2021, the Trustee alerted the Court of the need to the transfer all of Debtors’ bank accounts to the Trustee’s control. The Court addressed the transfer of all bank accounts and noted on the docket that:

As stated on the record, the Court orders that all interests in all accounts as they exist immediately prior to a transfer to the Trustee’s account will be carried forward into the Trustee’s accounts without the necessity for further documentation or order, parties may follow up to clarify if needed, to the extent there is a dispute to the integration it will be sorted at a later date.

Docket No. 745 dated June 30, 2021.

2. Citibank, N.A. (“**Citibank**”) holds an Escrow Account (defined below and originally funded by the Buyer with \$12 million) in which the Debtors have an interest. In conferring with Citibank regarding the turnover of these funds to the Trustee, Citibank requested a court order to facilitate this turnover because the escrow agreement governing these funds includes the Buyer as a party. In negotiating a proposed stipulation and court order to facilitate this transfer, the Trustee became aware of the Buyer’s objection to transferring these funds to the Trustee.

3. For clarity and avoidance of doubt, the Trustee seeks the Court’s instruction as to turnover of these funds. The Trustee seeks turnover of the escrow funds from Citibank and an order authorizing and directing the transfer of these funds to the Trustee. The Trustee proposes to hold these funds in a segregated account pending further Court order.

4. Alternatively, to the extent the Court determines that the escrowed funds should stay with Citibank, the Trustee request an order that such funds will be released only upon Court order and that the Buyer may not unilaterally direct Citibank to disburse any funds from the Escrow Account.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

6. On February 15, 2021 (the “**Petition Date**”), the Debtors filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code (the “**Case**”).²

7. The Debtors operated as a debtor-in-possession from February 15, 2021 until June 21, 2021, when the Court entered its order of conversion to Chapter 7—*Order (I) Authorizing and approving the Conversion of the Chapter 11 Cases, (II) Extending the Designation Rights Period, and (III) Granting Related Relief* [Docket No. 719] (the “**Conversion Order**”). Thereafter, Janet S. Northrup was appointed as the Chapter 7 Trustee.

8. Prior to conversion, on March 29, 2021, the Debtors sold their assets to Stellex/CF Buyer (US) LLC (the “**Buyer**”) pursuant to this Court’s *Order Authorizing Country Fresh*

² Additional information about the Debtors and their business can be found in the *Declaration of Stephen Marotta in Support of First-Day Motions* filed at Docket No. 18 in this Case.

Holdings Company Inc. and Its Affiliated Debtors to (I) Sell Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Authorizing and Approving the Debtors' Performance under the APA, (III) Authorizing and Approving the Assumption and Assignment of Certain of the Debtors' Executory Contracts, Unexpired Leases, And Permits Related Thereto, and (IV) Granting Related Relief [Docket No. 437] (the "Sale Order").

9. On April 29, 2021, pursuant to the Sale Order, the Debtors and Buyer entered into the Asset Purchase Agreement [Docket No. 659-2] (as may be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto, the "APA").

10. Pursuant to the APA, Debtors and Buyer entered into an escrow agreement dated April 29, 2021 (the "Escrow Agreement") attached hereto as **Exhibit 1**, whereby the Buyer placed the Adjustment Escrow Amount, License Escrow Amount, and Replenishment Funds³ (if any) into escrow with Citibank in the amount of \$12 million (the "Escrow Account"). The Escrow Account facilitates the purchase price adjustment under the APA pursuant to section 3.1 and the final amount of proceeds the Debtors receive for the sale of their assets. As such, the Debtors' bankruptcy estates have an interest in the Escrow Account.

11. The APA provides that the Buyer may unilaterally direct Citibank to release funds from the Escrow Account. Docket No. 659-2, APA, para. 3.1(i).

Relief Requested

12. Section 543(b) of the Bankruptcy Code provides that a custodian shall "deliver to the trustee any property of the debtor held by or transferred to such custodian . . . that is in such

³ The Adjustment Escrow Amount, License Escrow Amount, and Replenishment Funds shall each have the same meaning as defined in the Escrow Agreement.

custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case ..." 11 U.S.C. § 543(b)(1).

13. Under 11 U.S.C. § 541 provides that property of the estate includes: all legal or equitable interests of the debtor in property as of the commencement of the case...". 11 U.S.C. § 541(a)(1). Because the Debtors have an interest in the escrowed funds, albeit undetermined as to amount, the escrowed funds should be turned over to the Trustee.

14. Thus, the Trustee seeks turnover of the funds in the Escrow Account from Citibank. The Trustee will place such funds in a segregated account pending the determination of the purchase price adjustment as provided for in the APA. The Trustee will release such funds only upon Court order.

15. Alternatively, to the extent the Court determines that the escrowed funds should remain with Citibank, the Trustee requests an order that such funds will be released only upon Court order and that the Buyer may not unilaterally direct Citibank to disburse any funds from the Escrow Account.

Basis for Emergency Consideration

16. The Trustee requests that the Court consider this Motion on an expedited basis in the interest of the Trustee timely complying with this Court's order regarding turnover of Debtors' accounts to the Trustee. In addition, Trustee believes that the escrowed funds are not earning interest at Citibank. The Trustee believes that the funds would earn interest in a Trustee account.

17. Pursuant to Local Rule 9013-1(i), the undersigned counsel for the Trustee, certifies that this Motion and the grounds set forth for emergency consideration are accurate, to the best of her information and belief, after diligent inquiry and investigation.

WHEREFORE, the Trustee prays that the Court enter an Order directing Citibank to turnover any funds in which the Debtors have an interest including the Escrow Account to the Trustee and for such other relief to which she may be entitled.

Dated: August 2, 2021.

Respectfully submitted,

/s/ Heather Heath McIntyre

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**PROPOSED ATTORNEYS FOR CHAPTER 7
TRUSTEE, JANET S. NORTHRUP**

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2021, a true and correct copy of the foregoing document was served on (i) parties receiving ECF notice via the Court's CM/ECF system in the above-referenced case, and (ii) parties listed on the attached Master Service List via first-class, U.S. Mail, postage-prepaid to the extent not served via ECF.

/s/ Heather Heath McIntyre

Heather Heath McIntyre

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that she conferred in good faith over multiple days with Buyer's counsel and that this Motion remains opposed and Buyer desires a hearing on the matter.

/s/ Heather Heath McIntyre

Heather Heath McIntyre