United States Bankruptcy Court
Southern District of Texas
ENTERED
October 18, 2021
Nathan Ochsner, Clerk

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

In re:	§	**Chapter 7**
	§	
COUNTRY FRESH HOLDING COMPANY INC., *et. al.*[1]	§	**Case No.: 21-30574 (MI)**
	§	
	§	**Jointly Administered**
Debtors.	§	

STIPULATION AND AGREED ORDER REGARDING ASSUMPTION AND ASSIGNMENT OF THE OSWEGO AGREEMENTS

This stipulation and agreed order ("Stipulation and Agreed Order") is entered into by and between Janet Northrup, as chapter 7 trustee (the "Trustee") of the estates of Country Fresh Holding Company Inc., *et al.* (collectively, the "Debtors"), County of Oswego Industrial Development Agency (the "Oswego IDA"), Stellex/CF Buyer (US) LLC (the "Buyer"), and CF Oswego, LLC ("CF Oswego", and together with the Trustee on behalf of the Debtors, the Buyer, and the Oswego IDA, collectively, the "Parties"). The Parties hereby stipulate and agree as follows:

[1] The Debtors in these Chapter 11 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.

RECITALS

WHEREAS, on February 1, 2020, the Oswego IDA and Debtor Champlain Valley Specialty of New York, Inc. entered into an Amended and Restated Company Lease Agreement (the "Lease") for a facility located in Oswego County, New York;

WHEREAS, on February 1, 2020, in conjunction with the Lease, the Oswego IDA and Debtor Champlain Valley Specialty of New York, Inc. entered into a Payment in Lieu of Taxes Agreement (the "PILOT Agreement" together with the Lease, the "Oswego Agreements") for the Oswego Facility;

WHEREAS, on February 15, 2021, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, on March 29, 2021, the Court approved the sale of substantially all the Debtors' assets to the Buyer pursuant to that *Order Authorizing Country Fresh 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] (as the same has been and may further be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits thereto, the "Sale Order");

WHEREAS, as authorized by the Sale Order, the Debtors, and the Buyer entered into that certain Asset Purchase Agreement, dated as of April 29, 2021, by and between the Debtors and the Buyer (as the same has been and may further be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto, the "APA");

WHEREAS, as authorized by the Sale Order and the APA, the Debtors and the Buyer entered into that certain Transition Services Agreement, dated as of April 29, 2021 (as the same has been and may further be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto, including the Supplemental TSA Order (as defined below), the "TSA"), which TSA has governed the business between the Parties from the Closing through the date hereof;[2]

WHEREAS, on April 29, 2021, the closing of the sale with the Buyer occurred;

WHEREAS, on June 21, 2021, the Court entered the *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];

WHEREAS, on June 21, 2021, the Trustee was appointed as the Chapter 7 Trustee in the above-captioned cases;

WHEREAS, on August 5, 2021, the Court entered the *Stipulation and Agreed Order Regarding County of Oswego Industrial Development Agency* [Docket No. 848], pursuant to which, as and to the extent set forth therein, the Designation Rights Period and the Term of the TSA were extended through and including October 15, 2021 by agreement of the Parties, with respect to the Oswego Agreements;

WHEREAS, the Oswego IDA and CF Oswego have negotiated the following amendments to the Oswego Agreements: (a) Amended and Restated Payment in Lieu of Taxes Agreement; (b) Omnibus Amendment of Transaction Documents; and (c) Omnibus Assignment and Assumption Agreement (collectively, the "Amended Oswego Agreements"), which Amended Oswego

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the APA, the Sale Order, or the TSA, as applicable.

Agreements shall be effective as of the date of entry of this Stipulation and Agreed Order (the "Assumption Date");

WHEREAS, the Parties have agreed to the assignment to and assumption by CF Oswego of the Oswego Agreements, as amended by the Amended Oswego Agreements;

WHEREAS, to the best of the knowledge of the Oswego IDA, there are no defaults existing under the Oswego Agreements or Amended Oswego Agreements as of the date hereof;

WHEREAS, the Parties (other than the Oswego IDA) represent that there are no defaults existing under the Oswego Agreements or Amended Oswego Agreements as of the date hereof.

WHEREAS, there are no Cure Amounts (as defined in the Sale Order) owing under the Oswego Agreements or Amended Oswego Agreements as of the date hereof.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. The recitals to this Stipulation and Agreed Order are incorporated as if fully set forth herein.

2. The Oswego Agreements, as amended by the Amended Oswego Agreements, are assumed and assigned to CF Oswego as of the Assumption Date.

3. No Cure Amount shall be paid in order to assume the Oswego Agreements as set forth herein.

4. The Parties are authorized to take all actions necessary to effectuate the relief granted pursuant to this Stipulation and Agreed Order.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Stipulation and Agreed Order.

Signed: October 18, 2021

Marvin Isgur
United States Bankruptcy Judge

AGREED AND ACCEPTED:

HUGHES WATTERS ASKANASE, LLP

By: */s/ Wayne Kitchens*
Wayne Kitchens
wkitchens@hwa.com
State Bar No. 11541110
Heather Heath McIntyre
hmcintyre@hwa.com
State Bar No. 24041076
1201 Louisiana, Suite 2800
Houston, TX 77002
Telephone: 713-759-0818
Facsimile: 713-759-6834

ATTORNEYS FOR JANET NORTHRUP, CHAPTER 7 TRUSTEE

CARACCIOLI LAW, PLLC

/s/ Kevin C. Caraccioli
Kevin C. Caraccioli
175 East Seventh Street
Oswego, New York 13126
Telephone: (315) 343-1939
Facsimile: (315) 343-1822
E-mail: kcc@caracciolilaw.com

COUNSEL FOR OSWEGO IDA

WINSTON & STRAWN LLP

/s/ Carey D. Schreiber
Carey D. Schreiber*
200 Park Avenue
New York, New York 10166
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
E-mail: cschreiber@winston.com

*Admitted *Pro Hac Vice*

COUNSEL TO THE BUYER AND CF OSWEGO