

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2019 SKQB 239

Date: 2019 09 17  
Docket: QBG 915 of 2019  
Judicial Centre: Saskatoon

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IN THE MATTER OF THE RECEIVERSHIP OF BECKERLAND FARMS INC.

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA,

APPLICANT

- and -

BECKERLAND FARMS INC.,

RESPONDENT

**Counsel:**

Jeffrey M. Lee, Q.C.  
Shawn M. Patenaude

for the applicant Receiver, MNP Ltd.  
for the respondents, S & D Solonenko Farms Ltd.  
and Clarence Perpeluk

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FIAT  
September 17, 2019

ROTHERY J.

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[1] Beckerland Farms Inc. [Debtor] is a Saskatchewan corporation engaged in the business of grain drying and grain storage. Its two facilities are located near Canora, Saskatchewan, and near Wroxton, Saskatchewan. The Business Development Bank of Canada [BDC] lent the Debtor monies, secured by a general security agreement and mortgages. Tyland Management Group Inc. [Tyland] granted BDC an unlimited guarantee. Tyson Becker [Becker] granted BDC a guarantee to the limit of \$500,000.00. Becker is the sole shareholder and director of both the Debtor and Tyland.

[2] BDC demanded repayment of the indebtedness on April 14, 2016. Then

BDC entered into a forbearance agreement with the Debtor and its guarantors, Tyland and Becker, on September 1, 2016, which was extended to May 31, 2018. The Debtor declined to renew the forbearance agreement, and BDC began to realize on its security, beginning with the mediation process under *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1. As at June 20, 2019, the Debtor owed BDC over \$5,617,000.00.

[3] BDC brought the application for the appointment of MNP Ltd. [Receiver] as receiver of the assets of the Debtor, returnable July 3, 2019. After a short adjournment, on July 5, 2019, the Receiver was appointed interim receiver of the Debtor's property to preserve the grain stored at its facilities. The receivership order was granted July 11, 2019.

[4] When the Receiver took possession of the Debtor's two grain drying and storage facilities, the Receiver discovered that two customers still had grain stored on site. S & D Solonenko Farms Ltd. [Solonenko] provided the Receiver with documentation supporting its claim to the stored grain. Solonenko's claim consisted of a contract dated August 28, 2018 which referred to Solonenko paying \$126,000.00 for grain storage to a numbered company, 102016217 Saskatchewan Ltd. [102 Ltd.]. Solonenko also provided the Receiver with a copy of its cancelled cheque dated August 28, 2018 showing payment for that amount had been made to 102 Ltd.

[5] The Receiver completed a Saskatchewan Corporate Registry Profile search on July 8, 2019, for 102 Ltd., and the report stated that 102 Ltd. was incorporated March 1, 2017. Becker was listed as the sole director, officer and shareholder of 102 Ltd.

[6] On July 12, 2019, Clarence Perpeluk [Perpeluk] provided the Receiver with two contracts for grain storage and grain turning. The first contract for \$4,620.00 with 102 Ltd. was dated December 14, 2018, and the cancelled cheque dated

December 22, 2018 for \$4,620.00 was made payable to 102 Ltd. The second contract for \$5,902.47 with 102 Ltd. was dated March 26, 2019, and the cancelled cheque dated March 26, 2019 for \$5,902.47 was made payable to 102 Ltd.

[7] The Receiver advised both Cortney Solonenko (director of Solonenko) and Perpeluk that the Debtor was the owner of the grain storage and drying facilities, and as such, the Debtor has a commercial lien claim over their grain being held at the Debtor's storage facilities. The Receiver issued a formal demand that 102 Ltd. pay the sum of \$115,522.47 to the Receiver. This demand represented the net balance that Solonenko had paid to 102 Ltd. of \$105,000.00 and the total balance of \$10,522.47 that Perpeluk had paid in his two cheques to 102 Ltd.

[8] The Receiver reached agreements with Solonenko and Perpeluk to allow the release of the grain being held in order that they could complete the sale of their grain to third parties. Solonenko paid \$105,000.00 in trust to his lawyer, Shawn Patenaude, and Perpeluk paid \$10,522.47 in trust to Mr. Patenaude. Those monies continue to be held in trust pending the outcome of this application to determine the validity of the commercial lien claimed by the Receiver against those monies.

[9] On the return date of August 23, 2019, Cortney Solonenko and Perpeluk filed affidavits in this application in support of their position that the Receiver does not have a valid commercial lien and that the monies ought to be released to them.

[10] Becker also filed an affidavit in support of Solonenko and Perpeluk. Becker swore that 102 Ltd. operated and paid the costs of the grain storage business for the 2018/2019 crop season. Because there were sufficient discrepancies between Becker's affidavit and previous affidavits he had filed with the court in related matters, along with his discrepancies with the evidence collected by the Receiver, I ordered that the application pertaining to the validity of the commercial lien be adjourned to

September 12, 2019 and that Becker attend for cross-examination on his affidavit before the Receiver. That cross-examination took place on September 3, 2019 and some of the undertakings have been complied with.

[11] Based on that cross-examination, and the affidavits filed, along with the two Receiver's reports, I conclude the following. The Debtor and Tyland advertise that the Debtor owns and operates the grain drying and storage facilities at Canora and Wroxton. The Debtor owns all the assets to operate this business. Becker admits that 102 Ltd. has no employees and no ability to provide this service to customers. There is no agreement between the Debtor and 102 Ltd. for 102 Ltd. to carry on this business.

[12] These conclusions are crucial because of the definition of "services" in *The Commercial Liens Act*, SS 2001, c C-15.1 [*Act*].

[13] Section 2 of the *Act* states:

...

"services" means any of the following types of services rendered for consideration in relation to goods:

- (a) the provision of labour or materials for the purposes of restoring, improving or maintaining the condition and properties of goods and of salvaging goods;
- (b) the storage of goods;
- (c) the transportation, carriage and towage of goods.

[14] Based on the definition of "services" in the *Act*, it is clear that it was the Debtor that provided them, with both its storage and drying of grain for Solonenko and Perpeluk.

[15] The other sections of the *Act* that are germane to this analysis are:

3(1) A person has a lien on goods for services that he or she has provided in relation to those goods if, at the time the request was made or the services were provided, the services were requested by a person:

- (a) with an interest in the goods;

- (b) in possession of the goods; or
- (c) legally entitled to possession of the goods.

...

4(1) Subject to section 5, a lien secures the amount that the person who requested the services agreed to pay for the services.

...

5 A lien attaches to goods on the commencement of the services giving rise to the lien but, until completion of the services, secures only the fair value of the services provided.

6(1) Subject to subsection (4), a lien is enforceable only where:

- (a) the goods are in the possession of the lien claimant; or

...

(2) For the purposes of clause (1)(a), a lien claimant is deemed not to have possession of goods that are in the apparent possession or control of the person requesting the services or that person's agent.

[Emphasis added]

[16] For the lien to be valid, the lien claimant must comply with the provisions of the *Act* as set out. There is no doubt that Solonenko and Perpeluk requested the services and had an interest in the grain they delivered to the Debtor. There is no dispute that they each agreed to pay a specific amount for the services requested.

[17] The Receiver has complied with s. 6(1)(a) of the *Act* because the goods are in the possession of the Receiver, pursuant to the receivership order which granted it possession of the assets of the Debtor. Section 6(2) of the *Act* is inapplicable because neither Solonenko nor Perpeluk, or any agents of either of them, have apparent possession or control of the grain. Neither the Debtor nor 102 Ltd. could be described as agent for either Solonenko or Perpeluk. That would be an absurd interpretation of s. 6(2) of the *Act*. In short, the Receiver is in compliance with the provisions of s. 6 of the *Act*. However, the analysis does not end there.

[18] Section 4 of the *Act* states that a "lien secures the amount that the person

who requested the services agreed to pay for the services”. Both Solonenko and Perpeluk paid for those services at the time they entered the contracts for service. That is, the services were already paid for some time prior to the services actually being rendered. Therefore, there is no amount to which a lien could attach. The *Act* does not apply.

[19] Counsel for the Receiver argues that Cortney Solonenko and Perpeluk, when they each entered contracts with 102 Ltd. and paid 102 Ltd. for the services, ought to have known that they were not paying the actual provider of these services. They were wilfully blind to the situation and cannot now benefit from their wilful blindness.

[20] Granted, the advertising of the services only refers to the Debtor and Tyland. But, Becker was known in the community as the principal in the operation. Instructions from Becker as to whom to make the cheque payable would not necessarily have caused any alarm to a customer.

[21] A search of the Land Titles Office registry in the autumn of 2018 would show that the Debtor was hopelessly insolvent. There were builders’ liens, tax liens, and a judgment by BDC for \$4.9 million registered against the Debtor’s titles. However, neither Cortney Solonenko nor Perpeluk would be expected to search the title prior to making cheques payable to 102 Ltd.

[22] Cortney Solonenko stated in his affidavit, sworn August 19, 2019, at para. 5 that:

5. I was aware that Tyson had dealings involving the business name “Beckerland Farms” because the logo was on trucks and I had heard references of Beckerland Farms being a business name associated with Tyson. When it was requested that the cheque be payable to Numbered Co. [102016217 Saskatchewan Ltd.], I did not question the request because I believed that either Beckerland Farms was a separate business from the grain storage or that Numbered Co. carried on business using the business name “Beckerland Farms”. All I knew was that Tyson Becker was the

principal of the business in any event and that I would take his direction as to whom the cheque would be payable.

[23] On all the evidence, I must conclude that the Receiver has not made out a case that either Cortney Solonenko or Perpeluk were wilfully blind to the fact that Becker was making out invoices to and requesting cheques payable to 102 Ltd. when the services were actually being provided by the Debtor. Therefore, there is no requirement that they pay twice for the services provided to them.

[24] In summary, the Receiver's application seeking a declaration that it has a valid and subsisting commercial lien on the grain of Solonenko and Perpeluk is dismissed. The monies presently held in Mr. Patenaude's trust account, which represent the proceeds of the grain, are directed to be paid as follows:

1. The sum of \$105,000.00 to Solonenko;
2. The sum of \$10,522.47 to Perpeluk.

[25] Order accordingly.

 J.  
A.R. ROTHERY