

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

B E T W E E N:

BANK OF MONTREAL

Applicant

and

**ARRRC INTERNATIONAL INC., AGRICULTURE TECHNOLOGY INCORPORATED,
2265469 ONTARIO INC., 2292760 ONTARIO INC. and 2517748 ONTARIO INC.**

Respondents

**SECOND REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS RECEIVER OF
ARRRC INTERNATIONAL INC., AGRICULTURE TECHNOLOGY INCORPORATED,
2265469 ONTARIO INC., 2292760 ONTARIO INC. and 2517748 ONTARIO INC.**

August 20, 2018

Table of Contents

	<u>Page</u>
1.0 Introduction and Purpose of Report	1
1.1 Introduction.....	1
1.2 Purpose of the Receiver’s Second Report.....	2
2.0 Receiver’s activities since the First Report.....	3
2.1 Environmental – Leachate Pad and Lagoons.....	3
2.2 Government Accounts	3
2.3 Accounts Receivable.....	3
2.4 Inventory Liquidation	4
2.5 Insurance.....	4
2.6 Third Party Assets.....	4
2.7 Independent Security Opinion	4
3.0 Sales Solicitation Process	5
4.0 2435895 Ontario Inc. and Subject Property.....	7
5.0 Statement of Receipts and Disbursements.....	10
6.0 Receiver and its Counsel’s Accounts.....	11
7.0 Order Sought.....	12

Listing of Appendices

Appendix A	Initial Order
Appendix B	First Report
Appendix C	Order and Endorsement Approving First Report
Appendix D	MT Security Opinion
Appendix E	243 Notice of Termination
Appendix F	Statement of Receipts and Disbursements
Appendix G	MNP Fee Affidavit
Appendix H	Miller Thomson Fee Affidavit

1.1 Introduction

1.1.1 ARRRC International Inc. (“**ARRRC**”) is a real estate holding company and sole title holder of lands municipally known as 329 County Road 34, Ruthven Ontario (the “**329 Property**”). The 329 Property is comprised of 26.42 acres of land and has been improved with multiple outbuildings, including three private residences. ARRRC leases the 329 Property exclusively to Agriculture Technology Inc. (“**ATI**”).

1.1.2 ATI’s primary business is the handling of plant materials and growing media removed from local greenhouse growers at the end of the crop cycle. Services offered by ATI include agriculture material handling, organic and substrate recycling, wood grinding and soil screening. Related businesses include plastic recycling, bio-fiber production, bio-fuel compounding and garden products.

1.1.3 2517748 Ontario Inc., operating as City Recycle (“**251**”) operates as a waste disposal, processing and recycling transfer station from leased lands municipally known as 1153 Tecumseh Rd, Windsor Ontario (“**Tecumseh Property**”).

1.1.4 2265469 Ontario Inc. o/a as AR3C (“**226**”) provides management services to ARRRC, ATI and City.

1.1.5 2292760 Ontario Inc. o/a WECO2 (“**229**”) is a non-operating company.

1.1.6 ARRRC, ATI, 251, 226 and 229 (collectively the “**Companies**”) are all related private corporations having common ownership and directors.

The directors of the Companies are:

- (i) Mr. Matthew Posthumus;
- (ii) Mr. Steve Posthumus;
- (iii) Mr. Luke Posthumus; and
- (iv) Mr. Mark Posthumus (together the “**Posthumus Family**”).

1.1.7 Bank of Montreal (“**BMO**” or the “**Bank**”) is the senior secured lender to the Companies. In aggregate, the Companies are indebted to BMO for approximately \$14,600,000.

1.1.8 The debt owing to BMO is secured by the following:

- (i) A collateral charge registered against the Property in the principal amount of \$12,800,000;
- (ii) General security agreements from each of the Companies.

1.1.9 On April 3, 2018, the Companies advised BMO that the businesses were experiencing financial distress caused by the activities of the Ministry of Environment and the Town of Kingsville and, as

a result, operations had effectively ceased. On April 4, 2018, BMO issued demands for payment and notices of intention to enforce security to the Companies.

1.1.10 On April 18, 2018, the Honourable Justice Pattillo of the Ontario Superior Court of Justice issued an Order (the “**Appointment Order**”) appointing MNP Ltd. as receiver (the “**Receiver**”) of the Companies. A copy of the Appointment Order and the endorsement of Justice Pattillo are attached as **Appendix A**. The Appointment Order is substantially in the form of the Model Receivership Order.

1.1.11 The Appointment Order authorized, but did not obligate, the Receiver, among other things, to do the following where the Receiver considers it necessary or desirable:

- (i) Take possession of and exercise control over the property of the Companies;
- (ii) Manage, operate and carry on the business of the Companies;
- (iii) Initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Companies, the Property or the Receiver, and to settle or compromise any such proceedings; and,
- (iv) Market any or all of the property of the Companies and negotiate such terms and conditions of sale as the Receiver may deem appropriate.

1.1.12 The Receiver submitted one previous report to the Court dated June 19, 2018 (the “**First Report**”), which included a confidential supplemental report. The First Report, without appendices, is attached as **Appendix B**. A copy of the Order and Endorsement of Justice McEwen approving the First Report is attached as **Appendix C** (“**McEwen Order**”).

1.2 Purpose of the Receiver’s Second Report

1.2.1 This constitutes the Receiver’s Second Report to the Court (the “**Second Report**”) in this matter and is filed to:

- (i) Report on the Receiver’s activities since the First Report;
- (ii) Provide an update to the Court on the Receiver’s sale solicitation process (“**SSP**”);
- (iii) Report the results of a security review conducted by the Receiver’s independent legal counsel to the Court;
- (iv) Request an Order requiring 2435895 Ontario Inc. (“**243**”) and its president, Mr. Reno Vespa (“**Vespa**”), to surrender ATI assets to the Receiver and pay for costs to dispose of waste material deposited into these assets post receivership;
- (v) Obtain approval of the Receiver’s Statement of Receipts and Disbursements for the period April 18, 2018 to August 13, 2018; and,
- (vi) Obtain approval of the fees and expenses of the Receiver and its legal counsel.

2.0

Receiver's activities since the First Report

2.1 Environmental – Leachate Pad and Lagoons

- 2.1.1** As discussed in the First Report, ATI's processing facility at the 329 Property is equipped with a 7-acre cement holding pad ("**Pad**") which is utilized to stockpile unprocessed agriculture by-product. The Pad and two large reservoirs ("**Lagoons**") collect precipitation run-off. The resulting liquid ("**Leachate**") is deemed by the Ministry of Environment and Climate Change ("**MOE**") to be 'Non-Agriculture Sourced Material' ("**NASM**").
- 2.1.2** Since the First Report the Receiver has continued to retain the Posthumous family to monitor and manage the Lagoons.
- 2.1.3** MOE officials have attended the 329 Property on multiple occasions since the First Report to inspect the status of the Pad and Lagoons. MOE officials have reported their observations periodically and advise Lagoon levels remain at freeboard levels. The MOE last visited the 329 Property on August 9, 2018 and confirmed that Leachate levels remain below freeboard range.
- 2.1.4** While a significant quantity of Leachate was removed from the Lagoons between May 29 and June 1, 2018 in accordance with a NASM Development Plan ("**NASM Plan**"), Lagoon Leachate levels remain high and continue to rise in conjunction with area precipitation.
- 2.1.5** The Receiver has organized a second NASM Plan to commence the first week of September. The proposed NASM Plan will reduce existing Lagoon Leachate levels by approximately 660,000 gallons.

2.2 Government Accounts

- 2.2.1** Canada Revenue Agency ("**CRA**") has commenced an audit of the Companies source deduction and HST accounts. CRA has not yet concluded its review.
- 2.2.2** As discussed in the First Report, the Receiver engaged ATI's former accountant, Collins Barrow LLP, to file ATI's income tax return and HST remittances.
- 2.2.3** The Receiver is working with CRA to complete and file HST returns for ARRC, 251, 226 and 229.

2.3 Accounts Receivable

- 2.3.1** The consolidated book value of the Companies accounts receivable at the date of receivership was \$306,028 (net of intercompany account balances).
- 2.3.2** The Receiver has processed outstanding invoices and communicated with customers to collect outstanding accounts.
- 2.3.3** The Receiver has confirmed that \$248,115 of the outstanding accounts receivable are subject to contra set-off claims for accounts payable due by the Companies to its customers and therefore not collectible.
- 2.3.4** A further \$17,492 is uncollectible due to confirmed invoicing errors and accounting disputes.

2.3.5 The net balance of accounts receivable outstanding after adjustments is \$33,672. The Receiver has collected \$30,038 of these accounts to date.

2.4 Inventory Liquidation

2.4.1 The book value of raw material, at the date of receivership was \$3,099,816.

2.4.2 As discussed in the First Report, the Receiver engaged the Posthumus Family on a contract basis to assist in realizing certain of ATI's inventory including bulk coconut husk and plastic bales. Sales are ongoing and conducted on an "as-is/where-is" basis with no representations or warranties by the Receiver.

2.4.3 The Receiver has sold \$90,084 in inventory post receivership of which \$64,487 has been collected to date.

2.5 Insurance

2.5.1 The Companies insurance policies expired July 2018. The Receiver has obtained alternate insurance coverage through Firstbrook Cassie and Anderson Ltd. insurance brokers.

2.6 Third Party Assets

2.6.1 The Receiver is aware of multiple property claims and continues to work with claimants to verify ownership rights.

2.6.2 Since the First Report the Receiver has released fuel tanks owned by Dowler-Karn.

2.7 Independent Security Opinion

2.7.1 The Receiver's independent legal counsel, Miller Thomson LLP ("MT"), has reviewed the security registrations against the Companies, in favour of BMO, and various equipment lessors (Axiom Leasing Inc., Blueshore Leasing Ltd., CWB Maxium Financial Inc., RCAP Leasing Inc., National Leasing Group Inc., Great Lakes Leasing, a division of 1354439 Ontario Inc., Blueshore Transport Finance Ltd., John Deere ULC and Wells Fargo Equipment Finance Company, collectively the "Equipment Lessors"). Subject to the customary assumptions and qualifications, MT has provided an opinion that a) BMO's security registered against the 329 Property is valid and enforceable, b) BMO has a valid and perfected security interest in the personal property of the Companies, c) each of the Equipment Lessors has a valid and perfected purchase money security interest in its specific collateral and, d) the Equipment Lessor's purchase money security interests have priority over BMO's security interest in the Equipment Lessors' specific collateral.

2.7.2 A copy of the MT security opinion is attached as **Appendix D**.

3.0

Sales Solicitation Process

- 3.1.1** Pursuant to the Initial Order, the Receiver was authorized to market any or all of the assets and operations of the Companies (the “**Assets**”), including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- 3.1.2** In its First Report the Receiver outlined the SSP to be undertaken by the Receiver for the assets and undertakings of the Companies. The SSP was approved by the Court in the McEwen Order (Appendix C).
- 3.1.3** Pursuant to the SSP described in the First Report and approved by this Court, the Receiver took the following actions to market the Assets:
- On June 8, 2018, the Receiver emailed the Invitation for Proposals included in the First Report to two hundred and fifteen interested parties including domestic and international competitors, other industry participants, equity investment firms and liquidators identified by the Receiver and MNP Corporate Finance Ltd;
 - The Receiver advertised the Invitation for Proposals in the financial section of the national edition of the Globe & Mail on Saturday June 16, 2018;
 - The Receiver promoted the sale of Assets through national business magazine publisher, Greenhouse Canada (“**GC**”). GC is published exclusively for the Canadian commercial greenhouse sector and has a subscribership of 3,000 plus industry professionals. The Invitation for Proposals was published on GC’s website for a period of one-month commencing June 21, 2018 and was promoted through an electronic mail-blast to GC subscribers;
 - The Receiver provided a copy of the Invitation for Proposals to Clean Farms Ontario for distribution to its membership. Clean Farms Ontario is a group of Ontario farmers dedicated to practising and promoting clean farming practises;
 - The Receiver notified more than 650 MNP partners across Canada of the SSP and provided a copy of the Invitation for Proposals for distribution to MNP clients that may be interested in the opportunity;
 - The Receiver published a notice of the SSP in the Insolvency Insider, a weekly email publication circulated within the national insolvency industry; and,
 - The Receiver invited all prospective parties to view the Assets on pre-arranged dates throughout June and July. The Receiver accommodated multiple Asset viewing requests and met a total eight prospective purchasers at the 329 Property.
- 3.1** As a result of the marketing described above, thirty-four parties executed confidentiality agreements and were provided a copy of the Receiver’s confidential information memorandum detailing the opportunity. A virtual data room with additional information relevant to the sale was set up by the Receiver and interested parties were granted access.
- 3.2** The Receiver responded to queries and information requests of all interested parties in a timely and efficient manner, as well as organized additional asset viewing dates to accommodate prospective purchaser’s schedules.

- 3.3** The deadline to submit offers was established as 2:00 p.m. on Friday, July 27, 2018 (“**Original Bid Deadline**”). The Original Bid Deadline provided prospective bidders six weeks to complete due diligence.
- 3.4** The SSP resulted in the submission of a number of offers.
- 3.5** Having regard to the offers received and the expressed desire of certain interested parties to conduct further due diligence, the Receiver extended the bid deadline for all interested parties to 2:00 pm on September 11, 2018 thereby allowing all parties, including those that submitted offers, a further 45 days from the Original Bid Deadline to conduct additional due diligence and submit offers.
- 3.6** The Bank supported the extension of the bid deadline.
- 3.7** On July 31, 2018 the Receiver contacted all parties that executed a Non-Disclosure agreement to advise of the bid extension deadline and welcomed parties to revisit the Receiver’s Data Room dedicated to the SSP.

4.0

2435895 Ontario Inc. and Subject Property

- 4.1.1** ATI is the owner of approximately sixty roll off waste bins. A roll off bin is a large rectangular dumpster which utilizes wheels to facilitate it being rolled in place. The container is designed to be transported by specialized roll-off tracks for use at waste disposal sites, construction sites and other similar uses. Twenty of these bins are owned outright by ATI. The balance are subject to lease agreement in favour of National Leasing and Blueshore Leasing.
- 4.1.2** Twenty bins are located at the 329 Property. The remaining forty were kept at leased property at 1593 County Road 32, Kingsville, Ontario (the “**1593 Property**”). The bins at each location are a mix of leased and owned.
- 4.1.3** 243 is an unrelated third party that owns the 1593 Property. ATI occupied the 1593 Property beginning September 1, 2015 pursuant to a month to month tenancy agreement and Offer to Lease.
- 4.1.4** Following defaults made in respect of the tenancy agreement, on April 17, 2018, 243 terminated ATI’s occupancy and changed the locks to premises.
- 4.1.5** On April 19, 2018 the Receiver contacted Vespa, the principal of 243, to provide a copy of the Appointment Order. The Receiver requested details of ATI’s occupancy, copies of 243’s Notice of Termination and a schedule of ATI property in 243’s possession. Vespa advised approximately forty roll-off waste bins (the “**Subject Property**”) owned by ATI remained situated at the 1593 Property following termination of ATI’s occupancy. Following its conversation with Vespa, the Receiver attended the 1593 Property and walked the exterior to confirm the quantity and condition of the Subject Property.
- 4.1.6** On May 9, 2018 counsel for 243, Ricci Enns Rollier and Settingon LLP (“**243 Counsel**”) provided a copy of 243’s Notice of Termination dated April 5, 2018. A copy of 243’s Notice of Termination is attached as **Appendix E**.
- 4.1.7** After being made aware that additional ATI assets were located inside the facility at the 1593 Property, the Receiver arranged to meet Vespa to gain access to the building for inspection.
- 4.1.8** On May 24, 2018 the Receiver met Vespa at the 1593 Property. At the meeting Vespa advised that 243 was claiming a storage lien under the *Repair and Storage Liens Act* (the “**RSLA**”) over the chattels left by ATI following its eviction. In addition to the Subject Property, ATI chattels located within the facility were comprised primarily of office equipment and a large quantity of storage racking. The Receiver advised Vespa that 243 did not have a valid storage lien as no storage agreement existed between 243 and ATI. Rather, the chattels remained situated on the 1593 Property as a result of ATI being locked out and its lease for the 1593 Property being terminated. Notwithstanding, the Receiver advised Vespa to submit a claim detailing 243’s storage costs and confirmed it would review same. Furthermore, the Receiver advised Vespa it was in the process of verifying third party claims against the Subject Property and that it was awaiting information from known claimants before it could offer an action plan to deal with the Subject Property.
- 4.1.9** The Receiver engaged Infinity Asset Solutions (“**Infinity**”) to perform a desktop appraisal of the Subject Property. Based on the Infinity appraisal and notwithstanding there remains payment obligations under the National and Blueshore lease agreements, the Receiver has determined that there is value in the Subject Property beyond the amounts owed to National and Blueshore under their respective leases.

- 4.1.10** Accordingly, on June 12, 2018 the Receiver communicated with 243's Counsel and advised its intention to attend the 1593 Property to remove and repatriate the Subject Property.
- 4.1.11** Having not received a response from 243, on June 19, 2018 the Receiver sent a follow up email to advise 243 it had engaged a third-party logistics company to begin removing the Subject Property on June 20, 2018.
- 4.1.12** On June 20, 2018 the Receiver attended the 1593 Property to oversee removal of the Subject Property. During its inspection, the Receiver noted the Subject Property had been relocated and multiple bins had been removed from the 1593 Property altogether. The Receiver further observed most waste bins, which were empty during its visit on May 19, 2018, had since been filled with waste and debris which 243 claimed belonged to ATI.
- 4.1.13** Vespa advised he would not deliver possession of the Subject Property to the Receiver until 243's storage lien was satisfied and cautioned that anyone entering the 1593 Property without his authorization would be charged with trespassing.
- 4.1.14** Vespa further advised he was seeking storage costs in excess of \$1,200 per day for the period of April 17 through to June 20, 2018.
- 4.1.15** On June 21, 2018 the Receiver confirmed to Vespa that pursuant to paragraph 4 of the Appointing Order he was required to surrender the Subject Property to the Receiver. The Receiver again advised Vespa that 243 does not have the right to claim a storage lien as a storage lien under the RSLA may only be asserted by a "storer" who takes possession of an article for storage by agreement. Based on the information available to the Receiver, 243 does not have a storage agreement. To resolve the matter and avoid further costs, the Receiver offered to 243 a payment of \$5,000.
- 4.1.16** Vespa did not immediately respond and the Receiver continued to follow up. On July 18, 2018 Vespa advised the Receiver he was claiming storage costs in excess of \$119,000.
- 4.1.17** The Receiver spoke with Vespa on July 20, 2018 to reiterate the position that 243 does not have a storer's lien and urged Vespa to seek legal counsel on the matter. Vespa undertook to respond to the Receiver by the end of that week. As of the date of this report no response has been received.
- 4.1.18** The Receiver has been unsuccessful in all attempts to recover the Subject Property from 243. Furthermore, although the Receiver has made multiple requests of 243 and Vespa, neither have provided details or the location of the Subject Property which was removed from the 1593 Premise subsequent to May 19, 2018.
- 4.1.19** 243 is preventing the Receiver from securing ATI's property and at the same time continues to accrue unwarranted storage charges.
- 4.1.20** As a result of the forgoing and the fact this matter has remained unresolved for over three months, the Receiver is seeking an Order requiring 243 to deliver up possession of the Subject Property to the Receiver.
- 4.1.21** This is in the best interest of all creditors as the Receiver can then review and assess all potential claims against the Subject Property. The sale proceeds of the Subject Property will stand in the stead of the Subject Property and any valid claims against the proceeds (including 243's claim) can be dealt with on a future distribution motion.

4.1.22 The Receiver further requests that the Subject Property either be delivered up to the Receiver emptied of waste placed therein by 243 or that 243 and Vespa be responsible to pay the disposal costs for the waste material and debris that was put in the Subject Property after they were notified of the receivership and provided with a copy of the Application Order (as noted above in paragraph 4.1.12 when the Receiver first inspected the waste bins all were empty).

5.0

Statement of Receipts and Disbursements

- 5.1.1** **Appendix F**, attached, is a summary of the Receiver's Statement of Receipts and Disbursements for the period April 18 to August 13, 2018.
- 5.1.2** In addition to an advance of \$100,000 from the Bank, the Receiver has generated receipts of \$106,957, primarily from the sale of inventory and collection of accounts receivable.
- 5.1.3** The Receiver has made disbursements of \$154,000, primarily for:
- (i) draining the Lagoon Leachate levels in accordance with NASM Plan;
 - (ii) Contract labour wages paid to the Posthumous Family;
 - (iii) Legal fees paid to Wilms & Shier Lawyers LLP for assistance the MOE Environmental Review Tribunal, as discussed in the First Report;
 - (iv) Retainer paid to Collins Barrow to finalize the 2017 financial statements and prepare a corporate tax return; and
 - (v) Utilities.
- 5.1.4** The Receiver has generated a net excess of receipts over disbursements as at August 13, 2018 of \$52,678.

6.0

Receiver and its Counsel's Accounts

- 6.1.1** As required in the Initial Order, the Receiver is seeking the approval of its accounts and the accounts of its legal counsel for the receivership period to date.
- 6.1.2** The Receiver has submitted one invoice dated August 15, 2018 for the period April 9 to August 15, 2018 in the amount of \$175,000, inclusive of disbursements and before HST. The invoice, together with the Receiver's affidavit of verification of fees, is attached as **Appendix G**.
- 6.1.3** MT has submitted a single invoice, as follows:

For the period April 10 to June 30, 2018	\$27,261.54
--	-------------

This amount is inclusive of disbursements and before HST. The invoice, together with the Miller Thomson affidavit of verification of fees, are attached as **Appendix H**.

- 6.1.4** It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

- 7.1 We submit this **Second Report** to this Honourable Court in support of our Motion respectfully requesting this Honourable Court to:
- (a) Approve the Second Report and the activities of the Receiver described herein;
 - (b) Approve the SSP bid deadline extension as discussed in Section 3 of this Second Report;
 - (ii) Issue an Order requiring 243 and Vespa to deliver up possession of the Subject Property to the Receiver emptied of waste (or that 243 and Vespa pay for costs to dispose of waste material deposited in same post receivership if not emptied);
 - (c) Approve the Receiver's Statement of Receipts and Disbursements for the period April 18, 2018 to August 13, 2018; and,
 - (d) Approve the fees and expenses of the Receiver and its legal counsel.

All of which is respectfully submitted this 20th day of August 2018.

**MNP Ltd. in its capacity as Receiver of
ARRRC International Inc., Agriculture Technology Incorporation, 2265469 Ontario Inc.,
2292760 Ontario Inc. and 2517748 Ontario Inc.
and not in its personal capacity**


Per: Robert W. Smith CPA, CA, CIRP, LIT
Senior Vice President