

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

B E T W E E N:

XQUISITE CAPITAL CORP.

Plaintiff

and

CRYSTAL FARMS LIMITED, JAMES GERALD TATOMIR, KRYSTAL MARTENS  
and MILLIE ANN BARBERIO

Defendants

**FIRST REPORT TO THE COURT  
SUBMITTED BY MNP LTD.  
RECEIVER**

March 13, 2023

# *Table of Contents*

---

	<u>Page</u>
1.0	Introduction and Purpose of Report..... 3
1.1.	Introduction..... 3
1.2	Purpose of Receiver’s First Report..... 5
2.0	Initial Receiver Activities ..... 6
2.1	Possession ..... 6
2.2	Notice..... 6
2.3	Machinery and Equipment..... 6
2.4	Storage and Third Party Owned Goods ..... 6
2.5	Planted Crops..... 7
2.6	Employees..... 7
2.7	Logistic Operations..... 7
2.8	Books and Records ..... 8
2.9	Accounts Receivable..... 8
2.10	Surplus proceeds from sale of repossessed tractor trailers..... 8
2.11	Government Accounts ..... 8
2.12	Property Insurance ..... 9
2.13	Cash on Hand and CFL Bank Accounts ..... 9
2.14	Receiver’s Banking..... 9
2.15	Independent Counsel..... 9
3.0	Recommended Realization Strategy ..... 11
3.1	Real Property ..... 11
3.2	Machinery, Equipment and Rolling Stock..... 11
3.3	Complete Liquidation May be Unnecessary ..... 11
3.4	Sealing Order – Confidential Supplement ..... 12
4.0	Receiver’s Interim Statement of Receipts and Disbursements ..... 13
5.0	Receiver and its Counsel’s Accounts..... 14
6.0	Order Sought..... 15

# *Listing of Appendices*

---

- Appendix A - Summary of Land Holdings
- Appendix B - Initial Order
- Appendix C - Receiver's 245 Notice
- Appendix D - CFL's Asset Schedule
- Appendix E - Unaccounted Machinery, Equipment or Rolling stock
- Appendix F - Miller Thomson's Security Opinion
- Appendix G - Redacted Valco and Derochie Appraisals
- Appendix H - Template Agreement of Purchase and Sale
- Appendix I - Babula Auction Proposal
- Appendix J - Receiver's Interim Statement of Receipts and Disbursements
- Appendix K - MNP Fee Affidavit
- Appendix L - Miller Thomson LLP Fee Affidavit

## ***1.0 Introduction and Purpose of Report***

---

### **1.1. Introduction**

**1.1.1.** Crystal Farms Limited (“**CFL**”) provided freight and logistics services to local greenhouses and operated a 270 acre vegetable and cash crop farm located outside Leamington, Ontario. CFL’s land holdings include five main ‘parcels’ which are comprised, in some cases, of multiple severed lots. The five main parcels are municipally (or legally) known as:

- (i) 1434-1436 Mersea Road D, Leamington Ontario (“**Main Farm**”): Parcel 1 is considered the main farm and is comprised of two separate lots totaling 33.34 acres of land and has been improved with multiple outbuildings including the personal residence of Mr. James Tatomir;
- (ii) 1432 Mersea Road D, Leamington (“**1432**”): Parcel 2 is a personal residence occupied by Mr. Tatomir’s son.
- (iii) 1828 Mersea Road D, Leamington (“**1828**”): Parcel 3 is comprised of 12.14 acres of land and improved with one storage barn.
- (iv) 10 & 16 Mersea Road 19, Leamington (“**10&16**”): Parcel 4 is comprised of two separate lots totaling 170.32 acres of land and has been improved with a residential dwelling and two storage barns.
- (v) Part Lot 19, concession D, Leamington (“**Pt19**”): Parcel 5 is comprised of ten separate lots totalling 170 acres and is improved with a quonset hut for storage.

(collectively the “**Real Property**”).

**1.1.2.** A summary of CFL’s land holdings including their legal description and registered owner is attached as **Appendix A**.

**1.1.2** As at August 16, 2022, CFL was indebted to Xquisite Capital Corp. (“**Xquisite**”) in the amount of \$4,144,104 plus accruing interest and costs of enforcement. As security for this indebtedness, Xquisite was granted the following:

- Charge/mortgage of land in the principal sum of \$4,800,000 and registered as instrument numbers CE1000226 and CE1000223 on April 4, 2021 over the Real Property.
- General security agreement March 24, 2021;
- Assignment of rents dated March 23, 2021 with respect to the Real Property;
- Postponements of claims and shareholder loans from James Gerald Tatomir (“**Tatomir**”) and Mildred Tatomir; and
- Postponement of non-arm’s debt from Krystal Martens (“**Martens**”) and Millie Ann Barberio (“**Barberio**”).

- 1.1.3** Tatomir, Barberio and Martens hold certain pieces of the Real Property in bare trust for CFL. As part of the lending arrangement between CFL and Xquisite, Barberio, Tatomir and Martens granted a mortgage of beneficial interest in the Real Property and thus have been named in this proceeding.
- 1.1.4** CFL's logistics and farm operations have evolved as a multigenerational business. More recently, operational control has transitioned from Tatomir to his daughter, Barberio. The Receiver understands Barberio manages all aspects of CFL's daily operations.
- 1.1.5** We understand CFL's financial position has deteriorated rapidly over the last several years. Within months of receiving Xquisite's funding, CFL had already breached various terms of its finance agreements and was unable to remedy defaults. As a result, on August 17, 2022 Xquisite demanded payment and issued a Notice of Intention to Enforce Security pursuant to the Bankruptcy and Insolvency Act and Notice of Intention to Realize on Security pursuant to the Farm Debt Mediation Act ("**FDMA**").
- 1.1.6** On November 30, 2022, the Honourable Justice Dube issued an Order (the "**Initial Order**") appointing MNP Ltd. as receiver (the "**Receiver**") of the assets, undertakings and properties of CFL and certain real property legally owned and held in bare trust for CFL by Tatomir, Barberio and Martens acquired for, or used in relation to CFL's business (the "**Assets**"). A copy of the Initial Order is attached as **Appendix B**. The Initial Order is substantially in the form of the Model Receivership Order developed by the Commercial Court Users Committee.
- 1.1.7** The Initial Order authorized but did not obligate the Receiver to, among other things:
- Take possession of and exercise control over the Assets and Real Property;
  - Manage, operate and carry on the business of CFL;
  - 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 Assets or Real Property, and to settle or compromise any such proceedings; and,
  - Market any or all the Assets and Real Property and negotiate such terms and conditions of sale as the Receiver may deem appropriate.

## **1.2 Purpose of Receiver's First Report**

**1.2.1** This constitutes the Receiver's **First Report** to the Court in this matter and it is filed to:

- i. Report on the Receiver's activities since its appointment and seek the Court's approval of same;
- ii. Report to the Court in respect of the realization strategy for the Real Property and personal property (the "**Sale Process**");
- iii. Obtain an Order,
  - a) approving the First Report and the confidential supplement thereto, along with the activities of the Receiver detailed therein;
  - b) approving the Sale Process ;
  - c) sealing the Confidential Supplement to the First Report until completion of a sale of the Real Property or further Order of the Court;
  - d) approving the Receiver's Statement of Receipts and Disbursements as at February 22, 2023; and,
  - e) approving the fees and disbursements of the Receiver and its legal counsel.

## **2.0 Initial Receiver Activities**

---

### **2.1 Possession**

- 2.1.1 On December 1, 2022, the Receiver attended the Real Property and met with Barberio. The Receiver and Barberio toured the Main Farm but did not access the residential dwellings.
- 2.1.2 There are multiple outbuildings located on the main farm including Tatomir's residence, CFL's administration office, maintenance barn, storage barn, insulated vegetable storage barn and small personal livestock barn.
- 2.1.3 The Receiver posted notices of the receivership.
- 2.1.4 The Receiver photographed the Real Property, the outbuildings, machinery, equipment and the rolling stock thereon.
- 2.1.5 With Barberio's assistance, the Receiver completed an inventory of machinery, equipment and rolling stock.

### **2.2 Notice**

- 2.2.1 On December 15, 2023, the Receiver mailed notice of the receivership to all known creditors of CFL pursuant to Section 245 of the Bankruptcy and Insolvency Act. A copy of the Section 245 Notice is attached hereto as **Appendix C**.
- 2.2.2 The Receiver has setup a website at [mnpdebt.ca/en/corporate](http://mnpdebt.ca/en/corporate) to post documents relating to the receivership that should be available to public, including the Initial Order.

### **2.3 Machinery and Equipment**

- 2.3.1 CFL's machinery is comprised of general farm implements including tractors, plows, planters, and hand tools. Attached hereto as **Appendix D** is CFL's movable asset list at December 1, 2022 ("**Company's Asset Schedule**").
- 2.3.2 The Receiver has attempted to reconcile the Company's Asset Schedule and Receiver's inventory to a similar asset schedule Xquisite obtained from CFL prior to the Receiver's appointment. The Receiver has determined there are multiple pieces of machinery, equipment and rolling stock that may be unaccounted for. Attached hereto as **Appendix E** is a schedule of the pieces which were disclosed on the Xquisite schedule but not present at the time of the Receiver's appointment. The Receiver is awaiting Barberio's clarification regarding unaccounted pieces of machinery, equipment and certain rolling stock.

### **2.4 Storage and Third Party Owned Goods**

- 2.4.1 CFL rents a portion of its main barn to storage customers. The contents of the 'storage' barn, mainly all recreational vehicles therein, are purportedly owned by third parties. The Receiver has requested customer contact information from Barberio and is awaiting same so it can verify ownership claims and release the property in due course.
- 2.4.2 Barberio claims certain vehicles and other recreational equipment located at the Main Farm are personally owned. The Receiver has requested information from Barberio to support these claims

and is awaiting same. If Barberio does not or cannot satisfy the Receiver that the subject property is personally owned, the Receiver will take possession of the vehicles and will offer them up at the proposed machinery, equipment and rolling stock auction discussed later in this report.

## **2.5 Planted Crops**

**2.5.1** The Receiver understands CFL historically grew vegetable crops including potatoes, beets and onions. According to Barberio, CFL suffered working capital constraints in early 2022 so no vegetable crop was planted for the 2022 growing season. In place of a vegetable crop, CFL planted a less capital-intensive soybean crop in July 2022. Barberio states a total of 270 acres of soybeans were planted in 2022.

**2.5.2** Upon taking possession of the Assets, the Receiver was advised by Barberio that CFL was in the middle of harvesting soybeans. At December 1, 2022 CFL had harvested and shipped approximately 77 metric tonnes of soybeans to its marketer, Sollio Agriculture (“**Sollio**”) in Staples, Ontario. The Receiver sold the beans through Sollio at market value generating net sale proceeds of \$53,782 which have been deposited into the receivership bank account.

**2.5.3** CFL’s farm manager was retained to, among other things, oversee harvest of the 2022 soybean crop. An additional 50 metric tonnes of soybeans were harvested between December 2022 and February 2023. The beans were sold at market through Sollio. Net sale proceeds of \$35,032 have been deposited into the receivership bank account.

**2.5.4** Of the 270 acres planted, Barberio estimates 250 have been harvested. The balance of planted crop, approximately 20 acres, is situated in a low laying part of the field that has not been accessible due to unfavourable winter conditions. Barberio and CFL’s farm manager have been monitoring planted crops closely, however, a recent assessment determined it would not be feasible to harvest due to field and plant conditions.

**2.5.5** The Receiver is awaiting Barberio’s response to confirm details of CFL’s crop insurance so that it can make an insurance claim for any unharvestable crops.

## **2.6 Employees**

**2.6.1** As mentioned above, the Receiver has retained CFL’s farm manager to oversee harvest, maintain machinery, meet with equipment appraisers, and monitor field and planted crop conditions. We understand field maintenance, specifically water management, is necessary given the areas ‘mucky’ soil characteristics and that regular pumping is required to ensure the fields are ready for spring planting.

**2.6.2** The Receiver understands CFL had other employees, including two foreign immigrant workers who have since returned home, but despite repeated requests, it is still waiting for Barberio to provide employee contact information, employment details and payroll records. With the exception of the farm manager, the Receiver understands CFL employees were terminated or were on sick leave prior to its appointment; however, it is awaiting information from Barberio to confirm same.

## **2.7 Logistic Operations**

**2.7.1** The Receiver understands from Barberio that CFL provided logistic solutions to several local greenhouses. According to Barberio, CFL’s trucking business declined rapidly over the last couple of years. Unable to meet certain lease commitments, CFL was forced to return several trucks and reefer trailers in 2022, while others were seized by lessees for non-payment. According to Barberio,



there was only one shipping order at the time of the Receiver's appointment. This order was completed on or around December 1, 2022. CFL has not engaged in any further logistic trade since the Receiver's appointment.

## **2.8 Books and Records**

**2.8.1** CFL's fiscal year end is July 31 According to external statements obtained from CFL's accountant, HMID Accountants. CFL suffered a \$1.07 million dollar loss in fiscal 2021. Fiscal 2022 and year to date result are not yet available.

**2.8.2** We understand CFL was in the process of updating fiscal 2022 accounting data to bring its internal financials current. The Receiver obtained access to CFL's online Quickbooks data but according to the bookkeeper, the data is not reliable because the fiscal 2022 data is incomplete.

**2.8.3** The Receiver has asked Barberio to provide documentation in relation to fiscal 2022 and year to date operations (including creditor, receivable, banking, employee, asset and other financial records). As of the date of this report Barberio has provided limited information or documentation in response to the Receiver's request.

## **2.9 Accounts Receivable**

**2.9.1** Upon taking possession, Barberio stated CFL did not have any outstanding accounts receivable.

**2.9.2** An aged accounts receivable report at December 1, 2022 obtained from CFL's Quickbook accounting data shows debts due to CFL, net of credit accounts, of \$75,658. The balance includes a logistic sale for \$1,412 that CFL conducted after the Receiver's appointment.

**2.9.3** The Receiver has requested information from Barberio to verify customer account balances and is awaiting same. The Receiver has sent collection demands to customers it believes may still be indebted to CFL.

## **2.10 Surplus proceeds from sale of repossessed tractor trailers**

**2.10.1** Bank of Montreal ("**BMO**") repossessed and sold two CFL owned 2020 International LT625 tractor trailers prior to the Receiver's appointment. Net surplus proceeds after payment of BMO's secured indebtedness of \$187,305 were \$57,609 ("**Surplus Proceeds**"). The Receiver has collected the Surplus Proceeds from BMO and deposited the funds into the receivership bank account.

## **2.11 Government Accounts**

**2.11.1** The Receiver has opened an HST account with Canada Revenue Agency ("**CRA**") to report all HST collected and paid through the receivership process.

**2.11.2** The Receiver has requested CRA to conduct a review of CFL's payroll and HST accounts to ascertain its claim, if any, for unremitted source deductions and HST.

**2.11.3** Audits are ongoing, however, CRA has confirmed unremitted source deductions and HST arrears at January 5, 2023 were \$96,000 and \$5,600, respectively.

**2.11.4** CFL has not reported employee earnings in 2022. We understand CRA's calculation of source deductions at January 5, 2023 doesn't include amounts for unremitted employee source deductions for the period January 1, 2022 through November 30, 2022.

**2.11.5** According to CRA, CFL is usually in a HST refund position so we don't anticipate the audit will result in any material HST liability.

## **2.12 Property Insurance**

**2.12.1** The Receiver contacted CFL's insurance broker, Premium Insurance Brokers ("**Premium**") on December 2, 2023 and confirmed CFL held limited liability and comprehensive coverages over the Real Property, machinery and equipment through Economical Insurance ("**Economical**") and A.M Fredericks Underwriting Management Ltd. ("**AM**").

**2.12.2** On January 10, 2023 Economical notified CFL that its farm policy would be cancelled for non-payment. Premium failed to advise the Receiver of the arrears until the cancellation notice was sent. The Receiver contacted the broker and Economical to address the arrears and remitted payment of \$14,967 to have the policy reinstated. Economical has added the Receiver as a named insured and loss payee to CFL's farm policy.

**2.12.3** The Receiver learned CFL's auto and cargo policies with AM were also in arrears and was required to pay \$8,927 to keep the policies active. Despite repeated requests, AM has refused to add the Receiver as a named insured to CFL's cargo and auto policies. The Receiver has confirmed it is the sole loss payee in the event of claim and is working with AM to address, what it believes, is an administrative issue.

## **2.13 Cash on Hand and CFL Bank Accounts**

**2.13.1** The Receiver understands CFL maintained multiple business accounts and banked exclusively with Royal Bank of Canada ("**RBC**"). Upon the Receiver's appointment, Barberio stated there was approximately \$2,300 in CFL's business chequing account. The Receiver directed RBC to freeze CFL's accounts and to remit funds on deposit to its office. The Receiver understands RBC placed CFL's accounts on deposit only status but is awaiting RBC's response regarding the status of deposit funds.

**2.13.2** Barberio has provided bank statements for the period January 2021 to August 2022. The Receiver requested all remaining 2022 bank and credit card statements and is awaiting Barberio's response to same.

## **2.14 Receiver's Banking**

**2.14.1** The Receiver has set up a receivership account to administer estate receipts and disbursements.

## **2.15 Independent Counsel**

**2.15.1** The Receiver has retained Miller Thomson LLP ("**MT**") as independent counsel. MT has reviewed security documents and registrations against CFL in favor of Xquisite, Scotiabank (in respect of crop) and vehicle and equipment lessors RCAP Leasing Inc., Transit Trailer Leasing Limited. and Bank of Nova Scotia (collectively "**Equipment Lessors**"). Subject to the customary assumptions and qualifications, MT has provided an opinion that:

- (i) Xquisite's security registered against the Real Property is valid and enforceable;
- (ii) Xquisite has a valid and perfected security interest in the personal property of CFL, excluding crops;

- (iii) Scotiabank has a valid and perfected security interest in CFL's crops (and any proceeds thereof); and
- (iv) each of the Equipment Lessors has a valid and perfected purchase money security interest ("PMSI") in its specific collateral and,
- (v) Equipment Lessor's purchase money security interests have priority over Xquisite's security interest in the Equipment Lessors' specific collateral.

**2.15.2** A copy of the MT Opinion is attached at **Appendix F**.

## **3.0 Recommended Realization Strategy**

---

### **3.1 Real Property**

- 3.1.1** The Receiver commissioned appraisals of the Main Farm, 1828, 10&16 and Pt19 from Valco Real Estate Appraisers (the “**Valco Appraisal**”) and 1432 from Jeff Derochie Appraisal Service (the “**Derochie Appraisal**”). The Derochie Appraisal and Valco Appraisal are dated January 5, 2023 and December 14, 2022 respectively. Due to the confidential nature of the appraisals, the Receiver has attached redacted versions at **Appendix G** and disclosed valuation details via the Confidential Supplement to the Receiver’s First Report (the “**Confidential Supplement**”).
- 3.1.2** The Receiver has received listing proposals from three local real estate agents specializing in agriculture sales, which are described in more detail in the Confidential Supplement.
- 3.1.3** The Receiver recommends the Real Property be listed with ReMax Chatham-Kent Realty Inc. for sale through the Multiple Listing Service. Prospective purchasers will be provided with a template Agreement of Purchase and Sale in the form attached as **Appendix H**.
- 3.1.4** The suggested opening list price is disclosed in the Confidential Supplement.

### **3.2 Machinery, Equipment and Rolling Stock**

- 3.2.1** The Receiver commissioned Curtis Babula Auctioneering Service to perform an appraisal of CFL’s machinery, equipment and rolling stock. Due to the confidential nature of the appraisal and to avoid the prejudice which would be caused to the sale process if the appraised values were to be disclosed before a sale is completed, the Receiver has disclosed its details via the Confidential Supplement.
- 3.2.2** The Receiver recommends that machinery, equipment and rolling stock (excluding pieces subject to PMSI which the Receiver has established CFL has no ownership or equity stake in) be sold by public auction conducted simultaneously online and in-person at the Main Farm.
- 3.2.3** Babula is a well-regarded auctioneer specializing in farm machinery and equipment sales. As such, the Receiver solicited his interest in submitting a proposal to conduct an onsite public auction of CFL’s movable assets. Babula has proposed a commission-based fee of 15% of gross sale proceeds, plus costs of \$31,800 to conduct the auction. From the Receiver’s experience, those terms are consistent with the financial terms typically offered by other auctioneers in similar situations. Attached as **Appendix I** is Babula’s auction proposal.
- 3.2.4** The Receiver recommends Babula be retained to conduct a public auction of CFL’s machinery, equipment and rolling stock in accordance with the terms proposed.

### **3.3 Complete Liquidation May be Unnecessary**

- 3.3.1** Based on the appraised values of the Real Property and the machinery, equipment and rolling stock, it appears unlikely that all of CFL’s assets would need to be liquidated to realize sufficient funds to fully satisfy the claims of its creditors. The Receiver wrote Barberio asking for input on a preferred order in which to market and sell the assets to avoid liquidating everything unnecessarily. Barberio stated she wanted to preserve Real Property and auction machinery, equipment and rolling stock only as CFL expected to secure sufficient financing to repay secured claims and end the receivership. The Receiver sought Barberio’s clarification to determine how she intended to settle CFL’s claim and explained that estimated realizations from machinery, equipment and rolling stock

alone would be insufficient to satisfy known secured creditor claims and as a result, Real Property (or a portion of it) would have to be marketed. With this information the Receiver again asked for Barberio's input on a preferred order in which to offer Real Property, however, Barberio has not responded to the Receiver's writing.

### **3.4 Sealing Order – Confidential Supplement**

- 3.4.1** The Receiver is concerned about the negative market impact and prejudice which would be caused to the Sale Process of disclosing publicly the appraised values and the listing proposals for the Real Property and the machinery/equipment appraisal until such time as sales of the Real Property and equipment have been completed. Accordingly, the Receiver is requesting a sealing order for the Confidential Supplement.

## ***4.0 Receiver's Interim Statement of Receipts and Disbursements***

---

- 4.1.1** Attached as **Appendix J** is a summary of the Receiver's Statement of Receipts and Disbursements for the period December 1, 2022 to February 28, 2023.
- 4.1.2** The Receiver has generated receipts of \$146,499 from the sale of CFL's grain and collection of the the Surplus Proceeds.
- 4.1.3** The Receiver has made disbursements of \$35,998 for insurance and appraisal fees.
- 4.1.4** The Receiver has a balance of \$110,502 in the receivership bank account.

## ***5.0 Receiver and its Counsel's Accounts***

---

- 5.1.1** Pursuant to paragraph 18 of the Initial Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Initial Order. Pursuant to paragraph 19 of the Initial Order, the Receiver and its counsel are required to pass their accounts.
- 5.1.2** 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.
- 5.1.3** The Receiver has submitted one invoice for the period December 1, 2022 to February 15, 2023, in the amount of \$67,529.98, inclusive of disbursements and before HST. The invoice, together with the Receiver's affidavit of verification of fees, is attached as **Appendix K**.
- 5.1.4** MT, the Receiver's legal counsel, has submitted one invoice for the period December 1 to February 28, 2023 in the amount of \$7,014.88, inclusive of disbursements and before HST. The invoice, together with MT's affidavit of verification of fees, is attached as **Appendix L**.
- 5.1.5** 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 these accounts by the Court.

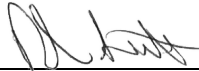
## ***6.0 Order Sought***

---

**6.1.1** We submit this First Report to the Court and respectfully request that the Court make an order as requested in paragraph 1.2.1 above.

All of which is respectfully submitted this 13<sup>th</sup> day of March, 2023.

**MNP Ltd. in its capacity as  
Court Appointed Receiver of  
Crystal Farms Limited  
and not in its personal capacity**



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