COURT FILE NUMBER **KBG-RG-909-2023**
COURT OF KING'S BENCH FOR SASKATCHEWAN IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE **REGINA**
APPLICANT **AFFINITY CREDIT UNION 2013**
RESPONDENT **F & L CONTRETE SERVICES LTD.**

IN THE MATTER OF THE RECEIVERSHIP OF F & L CONCRETE SERVICES LTD.

BRIEF OF LAW OF THE RECEIVER, MNP LTD.

CHAMBERS SCHEDULED FOR SEPTEMBER 1, 2023

A. INTRODUCTION

1. On August 3, 2023, pursuant to the Order of the Honourable Justice P.T. Bergbusch (the "**Initial Order**"), MNP Ltd. (the "**Receiver**") was appointed as the Receiver over all of the undertakings and property of F&L Concrete Services Ltd. (the "**Debtor**").

2. As is set out in greater detail below, since its appointment, the Receiver has been met with resistance and difficulty at every step. The Debtor, and its principals, have failed to deliver equipment or accounting information or cooperate with the Receiver. There appears to a clear misunderstanding as to the effect of the Initial Order.

3. As a result, the Receiver has had no choice but to temporarily shut down the Debtor's operations, so that it can assess and determine the best path forward for the Debtor, to the benefit of all of the stakeholders.

4. As a result of the issues faced, the Receiver brought an application seeking to confirm the Initial Order and confirm the Debtor, and its principals, employees, officer, directors and other third party's, obligations as a result of the Initial Order. The Receiver further seeks approval of its actions to date.

5. In response, the Debtor brings an application seeking the following relief:

   (a) Discharging the Receiver;

(b) In the alternative, directing the Receiver to carry out the Debtor's business and operations, seemingly at the Debtor's direction, including the return of all of the Debtor's property to it, in clear contradiction of the Initial Order; and

(c) Leave to commence a Statement of Claim against the Affinity Credit Union and the Receiver.

6. The Receiver, as an officer of the court, takes no position on the discharge application, subject to the requirement that its fees, and those of its professional advisors, be paid as part of any discharge. This is provided for in the Initial Order.

7. Furthermore, the Receiver has, and will continue to act in good faith and it will take direction from the Court on the receivership as a whole. That being said, it is respectfully submitted that the Receiver's business judgment should be deferred to and the Receiver be permitted to conduct its mandate in accordance with the Initial Order.

8. The Receiver is strongly opposed to any claim being brought against it and sees this as nothing more than a collateral attack on the Initial Order

B. FACTS

9. The facts relevant to this application are set out in great length in the First Report of the Trustee dated August 15, 2023 (the "**First Report**") and the Supplement to the First Report of the Trustee dated August 29, 2023 (the "**Supplemental Report**"). As is generally accepted, the Receiver, as an officer of the Court, provides its information by way of report.[1]

10. All of the relevant facts will be discussed in the analysis portion of this brief.

C. ISSUES

1. Should the Receiver be Discharged?

2. There is no basis for leave to be granted to commence an action against the Receiver.

[1] See *e.g. Mortgage Insurance Co. of Canada v Innisfil Landfill Corp.*, 1995 CarswellOnt 43 at para 5, 3 OTC 23 (Ont SC); *Farber v Goldfinger,* 2011 ONSC 2044; *Stevens v Hutchens,* 2021 ONSC 3255 at pars 26-27.

3. In the event the Receiver should not be discharged, the Receiver should be permitted to carry out its mandate as it sees fit, continuing to act in good faith.

4. The Debtor and its principals shall comply the Order as directed.

5. The Receiver's actions to date shall be approved by the Court.

D. LAW AND ANALYSIS

General Comments

Mischaracterization of the Receivership Order

11. Many of the issues in this receivership arise from the misconceptions held by the Debtor. The correspondence between the Debtor and the Receiver, as well as their respective counsel, indicates that the Debtor has been operating on several misconceptions for the entirety of the proceedings:

    (a) The first communication from counsel for the Debtor to the Receiver asserted that the order was akin to Chapter 11 proceedings in the United States. It would appear that this characterization has driven the continued insistence of the Debtor's management in attempting to continue operation of the Debtor without regard to the Receiver's powers and obligations.[2]

    (b) There was a clear misconception that if the Debtor raised $300,000, the receivership would be terminated. Presumably, this was based on section 3(l) of the Initial Order permitting sales in an aggregate of $300,000 without Court approval.[3]

    There are several issues with this misconception. First, it is clear from the Initial Order that the Receiver's mandate was not to raise $300,000. The Receiver was appointed take control of the business as it saw fit.[4]

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[2] Letter from Grant Schmidt dated August 8, 2023 as found at Schedule C of the First Report;

[3] Letter from Grant Schmidt dated August 8, 2023 as found at Schedule C of the First Report; Both letters from Grant Schmidt dated August 10, 2023, as found at Schedule C of the First Report; Letter from Grant Schmidt dated August 10, 2023, as found at Schedule C of the First Report.

[4] Initial Order at para 2 and 3(c).

Second, this misconception misses the very important principle that all of Debtor's assets vested in the Receiver. The Debtor no longer has the power to deal with the assets.[5]

(c) The Debtor continued to assume it could make payments to Affinity Credit Union, or other creditors, either from cash on hand or the sale proceeds from equipment. No regard is or was given to security interests or a potential claim by Canada Revenue Agency. The Debtor treated the Receiver as a debt collector. [6]

Setting aside the fact that the Personal Property Security Registry search result for the Debtor is over 100 pages, meaning a complicated and lengthy priority determination would need to be made, there is likewise likely a claim to be made by the Canada Revenue Agency ("**CRA**") as the amount owing to CRA remains in dispute. Furthermore, and as was outlined above, all property of the Debtor has vested in the Receiver. While the Debtor can look for financing, it cannot, on its own accord, sell assets or distribute proceeds.[7]

(d) The Receiver was obligated to take instructions from the Debtor's principal in operating the business and that not continuing operations was misconduct contrary to the Court Order.[8]

The notion that management of the Debtor has power to direct the affairs of the corporation is not consistent with the provisions of s. 9-2 of *The Business Corporations Act, 2021,* a position communicated, without apparent effect to counsel for the Debtor on August 8, 2023.[9]

The Initial Order makes it clear that the Receiver would not be obligated to operate the business. All correspondence from the Receiver indicated an accurate inventory and

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[5] Initial Order at para 2.

[6] Letter from Grant Schmidt dated August 8, 2023 as found at Schedule C of the First Report. Supplemental Affidavit of Chris Fichter sworn August 25, 2023 at Exhibit "A".

[7] Schedule "C" to the Supplemental Report.

[8] Both letters from Grant Schmidt dated August 10, 2023, as found at Schedule C of the First Report

[9] Letter from M. Kim Anderson K.C. dated August 8, 2023 as found at Schedule C to the First Report;

review of all property and records would need to be completed before a decision was made on the continuing of business.[10]

(e) That a liquidation of the Debtor has or was occurring.[11] To date, the Receiver has not sold any assets.

(f) That the Debtor's principals were not required to provide the information requested of them including, but not limited to, the location of all of the assets of the Debtor and whether there had been any equipment disposed of.[12]

The Initial Order includes a clear requirement to cooperate.[13] To the contrary, since the very start the Debtor has made veiled, and sometimes explicit, references to a potential lawsuit against the Receiver.[14]

(g) More generally, the correspondence from counsel for the Debtor indicates that the Debtor was, throughout the proceedings, attempting to informally relitigate or appeal the Initial Order. Often times references to equity, the ability to operate, liquidity or payment plans are made.[15]

Should the Debtor wish to terminate the receivership proceedings, it is for the Court, not the Receiver, to determine. The Debtor was advised of this to clear up any confusion.[16]

12. The Receiver took no position with respect to whether it should, or should not be, appointed as a receiver when this matter was initially heard. The Court, on the preponderance of

[10] Initial Order at para 3(c).

[11] Letter from Grant Schmidt dated August 11, 2023, as found at Schedule C of the First Report;

[12] Letter from Grant Schmidt dated August 15, 2023, as found at Schedule C of the First Report.

[13] Paras 4 and 5 of the Initial Order.

[14] Letter from Grant Schmidt dated August 8, 2023 as found at Schedule C of the First Report; Both letters from Grant Schmidt dated August 10, 2023, as found at Schedule C of the First Report; Letter from Grant Schmidt dated August 10, 2023, as found at Schedule C of the First Report.

[15] *E.g.* Letter from Grant Schmidt dated August 8, 2023 as found at Schedule C of the First Report

[16] Letter from M. Kim Anderson K.C. dated August 11, 2023 as found at Schedule C to the First Report;

evidence before it, determined that the Debtor was insolvent, a receiver should be appointed and did so in accordance with the terms of the Initial Order.

13. These are findings of fact that have already occurred. The Debtor's conduct to date appears to be an informal appeal or attempt at relitigating the findings of fact that have been made. The Receiver is not a trier of fact with respect to whether a receiver should have been appointed.

14. The Receiver has been appointed and must carry out its mandate.

15. The Receiver is an impartial officer of the Court, to whom deference is normally granted. In many cases, a Receiver takes no position on a matter before the court, but in others, were the integrity or the proper administration of the receivership is at issue, the Receiver is not obliged to sit by, but is, rather, expected to express its opinion and position clearly and unequivocally.

16. As noted by Justice Gilmore of the Ontario Superior Court:

> [49] Further, as per *YBM Magnex International Inc. (Re), 2000* CanLII 28169 (Alta. Q.B.) [YBM], it is presumed that Receivers will act impartially. However, acting impartially does not mean that a Receiver is precluded from taking a position which may favour certain stakeholders over others.
>
> [50] In *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, 139 O.R. (3d) 1, the Court considered a challenge to the Monitor's standing as a complainant under the provisions of the CBCA. Although that case involved a monitor under the CCAA, the principles are similar given the duties that both Monitors and Receivers have to the Court. The Court of Appeal for Ontario, at para. 109, said:
>
> > The monitor is to be independent and impartial, must treat all parties reasonably and fairly, and is to conduct itself in a manner consistent with the objectives of the CCAA and its restructuring purpose. In the course of a CCAA proceeding, a monitor frequently takes positions; indeed it is required by statute to do so.
>
> [51] It is unavoidable that, in investigating a stakeholder's affairs, some of the Receiver's decisions may not be popular. In YBM the Court was clear that this does not mean that a Receiver is not objective or "playing favourites."[17]

17. Consistent with the foregoing principle, the Receiver has raised in its report matters which have negatively impacted the Receiver's efforts to comply with the Receivership Order and carry out its mandate. It has also appropriately taken issue with factual statements that it considers to be incorrect, and it appropriately opposes an application for leave to bring action against the Receiver.

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[17] *Stevens et al v Hutchens et al,* 2021 ONSC 3255 at paras 49-51.

There is no basis for leave to be granted to commence an action against the Receiver.

18. As a starting point, it is the Receiver's position that the application for leave to bring a claim against the Receiver should be adjourned until some order is brought to these proceedings. If the relief sought by the Receiver is granted, and the receivership continues and its actions to date approved, this implicitly suggests that the leave application is without merit.

19. Similarly, even if the Receiver is discharged, if the Court approves the Receiver's actions to date, this likewise implicitly suggests the Debtors' application must fail.

20. In any event, there is no prejudice to the Debtor to delay the leave portion of the application. Once the remainder of the relief sought is determined, order is restored and cooler heads have prevailed, the matter can be returned if necessary.

21. That being said, given the interrelatedness of all of the issues, the Receiver would be remiss if it did not address the application for leave.

22. The Receiver strenuously opposes the granting of leave to commence action against it pursuant to section 215 of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3, which reads as follows:

> **215** Except by leave of the court, no action lies against the Superintendent, an official receiver, an interim receiver or a trustee with respect to any report made under, or any action taken pursuant to, this Act.

23. In addition, the following provisions of the Initial Order are particularly instructive:

> 7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.
>
> …
>
> 16. Except for gross negligence or willful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that excess an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afford to the Receiver under any applicable law..

24. From the time the Initial Order was made, the Receiver was obligated to act in accordance with the Initial Order for the benefit of all of the stakeholders in the receivership. To be clear, it was not optional. Just as the Debtor is bound by the Initial Order, so to is the Receiver.

25. Before turning to the nature of the claims being advanced by the Debtor against the Receiver, it should be noted that obtaining leave to commence an action against the Receiver is a high bar.

26. In order to obtain leave to commence an action, the purported Plaintiff must do more than allege negligent mismanagement. Material facts must be pled that would lead to reasonable cause of action. The claim must also not be vexatious:

> 50 Price Waterhouse submits that based on the case of *Lang Michener Lash Johnson v. Fabian* (1987), 16 C.P.C. (2d) 93, (sub nom. *Lang Michener v. Fabian)* 59 O.R. (2d) 353, 37 D.L.R. (4th) 685 (H.C.), this action should be struck. At pp. 358-359 [O.R.], Henry J. extracts a list of principles from other decisions which lead to the conclusion that an action is frivolous or vexatious or an abuse of process of the court:
>
> (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
>
> (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
>
> (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
>
> (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
>
> (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
>
> (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
>
> (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.[18]

27. The Supreme Court of Canada, in *GMAC Commercial Credit Corp.,* summarized the test for obtaining leave to commence action against a receiver as follows:

> 57 In the leading case of *Mancini*, the court summarized the accepted principles as being the following:
>
> 1. Leave to sue a trustee should not be granted if the action is frivolous or vexatious. Manifestly unmeritorious claims should not be permitted to proceed.
>
> 2. An action should not be allowed to proceed if the evidence filed in support of the motion, including the intended action as pleaded in draft form, does not disclose a cause of action against the trustee. The evidence typically will be presented by way of affidavit and must supply facts to support the claim sought to be asserted.

[18] *MacCullouch v Price Waterhouse Ltd.* 1992 CarswellNS 48 at para 50, [1992] NSJ No 309 (NBSC) [**TAB 1**]

> 3. The court is not required to make a final assessment of the merits of the claim before granting leave. [Citations omitted; para. 7.]
>
> 58 The court in *Mancini* explained that the duty of the trustee is to protect both the creditors and the public interest in the proper administration of the bankrupt estate. The gatekeeping purpose of the leave requirement, therefore, in light of this duty, is to prevent the trustee or receiver "from having to respond to actions which are frivolous or vexatious or from claims which do not disclose a cause of action" (para. 17) so that the bankruptcy process is not made unworkable. On the other hand, it ensures that legitimate claims can be advanced.
>
> 59 The question under s. 215 is whether the evidence provides the required support for the cause of action sought to be asserted. As Blair J. observed in *Nicholas*:
>
> > The question ... is whether, in the circumstances of this case, the facts in support of the proposed claim have been disclosed by sufficient affidavit evidence to ensure the claim's proper factual foundation, having regard to the policy of requiring leave in order to protect a trustee from claims which have no basis in fact. [para. 16]
>
> In other words, the evidence must disclose a *prima facie* case.[19]

28. Upon a review of the Draft Statement of Claim, the Debtor seeks to commence a claim against the Receiver on the following grounds:

    (a) Gross Negligence – the Receiver's alleged failure to attempt to operate the Debtor as a going concern, or obtain a loan from officer's of the Debtor, is suggested to be gross negligence. There are further allegations that contacting the Debtor's customers and advising of the situation was conducted in bad faith. There is an allegation that the Receiver immediately commenced steps to liquate the assets of the Debtor;

    (b) Inducement of Breach of Contract – it is alleged that by taking control of the Debtor, as required and authorized by the Initial Order, the Receiver caused the Debtor to breach contracts with customers and employees;

    (c) Conversion – the Debtor suggests by taking possession of the Debtor's property, they have committed conversion; and

    (d) Bad Faith – this is in essence the same as the allegation in Gross Negligence.[20]

29. Starting with the claim in conversion, this can be dealt with in quick order. Paragraph 3 permits the Receiver to take control of, *inter alia,* any assets, property and receipts of the

[19] *GMAC Commercial Credit Corporation – Canada v TCT Logistics Inc.,* 2006 SCC 35 [**TAB 2**}

[20] Exhibit F of the Affidavit of Chris Fichter sworn August 25, 2023.

Debtor. Paragraph 2 of the Initial Order permits the Receiver to take possession of the entirety of the Debtors' assets, undertakings and property.[21]

30. The Receiver had clear lawful authority and any claim in conversion is destined to fail.

31. Similarly, the allegation of Inducing Breach of Contract must fail. The Initial Order provided the Receiver with the power to reach out to customers and contact them as they saw fit. The Initial Order granted the Receiver the following powers:

> to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part other business, or cease to perform any contracts of the Debtor;[22]
>
> …
>
> to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;[23]
>
> …
>
> to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;[24]

32. Further, as will be set out below, while the Receiver has effectively ceased operations at this time, the Debtor has been advised that if it could provide the necessary and relevant information, the Receiver would review what, if any, operations should be restarted/continued. The Receiver has been met with resistance at every step of the way making this a difficult task.[25]

33. Turning to the allegations of bad faith and gross negligence, it is helpful to review the correspondence to date and the misconceptions held by the Debtor, as was set out above.

34. Throughout all the correspondence, a theme of treating the Receiver as a restructuring officer, who takes direction from the Debtor, arose. This could not be further from the intent of the Initial Order.

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[21] Initial Order at paras 2 and 3.

[22] Initial Order at para 3(c).

[23] Initial Order at para 3(h).

[24] Initial Order at para 3(n).

[25] See generally, the Supplemental Report at paras 18-41.

35. It is no coincidence that the misconceptions go hand in hand with the claims being advanced. The Debtor and its employees, directors and officers are under the assumption that the Receiver is to take direction from the Debtor and operate the Debtor's business as the Debtor's principals suggest. This is simply not the role of a receiver.

36. The Receiver, at all times since August 3, 2023, has had the right to:

    (a) Continue or cease business operations as it considers necessary or desirable;[26]

    (b) Terminate employees on the Debtor's behalf;[27]

        Notably, the evidence led by the Debtor makes it clear that the Debtor's employees were in the dark in this matter. Despite the fact that the application to appoint a receiver was served on April 12, 2023, argued in May, 2023 and the Initial Order granted on August 3, 2023, the Debtor's employees had no knowledge of the potential for a receiver until the Receiver attended the offices on August 8, 9 and 10, 2023. This undoubtedly made an already difficult situation worse;[28]

    (c) Take possession of all the Debtor's assets, undertakings and property, including the proceeds thereof;[29] and

    (d) Contact customers and suppliers of the Debtor.[30]

37. The Receiver has always carried its mandate in accordance with the Initial Order. The Receiver is experienced in the insolvency field, having taken on a receivership appointment numerous times in the past.[31]

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[26] Para 3(c) of the Initial Order.

[27] Para 13 of the Initial Order.

[28] Affidavit of Arthur MacArthur sworn August 24, 2023 at para 4; Affidavit of Dale Whitfield sworn August 24, 2023 at para 4; Affidavit of Darrin Taylor sworn August 24, 2023 at para 4; Affidavit of Janine Carlisle sworn August 24, 2023 at para 2; Supplemental Report at para 13(a),

[29] Para 2 of the Initial Order.

[30] Paras 3(c)(d) and (n) of the Initial Order.

[31] See the Supplemental Report at paras 8-12.

38. In doing so, the Receiver has developed informed and well-reasoned practices and protocols. This experience informs the Receiver's day-to-day processes and decisions.

39. In addition to past practice, when the Receiver has made decisions, it has done so on the information available to it:

    (a) The Receiver is required to review the financial information in detail before deciding if the Debtor could continue operations under the receivership. Information was sparsely provided and as such, the Receiver was unable to determine if continuing with the operations made sense.[32]

    In many cases, the principles of the Debtor simply told the Receiver to take them at their word without documentation.[33] This continues in the affidavit evidence:

    (i) An allegation that there will be a net profit of $2,000,000 this year. No documentation is provided to support this.[34]

    (ii) An allegation that the Debtor owns equipment valued at $10,000,000. There is no appraisal completed, though the Receiver is working to complete one. It is unclear what, if any, of this equipment is free and clear and what the balances owing to the various secured creditors might be. There are other issues as to what equipment is subject to a lease and what might be owing under the said lease.[35]

    (b) The Receiver did, in certain instances where work was being completed by way of a purchase order, allow certain operations to continue. The Receiver, in each instance, carried out a thoughtful analysis of which work should continue based on the limited information provided;[36]

    (c) The Receiver, after thoughtful consideration of the limited information before it, determined operations must be ceased and employees terminated. This was done in

[32] Para 11.

[33] Para 12(f).

[34] Affidavit of Chris Fichter sworn August 25, 2023 at para 14.

[35] Affidavit of Chris Fichter sworn August 25, 2023 at para 6; Paras 32-41 of the Supplemental Report.

[36] The First Report at para 13; Supplemental Report at para 46-71

consideration of various factors including the cost of fuel being $20,000 per day, serious concerns regarding the management of the Debtor and the lack of financial information to indicate operations were beneficial to the Estate;[37] and

(d) As part of the established protocols and practice, the Receiver contact various customers and contractors to advise of the situation and furthermore, to collect on the accounts receivable. Not only is this informed by standard practice, but this is done to ensure that accounts are collected on in a reasonable fashion.[38]

40. The Receiver indicated that it would consider running the business of the Debtor, but only after it was able to complete a financial analysis of the Debtor, including a review of all relevant financial information and property. The Debtor's principals continuously failed to provide the same. Any damage to the Debtor is the fault of the Debtor, not the Receiver.[39]

41. In conclusion, the Receiver sees this application as a corollary attack on the Initial Order and an attempt, in practical terms, to appeal the same. It is clear that any claim as against the Receiver is destined to fail and leave should not be granted.

Should the Receiver be Discharged?

42. With respect to a potential order that the Receiver be discharged, as an officer of the Court, the Receiver takes no position of the same. This is similar to how the Receiver, as is normally the case, took no position on the appointment application.

43. The Receiver would note that in accordance with paragraph 17 of the Initial Order, should the Receiver be discharged, a further application will be needed to have its, and its counsel's, fees approved and paid out as part of the discharge.

44. Given the complex and various matters already before the Court in this proceeding, the Receiver suggests that the issue of fees, if needed, be determined at a later date.

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[37] Para 16 of the First Report; Supplemental Report at para 17.

[38] Paras 43-45 of the Supplemental Report.

[39] The First Report at paras 14-17.

In the event the Receiver should not be discharged, the Receiver should be permitted to carry out its mandate as it sees fit, continuing to act in good faith.

45. As a starting point, it should be made clear that the Receiver strongly disagrees with any inference or suggestion that it is not acting honestly and in good faith. As was already outlined in significant detail in the brief, the difficulties to date are solely caused by the Debtor, and its principals and employees, lack of cooperation and fundamental misunderstanding of the Receiver's role.

46. While the Receiver is impartial and will take direction from the Court as the Court determines appropriate, the Initial Order is clear that the Receiver shall operate as it "considers it necessary or desirable."[40]

47. As an officer of the Court, the Receiver is granted great deference in the decisions it makes. The Court should only reject the recommendations and actions of the Receiver in the most exceptional circumstances to preserve the role and function of the Receiver.[41]

48. Notably, and to address the Debtor's largest concern, the Receiver would continue to be bound by the Initial Order and should the Receiver determine a sale of some of the assets be necessary, the Receiver would, as is the normal course, require Court approval for the sale of substantial assets (in excess of $75,000 in accordance with the Initial Order). It is probable that a Sales Process Order is likely to be sought from the Court.

49. It is respectfully submitted that, for the reasons canvassed more thoroughly in the preceding paragraphs of this brief, the deference granted to the Receiver should not be interfered with.

The Debtor and its principals shall comply the Order as directed.

50. In the event the Receiver is not discharged, it is respectfully submitted that the Receiver's Draft Order should issue in the form provided.

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[40] Initial Order para 2.

[41] *Business Development Bank of Canada v 1673747 Ontario Inc.* 2013 ONSC 286 [**TAB 3**]; see also *Ontario Securities Commission v Bridging Finance Inc.,* 2022 ONSC 1857 [**TAB 4**].

51. Notably, none of the relief sought by the Receiver is new relief. Rather, this relief is corollary to, and in other cases expressly provided for in, the Initial Order.

52. Therefore, it is appropriate that Draft Order issue in the form filed.

The Receiver's actions to date shall be approved by the Court.

53. Regardless of the outcome of the discharge application, it is appropriate that the Receiver's actions be approved.

54. In the course of commercial insolvency, liquidation and similar proceedings, approval is routinely sought for activities of the Court Office in question, such as the Receiver. While these proceedings have been anything but routine, it is appropriate that such approval be sought here.

55. While the Saskatchewan Template Distribution and Discharge Order contemplates this approval at the end of the proceedings, it is common for such approvals to be granted by this Honorable Court at various intervals including as follows:

    (a) *Re Beckerland Farms Inc.,* a 2019 Order in which Justice Rothery approved the activities of the Receiver even though the matter had not concluded;[42] and

    (b) *Re Morris Industries Ltd.* granted by Justice Smith on May 8, 2020 which approved the activities of the Monitor in the course of an extension application.[43]

56. The Receiver's activities to date are set out in detail in the First and Supplemental Report.

57. The Receiver submits, and as has been addressed at great length already, that it has acted honestly and in good faith, and managed the affairs of the Debtor in a reasonable manner. Accordingly, approval of the First Report and Supplemental Report and the Receiver's activities to date as described therein, are appropriate in the circumstances.

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[42] (unreported) QBG-SA-00915-2019 at paras 22-24 [**TAB 5]**

[43] (unreported) QBG-SA-01884-2019 at paras 2-3 [**TAB 6]**

V. CONCLUSION

58. Given all of the above, the Receiver respectfully submits:

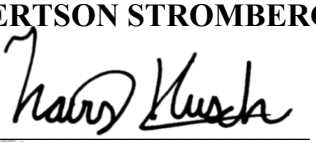
(a) Its actions should be approved to date;

(b) The Receiver, should the receivership continue, should be allowed to carry out its duties in accordance with the Initial Order and by exercising its discretion in good faither; and

(c) There is no basis to commence an action against the Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of August, 2023.

ROBERTSON STROMBERG LLP

For: 

M. Kim Anderson K.C.

LIST OF AUTHORITIES

Pursuant to Rule 13-38.1, the authorities which are publicly available on CanLii have not been appended.

Tab	Decision	Paragraph	Principal
1.	*MacCullouch v Price Waterhouse Ltd.* 1992 CarswellNS 48 at para 50, [1992] NSJ No 309 (NBSC)	50, attached.	Vexatious actions, those which simply seek to relitigate matters, should not be granted leave.
2.	*GMAC Commercial Credit Corporation – Canada v TCT Logistics Inc.,* 2006 SCC 35	57	Sets out the text for obtaining leave to commence an action against the Receiver.
3.	*Business Development Bank of Canada v 1673747 Ontario Inc.* 2013 ONSC 286	35-39	Deference should be granted to the Receiver's business judgment.
4.	*Ontario Securities Commission v Bridging Finance Inc.,* 2022 ONSC 1857	21-24	Deference should be granted to the Receiver's business judgment.
5.	QBG-SA-00915-2019	22-24, attached	Permits the approvals of the Receiver's actions at an intermediary step.
6.	QBG-SA-01884-2019	2-3, attached	Permits the approvals of the Receiver's actions at an intermediary step.

This Brief delivered by:

ROBERTSON STROMBERG LLP
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Suite 600, 105 – 21st Street East
Saskatoon, SK S7K 0B3

Lawyer in Charge of file: M. Kim Anderson K.C./Travis K. Kusch
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TAB 1

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1990 S.H. No. 71344

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN: Patricia MacCulloch, of Enfield in the County of Halifax, Province of Nova Scotia

Plaintiff

- and -

Price Waterhouse Limited, a body corporate

Defendant

1991 S.H. No. 78184

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN: Mrs. Patricia B. MacCulloch, Gen. Del. Post Office, Enfield, N.S., B0N 1N0

Plaintiff

- and -

The Bank of Nova Scotia and Bank employees, R. Douglas and D. MacLeod

Defendants

HEARD: Before the Honourable Chief Justice Glube in Chambers at Halifax, Nova Scotia, June 11th, 1992

DATE: July 16th, 1992

COUNSEL: Winston B. Cole, for the Plaintiff
Carl A. Holm, Q.C., for Price Waterhouse
Daniel M. Campbell, Q.C., for the Bank of Nova Scotia et al.

1990 S.H. No. 71344

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN: Patricia MacCulloch, of Enfield in the County of Halifax, Province of Nova Scotia

Plaintiff

- and -

Price Waterhouse Limited, a body corporate

Defendant

1991 S.H. No. 78184

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN: Mrs. Patricia B. MacCulloch, Gen. Del. Post Office, Enfield, N.S., B0N 1N0

Plaintiff

- and -

The Bank of Nova Scotia and Bank employees, R. Douglas and D. MacLeod

Defendants

GLUBE, C.J.T.D.:

The hearing involved two applications which contain a number of similarities

They will be dealt with together or separately as the facts and argument dictates.

I. APPLICATION BY PRICE WATERHOUSE LIMITED:

The application by Price Waterhouse Limited ("Price Waterhouse" or the "Trustee") is to strike the Amended Statement of Claim of Patricia MacCulloch dated April 21, 1992, on the following alternative grounds:

1. (a) leave to commence the Action was not obtained under s.215 of the **Bankruptcy Act**; and

(b) leave should not be granted *nunc pro tunc.*

2. (a) the pleadings disclose no reasonable cause of action;

(b) as the allegations in the plaintiff's pleadings having been put in issue in previous proceedings, the plaintiff is barred by the principle of issue estoppel from relitigating the same issues and/or the issues raised are *res judicata;*

(c) the proceeding is frivolous, vexatious and an abuse of process of the court.

3. The applicant seeks to have the plaintiff barred from further proceedings against the Defendant concerning the Estate of Charles E. MacCulloch in Bankruptcy (the "Estate"), in particular, concerning the defendant's administration of and dealings with the assets of the Estate or the action

(a) NO REASONABLE CAUSE OF ACTION -PRICE WATERHOUSE

Price Waterhouse submits that in order to have a cause of action against the Trustee, there must be a duty owed by the Trustee to the plaintiff. The action against the Defendant is in its capacity as Trustee in Bankruptcy and as such it owes a duty to the creditors, to the court and to the Estate in Probate. The latter is represented by its Executors, Central and Mrs. MacCulloch, however, Mrs. MacCulloch is not suing in her capacity as an Executor, she is suing personally.

On behalf of Mrs. MacCulloch it was claimed that she is a substantial beneficiary and because of negligent mismanagement, the Trustee owes a duty to the Estate which owes a duty to Mrs. MacCulloch and that she can bring the action herself. No authority was submitted for this proposition except counsel used the analogy of product liability cases where the consumer can sue directly. I find that this analogy is not applicable to the present case.

Mrs. MacCulloch is a beneficiary under the Estate in Probate. She would have a cause of action against the Executors to compel them to carry out their duties in a proper manner and could bring an action for breach of trust if the Executors refuse to carry out an act which is their duty to discharge. If successful, this would oblige the Executors personally to indemnify the Estate for any loss. (Waters, **Law of Trust (1974)**). In spite

of my opinion that the argument by Price Waterhouse is correct on this point, I propose to proceed to determine whether the statement of claim discloses a reasonable cause of action.

Counsel for the respondent/plaintiff submitted in an unsworn brief that:

> "After the issuance of the amended Statement of Claim in this matter by myself, I made contact with the solicitor for the Applicant to indicate that I was aware of additional causes of action and issues regarding the negligent mismanagement of the estate which had not previously been litigated and asked my friend whether he would be filing a Demand for Particulars in order that he might have specific knowledge of these fresh issues. My friend declined to follow this course of action, but chose to proceed with the application to strike now before the Courts.
>
> If this Court should be of the opinion that Affidavit evidence is required to establish a reasonable cause of action, Mrs. MacCulloch would be pleased to swear an Affidavit enumerating the as yet non litigated issues which my friend has chosen not to make himself aware of by virtue of the procedure offered in the Civil Procedure Rules by way of a Demand for Particulars."

I do not accept that this statement is an answer to pleadings which do not disclose a cause of action.

In the case of **Teale v. United Church of Canada** (1979) 34 N.S.R. (2d) 313 at p.315, MacKeigan, C.J.N.S. stated:

> "Whether a statement of claim discloses a cause of action is ordinarily to be determined solely by perusing its contents and any relevant statutes. Affidavit evidence may be admitted at the discretion of the chambers judge but should not relate to

> proof or disproof of the facts alleged in the claim. On an application to dismiss it is assumed that the facts alleged in the statement of claim can be proved. The question is whether a claim in law is shown, assuming the facts to be true."

Also in **Vladi Private Islands Ltd. v. Haase et al.** (1990) 96 N.S.R. (2d) 323, MacDonald, J.A. states the test to strike out a statement of claim at p.325:

> " The proper test to be applied when considering an application to strike out a statement of claim has been considered by this Court on numerous occasions. It is clear from the authorities that a judge must proceed on the assumption that the facts contained in the statement of claim are true and, assuming those facts to be true, consider whether a claim is made out. An order to strike out a statement of claim will not be granted unless on the facts as pleaded the action is 'obviously unsustainable'."

Note also **Operation Dismantle v. The Queen** [1985] 1 S.C.R. 441 at p. 486:

> "The law then would appear to be clear. The facts pleaded are to be taken as proved. When so taken, the question is do they disclose a reasonable cause of action, i.e. a cause of action 'with some chance of success' (**Drummond-Jackson v. British Medical Association,** [1970] 1 All E.R. 1094) or, as Le Dain J. put in **Dowson v. Government of Canada** (1981), 37 N.R. 127 (F.C.A.), at p.138, is it 'plain and obvious that the action cannot succeed?' Is it plain and obvious that the plaintiffs' claim for declaratory or consequential relief cannot succeed?"

Counsel for Mrs. MacCulloch continues to rely on the position that because the assets in the Estate initially were worth around $10,000,000.00 and now there are none, that there must be something wrong. Again, this does not satisfy the requirements for pleadings under the Rules.

Looking at the pleading in the action against Price Waterhouse, although certain statements are made, including that the defendant was the Trustee and acted as Receiver and Manager for various companies in which the Estate had an interest, it alleges negligent mismanagement without pleading any material facts and thus there are no facts in the Statement of Claim which if proved would give rise to a cause of action. A party is entitled to know the case which has to be met and this document is totally deficient in that respect. (Bullen & Leake and Jacob's Precedents of Pleading, 12th ed. Sweet & Maxwell, 1955 p.6-8.). (See also **Campbell and Campbell v. Sinnott et al.** (1984), 48 Nfld. & P.E.I.R. 125 - the court refused to allow the plaintiffs to tender evidence which could have been, but was not, included in the statement of claim.)

I find that the pleading discloses no reasonable cause of action in the case of **MacCulloch v. Price Waterhouse.** It is plain and obvious that the plaintiff cannot succeed.

(b) NO REASONABLE CAUSE OF ACTION - BANK, ET AL.

The Bank appointed Price Waterhouse receiver under debentures of two companies of the late Charles E. MacCulloch and petitioned the court for the receiving order in Bankruptcy. The two individuals named as defendants are employees of the Bank and are two of the three inspectors appointed with certain duties and a role to play under the **Bankruptcy Act.** The inspectors are in a fiduciary position to all creditors and exercise their duties in the interest of those creditors. They do not represent their employer when they are performing their duties as inspectors and continued to perform their duties even

after the Bank had been paid in full.

The allegations against the inspectors in the purported statement of claim are very unclear. Although there are claims of conflict of interest, discrimination, hounding her etc. none of these are things which involved the Bank or the Inspectors specifically and none of these allegations disclose a cause of action against these defendants. The applicants/defendants in their submission went through each allegation trying to show that none of them give rise to a reasonable cause of action. On behalf of Mrs. MacCulloch, the submission is that if the inspectors have any role in the various things alleged such as the valuation process and the sale process and enforcing debts, then it does disclose a cause of action.

The applicants submit that Mrs. MacCulloch is a legatee under the will and is not a residual beneficiary and she is indebted to the estate in a substantial amount. They submit that she has no standing to assert a claim against the Estate on behalf of the Estate or any other beneficiaries under the will. If anything, they argue that there are only implied allegations against the two individuals and if there is a claim, it should be against the Trustee and not the Inspectors which would require leave of the court which was not obtained. Again, I do not propose to decide this question based on standing only, although I agree with the applicant's submission.

I do not propose to go through each allegation of the plaintiff but I find that

there is no cause of action against the defendant Bank or the individuals named in the documents which have been submitted to the court.

Mrs. MacCulloch spoke personally following the argument on this point and submitted that the matter should come to trial so that the whole picture could be placed before the court at once instead of bits and pieces as had happened in the past. She sought a ruling that would be completely unfettered of any legal technicalities to allow "the whole truth" to come out. I can only respond by saying that the court is bound by rules which are applicable to all and rulings are made in accordance with those rules to allow for consistency before the courts. In this way, any litigant can understand the procedures which they must follow. To deal with matters otherwise would be chaotic. No one would know when there was an appropriate claim before the court.

If I am wrong in these conclusions that both actions should be struck on the ground that they disclose no reasonable cause of action, I propose to deal briefly with the other grounds claimed.

(c) ARE THE ACTIONS FRIVOLOUS OR VEXATIOUS ? ARE THEY AN ABUSE OF PROCESS OF THE COURT ?

Price Waterhouse submits that based on the case of **Re Lang Michener et al. and Fabian et el.** (1987), 59 O.R. (2d) 353, this action should be struck. At p. 358-9, Henry

J. extracts a list of principles from other decisions which lead to the conclusion that an action is frivolous or vexatious or an abuse of process of the court:

> "(a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
>
> (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
>
> (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
>
> (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
>
> (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
>
> (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to he considered in determining whether proceedings are vexatious;
>
> (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings."

Every one of these principles exist in the present case. In particular, I have

previously outlined the decision of Hallett, J. and other cases which have brought Mrs. MacCulloch before the court. She appears to continue to believe that some of those decisions are wrong, however they have been taken through the legal process including appeal and the results do exist and the issues have been finally determined. It appears that Mrs. MacCulloch wishes to relitigate matters which have been previously decided against her; she cannot seem to accept that the decisions made by the court are final and that there is nothing more to litigate against the defendants in either of the two actions.

This leads into the area of issue estoppel which is discussed in the case of **Feener & Feener v. Surette, Attorney General of Nova Scotia, Davidson and D. & E. Industries Limited** (1982) 56 N.S.R. (2d) 89 (N.S.S.C.A.). where the same subject matter was involved in an action as in an earlier action which had been decided in the court. The second action was barred under C.P.R. 25, but the appeal court also stated that it could have been dismissed on the basis of C.P.R. 14.25 as well.

Again, on behalf of Mrs. MacCulloch counsel submits that the actions should be allowed to continue because there are new issues of negligent mismanagement which are not barred by issue estoppel or *res judicata.* I must again state that neither Mrs. MacCulloch nor anyone else has provided this information in the proper form. There is no affidavit before the court and there was certainly enough time before these applications came on for hearing to obtain and file the necessary affidavit. Counsel states in his written submission at p.3:

> "In my review of the numerous proceedings that have taken place to date, there are issues at hand which have not as yet been litigated which, in my opinion, give rise to a valid claim for negligent mismanagement of the estate.
>
> In addition, fresh evidence and issues that I have discovered also bring some of the previously litigated issues into new perspective and allow a new and different interpretation of the issues to such an extent that if the evidence had been made available previously, it is my opinion that previous findings of the Courts might have been different."

In my opinion, this does not form a proper basis to allow these actions to continue. The "hope" appears to be to retry matters with a few more facts (which are completely unknown) and "maybe" there will be a different result. If there were new facts on which these actions are now based, the plaintiff was given full opportunity to plead those when time was given in March to file amended statements of claim. Also there was ample time to file affidavits before this application was heard. The amended documents were filed but nothing new was included in them.

All matters have been thoroughly examined previously. If one looks at the earlier statements of claim and affidavits of Mrs. MacCulloch involving both sets of defendants, in my opinion, all the allegations made which are able to be litigated have been previously dealt with. Both of the actions are duplicitous and the multiplicity of actions which basically deal with the same matters leads to the inevitable conclusion that these two actions should be struck out under C.P.R.14.25 (1) (b) or (d).

V. SUMMARY

The statement of claim in the action against Price Waterhouse and in the action against the Bank and the two named defendants are struck out under the provisions of C.P.R. 14.25(1) (a) and(b) and (d). As there is no cause of action, permission to bring the action against the Trustee under the **Bankruptcy Act** is denied.

This leaves one final matter. The Trustee seeks to bar the plaintiff from bringing any further actions against the Trustee concerning the Estate of Charles E. MacCulloch in Bankruptcy, in particular concerning the administration of the Estate, and the way in which Price Waterhouse dealt with the assets of the Estate. This would allow the Trustee to apply for and obtain a discharge. Although this is a rather drastic remedy, in my opinion, it is appropriate given the extensive litigation background which currently exists. There has to be an end for the Trustee so that the discharge can be obtained. If there are others to litigate against and Mrs. MacCulloch wishes to proceed against them, they do not include the Trustee. I come to the same conclusion with respect to the Inspectors in the second action, however, not in the case of the Bank. I am, however, prepared to order that any new action against the Bank can only be commenced with leave of the Court.

The two applicants, Price Waterhouse and the Bank of Nova Scotia are successful in their applications to have the two actions dismissed.

Constance R. Glube

Halifax, Nova Scotia

TAB 5

COURT FILE NUMBER **QBG 915 of 2019**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE **SASKATOON**

IN THE MATTER OF THE RECEIVERSHIP OF BECKERLAND FARMS INC.

SALE APPROVAL AND VESTING ORDER – CANORA ASSETS

Before the Honourable Madam Justice A.R Rothery in chambers the 28th day of October, 2019.

On the application of MNP Ltd., in its capacity as the Court-appointed **receiver** (the "**Receiver**") of the assets, undertakings and properties of Beckerland Farms Inc. (the "**Debtor**") pursuant to the Order of this Court made on July 11, 2019 (the "**Receivership Order**"); and upon hearing from counsel for the Receiver and upon reading the Notice of Application dated October 23, 2019, the Second Report of the Receiver dated October 23, 2019 (the "**Second Report**"), the Confidential Supplement to the Second Report of the Receiver dated October 23, 2019 (the "**Confidential Supplement**") and a proposed Draft Order, all filed and the pleadings and proceedings having taken herein:

THE COURT ORDERS:

SERVICE

1. Service of the Notice of Application on behalf of the Receiver and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient.

APPROVAL OF TRANSACTION

2. The sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Geerts Farms Ltd. (the "**Purchaser**") dated October 22, 2019 and appended to the Confidential Supplement, for the sale to the Purchaser (or its nominee) of the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") is declared to be commercially reasonable and in the best interests of the Debtor and its creditors and other stakeholders and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.

3. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable (including any steps necessary or desirable to satisfy and/or comply with any applicable laws, regulations or orders of any courts, tribunals, regulatory bodies or administrative bodies in any jurisdiction in which the Purchased Assets may be located) for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee), subject to such amendments as the Receiver and the Purchaser may agree upon, provided that any such amendments do not materially affect the Purchase Price.

VESTING OF PROPERTY

4. Upon the Receiver determining that the Transaction has closed to its satisfaction and on terms substantially as approved by this Honourable Court pursuant to this Order, the Receiver shall deliver to the Purchaser (or its nominee) a Receiver's certificate substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**").

5. The Receiver may rely on written notices from the Purchaser regarding fulfillment or, if applicable, waiver of conditions to closing of the Proposed Sale under the Sale Agreement and shall have no liability with respect to the delivery of the Receiver's Certificate.

6. Upon delivery of the Receiver's Certificate all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall, save and except for the encumbrances listed in **Schedule "C"** hereto (the "**Permitted Encumbrances**"), vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, "**Encumbrances**") and all rights of others, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

   (a) any encumbrances or charges created by the Receivership Order;

   (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act, 1993* SS 1993, c P-6.2, or any other personal property registry system; and

   (c) those Encumbrances listed in **Schedule "D"** hereto;

   and, for greater certainty, this Court orders that all of the Encumbrances (save and except for the Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

7. Upon delivery of the Receiver's Certificate to the Purchaser, the Receiver shall be and is hereby authorized to effect such discharges or revisions in the Saskatchewan Personal Property Registry as may be reasonably required to conclude the Transaction.

8. Pursuant to section 109 of *The Land Titles Act, 2000,* SS 2000, c L-5.1 and section 12 of *The Queen's Bench Act, 1998,* SS 1998, c Q-1.01 the Saskatchewan Registrar of Titles shall be and is hereby directed:

   (a) to accept an application (the "**Land Titles Application**") to surrender the existing title to the real property legally described as:

      Surface Parcel #203043114, BLK/PAR A Plan No 102173701 Extension 0

      (collectively, the "**Real Property**")

   and to set up a new title to such Real Property in the name of the Purchaser (or its nominee) as owner free and clear of any and all Encumbrances, save and except for the Permitted Encumbrances as set out in Schedule "C"; and

   (b) for greater certainty, to discharge all interests described in Schedule "D" hereto.

9. Any and all registration charges and fees payable in regard to the Land Titles Application shall be to the account of the Purchaser.

10. For the purposes of determining the nature and priority of the Encumbrances:

   (a) the net proceeds from the sale of the Purchased Assets (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets; and

(b) from and after the delivery of the Receiver's Certificate to the Purchaser, all Encumbrances and all rights of others shall attach to the Net Sale Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to closing of the Transaction.

11. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.

12. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

13. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.

14. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.

15. Forthwith after the delivery of the Receiver's Certificate to the Purchaser (or its nominee), the Receiver shall file a copy of the Receiver's Certificate with the Court, and shall serve a copy of the Receiver's Certificate on the recipients listed in the Service List maintained with respect to these proceedings.

16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtor and the Receiver are hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

17. Notwithstanding:

    a) the pendency of these proceedings;

    b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to such applications;

    c) any assignment in bankruptcy made in respect of the Debtor; and

    d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

    the vesting of any of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order and the obligations of the Debtor under the Sale Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other

reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Transaction is exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and is exempt from the application of any bulk sales legislation in any Canadian province or territory.

MISCELLANEOUS MATTERS

19. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction, including, without limitation, an application to the Court to deal with interests which are registered against title to the Real Property after the time of the granting of this Order.

20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

21. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the Receivership Order.

APPROVAL OF ACTIVITIES AND DISBURSEMENTS OF THE RECEIVER

22. All activities, actions and proposed courses of action of the Receiver to date in relation to the discharge of its duties and mandate as receiver of the Property, as such Actions of the Receiver are more particularly described in the First Report of the Receiver dated August 16, 2019, the Second Report and the Confidential Supplement, as well as the statement of receipts and disbursements contained in the Report, shall be and are hereby approved and confirmed.

23. The professional fees and disbursements of the Receiver, as set out in the Second Report, are hereby approved without the necessity of a formal passing of its accounts.

24. The professional fees and disbursements of the Receiver's legal counsel, MLT Aikins LLP, as set out in the Second Report, are hereby approved without the necessity of a formal assessment of its accounts.

SEALING ORDER

25. Counsel for the Receiver having complied with Practice Directive #3, the Confidential Supplement shall be kept sealed and confidential and shall not form part of the public record, but rather shall be placed, kept separate and apart from all other contents of the Court file, in sealed envelopes each of which shall bear a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court or upon the filing of the Receiver's Certificate.

ISSUED at Saskatoon, Saskatchewan, this 29th day of October, 2019.

JACKIE FREEBORN
DEPUTY LOCAL REGISTRAR

(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	MLT Aikins LLP
Name of lawyer in charge of file:	Jeffrey M. Lee, Q.C. and Paul Olfert
Address of legal firms:	1500 - 410 22nd Street, Saskatoon SK S7K 5T6
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File No:	31617.33

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

COURT FILE NUMBER **QBG 915 of 2019**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE **SASKATOON**

IN THE MATTER OF THE RECEIVERSHIP OF BECKERLAND FARMS INC.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice A.R. Rothery of the Court of Queen's Bench of Saskatchewan (the "**Court**") dated July 11, 2019, MNP Ltd. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and property of Beckerland Farms Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated October 28, 2019 (the "**Sale Approval and Vesting Order**"), the Court approved the agreement of purchase and sale made as of **October 22, 2019** (the "**Sale Agreement**") between the Receiver and Geerts Farms Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section 8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee);

3. The Transaction has been completed to the satisfaction of the Receiver; and

4. This Certificate was delivered by the Receiver at [Time] on [Date].

MNP LTD., in its capacity as Receiver of the undertaking, property and assets of BECKERLAND FARMS INC., and not in its personal capacity.

Per;_____
Name:
Title:

SCHEDULE "B"
PURCHASED ASSETS

1. Real property in the Town of Canora, Saskatchewan legally described as follows:

   Surface parcel #203043114
   BLK/PAR A Plan No 102173701 Extension 0

2. Personal property set out as items 82 to 94 in the attached list.

EQUIPMENT & GRAIN BINS

ITEM	DESCRIPTION	FMV
Equipment & Grain Bins Located at 1616 Highway No. 5 West in Canora, SK		
82	Twister 60-12 117,820 bu grain bin C-1, w/ concrete floor, full floor aeration, u-trough, power sweep, double aeration fans, OPI cable, outside ladder,& bin lid opener, drag augers to central conveyor to grain leg, all electric motor drive, 3 phase, SN N/A	
83	Twister 60-12 117,820 bu grain bin C-2, w/ concrete floor, full floor aeration, u-trough, power sweep, doub le aeration fans, OPI cable, outside ladder,& bin lid opener, drag augers to central conveyor to grain leg, all electric motor drive,3 phase,SN N/A	
84	Twister 60- 12 117,820 bu grain bin C-3, w/ concrete floor, full floor aeration, u-trough, power sweep,double ae ration fans,OPI cable, outside ladder,& bin lid opener, drag augers to central conveyor to grain leg, all electric motor drive, 3 phase, SN N/A	
85	Twister 60-12 117,820 bu grain bin C-4, w/ concrete floor, full floor aeration, u-trough, power sweep, double aeration fans, OPI cable, outside ladder ,& bin lid opener, drag augers to central conveyo r t o grain leg, all electric motor drive, 3 phase, SN N/A	
86	Twister 60-12 117,820 bu grain bin C-5, w/ concrete floor, full floor aeration,u-trough, power sweep, OPIra ble, outside ladder, & bin lid opener ,drag augers to central conveyor to grain leg,all electric motor drive, 3 phase,SN N/A	
87	Twister 60-12 117,820 bu grain bin C-6, w/ concrete floor, full floor aeration, u-trough,power sweep,double aeration fans. OPI cable, outside ladder,& bin lid opener, drag augers to central conveyor to grain leg, all electric mot or drive, 3 phase,SN N/A	
88	Twister 60-12 117, 820 bu grain bin w/concrete floor, full floor aeration, u-trough, power sweep, double aeration fans, OPI cable, outside ladder & bin lid opener, drag augers to central conveyor to grain leg, all electric motor dirve, 3 phase, SN N/A	
89	Twister 60-12 117,820 bu grain bir1 C-8, w/ concrete floor,full floor aeration, u-trough, power sweep, double aeration fans, OPI cable, outside ladder, & bin lid opener,drag augers to central conveyor to grain leg,all electr ic motor drive, 3 phase, SN N/A	
90	Neco Triple filn gra in dryer, 11sections high,electric-powe red, continuous flow, This unit is disassembled but it appears the pieces are all there to make it functional.	

EQUIPMENT & GRAIN BINS

ITEM	DESCRIPTION	FMV
91	HSISystems double 10,000 bu.grain leg & grain handling system, Meridian TL12-39 grain unload auger,Conveyors, catwalk, grain leg sect ions,grain leg buckets & belting,hoppers & manifolds ladders & safety cage, etc . The grain leg is only partially completed, there are parts to the unit in the yard as per pict ures,there is much wor k needed to make this grain handling system functional.	
82	Truck scale, 12'x l10' w/ catwalks on each side, ramps up to scale, digital read-out, scale mounted on ceme nt pylons w/ underslung unlrJdd co nveyor, unload conveyor not functional at this time.	
93	Metal-clad office building, Dryer shack, 16'x24',metalclad, wood co nstruction, w/ 2x8 construction, bathroom & shower, bedroom w/ 1bed, lunch area w/ st ove, fridge, toaster ,coffee pot,table,2 chairs, couch. loveseat, insulated,wirC'd & heated, on steel skid	
94	Metal-cla d Elect ronics building,16'x2 t:',w/ electr ical component s, on steel skid	

SCHEDULE "C"
PERMITTED ENCUMBRANCES

1. Power Corporation Act Easement (s. 23) in favour of Saskatchewan Power Corporation (Interest Register #120324204)

2. Planning and Development Act, 2007 – Dedication Deferral (Section 190) in favour of Her Majesty the Queen in Right of Saskatchewan (Interest Register #120396281)

3. Power Corporation Act Easement (s. 23) in favour of Saskatchewan Power Corporation (Interest Register #120642397)

4. Tax lien in favour of the Town of Canora (Interest Register #123207881)

SCHEDULE "D"
ENCUMBRANCES TO BE DISCHARGED

1. Mortgage in favour of Business Development Bank of Canada (Interest Register #120424362)

2. Assignment of Rents in favour of Business Development Bank of Canada (Interest Register #120424384)

3. Builders' Lien in favour of Flaman Sales Ltd. (Interest Register #120894802)

4. Mortgage in favour of EMW Industrial Ltd. (Interest Register #121020781)

5. Enforcement Charge – Provincial Judgment in favour of Business Development Bank of Canada (Interest Register #123228985)

6. Enforcement Charge – Provincial Judgment in favour of Business Development Bank of Canada (Interest Register #123229098)

7. Court Order in favour of MNP Ltd. (Interest Register #123555269)

TAB 6

COURT FILE NUMBER Q.B. No. 1884 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED (the "CCAA")

AND

IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF 101098672 SASKATCHEWAN LTD., MORRIS INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD., CONTOUR REALTY INC., and MORRIS INDUSTRIES (USA) INC.

ORDER

(Second Extension of Stay of Proceedings)

Before the Honourable Mr. Justice R.S. Smith in Chambers the 8th day of May, 2020.

Upon application by Jeffrey M. Lee, Q.C. and Paul Olfert, counsel on behalf of the Monitor, Alvarez & Marsal Canada Inc. (the "**Monitor**"), and upon hearing from counsel on behalf of other parties participating, and upon reading the Notice of Application dated the 6th day of May, 2020, the Fifth Report of the Monitor dated May 5, 2020 (the "**Fifth Report**"), the Confidential Appendix to the Fifth Report of the Monitor dated March 6, 2020 (the **"Confidential Appendix")**, and the Draft Order (collectively, the "**Application Materials**"), all filed with proof of service; and upon reading the pleadings and proceedings herein;

THE COURT ORDERS:

1. The term of the Amended and Restated Initial Order granted by the Honourable Mr. Justice R.S. Smith in these proceedings on January 16, 2020 (the "**ARI Order**"), and the stay of proceedings provided for thereunder, shall be and are hereby extended from 11:59 p.m. on May 8, 2020 to 11:59 p.m. on May 29, 2020.

2. All activities, actions and proposed courses of action of the Monitor (collectively, the "**Actions of the Monitor**") from and after March 27, 2020 in relation to the discharge of its duties and mandate as Monitor pursuant to the various Orders of the Court of Queen's Bench for Saskatchewan in these proceedings (collectively, the "**Monitor's Mandate**"), as such Actions of the Monitor are more particularly described in the Fifth Report, shall be and are hereby approved and confirmed.

3. All of the professional fees and disbursements of the Monitor and its legal counsel, MLT Aikins LLP, from February 29, 2020 through to and including April 30, 2020, as more particularly described in the Fifth Report, shall be and are hereby approved and confirmed.

4. The Confidential Appendix shall be kept sealed and confidential and shall not form part of the public record, but rather shall be placed, kept separate and apart from all other contents of the Court file, in a sealed envelope which shall bear a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this 8th day of May, 2020.

DEPUTY LOCAL REGISTRAR

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

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File No:	35572.3