

DUPLICATE
ORIGINAL

COURT FILE NUMBER QBG No 1038 of 2021

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

JUDICIAL CENTRE SASKATOON

APPLICANT BANK OF MONTREAL

RESPONDENT NORMAN PRIOR NODWELL

IN THE MATTER OF THE INTERIM RECEIVERSHIP OF NORMAN PRIOR NODWELL
(Amended and Restated Interim Receivership Order)

Before the Honourable Mr. Justice G.A. Meschishnick in Chambers the 12th day of November, 2021.

Upon the application of Bank of Montreal ("BMO") in respect of Norman Prior Nodwell (the "Debtor"); and upon having read the Notice of Application for Extension of Interim Receivership, Draft Interim Receivership Order, and the First Report of the Interim Receiver dated November 8, 2021, all filed; and the pleadings and proceedings herein;

The Court Orders:

SERVICE

1. To the extent required, the time for service of notice of the application for this order is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 47(3)(b) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"), the appointment of Deloitte Restructuring Inc. as interim receiver ("Interim Receiver"), without security, of all of the Debtor's livestock, including all of the Debtor's cattle and bison, and all of the Debtor's feed and forage (collectively, the "Property") by order of the Honourable Mr. Justice G.A. Meschishnick dated October 14, 2021 (the "Initial Interim Receivership Order") is hereby extended by thirty (30) days from November 13, 2021 to December 13, 2021 at 11:59 p.m. (Saskatchewan time).
- 2A. The appointment of the Interim Receiver under this Order shall continue in full force and effect until the first occurrence of either a receiver taking possession of the Property under section 243(2) of the BIA, a trustee taking possession of the Property under section 71 of the BIA, or in accordance with further Order of this Court extending such appointment. If this Order is not extended by further Order of the Court or the Interim Receiver discharged in accordance with this section 2A, the Interim Receiver shall be automatically discharged (without further Order of the Court) at 11:59 p.m. (Saskatchewan time) on December 13, 2021.

INTERIM RECEIVER'S POWERS

3. The Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property, and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to enter upon, occupy and use real property owned or leased by the Debtor, or real property to which the Debtor has access or over which the Debtor has control (collectively, the "Real Property") including, without limitation:
 - i. those portions of the Real Property comprising or containing livestock corrals, livestock chutes or pens or livestock handling facilities;
 - ii. those portions of the Real Property comprising pasture(s) and pastureland; and
 - iii. those portions of the Real Property comprising co-operative pastures, feedlots or livestock handling facilities (whether owned by the Debtor or owned by third parties) in which livestock owned by the Debtor are located or contained;for the purpose of taking possession, exercising control, receiving, preserving, protecting, and maintaining control of the Property including, without limitation, using the Real Property for grazing of the Debtor's livestock;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, legal counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties including, without limitation, those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor in relation to the Property;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (h) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtor;
- (i) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (j) to utilize money borrowed by the Interim Receiver to fund payment of any employee payroll obligations, wages, salaries, rent, insurance, utilities and other obligations determined by the Interim Receiver to be integral to the preservation of the Property;

(k) to report to the Court and the creditors of the Debtor regarding the status of the business and financial affairs of the Debtor, including assets, liabilities, accounts payable and other matters deemed relevant by the Interim Receiver; and

(l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. (i) The Debtor, (ii) all of his current and former employees, agents, accountants, and legal counsel and all other persons acting on his instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Interim Receiver upon the Interim Receiver's request.
5. All Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control relating to the Property of the Debtor, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto provided, however, that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require, including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE PROPERTY

8. No Proceeding against or in respect of the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement, if such Proceeding is not commenced before the expiration of the stay provided by this paragraph; or (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall: (i) exempt the Interim Receiver from compliance with statutory or regulatory provisions relating to health, safety or the environment; (ii) prevent the filing of any registration to preserve or perfect a mortgage or security interest; or (iii) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect a lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further steps shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Debtor and the Interim Receiver.

NO INTERFERENCE WITH THE INTERIM RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor in relation to the Property, including, without limitation, insurance coverage, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services in relation to the Property, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into the Post Receivership Accounts established pursuant to the Initial Interim Receivership Order and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to the employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Interim Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5), 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c 47.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. (a) Notwithstanding anything in any federal or provincial law, the Interim Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Interim Receiver's appointment; or
 - (ii) after the Interim Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Interim Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts an Interim Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Interim Receiver to remedy any environmental condition or environmental damage affecting the Property, the Interim Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within ten (10) days after the order is made if no time is so specified, within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Interim Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within ten (10) days after the order is made or within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Interim Receiver to contest the order; or

- B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Interim Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Interim Receiver by section 14.06 of the BIA or any other applicable legislation.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

- 15. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Interim Receiver shall incur no liability or obligation that exceeds 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 afforded to the Interim Receiver under any applicable law, including, without limitation, Sections 14.06, 81.4(5) or 81.6(3) of the BIA.

INTERIM RECEIVER'S ACCOUNTS

- 16. The Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements and the Interim Receiver and counsel to the Interim Receiver shall be entitled and continue to be entitled to the Interim Receiver's Charge established pursuant to the Initial Interim Receivership Order on the Property as security for such fees and disbursements both before and after the making of this Order in respect of these proceedings, and the Interim Receivers' Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 17. The Interim Receiver and its legal counsel shall pass their accounts from time to time.
- 18. Prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

- 19. The Interim Receiver shall be at liberty and is hereby empowered to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not at any time exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize), inclusive of such monies already borrowed by the Interim Receiver pursuant to the Initial Interim Receivership Order, at any time at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be charged and continued to be charged by way of the Interim Receiver's Borrowings Charge established pursuant to the Initial Interim Receivership Order as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 20. Neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. The Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Interim Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

ALLOCATION

23. Any interested party may apply to this Court, on notice to any other party likely to be affected, for an order allocating the Interim Receiver's Charge and Interim Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

24. The Interim Receiver may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtor.
26. Unless otherwise ordered by this Court, the Interim Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
27. 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 Interim 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 and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.
28. The Interim Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and for the recognition that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
29. The Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
30. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

NOTICE AND SERVICE

31. The Applicant shall, within three (3) days of the date of this Order, cause a true copy of this Order to be served by e-mail transmission on all parties who appear to have an interest in these proceedings,

as more particularly described in the Service List maintained in respect of these proceedings as it exists on the date of this Order.

32. The Electronic Case Information and Service Protocol (the "Protocol") approved and adopted for these proceedings by the Initial Interim Receivership Order shall continue in full force and effect. Terms which are capitalized herein but not otherwise defined shall bear the respective meanings ascribed to them in the Protocol.
33. Service of documents made in accordance with the Protocol shall (subject to review by the Court at the time of any application) constitute valid and effective service. Applications in respect of this matter may be made upon three (3) days notice.
34. The Case Website established in accordance with the Protocol with the URL www.insolvencies.deloitte.ca/en-ca/nodwell shall be maintained by the Interim Receiver during the term of its appointment as Interim Receiver of the Debtor.
35. The failure of any Person to forward a Request for Electronic Service or a Request for Facsimile Service to the Service List Keeper shall release the Interim Receiver, the Applicant, and any other interested Person serving court materials in this matter from any requirement to provide further notice in respect of these proceedings to any such Person until such time as a properly completed request for such service is received from such Person by each of the counsel for the Interim Receiver and the Applicant.
36. The Applicant and the Interim Receiver shall be at liberty to serve the Notice on any other interested Person by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to such Persons at their respective addresses as last shown on the records of the Applicant.

ISSUED at Saskatoon, Saskatchewan, this 10 day of November, 2021.


DEPUTY LOCAL REGISTRAR

This Order consented to this 10th day of November, 2021.

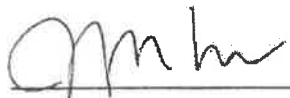
CUELENAERE LLP

Per: 

Jay Watson, Solicitor for the Respondent, Norman
Prior Nodwell

This Order consented to this 8th day of November, 2021.

MLT AIKINS LLP

Per: 

Jeffrey M. Lee., Q.C., and Shay Brehm, Solicitors
for the Applicant, Bank of Montreal

This document was delivered by: MLT Aikins LLP, Solicitors for the Applicant, Bank of Montreal

TO: a) All Persons named on the Service List for these proceedings as at November 8, 2021

SCHEDULE "A"

INTERIM RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the interim receiver (the "Interim Receiver") of Norman Prior Nodwell's (the "Debtor") livestock, including cattle and bison, and feed and forage the (the "Property") appointed by Order of the Court of Queen's Bench of Saskatchewan (the "Court") issued the 14th day of October, 2021 and by Order of the Court issued the ____ day of November, 2021 (collectively, the "Order") made in action QBG No 1038 of 2021, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$250,000.00 which the Interim Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act* (Canada) and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at *.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Interim Receiver does not undertake any personal liability to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

Deloitte Restructuring Inc., solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title: