

Form 3-49
(Rule 3-49)

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

ORIGINATING APPLICATION

(Appointment of Interim Receiver)

NOTICE TO RECIPIENTS LISTED IN THE PRELIMINARY SERVICE LIST

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where	Court House, 520 Spadina Crescent East Saskatoon, Saskatchewan
Date	Thursday, October 14, 2021
Time	10:00 am

Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, you must immediately contact the office of the local registrar at (306) 933-5135 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.

Go to the end of this document to see what you can do and when you must do it.

The applicant seeks the following remedy or order:

1. An Order pursuant to section 47(3)(b) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") appointing Deloitte Restructuring Inc. as Interim Receiver (the "Interim Receiver") of all of the livestock (including cattle and bison) and all forage and feed owned by the Respondent, Norman Prior Nodwell ("Mr. Nodwell" or the "Debtor"), with all of such livestock (including cattle and bison) and all such forage and feed hereinafter collectively described as the "Property".

2. An Order pursuant to section 47(3)(b) of the BIA granting to the Interim Receiver the ancillary power 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:
 - a) those portions of the Real Property comprising or containing livestock corrals, livestock chutes or pens or livestock handling facilities;
 - b) those portions of the Real Property comprising pasture(s) and pastureland; and
 - c) 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;
3. Such further and other relief as counsel may request and this Honourable Court may allow.

The material facts and the applicant’s grounds for making this application are:

Background, Loans and Security

4. Mr. Nodwell operates a mixed farming operation near Biggar, Saskatchewan. Mr. Nodwell’s livestock operation consists of both cattle and bison husbandry. Mr. Nodwell has approximately 150 head of cattle that are located at a community cooperative pasture near Biggar, Saskatchewan and has approximately 550 head of bison that are located at three pastures owned by Mr. Nodwell near Biggar, Saskatchewan.
5. Pursuant to a Letter of Agreement dated March 6, 2018 between BMO and Mr. Nodwell and a Borrower request for Loan Advance dated March 14, 2018 (collectively, the “**Credit Agreement**”), BMO made credit available and advanced certain funds to Mr. Nodwell in the form of an Agri Rediline Facility and an Operating Demand Loan.
6. Mr. Nodwell’s obligations under the Credit Agreement are secured by section 427 *Bank Act* (Canada) security granted by Mr. Nodwell to BMO pursuant to a Notice of Intention registered by BMO in the Bank of Canada Registry against Mr. Nodwell on March 20, 2018; a Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated March 21, 2018; and a Bank Act Security Agreement dated March 21, 2018 (collectively, the “**Bank Act Security Documents**”). Pursuant to the Bank Act Security Documents, Mr. Nodwell granted to BMO a security interest in, among other property, all of Mr. Nodwell’s livestock and all of Mr. Nodwell’s forage and feed.

7. Mr. Nodwell's obligations to BMO under the Credit Agreement are also secured against the personal property of Mr. Nodwell by means of a General Security Agreement between Mr. Nodwell and BMO dated March 14, 2018 (the "**GSA**"), whereby Mr. Nodwell granted to BMO a security interest in all of his undertakings, personal property, and assets, both present and future.

8. Mr. Nodwell's obligations to BMO under the Credit Agreement are secured against the real property of Mr. Nodwell by means of an All Indebtedness Mortgage dated March 14, 2018, executed by Mr. Nodwell in favour of BMO in the principal amount of \$3,000,000 (the "**Mortgage**"). Pursuant to the Mortgage, Mr. Nodwell mortgaged to and in favour of BMO all of his estate and interest in the following lands:
 - i. Surface Parcel #118731887, NE 24-36-14 W3 Ext 0;
 - ii. Surface Parcel #118731865, SE 24-36-14 W3 Ext 0;
 - iii. Surface Parcel #150347651, SW 24-36-14 W3 Ext 13;
 - iv. Surface Parcel #118731573, SE 14-36-14 W3 Ext 0;
 - v. Surface Parcel #118759315, SW 14-36-14 W3 Ext 0;
 - vi. Surface Parcel #118731562, NE 13-36-14 W3 Ext 0;
 - vii. Surface Parcel #117465789, SW 30-36-13 W3 Ext 0;
 - viii. Surface Parcel #117470044, NW 06-35-13 W3 Ext 0;
 - ix. Surface Parcel #145869261, SW 06-35-13 W3 Ext 8;
 - x. Surface Parcel #118742508, SE 23-35-16 W3 Ext 0;
 - xi. Surface Parcel #118725194, SW 23-35-16 W3 Ext 0;
 - xii. Surface Parcel #118742182, NW 14-35-16 W3 Ext 0; and
 - xiii. Surface Parcel #118742193, NE 14-35-16 W3 Ext 0.

Default, Demand and Current State of Accounts

9. Mr. Nodwell defaulted on his obligations to BMO under the Credit Agreement in the Fall of 2020 by failing to make payments under the Credit Agreement as they became due, by ceasing to meet his liabilities generally as they became due (such that he had become insolvent), by causing or permitting a material judgment to be registered against him by a creditor, and by BMO's determination that there had been a material adverse change in Mr. Nodwell's financial condition.
10. BMO demanded repayment of the indebtedness owing by Mr. Nodwell to BMO and secured by the Bank Act Security Documents, the GSA, and the Mortgage by way of demand letter and statutory notices dated April 14, 2021 (the "**Demand**"). The Demand included a Notice of Intention to Enforce a Security under section 244 of the BIA dated April 14, 2021. Mr. Nodwell has failed, neglected, or refused to retire his indebtedness since the delivery of the Demand.
11. As of October 12, 2021, the credit facilities provided by BMO to Mr. Nodwell pursuant to the Credit Agreement remain outstanding in the amount of \$2,179,555.01.

Animal Welfare Issues and the Sale of Livestock

12. Mr. Nodwell sold 131 bison for approximately \$65,000 in September of 2021. Mr. Nodwell deposited the proceeds from the bison sale into an account maintained by him at Biggar and District Credit Union contrary to BMO's instructions and Mr. Nodwell's agreement to deposit the funds from his farming operation exclusively into his BMO account. It is estimated that Mr. Nodwell has approximately \$24,000 in his Biggar and District Credit Union account.
13. On or about September 29, 2021, the Animal Protection Services Branch of the Government of Saskatchewan ("**APS**") initiated an investigation of an animal welfare concern relating to Mr. Nodwell's livestock. On that same day, APS issued Mr. Nodwell a Corrective Action Order under section 3(d) of *The Animal Protection Act, 2018*, SS 2018, c A-21.2, requiring Mr. Nodwell to provide his livestock with supplemental feed to improve the livestock's body condition, to humanely euthanize or provide veterinary care to distressed animals, and providing that APS would take Mr. Nodwell's livestock into protective custody upon Mr. Nodwell's failure to comply with the Corrective Action Order.
14. On September 29, 2021, BMO proposed that Mr. Nodwell consent to an Order of the Court appointing a Receiver in order to facilitate BMO providing funding to feed Mr. Nodwell's livestock by means of Receiver's Borrowings. Mr. Nodwell rejected BMO's proposal, indicating that he was in the process of liquidating his livestock "as fast as he can" and that he had arranged a sale of bison early in the week of October 3, 2021. Mr. Nodwell subsequently advised BMO that the proposed sale had fallen through.

15. On or about October 4, 2021, APS attended Mr. Nodwell's farm to inspect his progress in resolving his animal welfare issues. APS informed Mr. Nodwell of drought relief programs available to livestock producers. Mr. Nodwell informed APS and BMO that he has plans to liquidate his livestock and is not interested in applying for assistance from the drought relief programs.
16. On or about October 5, 2021, BMO contacted Mr. Nodwell to inquire whether Mr. Nodwell was comfortable having Brendan Kramer ("**Mr. Kramer**"), an auctioneer specializing in the sale of bison from Kramer Auction Sales Ltd. in North Battleford, Saskatchewan, attend his farm to appraise his livestock. Mr. Nodwell refused to have Mr. Kramer attend his farm to appraise his livestock, advising BMO that he had arranged for a private sale of bison to Lawrence Vold ("**Mr. Vold**") of Ponoka, Alberta to take place around October 8, 2021.
17. On October 6, 2021, BMO's agent (the "**Agent**") attended Mr. Nodwell's farm to inspect the health and physical condition of the cattle and bison owned by Mr. Nodwell, to assess the quantity of feed available to Mr. Nodwell's cattle and bison, and to determine the details of Mr. Nodwell's intentions to market his cattle and bison. The Agent's inspection revealed that Mr. Nodwell's bison are in poor condition, that Mr. Nodwell had recently euthanized a number of bison, that Mr. Nodwell does not maintain any actual inventory or list whatsoever of his cattle and bison, that Mr. Nodwell's bison are unmarked and unidentifiable, that Mr. Nodwell's pastures are in extremely poor condition, and that Mr. Nodwell had approximately 20 days' of feed on hand as at the date of inspection.
18. Mr. Nodwell advised BMO that he had reached an agreement to sell Mr. Vold his bison for \$0.85/lb for bison cow and \$1.00/lb for bison yearling pursuant to a "handshake deal" with 14-day open credit terms and no advance payment. BMO furnished Mr. Nodwell with a draft Bill of Sale to document the terms of the sale between himself and Mr. Vold on October 7, 2021. Mr. Vold refused to sign the draft Bill of Sale, informing BMO that, contrary to Mr. Nodwell's representations, Mr. Vold was merely acting as an agent in the transaction for a purchaser in Nebraska and that the purchaser from Nebraska refused to sign the draft Bill of Sale.
19. BMO has canvassed bison auction facilities and has determined that no auctions are scheduled to take place until December, 2021. A number of auction facilities and bison purchasers are reluctant to work with Mr. Nodwell as a result of previous unsatisfactory experiences dealing with him.
20. It is estimated to cost approximately \$15,000 to provide Mr. Nodwell's bison with feed for 5 days.

Appointment of Receiver

21. Mr. Nodwell has demonstrated his failure or inability to care for and properly maintain his livestock. Mr. Nodwell's failure to care for his livestock has diminished the value of BMO's security and, in the case of the euthanized bison, has caused a complete loss of BMO's security.

22. BMO's security is also threatened by Mr. Nodwell's ability to source and to finance the purchase of feed for his livestock. As of October 6, 2021, Mr. Nodwell had approximately 20 days of feed on hand. It costs approximately \$15,000 to feed Mr. Nodwell's livestock for five days and Mr. Nodwell has, at most, \$24,500 of cash available to purchase feed. In such circumstances, Mr. Nodwell will run out of feed for his livestock and be unable to purchase additional feed by around November 3, 2021. The welfare of Mr. Nodwell's livestock and, thereby, BMO's security will be endangered if feed is not financed, sourced, and shipped prior to November 3, 2021.
23. Finally, BMO's security in the livestock is in jeopardy as a result of Mr. Nodwell's attempts to resolve his animal livestock issues by liquidating his livestock through high-risk transactions at prices below market value. Mr. Nodwell has proposed to sell his livestock through a "handshake deal" with 14-day open credit terms to an international purchaser for \$0.85/lb for bison cow and \$1.00/lb for bison yearling. Sales on such terms expose BMO to loss of its security without adequate recourse against the purchaser and may be at below market price. The threat to BMO's security is compounded in such circumstances by the fact that Mr. Nodwell does not maintain an inventory or list of his livestock, that Mr. Nodwell's bison are unmarked and unidentifiable, and that Mr. Nodwell has failed to communicate with BMO in a transparent and forthright manner regarding the terms of sale of his livestock and the funds which he has received from previous livestock sales.
24. By reason of the facts and matters described above, BMO has a reasonable apprehension that its security in Mr. Nodwell's livestock is in jeopardy. BMO seeks to preserve and protect its security interests in Mr. Nodwell's bison and cattle and corresponding forage and feed by obtaining an Order of this Honourable Court appointing an interim receiver thereof.
25. Deloitte Restructuring Inc. of Winnipeg, Manitoba is a licensed insolvency trustee and has consented to being appointed as interim receiver of Mr. Nodwell's livestock, including cattle and bison, and forage and feed.

In support of this application, the applicant relies on the following material or evidence:

26. This Originating Application, with proof of service;
27. Affidavit of Mathan Kumar sworn October 12, 2021;
28. Affidavit of John Gabrysh sworn October 11, 2021;
29. Draft Interim Receivership Order;
30. Redline of Draft Interim Receivership Order to Saskatchewan Template Receivership Order;
31. Consent to Appointment of Deloitte Restructuring Inc.; and

32. Such further and other material as counsel may advise and this Honourable Court may allow.

DATED at Saskatoon, Saskatchewan, this 12th day of October, 2021.

MLT AIKINS LLP

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

This application is issued at the above-noted judicial centre on the 12th day of October, 2021.

N. WATER
DEPUTY LOCAL REGISTRAR

(Deputy) Local Registrar

(sal)

NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant and against all persons claiming under the applicant. You will be bound by any order the Court makes, or another order might be given or other proceedings taken, which the applicant is entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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