

QBG 1337 of 2020 - JCS

Bank of Montreal v Tyler Smith

James P. Kroczyński for Richardson Pioneer Limited

David G. Gerecke, Q.C.,
Wuraola (Wura) A. Dasylva,
and Jacey K. Safnuk for Bank of Montreal

Jeffrey M. Lee, Q.C.,
and Paul D. Olfert for Deloitte Restructuring, Receiver of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd.

Peter V. Abrametz for Tyler and Pamela Smith

Janine L. Lavoie-Harding,
and David J. Ukrainetz for Farm Credit Corporation

Nicole C. Krupski for John Deere Financial Inc.

Donald J. Klaassen for Department of Justice (Canada)

FIAT - April 7, 2021 - MESCHISHNICK J.

[1] Pursuant to my order of March 17, 2021, a number of matters were brought before me for argument on March 31, 2021. They were applications:

- a. That the Receivership Order made December 1, 2020 be interpreted or amended to read as included within the definition of “property” in paragraph 2, the proceeds from the sale of land; alternately
- b. For a Preservation Order pursuant to s. 5 of *The Enforcement of Money Judgments Act*, SS 2010, c E-9.22, preventing Tyler and Pamela Smith from disposing of the net sale proceeds of land;
- c. By the Debtors, as that term is defined in the Receivership Order, to terminate the Receivership Order; and
- d. To determine whether various creditors could be paid from the proceeds of the sale of the four quarter sections of farmland as described in the statement of adjustments filed by the Debtors’ lawyer [4 Quarter Sale] pursuant to my order of March 17, 2021.

[2] Let me briefly deal with the application to terminate the receivership. It is based on two grounds. The first is that the receivership proceeding was not commenced in accordance with s. 243(5) of the *Bankruptcy and Insolvency Act*, RSC

1985, c B-3 [BIA]. The Debtors misread that provision when they say that it requires that the proceeding be commenced in the judicial district where they reside. It requires the application for the order to be filed in a court having jurisdiction in the judicial district of the locality of the debtor. The application was filed in the Court of Queen's Bench. This Court has original jurisdiction throughout Saskatchewan: *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01. It has jurisdiction by virtue of s. 183 of the BIA to hear applications under that Act. The Receivership Order is not a nullity because it was filed in the Judicial Centre of Saskatoon rather than the Judicial Centre of Prince Albert: *Kucera (Re)*, 2014 BCSC 394. It is not necessary for me to address the arguments saying the Debtors are estopped from raising this argument at this point in the proceeding or that this is a collateral attack on the Receivership Order.

[3] The Debtors also argue that the purpose of the Receivership Order has been realized as the Receiver is in possession of sufficient funds to retire the secured claim of the Bank of Montreal and that there is no net realizable value left in the remaining assets.

[4] The Receiver has filed the Third Report. In it the report details that there is currently insufficient funds to pay the claim of the Bank of Montreal and the amounts secured by the Receiver's Charge found in paragraph 17 of the Receivership Order. In addition, the Receiver points to a variety of assets that are yet capable of realization.

[5] The Debtors' evidence on the first point was incomplete in that they did not have the current information provided in the Third Report. Their argument that there was no further net realization to be made was speculative and unsupported by the evidence.

[6] I accept the evidence of the Receiver as set out in the Third Report. I will leave it for the Receiver, acting as an officer of this Court, to determine when its activities have served the purpose of satisfying the claim of the Bank of Montreal or should be ended because they have maximized the available recovery.

[7] The Debtors' application to terminate the Receivership Order is dismissed with costs in the amount of \$2,000 to be paid to the Bank of Montreal.

Scope of the Receivership Order

[8] I find myself in agreement with Richardson Pioneer Limited and the Bank of Montreal on this point. In particular, I am in agreement with the law and analysis found at paragraphs 10 to 22 of the brief of law filed by counsel for the Bank of Montreal. Once a landowner has entered into an agreement for sale and certainly when the transaction has closed, the proceeds of that sale become personal property by virtue

of the equitable doctrine of conversion: *Re Hole Estate*, [1948] 2 WWR 754 (MBKB); *Re MacDougall Estate*, [1927] 1 WWR 612 (Sask KB); *MacWilliams v MacWilliams and Ray*, [1962] OR 407 (Ont CA).

[9] At this point there is nothing that turns on whether the proceeds from the sale of land which would reach the hands of the Smiths is currently property within the meaning of the Receivership Order or whether an amendment to the Receivership Order is needed. If it would have been necessary to decide that point I would have concluded that the Receivership Order, read in light of the case law cited by the Bank of Montreal, already captured the proceeds of the sale of land that would not be needed to honour the terms of the sale (i.e. provide clear title) or were reasonable and necessary costs to arrange and complete the sale. I realize that this was not the Receiver's understanding of the scope of the Receivership Order when it was granted. Thankfully the Receiver has not advised that it would withdraw its consent to acting if the scope of property covered by the Receivership Order was broader than it believed it to be.

[10] I will leave it to the Receiver to propose amendments to the Receivership Order clarifying and assisting with the efficient investigation and, subject to the claims of the other parties, realization of the proceeds of the sale of land that the Debtors would be entitled to after the payment of the amounts necessary to provide clear title to the purchasers and the necessary and reasonable costs of closing the sale.

[11] The Receiver can circulate the proposed amendments to the Bank of Montreal, Richardson Pioneer Limited, Farm Credit Canada and the Debtors. If these parties consent to the proposed amendments a consent order may be filed for my review. If there is disagreement over the proposed amendments the Receiver shall arrange a hearing before me by conference call to settle the necessary amendments.

[12] Because the net proceeds of sale of land by the Debtors that they would be entitled to receive falls within the definition of property in the Receivership Order, it is not necessary to rule on the application for a preservation order. For the same reason the statement of claim and application for a preservation order issued and brought by Richardson Pioneer Limited should now be and are stayed.

[13] Because this ruling requires the Receiver to consider the prospects of realization of the net proceeds of sale of land that would be paid to the Debtors, it must have an opportunity to do so. For the time being the balance of the sale proceeds from the 4 Quarter Sale which does not include the payments authorized with the consent of the parties at the March 31 hearing (Rosthern Agencies \$2,885, Krista L.L. Eggum Legal Professional Corp. \$2,363.13, A & M Ventures \$25,787.08 and Peter V. Abrametz Legal Professional Corp. \$25,000) shall remain in Mr. Abrametz's trust account and shall only be disbursed by further court order.

[14] The Receiver shall advise the parties appearing at the March 31 hearing as to its position with respect to the disbursement of the funds held in trust by Mr. Abrametz. There are various positions that the Receiver may take. There are various interests in those funds. If, after the Receiver has made its position known, the interested parties are unable to agree on the disbursement of those funds a further conference call shall be arranged with the court to determine how and when the matter shall be brought back before the court for resolution.



G.A. MESCHISHNICK