

COURT FILE NUMBER                      QBG 1337 of 2020

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

JUDICIAL CENTRE                      SASKATOON

PLAINTIFF                                      BANK OF MONTREAL

DEFENDANTS                                TYLER SMITH, PAMELA SMITH, SMITH NORTHERN  
RANCHING and 101197829 SASKATCHEWAN LTD.

**NOTICE OF APPLICATION**

**(Disclaimer of Contracts)**

**NOTICE TO RESPONDENT**

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, February 4, 2021
Time	9:00 a.m.

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.

*(Read the Notice at the end of this document to see what else you can do and when you must do it.)*

**Remedy claimed or sought:**

1. Deloitte Restructuring Inc. (the "**Receiver**"), the Court-appointed Receiver of certain property (the "**Property**") of Tyler Smith, Pamela Smith, Smith Northern Ranching, and 101197829 Saskatchewan Ltd. (collectively, the "**Debtors**") pursuant to the Receivership Order granted in these proceedings by the Honourable Mr. Justice R.S. Smith on December 1, 2020 (the "**Receivership Order**") seeks the advice and direction of the Court respecting whether or not it may cease to perform two Purchase Contracts, each dated effective July 24, 2020, and numbered 763048141 and 763048142, respectively (collectively the "**Contracts**", or individually a "**Contract**") between Tyler Smith and Richardson Pioneer Limited ("**Richardson Pioneer**").
2. Such further and other relief as counsel may request and this Honourable Court may allow.

**Grounds for making this application:**

3. The Debtors are in the business of farming.
4. On or about July 24, 2020, Tyler Smith and Richardson Pioneer entered into the Contracts which provide, *inter alia*, for the sale and delivery of canola by Mr. Smith to Richardson Pioneer on the following terms:
  - (a) One Contract provides for the delivery of 1,250 metric tonnes (55,115 bushels) at a price of \$456.35 per net metric tonne (\$10.35 per bushel); and
  - (b) One Contract provides for the delivery of 1,250 metric tonnes (55,115 bushels) at a price of \$460.76 per net metric tonne (\$10.45 per bushel).
5. The Receiver remains in possession of approximately 96,000 bushels of canola. However, the market price for canola has risen materially since July of 2020, and is now approximately \$14.70 per bushel (\$648.15 per metric tonne).
6. Based upon current anticipated recoveries, the Receiver believes that the Debtors' senior secured creditor, Bank of Montreal, will suffer a shortfall. Accordingly, it appears to the Receiver that the stakeholders of the Debtors should benefit from a market for canola which is more favourable than at the time the Contracts were entered into.
7. Holding the Receiver to the prices stipulated in the Contracts would appear to benefit Richardson Pioneer at the expense of the receivership estate. Permitting the Receiver to sell the canola at current market prices will ensure that the value of the Debtors' assets is realized for the benefit of their creditors in accordance with their respective legal priorities, which will be assessed by the Receiver, and determined by the Court, at a subsequent application.
8. Paragraph 3(c) of the Receivership Order grants the Receiver the authority to "*cease to perform any contracts of the Debtors*". However, case law commentary and best practices in insolvency matters suggest that, where the contracts which a Receiver seeks to cease to perform are material, advice and direction should be sought from the supervising Court prior to the Receiver ceasing performance.
9. Such further and other grounds as counsel may advise and this Honourable Court may allow.

**Material or evidence to be relied on:**

10. This Notice of Application, with proof of service;
11. Second Report of the Receiver dated February 1, 2021;

12. Draft Order;
13. Brief of Law (to be filed); and
14. Such further and other materials as counsel may advise and this Honourable Court may allow.

**Applicable Acts and regulations:**

15. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, Part XI.

DATED at Saskatoon, Saskatchewan, this 1st day of February, 2021.

**MLT AIKINS LLP**

Per: 

Jeffrey M. Lee, Q.C. and Paul Olfert, counsel for the Receiver, Deloitte Restructuring Inc.

**NOTICE**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

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