

COURT FILE NUMBER **QBG 1337 of 2020**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE **SASKATOON**

PLAINTIFF **BANK OF MONTREAL**

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

IN THE MATTER OF THE RECEIVERSHIP OF TYLER SMITH, PAMELA SMITH, SMITH NORTHERN RANCHING and 101197829 SASKATCHEWAN LTD.

ORDER
(Distribution and Discharge of Receiver)

Before the Honourable Mr. Justice G.A. Meschishnick in Chambers the 8th day of June, 2021.

Upon the application by Jeffrey M. Lee, Q.C. and Paul Olfert, counsel for the Receiver, Deloitte Restructuring Inc. (the "**Receiver**"), and upon hearing from Mr. Lee, Q.C., Peter V. Abrametz, counsel on behalf of Tyler Smith, Pamela Smith, Smith Northern Ranching, and 101197289 Saskatchewan Ltd. (the "**Debtors**"); David Gerecke, Q.C., counsel on behalf of Bank of Montreal ("**BMO**"), Janine Lavoie-Harding, counsel on behalf of Farm Credit Canada ("**FCC**"); and James Kroczyński, counsel on behalf of Richardson Pioneer Limited ("**Richardson Pioneer**"); and upon reading the Receiver's Notice of Application dated June 3, 2021, the Fifth Report of the Receiver dated June 3, 2021 (the "**Fifth Report**"), and a form of Draft Order (Distribution and Discharge of Receiver), and the pleadings and proceedings herein:

The Court Orders:

1. Service of notice of this application and supporting materials is hereby declared to be good, timely and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that time actually given.
2. The professional fees and disbursements of the Receiver from and after April 4, 2021, as set out in the Fifth Report (including the fees and disbursements necessary to finalize the receivership), are hereby approved without the necessity of a formal passing of its accounts.
3. The professional fees and disbursements of the Receiver's legal counsel, MLT Aikins LLP, from and after April 1, 2021, as set out in the Fifth Report (including the fees and disbursements necessary to finalize the receivership), are hereby approved without the necessity of a formal assessment of its accounts.
4. All activities, actions and proposed courses of action of the Receiver (collectively, the "**Actions of the Receiver**") to date in relation to the discharge of its duties and mandate as receiver of the Property pursuant to the Orders of this Honourable Court in these proceedings (collectively, the "**Receiver's Mandate**"), as such Actions of the Receiver are more particularly described in the Fifth Report, and all of the Receiver's other reports filed in these proceedings, as well as the statement of receipts and disbursements contained in the Fifth Report, shall be and are hereby approved and confirmed.

5. The Receiver is authorized to maintain a holdback of \$38,702.00 on account of residual operating disbursements and further fees and disbursements of the Receiver and its legal counsel (the "**Holdback**"), and to apply from time to time the amounts so held back against such further fees and disbursements (without the requirement of taxation or passing of accounts), and the Receiver is authorized and directed to make the following distributions:
- (a) to BMO, the sum of \$1,911,997.00; and
 - (b) if the full amount of the Holdback is not required in order to satisfy the fees and disbursements of the Receiver and its legal counsel, any further sums which remain to BMO.
6. Upon payment of the amounts set out in paragraph 5 of this Order, the Receiver shall be discharged as Receiver of the Property, provided that notwithstanding its discharge herein:
- (a) the Receiver shall remain Receiver for the performance of such routine administrative tasks as may be required to complete the administration of the receivership herein; and
 - (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Deloitte Restructuring Inc. in its capacity as Receiver.
- 6A. For greater certainty, (a) the Receiver shall have no liability for any unpaid utilities or insurance premiums related to the Debtors' operations or yard site, and the Debtors shall be responsible for the payment of the same; and (b) nothing in this Order shall affect the rights or obligations of BMO Transportation Finance ("**BMOTF**") or of the Debtors in respect of the 2015 International Truck model 9900i 6x4 financed by the Debtors through BMOTF.
7. It is hereby adjudged and declared that, based upon the evidence that is currently before this Honourable Court in regard to the Actions of the Receiver:
- (a) the Receiver has acted honestly and in good faith, and has dealt with the Property and carried out the Receiver's Mandate in a commercially reasonable manner;
 - (b) the Receiver has satisfied all of its duties and obligations pursuant to the Receiver's Mandate;
 - (c) the Receiver shall not be liable for any act or omission arising from, relating to or in connection with its discharge of the Receiver's Mandate, save and except for any liability arising out of fraud, gross negligence or willful misconduct on the part of the Receiver;
 - (d) the Receiver has never had and shall not in the future have any liability in regard to any act or omission of the Debtors (or any of them), including, without limitation, in relation to the business of the Debtors (or any of them), payment of and/or accounting for any taxes (including, without limitation, goods and services tax) on revenues earned or any indebtedness or obligations whatsoever or howsoever incurred by the Debtors (or any of them); and
 - (e) no person shall commence an action or proceeding asserting a claim against the Receiver arising from, relating to or in connection with its discharge of the Receiver's Mandate without first obtaining an Order of this Honourable Court (on notice to the Receiver) granting such person leave to commence such action or proceeding, and

any such action or proceeding commenced without such leave being obtained is a nullity.

8. Subject to the foregoing, any claims against the Receiver in connection with the Receiver's Mandate are hereby stayed, extinguished and forever barred.
9. Notwithstanding the discharge of the Receiver, the Receiver is hereby granted leave to apply to this Court for such further advice, direction or assistance as may be necessary to give effect to the terms of this Order.
10. This Order shall have full force and effect in all Provinces and Territories in Canada, outside Canada and against all Persons against whom it may be enforceable.
11. 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 and 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.
12. 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.

Issued at Saskatoon, Saskatchewan, this 15th day of June, 2021.



(Deputy) Local Registrar



CONTACT INFORMATION AND ADDRESS FOR SERVICE:

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