

**IN THE COURT OF APPEAL**

BETWEEN:

**LINCOLN WOLFE and 5606269 MANITOBA LTD.,**

(Applicants) Respondents,

– and –

**DUANNE TAYLOR and 5608067 MANITOBA LTD.,**

(Respondents) Appellants,

– and –

**TAYLOR BROS. FARM LTD. and EDWIN POTATO GROWERS LTD.,**

(Respondents).

APPLICATION UNDER section 207 of *The Corporations Act*, C.C.S.M. c. C225

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**NOTICE OF APPEAL**

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File No. 15,110-0-150-150

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COURT OF APPEAL

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**NOTICE OF APPEAL**

TAKE NOTICE that a motion will be made on behalf of these (Respondents) Appellants, Duanne Taylor and 5608067 Manitoba Ltd., by way of appeal from the judgment of the Honourable Mr. Justice Toews of the Court of Queen's Bench, Winnipeg Centre, pronounced on the 31<sup>st</sup> day of August, 2018 and filed on the 27<sup>th</sup> day of September 2018, in Queen's Bench File No. CI15-01-97066, whereby the Learned Motions Judge did:

- 1) grant the Order that the funds in the hands of the Liquidator be re-allocated and distributed by the Liquidator in accordance with the Distribution Schedule, attached to the said Order, resulting in the debts of the Secured Creditor, R.L. WOLFE LTD. ("RLW") be paid in full from the funds of EPG; and

- 2) costs as against the (Respondents) Appellants, Duanne Taylor and 5608067 Manitoba Ltd., on a party and party basis.

On appeal, this Honourable Court will be asked to:

- 1) set aside the said judgment of the Learned Motions Judge; and
- 2) such other and further relief as counsel may advise and this Honourable Court may allow;

on the following grounds:

- 1) the Learned Motions Judge erred in his finding that RLW was entitled to the to the reallocation sought;
- 2) the Learned Motions Judge failed to appreciate that RLW is not entitled to the reallocation sought, absent an order of marshalling;
- 3) the Learned Motions Judge erred in ordering reallocation, absent a marshalling order;
- 4) the Learned Motions Judge erred in granting the reallocation order, effectively ordering marshalling;
- 5) the Learned Motions Judge failed to rely on the proper principles of equity and apply properly the law of marshalling to the proper facts, or at all, and his decision is clearly wrong;
- 6) the Learned Motions Judge erred in relying upon irrelevant considerations in making his decision;
- 7) the Learned Motions Judge failed to draw inferences or proper inferences from the relevant facts, failed to consider certain relevant facts, and did consider certain irrelevant facts in arriving at his decision;

- 8) the Learned Motions Judge failed to follow the rules of natural justice and procedural fairness;
- 9) the Learned Motions Judge failed to hear counsel for the (Respondents) Appellants, Duanne Taylor and 5608067 Manitoba Ltd.;
- 10) the Learned Motion's Judge's decision is contrary to the law and the evidence;
- 11) if the Learned Motions Judge's order were allowed to stand, it would result in an injustice, or in the alternative, an unreasonable result; and
- 12) such further and other grounds as counsel may advise and this Honourable Court may allow.

Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?     Yes     No     Not required

Dated this 18<sup>th</sup> day of October, 2018

**FAST TRIPPIER CLUNIE WITTMAN SANTOS LLP**  
 Barristers & Solicitors  
 10 Donald Street  
 Winnipeg, Manitoba R3C 1L5

Per: \_\_\_\_\_

**Faron J. Trippier/ Irina Vakurova**  
 Counsel for the (Respondents) Appellants,  
 Duanne Taylor and 5608067 Manitoba Ltd.

**TO: The Registrar of the Court of Appeal**  
 Law Courts Building  
 100E – 408 York Avenue  
 Winnipeg, Manitoba R3C 0P9

**AND TO: MLT Aikins**  
 30<sup>th</sup> Floor – 360 Main Street  
 Winnipeg, Manitoba R3C 4G1

**Attention: Jeffrey M. Lee/J.J. Burnell**  
Counsel for the Liquidator

**AND TO: Thompson Dorfman Sweatman LLP**  
2200 – 201 Portage Avenue  
Winnipeg, Manitoba R3B 3L3

**Attention: Ross A. McFadyen**  
Counsel for the (Applicants) Respondents.

## SCHEDULE C

FORM 1  
(Rule 112)

## IN THE COURT OF APPEAL

## Notice of Intent to Exercise Language Right

The attached document begins a proceeding in the Court of Appeal. Your rights may be affected in the course of the proceeding. You have a right to use either the English or the French language even where the attached document is in the other language, but in order to exercise your right you are required within 21 days of service of this document on you to file with the registrar of the court a notice of your intention to do so and to leave with the registrar an address for service. If you file such a notice, you will be notified, in the language indicated in your notice, of further stages in the proceeding by registered mail addressed to your address for service. If you do not file a notice of your intention to exercise your right, the appeal will continue in the language of the attached document. The time limited for your filing of a notice may be enlarged or abridged at any time by order of a judge made on application in either English or French.

Registrar  
Manitoba Court of Appeal  
Room 205 Law Courts Building  
408 York Avenue  
Winnipeg, Manitoba  
R3C 0P9

## ANNEXE C

FORMULE 1  
(Règle 112)

## COUR D'APPEL

## Avis relatif au droit d'utilisation d'une langue

Le document ci-joint constitue un document introductif d'instance devant la Cour d'appel. Les procédures dans l'instance pourront porter atteinte à vos droits. Vous avez le droit d'utiliser l'anglais ou le français aux différentes étapes de l'instance même lorsque le document ci-joint est rédigé dans l'autre langue. Si vous désirez exercer votre droit d'utiliser l'une ou l'autre langue, vous devez, dans les 21 jours de la signification qui vous est faite de ce document, déposer auprès du registraire de la Cour d'appel un avis à cette fin et lui indiquer un domicile élu aux fins de signification. Si vous déposez cet avis, vous serez avisé(e) des procédures subséquentes par lettre recommandée envoyée à votre domicile élu aux fins de signification, dans la langue que vous aurez indiquée dans l'avis. Si vous ne déposez pas un avis de votre intention d'exercer votre droit, toutes les procédures subséquentes en appel se dérouleront dans la même langue que celle du document ci-joint. Suite à une demande présentée en anglais ou en français, le juge peut, en tout temps, par ordonnance, proroger ou abrégier le délai prescrit pour le dépôt de l'avis.

Registraire  
Cour d'appel du Manitoba  
Palais de justice  
408, avenue York, pièce 205  
Winnipeg, Manitoba  
R3C 0P9