

**THE QUEEN'S BENCH
GENERAL DIVISION
WINNIPEG CENTRE**

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.,

Applicants,

- and -

**DUANNE TAYLOR, 5608067 MANITOBA LTD., TAYLOR BROS. FARM LTD. and EDWIN
POTATO GROWERS LTD.,**

Respondents.

ENDORSEMENT SHEET

SITTING DATE: April 5, 2018

JUDGE: TOEWS J.

COUNSEL: Ross McFadyen and S. Tallon, student	<input checked="" type="checkbox"/> Applicants
Faron Trippier and Ambre Anjoubault	<input checked="" type="checkbox"/> Respondents
Douglas Ward	<input checked="" type="checkbox"/> for Bank of Montreal
Jeffrey Lee, Q.C. and J.J. Burnell	<input checked="" type="checkbox"/> for Deloitte Restructuring (Brent Warga)

ENDORSEMENT:

[1] Pursuant to an application brought by Lincoln Wolfe and 5606269 Manitoba Ltd., I pronounced an order on April 28, 2017, appointing Deloitte Restructuring Ltd. the liquidator of all of the assets, undertakings, and the property of Taylor Bros. Farms Ltd. and Edwin Potato Growers Ltd (the companies). The order was signed and entered with the court on June 5, 2017.

[2] The background leading up to the application is set out in the second report of the liquidator which is dated March 26, 2018. The powers granted to and the activities of the liquidator are also set out in that report.

[3] As outlined in the second report, the sales process, which was detailed in the first report of the liquidator, was approved by the court on November 21, 2017. The sales and information package, as well as a subsequent addendum to that package, were distributed to various interested parties commencing on January 10, 2018. The sales and information package and the addendum are attached as exhibits to the second report.

[4] The terms and conditions of sale included in the sales and information package included, inter alia, the requirement that prospective purchasers seeking to purchase some or all of the relevant assets were required to submit a standard form of offer prepared by the liquidator, a 20% deposit, and would have to be prepared to close the sale within 15 days after the date of the granting of a vesting order by the court or such other date as agreed to by the liquidator.

[5] On the basis of the information available to the liquidator, and the necessity to close a transaction in a timely manner so as to provide a successful purchaser with time to close a transaction prior to the 2018 crop season, the liquidator is of the view that proceeding with the offer of Beaver Creek Holding Co. Ltd. (Beaver Creek Holding) and the offer of Wolfe Land & Equipment Ltd. (Wolfe) will result in the highest return for the creditors. For the reasons outlined in the second confidential report the liquidator is recommending that the court approve the Beaver Creek Holding offer and the Wolfe offer together with the corresponding asset purchase agreements.

[6] However, based on the books and records of the companies and the secured claims received from the creditors, the liquidator is of the view that the proceeds from a sale may be insufficient to payout all of secured and unsecured creditors' claims in full. Accordingly, the liquidator is requesting that should it determine that the companies are insolvent, the appropriate course of action would be that the companies be assigned into bankruptcy.

[7] A summary of the assets of the companies are set out in the liquidator's second report.

[8] On the basis of the material set out in the second report, the liquidator requests the following relief:

- a. Granting of a sale approval order in respect of the Beaver Creek Holding offer and the corresponding asset purchase agreement;
- b. Granting of a sale approval order in respect of the Wolfe offer and the corresponding asset purchase agreement;
- c. Sealing of the second confidential report in the court file;
- d. Approval of the liquidator to assign the companies into bankruptcy if the companies are determined by the liquidator to be insolvent; and
- e. Approval of the reported actions of the liquidator to date in respect of administering these liquidation proceedings, including the liquidator's statement of receipts and disbursements for the period October 28, 2017 to March 23, 2018.

[9] The liquidator relies on the decision of the Ontario Court of Appeal in ***Royal Bank of Canada v. Soundair Corp.*** (1991) 4 OR (3d) 1, [1991] O.J. No. 1137 (QL) and the four factors identified by the court in its reasons in order to determine whether to approve a sale of assets by a court appointed officer, including a sale of assets by a court appointed liquidator. Those four factors are:

- a. Whether the court appointed officer has made sufficient effort to obtain the best price and has not acted improvidently;
- b. The interests of all parties;
- c. The efficacy and integrity of the process by which offers are obtained; and
- d. Whether there has been unfairness in the working out of the process.

[10] In this respect, the liquidator submits that the court approve the sale transactions as:

- a. The assets of the companies were marketed as part of a sales process approved by this court to identify and arrange for potential purchasers;
- b. The assets have been offered for sale for several months;
- c. It is necessary to close a transaction promptly in order to provide a successful purchaser with time to get on the land prior to the 2018 crop season;

- d. Interest continues to accrue on the secured loans;
- e. The liquidator is of the view that the Wolfe purchase agreement and the Beaver Creek purchase agreement will result in the highest return to all stakeholders; and
- f. The Wolfe offer and the Beaver Creek offer represent the highest offers received by the liquidator that complied with the terms and conditions of the sales and information package.

[11] In response to the liquidator's application for the requested relief, the respondents, have filed a notice of motion in which they apply for, inter alia:

- a. An order setting aside the sales process and any offers accepted by the liquidators;
- b. An order directing the liquidator to accept an offer to purchase submitted by the respondents; and
- c. An order that the liquidator provide the respondents the particulars of all offers received by the liquidator as part of the sales process.

[12] In response to the motion of the respondents, the liquidator points out that the respondents' offer to purchase does not comply with the terms and conditions of the sales and information package as it did not include the required 20% deposit. It takes the position that the respondents' position that their equity in the assets exceeds the required 20% deposit which must accompany a valid offer is not in compliance with the condition that: "All Offers must be accompanied by a bank draft or certified cheque ... in an amount equal to twenty percent (20%) of the offered purchase price for the Assets." Furthermore, the liquidator points out that it offered the respondents two deadline extensions in order to meet this financial requirement and the respondents have failed to provide the required deposit in the form specified in the terms and conditions of the sale and information process.

[13] In respect of the respondents' request that the liquidator's second confidential report, which includes the unredacted asset purchase agreements, be disclosed, the liquidator relies on the decision of the Manitoba Court of Appeal in *Histed v. Law Society of Manitoba*, 2005 MBCA 127, 201 Man.R. (2d) 91, which follows the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, which sets out the test for granting a sealing or confidentiality order.

[14] The liquidator takes the position that the second confidential report contains confidential and commercially sensitive information, the release of which to the public may detrimentally affect the liquidator's ability to market and sell the assets causing prejudice to the commercial interests of the companies and their stakeholders. Accordingly, it submits that the second confidential report, including the unredacted asset purchase agreements, should be sealed on the court file in these proceedings until further order of the court.

[15] I am satisfied on the basis of the case law and my review of the second confidential report of the liquidator, that the second confidential report of the liquidator, including the unredacted asset purchase agreements, should be sealed on the terms requested by the liquidator in its brief. In my opinion the material contains confidential and commercially sensitive information, the release of which to the public would detrimentally affect the liquidator's ability to market and sell the assets.

[16] I am also in agreement with the position of the liquidator that the bid of the respondents is non-compliant with the terms of the sales and information process owing to the failure to provide a 20%

