

THE QUEEN'S BENCH

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.

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

TRUE COPY

ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
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Winnipeg MB R3B 3L3

(Matter No. 0121816 BC/RAM)
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(Email: ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE) Friday, the 31st day of August, 2018
JUSTICE TOEWS)

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.,

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THIS MOTION, made by R.L. Wolfe Ltd. ("RLW"), being a secured creditor, for an Order providing for the application of the equitable doctrine of marshalling as amongst the secured creditors of Taylor Bros. Farm Ltd. ("TBF") and Edwin Potato Growers Ltd. ("EPG"), was heard on Thursday, June 21, 2018 and Friday, August 31, 2018 at the Law Courts Building, 408 York Avenue, in Winnipeg, Manitoba.

ON READING the Notice of Motion of RLW, the Second Report of Deloitte Restructuring Inc. (the "Liquidator") dated March 26, 2018, the Supplement to the Second Report of the Liquidator dated March 29, 2018, the Third Report of the Liquidator dated May 18, 2018, The Fourth Report of the Liquidator dated August 27, 2018, the Supplement to the Fourth Report of the Liquidated dated August 29, 2018, the Affidavit of Lincoln Wolfe affirmed June 5, 2018, the Affidavit of Lori Arnold sworn June 18, 2018, the Affidavits of Duanne Taylor sworn June 14 and August 30, 2018, the Affidavit of S. Marissa Verspeek sworn June 8, 2018, the Affidavit of Alexander Kapkey affirmed June 14, 2018 and the Affidavit of Pauline Picton sworn June 18, 2018, and on hearing the submissions of counsel for the Applicants and R.L. Wolfe Ltd., counsel for the Respondents Duanne Taylor and 5608067 Manitoba Ltd., counsel for Pitblado LLP, counsel for Gerald and Martha Wiebe and counsel for the Liquidator, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Ross A. McFadyen affirmed June 7, 2018,

1. THIS COURT ORDERS that, subject to adjustment for the actual amount of the fees of the Liquidator and its legal counsel (including any such fees incurred by the Liquidator in its potential future capacity as trustee in bankruptcy of either or both of TBF and EPG) and the overall availability of funds, the funds in the hands of the Liquidator shall be re-allocated and distributed by the Liquidator in accordance with the Distribution Schedule attached hereto as Schedule "A".

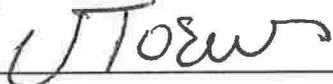
2. THIS COURT FURTHER ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of TBF or EPG and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of TBF or EPG;

the payment of funds to Pitblado LLP on account of its claims as a judgment creditor pursuant to the Distribution Schedule approved by this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of TBF or EPG and shall not be void or voidable by creditors of either TBF or EPG, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

3. THIS COURT ORDERS that RLW is awarded the costs of this motion as against the Respondents Duanne Taylor and 5608067 Manitoba Ltd. on a party-party basis in accordance with the Tariffs under the *Queen's Bench Rules*.

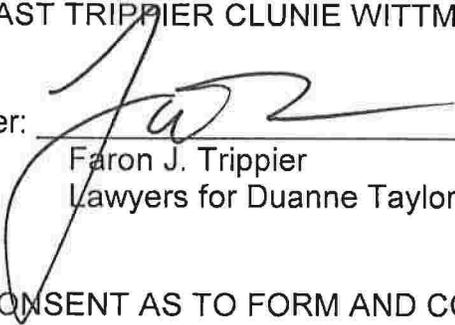
September 25th, 2017



CONSENT AS TO FORM:

FAST TRIPPIER CLUNIE WITTMAN SANTOS LLP

per: _____

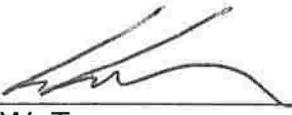

Faron J. Trippier

Lawyers for Duanne Taylor, 5608067 Manitoba Ltd. and Fat Cat Farms Ltd.

CONSENT AS TO FORM AND CONTENT:

PITBLADO LLP

per: _____

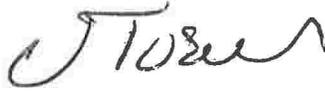

Thomas W. Turner

Lawyers for Pitblado LLP

CONSENT AS TO FORM AND CONTENT:

BOUDREAU LAW LLP

per: _____

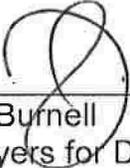
not required. 
J.R. Norman Boudreau

Lawyers for Gerald Wiebe and Martha Wiebe

CONSENT AS TO FORM:

MLT AIKINS LLP

per: _____


J.J. Burnell

Lawyers for Deloitte Restructuring Inc.

Schedule A

TAYLOR BROS. FARM LTD. AND EDWIN POTATO GROWERS LTD. DISTRIBUTION SCHEDULE IN ACCORDANCE WITH THE AUGUST 31, 2018 COURT HEARING

	Notes	Taylor Bros. Farm Ltd.	Edwin Potato Growers Ltd.	Total
Receipts				
Advance from secured creditor (property taxes)		\$ 76,436	\$ 80,195	\$ 156,631
Asset sale proceeds (land sales)		4,238,475	5,118,980	9,357,455
Cash on hand		30,724	-	30,724
GST collections		7,476	5,360	12,836
Interest		4,687	4,687	9,374
Refunds (insurance, tax, etc.)		34,005	66,679	100,684
Rental income (land)		149,517	107,200	256,717
Total Receipts		4,541,318	5,383,102	9,924,421
% of Total Receipts		45.8%	54.2%	100.0%
Disbursements				
Advertising	1	3,011	5,380	8,392
Appraisal	1	2,180	2,585	4,765
GST paid on disbursements	2	250	633	883
GST paid on legal fees and disbursements	1	4,794	5,683	10,477
GST paid on Liquidator fees and disbursements	1	5,283	6,262	11,546
GST remitted	2	3,311	1,105	4,416
Insurance	1	223	264	487
Legal fees and disbursements	1	96,224	114,060	210,284
Liquidator fees and disbursements	1	105,664	125,250	230,913
Locks	2	-	466	466
Municipal property taxes	2	100,962	97,785	198,747
PST paid on legal fees	1	5,614	6,654	12,268
Utilities	2	-	4,916	4,916
Total Disbursements		327,516	371,043	698,559
Distributions				
Bank of Montreal - Debt Repayment	3	Debt 5,518,039	3,838,986	1,679,053
Bank of Montreal - Per Diem Interest Payment (April 5 to May 3, 2018)	4	30,871	21,344	9,528
Excess of Receipts over Disbursements Prior to Holdbacks		\$ 353,473	\$ 3,323,478	\$ 3,676,951
Holdbacks				
Estimated liquidation professional fees		50,000	50,000	100,000
Estimated bankruptcy trustee fees	5	25,000	25,000	50,000
Contingency		25,000	25,000	50,000
Total Holdbacks		100,000	100,000	200,000
Excess of Receipts over Disbursements Subsequent to Holdbacks		\$ 253,473	\$ 3,223,478	\$ 3,476,951
Reallocation of Funds (pursuant to August 31, 2018 Court Hearing)		2,367,471	(2,367,471)	-
Excess of Receipts over Disbursements Subsequent to Holdbacks and Reallocation of Funds		\$ 2,620,944	\$ 856,007	\$ 3,476,951
Distributions to Secured Creditors				
Bank of Montreal	6	Claim		
R. L. Wolfe Ltd.	7	7,748	3,874	3,874
Assigned BNS Debt (claim as at June 11, 2018)		1,316,067	1,372,385	-
Assigned FCC Debt (claim as at March 20, 2018)		1,001,555	1,091,445	-
Assigned RBC Debt (Claim as at June 11, 2018)		131,004	133,198	-
Gerald and Martha Wiebe	8	813,928	-	820,081
Estimated Receipts over Disbursements Available to Judgment and Unsecured Creditors		\$ 20,042	\$ 32,052	\$ 52,094
Distributions to Judgement Creditor				
Pitblado LLP	9	100,275	20,042	32,052
Net Estimated Receipts over Disbursements		\$ -	\$ -	\$ -

Notes

- Liquidation costs have been allocated to TBF and EPG based on the respective Companies receipts as a percentage (%) of total receipts.
- Liquidation costs incurred by either TBF or EPG directly.
- Allocation of Bank of Montreal debt repayment between TBF and EPG was based on a payout statement summary provided by Bank of Montreal.
- On May 3, 2018, the Liquidator paid Bank of Montreal \$5,518,039 as per the April 5, 2018 Court Order. On May 23, 2018, the Liquidator received letter correspondence from Bank of Montreal claiming per diem interest from April 6 to May 3, 2018. After reviewing the claim, the Liquidator paid same on June 1, 2018.
- A \$25,000 holdback has been estimated for the administration of the each of the TBF and EPG bankruptcy proceedings.
- Distributions are inclusive of per diem interest to August 31, 2018, where applicable.
- On July 19, 2018, the Liquidator received e-mail correspondence from Bank of Montreal claiming amounts owing in accordance with their security for residual unpaid legal fees.
- The claim of Gerald and Martha Wiebe as filed in the EPG Claims Process was revised by the Liquidator and the revisions were accepted by the Wiebes.
- In accordance with the August 31, 2018 Court Hearing, Pitblado LLP to be paid subsequent to secured creditors but in priority to unsecured creditors.