

COURT FILE NUMBER Q.B.G. _____ 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.

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

NOTICE OF APPLICATION

NOTICE TO RESPONDENTS

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 of Queen's Bench 520 Spadina Crescent E Saskatoon, Saskatchewan
Date	November 19, 2020
Time	10:00 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) 787-5377 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.

Remedy claimed or sought:

1. An application will be made by the Plaintiff, Bank of Montreal ("**BMO**") for an Order appointing Deloitte Restructuring Inc. as receiver over the property, assets and undertaking of the Defendants, Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (collectively, the "**Debtors**") for the purpose of securing, preserving and disposing of the property, assets and undertakings of the Debtors.

Grounds for making this application:

2. (a) BMO is a secured creditor of the Debtors as a result of various credit facilities (the "**Credit Facilities**") provided to the Debtors. As at October 13, 2020, the total aggregate amount of the indebtedness owing to BMO by the Debtors pursuant to the Credit Facilities was \$1,758,018.42 plus legal fees.
- (b) In order to secure the repayment by the Debtors of the indebtedness, the Debtors granted to BMO, *inter alia*, the following security on or about the following dates (collectively, the "**Security**"):
 - (i) Section 427 Bank Act security, dated June 26, 2012, granting security over all of the Debtors' interest, present and future, in all grain, oil seeds, pulse crops, and forage in storage or in transit and standing crops in the field, and all the Debtors' interest, present and future, in all livestock including the natural increase and substitution thereof;
 - (ii) Saskatchewan Personal Property Security Act Security Agreements dated June 13, 2012, January 15, 2015, January 15, 2016 and July 16, 2018 granting security over all of the present and after-acquired property of the Debtors; and
 - (iii) General Assignment of Debts dated June 26, 2012 granting security over all accounts, debts, and other intangibles, chattel paper, documents of title, instruments, securities, and security interests.
- (c) The Debtors are insolvent and it is just, convenient and appropriate that a receiver be appointed.
- (d) The Debtors are in breach of their obligations to BMO.
- (e) BMO has demanded payment in full of the amounts owing to it by the Debtors and the Debtors have failed and continue to fail to pay the amounts owing and are unable to pay the amounts owing to BMO.
- (f) BMO has caused the Debtors to be served with a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act* and a Notice of Intent to Realize on Security pursuant to section 21 of the *Farm Debt Mediation Act*. The time limits in respect of each notice have expired.

- (g) BMO proposes that Deloitte Restructuring Inc. be appointed as receiver of the assets and undertaking of the Debtors, with the primary initial mandate of securing and preserving the property of the Debtors, attempting to locate a reasonable sales prospect for the said assets and reporting back to the Court.
- 3. BMO is concerned that its Security, particularly in respect of the livestock and the grain, is in jeopardy and the Debtors will continue to dissipate their assets, as they have previously done, without the proceeds being paid to BMO.

Material or evidence to be relied on:

- 4. In support of this application will be read the following material, all filed:
 - (a) this Notice of Application with proof of service;
 - (b) Affidavit of Mathan Kumar sworn November 10, 2020;
 - (c) Draft Receivership Order;
 - (d) Consent to Appointment of Deloitte Restructuring Inc.; and
 - (e) Such further and other material as counsel may advise and the learned Presiding Judge may allow.

Applicable rules:

- 5. (a) Rule 6-41 (re appointment of a receiver)

Applicable Acts and regulations:

- 6. (a) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (b) Section 65(1) of *The Queen's Bench Act*, 1998, S.S. 1998, c. Q-1.01; and
- (c) Section 64(8) of *The Personal Property Security Act*, 1993, S.S. 1993, c. P-6.2.

DATED at Saskatoon, Saskatchewan, this 10th day of November, 2020.

MILLER THOMSON LLP

Per: 

Solicitors for the Plaintiff, Bank of
Montreal

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

If prepared by a lawyer for the party:

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Name of lawyers in charge of file:	David G. Gerecke, Q.C.
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