

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

NOTICE OF MOTION
HEARING DATE: THURSDAY, FEBRUARY 18, 2021 AT 10:00AM
BEFORE THE HONOURABLE MR. JUSTICE TOEWS

MLT AIKINS LLP
Barristers and Solicitors
3000 – 360 Main Street
Winnipeg, Manitoba R3C 4G1

Jeffrey M. Lee, Q.C./J.J. Burnell
Ph: (306) 975-7136/ (204) 957-4663
Fax: (306) 975-7145/ (204) 957-4285
Email: jmlee@mltaikins.com/jburnell@mltaikins.com

File No. 56074.8/ 1702089

Box No. 3

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

NOTICE OF MOTION

Deloitte Restructuring Inc., court-appointed liquidator (the "**Liquidator**") of the assets, undertakings and property (collectively, the "**Property**") of Taylor Bros. Farm Ltd. ("**TBF**") and Edwin Potato Growers Ltd. ("**EPG**") (together the "**Companies**"), will make a motion before the Honourable Mr. Justice Toews on Thursday, the 18th day of February, 2021 at 10 o'clock in the forenoon or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. The advice and direction of this Honourable Court in respect of whether the claim (the "**Taylor Claim**"), filed by Duanne Taylor in the claims process of EPG (the "**EPG Claims Process**") is subject to review and determination by the EPG Claims Officer.
2. Such further and other relief as the Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

1. By means of the Order (Appointing Liquidator) of the Honourable Mr. Justice Toews pronounced in these proceedings on April 28, 2017 (the "**Liquidation Order**"), Deloitte Restructuring Inc. was appointed Liquidator of the Property.

2. The Liquidation Order provides at paragraph 12A that,

"...the claim of Duanne Taylor in regard to his employment contract (including the quantum of any amount which may be owing to Duanne Taylor in that regard) shall be unaffected by paragraph 12 of this Liquidation Order and shall be matters over which the Arbitrator shall continue to exercise jurisdiction."

3. By Order dated November 21, 2017 as amended by Order pronounced March 28, 2018, this Honourable Court approved the process by which claims of creditors of EPG were to be determined (the "**Claims Process**").

4. Pursuant to the Claims Process,

a. Any person with a claim owed by TBF or EPG may file a Proof of Claim with the Liquidator within the set time period (the "**Claimant**");

b. "*Claim*" is defined as "*...an amount of any kind or nature, whether unliquidated, contingent, or otherwise owing by the Companies*";

c. The Liquidator may disallow the value or classification of any Claim;

- d. Where the Liquidator disallows a Claim, it must serve the Claimant with a Notice of Revision or Disallowance of Proof of Claim (the “**Notice of Disallowance**”);
 - e. Within 30 days of receiving the Notice of Disallowance, a Claimant may dispute the matter by serving a Dispute Notice and supporting documentation (the “**Dispute Notice**”) upon the Liquidator and the Claims Officer; and
 - f. Upon review of the Dispute Notice, the Claims Officer must reconsider the status, validity or value of the Claim and may issue a written determination of issues raised in the Dispute Notice or schedule a hearing to determine said issues.
5. The EPG Claims Process was commenced on May 15, 2018.
 6. On June 25, 2018, Duanne Taylor submitted the Taylor Claim to the Liquidator claiming amounts owed by EPG based on the arbitration award granted by Mr. Harvey L. Selter (the “**Arbitrator**”) dated August 24, 2016 (the “**Arbitration Award**”).
 7. The Taylor Claim indicated *inter alia*,

“If the exact amount of the Taylor Debt cannot be agreed upon between the Liquidator and Taylor, the exact amount of the Taylor Debt is to be determined by the Arbitrator.”

8. The Taylor Claim was disallowed by the Liquidator on the ground that the Arbitration Award was owed by TBF and not EPG and a Notice of Disallowance was served upon Mr. Taylor.

9. Mr. Taylor served a Dispute Notice in relation to the disallowed Taylor Claim upon the Liquidator and the Claims Officer.

10. In the Interim Report of the Claims Officer dated October 15, 2020, the Claims Officer expressed uncertainty as to whether he had jurisdiction to determine the Taylor Claim, or if said determination was within the jurisdiction of the Arbitrator.

11. The Liquidator understood that the Arbitration and Arbitration Award related solely to Duanne Taylor's employment with TBF and that paragraph 12A of the Liquidation Order was intended to apply solely to Duanne Taylor's employment contract with TBF.

12. Section 22 of the Liquidation Order provides that the Liquidator may from time to time apply to this Honourable Court for advice and direction in the discharge of its powers and duties thereunder.

13. *The Corporations Act*, C.C.S.M. c. C225, s. 210(j).

14. *Queen's Bench Rules*, Man. Reg. 553/88, as amended, Rules 2.03, 3.02, 16 and 37.

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Liquidation Order (Doc #38);
2. Order pronounced November 21, 2017, filed December 13, 2017 (Doc #51);
3. Order pronounced May 28, 2018, filed May 30, 2018 (Doc #76);
4. The Fifth Report of the Liquidator, to be filed; and
5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 26, 2021

MLT AIKINS LLP
Barristers and Solicitors
3000 – 360 Main Street
Winnipeg, Manitoba R3C 4G1

Jeffrey M. Lee, Q.C./ J.J. Burnell
Ph: (306) 975-7136/ (204) 957-4663
Fax: (306) 975-7145/ (204) 957-4285
Email: jmlee@mltaikins.com/ jburnell@mltaikins.com

TO: The Attached Service List