

**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).

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**NOTICE OF MOTION**  
**HEARING DATE: THURSDAY, JULY 15, 2021 at 10:00AM**

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**COURT OF APPEAL**  
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**LAW COURTS**  
**WINNIPEG**

**File No. 0056074.00008**

Box No. 3

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(Respondents).

**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 Chambers Judge on Thursday, the 15<sup>th</sup> day of July, 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. An Order requiring the Appellants, Duanne Taylor and 5608067 Manitoba Ltd., on or before July 31, 2021 (or such other date as may be determined by this Court), to provide security for the costs incurred and to be incurred by the Liquidator in responding to and arguing the appeal in Court of Appeal File No. AI21-30-09618

(the “**Appeal**”) by paying to the Liquidator an amount of costs to be determined by this Court comprising the anticipated costs of the Liquidator (on a solicitor and client basis) in responding to and arguing the Appeal, failing which the Appeal shall stand dismissed (without further Order of the Court).

2. An Order requiring the Appellants, Duanne Taylor and 5608067 Manitoba Ltd., on or before July 31, 2021 (or such other date as may be determined by this Court), to pay to the Liquidator (in trust for the Liquidation Estate) the solicitor and client costs awarded against Duanne Taylor and 5608067 Manitoba Ltd. in favour of the Liquidator by the Order of the Honourable Mr. Justice Toews pronounced on February 16, 2021 and entered on April 21, 2021 in Queen’s Bench File No. CI15-01-97066 (in an amount to be determined by the Court), failing which the Appeal shall stand dismissed (without further Order of the Court).
3. Costs of this motion on a solicitor and client basis; and
4. Such further and other relief as the Court may deem just and appropriate.

**THE GROUNDS FOR THIS MOTION ARE:**

**Background**

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. The Learned Motions Judge has subsequently remained seized with this matter and has heard all motions

within these proceedings over the past four years since the granting of the Liquidation Order;

2. On September 4, 2020, the Appellants, Duanne Taylor and 5608067 Manitoba Ltd., filed a Notice of Motion seeking leave to commence an action against the Liquidator (the “**Leave Motion**”);

3. By Order pronounced on February 16, 2021 and entered on April 21, 2021, the Learned Motions Judge dismissed the Leave Motion and ordered the Appellants, Duanne Taylor and 5608067 Manitoba Ltd., to pay to the Liquidator costs of the Leave Motion on a solicitor and client basis;

4. On May 19, 2021, the Appellants filed a Notice of Appeal of the Leave Motion;

**The Appellants’ Proposed Claim Against the Liquidator and Its Appeal are Meritless**

5. The proposed claim against the Liquidator which the Appellants seek leave to commence is devoid of merit, constitutes an abuse of the process of the Court and amounts to a collateral attack on previous Orders of the Court within these proceedings (which Orders are the subject of issue estoppel as against the Appellants);

6. The Appeal is devoid of merit. The Learned Motions Judge correctly exercised his discretion by dismissing the Leave Motion;

**Unreasonable Conduct by the Appellants in These Proceedings**

7. As more particularly described below in paragraph 8 hereof, throughout the course of these liquidation proceedings, the Appellants have repeatedly attempted to hinder and

thwart the liquidation process and the efforts by the Liquidator to carry out its mandate to liquidate the Property pursuant to the Liquidation Order;

8. Further, and in particular, during the course of these liquidation proceedings, the Appellants have:

- a. Filed eight different Notices of Appeal of eight different Orders made within the liquidation proceedings;
- b. Filed unsuccessful motions for an Order staying the Liquidation Order which were heard and dismissed in 2017 by the Honourable Mr. Justice Toews in the Court below, by Madam Justice Hamilton in Manitoba Court of Appeal Chambers and by a full panel of this Court;
- c. Filed an unsuccessful Notice of Motion seeking an Order removing the Liquidator and served same on Liquidator's counsel 21 hours before the hearing of that unsuccessful motion;
- d. Filed an unsuccessful Notice of Motion seeking an Order setting aside a court-approved sale process and served same on Liquidator's counsel 18 hours before the hearing of that unsuccessful motion;
- e. Brought the Leave Motion in circumstances which amount to an abuse of the process of the Court and a collateral attack on previous Orders of the Court within these proceedings (which Orders are the subject of issue estoppel as against the Appellants); and

- f. Failed to comply with orders of this Court and the Court of Queen's Bench by failing to pay costs ordered against them.

### **Recovery of Costs from the Appellants is Unlikely**

9. It is unlikely that the Liquidator (on behalf of the Liquidation Estate) will be able to recover the costs of the Appeal from the Appellants;

10. The Appellants have disregarded previous Orders by failing to pay costs awarded against them, including:

- a. By Judgment of this Court dated December 29, 2017, costs were ordered against the Appellants. The Appellants have failed to pay the costs as ordered;
- b. By Endorsement dated April 13, 2018, the Learned Motions Judge ordered costs against the Appellants. The Appellants have failed to pay the costs as ordered;
- c. By Order dated December 2, 2020, this Court ordered the Appellants to pay costs to the Liquidator in the amount of \$3,306.10 (the "**Liquidator Distribution Order Appeal Costs**") and to pay costs to the Intervenors, Gerald and Martha Wiebe, in the amount of \$3,283.56 (the "**Intervenor Costs**");

- d. By letter dated June 24, 2021, the Liquidator requested that the Appellants make payment of the Liquidator Distribution Order Appeal Costs on or before June 30, 2021;
- e. The Appellants have failed to pay the Liquidator Distribution Order Appeal Costs (despite the Order of this Court requiring them to do so);
- f. By Order pronounced on February 16, 2021 and entered on April 26, 2021, the Learned Motions Judge ordered the Appellants to pay costs of the Leave Motion to the Liquidator on a solicitor and client basis (the **“Liquidator Leave Motion Costs”**);
- g. By Letter dated June 24, 2021, the Liquidator requested that the Appellants pay the Liquidator Leave Motion Costs totaling \$102,905.33 on or before June 30, 2021;
- h. The Appellants have failed to pay the Liquidator Leave Motion Costs (despite the Order of the Learned Motions Judge requiring them to do so);
- i. By Order dated April 26, 2021, the Learned Motions Judge ordered the Appellants to pay costs to the Liquidator (the **“Intercompany Debt Order”**). The Appellants have failed to pay the costs as ordered; and
- j. The Appellants have not moved for either a stay of the Leave Motion Order or a stay of the Intercompany Debt Order;

11. The Appellants lack the financial means with which to pay the costs of the Appeal, the costs of the Leave Motion and the other costs awards previously made against them;

**Preservation of the Liquidation Estate**

12. Extensive litigation has been initiated by the Appellants in relation to these liquidation proceedings which has resulted in the depletion of funds from the liquidation estate;

13. Should the Appeal proceed, the liquidation estate and other creditors will be forced to bear the costs of yet another meritless Appeal by the Appellants (and will likely be unable to recover such costs from the Appellants);

14. *The Court of Appeal Act*, CCSM c. C240, section 31; and

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. The Affidavit of Carmen Balzer sworn on July 2, 2021;
2. Certified True Copy of Affidavit of Duanne Eric Taylor affirmed on June 19, 2020 and filed in Queen's Bench (Family Division) File No. FD 15-01-09941, submitted in evidence pursuant to section 38(1) of *The Manitoba Evidence Act*, CCSM, c E150;

3. Certified True Copy of Financial Statement of Duanne Eric Taylor affirmed on July 2, 2020 and filed in Queen's Bench (Family Division) File No. FD 15-01-09941, submitted in evidence pursuant to section 38(1) of *The Manitoba Evidence Act*, CCSM, c E150; and
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

July 2, 2021

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