

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

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**NOTICE OF MOTION**  
**HEARING DATE: THURSDAY, FEBRUARY 3, 2021 AT 10:00 AM**  
**BEFORE THE HONOURABLE MR. JUSTICE TOEWS**

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File No. 56074.8

Box No. 3

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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 3<sup>rd</sup> day of February, 2022 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 substantially in the form of the Draft Order attached as Schedule "A" hereto, *inter alia*:
  - a. If required, abridging the time for service of the Notice of Motion and materials filed in support of this motion, such that this motion is properly returnable on February 3, 2022 at 10:00 a.m., and dispensing with further service thereof;

- b. Approving the Liquidator's Supplement to the Fourth Report dated August 29, 2018 (the "**Supplement Report**"), the Second Supplement to the Fourth Report dated October 20, 2020 (the "**Second Supplement Report**"), the Fifth Report dated February 8, 2021 (the "**Fifth Report**") and the Sixth Report dated January 24, 2022 (the "**Sixth Report**" and together with the Supplement Report, the Second Supplement Report, and the Fifth Report the "**Reports**") and the actions and activities of the Liquidator described therein, including the statement of receipts and disbursements;
- c. Approving the proposed Recommended Sales (as defined in the Sixth Report and hereinafter the "**Recommended Sales**") recommended by the Liquidator and authorizing and directing the Liquidator to complete the Recommended Sales;
- d. Ordering that the delivery by the Liquidator of the Liquidator's Statement of Receipts and Disbursements attached as Appendix "U" to the Sixth Report constitutes satisfactory compliance by the Liquidator with the requirements of section 214(h) of *The Corporations Act*, CCSM c. 225 (the "**Corporations Act**") with respect to preparation and delivery of financial statements with respect to the Companies;
- e. Amending paragraph 5 of this Honourable Court's Order pronounced August 31, 2018 to extend the time period within which the Liquidator shall be required to apply to Court for approval of its final accounts pursuant to

section 216(2) of the Corporations Act until all appeals in these proceedings have been decided; and

- f. Approving the fees and disbursements of the Liquidator from August 23, 2018 to January 13, 2022, the fees and disbursements of its legal counsel from July 31, 2018 to December 21, 2021, and the fees and disbursements of the Claims Officer (as defined in the Sixth Report) from August 31, 2020 to June 14, 2021; and
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.

**Liquidator's Reports and Activities**

2. An Order approving the activities of the Liquidator, inclusive of the Liquidator's Reports and the statement of receipts and disbursements is necessary, appropriate and in accordance with the standard practice of the Court in Court-supervised liquidation proceedings.

**Order Approving The Proposed Sales Process**

3. Paragraphs 2(i) and 2(o) of the Liquidation Order empower and authorize the Liquidator to market any or all of the Property, including advertising and soliciting offers

in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate.

4. The Liquidator has determined that the following three assets of TBF remain realizable by the Liquidator, namely:

- a. TBF's claim against BTW Inc., as pleaded in the Statement of Claim filed on October 9, 2020 in Manitoba Court of Queen's Bench File No. CI20-01-28571 (the "**BTW Claim**");
- b. TBF's claim against Northern Sunshine Farms (Manitoba) Ltd., as pleaded in the Statement of Claim filed on June 12, 2017 in Manitoba Court of Queen's Bench File No. CI17-01-08486 (the "**NSF Action**"); and
- c. TBF's claim against Fat Cat Farms Ltd. pursuant to the Arbitration Award of Mr. Harvey L. Selter made and published on August 24, 2016 (the "**FCF Award**").

(together, the "**Residual Assets**")

5. All of the Residual Assets involved extant litigation proceedings with uncertain outcomes. In an effort to limit the ongoing costs associated with litigation and maximize realizations in the liquidation proceedings, the Liquidator developed and implemented a sales and solicitation process for the Residual Assets (the "**Sales Process**") in accordance with the sales and information package (the "**SIP**") prepared by the Liquidator and distributed to all parties on the service list in these proceedings *via* email on November 30, 2021.

6. The Sales Process by which the Recommended Sales were received was conducted with integrity in a fair, efficient, transparent and reasonable manner and there has been no unfairness in the working out of the Sales Process.

7. The Liquidator is of the view that the Recommended Sales provide the highest possible value for the Residual Assets given the limited interest expressed in the Residual Assets during the Sales Process and the uncertainty and costs involved in continuing litigation.

8. The Recommended Sales are in the best interests of the parties and all stakeholders.

### **The Corporations Act**

9. Both of the Companies are insolvent.

10. Neither of the Companies have engaged in any active operations since April 2018. As the Companies have not yet been assigned into bankruptcy, the statement of receipts and disbursements as contained in the Sixth Report is sufficient to comply with section 214(h) of the Corporations Act with respect to both TBF and EPG.

11. The Liquidator has not been in a position to comply with section 216(2) of the Corporations Act due to its involvement in the various appeals filed in these liquidation proceedings.

12. Sections 214(h) and 216(2) of the Corporations Act.

**Accounts of the Liquidator, Counsel and Claims Officer**

13. Paragraph 16 of the Liquidation Order provides that the Liquidator and its legal counsel shall pass their accounts from time to time.

14. The Liquidator and its counsel's accounts are reasonable and in each case at the standard rates and charges.

15. The Liquidator has determined that the invoices rendered by the Claims Officer are reasonable and incurred in accordance with the provisions of the Claims Process Order.

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

17. 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 August 31, 2018 (Doc #109);
3. The Supplement Report (Doc #102);
4. The Second Supplement Report (Doc #128);
5. The Fifth Report (Doc #149);

6. The Sixth Report of the Liquidator (to be filed); and
7. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 26, 2022

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**Attention: Faron J. Trippier / Irina Vakurova**  
Counsel for the Applicants

**AND TO: Thompson Dorfman Sweatman LLP**  
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**Attention: Ross A. McFadyen**  
Counsel for the Respondents

**AND TO: Pitblado LLP**  
2500 — 360 Main Street  
Winnipeg, MB R3C 4G1  
**Attention: Catherine Howden**  
Counsel for Pitblado LLP

**Schedule "A"**

File No. CI 15-01-97066

THE QUEEN'S BENCH  
WINNIPEG CENTRE

BETWEEN:

**LINCOLN WOLFE and 5606269 MANITOBA LTD.**

Applicant

-and-

**DUANNE TAYLOR, 5608067 MANITOBA LTD., TAYLOR  
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**ORDER**

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THE HONOURABLE        )  
MR. JUSTICE TOEWS    )       Thursday, the 3<sup>rd</sup> day of February, 2022  
                                  )

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

**ORDER**

THIS MOTION, made by Deloitte Restructuring Inc., court-appointed liquidator (the "**Liquidator**") of the assets, undertakings and property of Taylor Bros. Farm Ltd. and Edwin Potato Growers Ltd., (together the "**Companies**"), for an Order approving the Recommended Sales, extending certain time periods, approving certain actions of the Liquidator and other relief was heard this day, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Supplement to the Fourth Report dated August 29, 2018 (the "**Supplement Report**"), the Second Supplement to the Fourth Report dated October 20, 2020 (the "**Second Supplement Report**"), the Fifth Report of the Liquidator dated

February 8, 2021 (the “**Fifth Report**”), the Sixth Report of the Liquidator dated January 24, 2022 (the “**Sixth Report**” and together with the Supplement Report, the Second Supplement Report and the Fifth Report, the “**Reports**”) and on hearing the submissions of counsel for the Liquidator, counsel for the Applicants, Lincoln Wolfe, 5606269 Manitoba Ltd. and R.L. Wolfe Ltd., counsel for the Respondents, Duanne Taylor, 5608067 Manitoba Ltd. and Fat Cat Farms Ltd., and Counsel for Pitblado LLP, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Erin McPhail sworn **\*\*\***, 2022.

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **LIQUIDATOR’S REPORTS AND ACTIVITIES**

2. THIS COURT FURTHER ORDERS that the Reports and the actions and activities of the Liquidator described therein, including the statement of receipts and disbursements are hereby approved.

**PROPOSED SALES PROCESS**

3. THIS COURT FURTHER ORDERS that the Recommended Sales as recommended by the Liquidator and described in paragraph 39 of the Sixth Report shall be and are hereby approved and the Liquidator is further hereby authorized and directed to take such steps as may be necessary or desirable for the completion of the Recommended Sales.

**THE CORPORATIONS ACT**

4. THIS COURT FURTHER ORDERS that the delivery by the Liquidator of the Liquidator's Statement of Receipts and Disbursements attached as Appendix "U" to the Sixth Report shall be and is hereby deemed to constitute satisfactory compliance by the Liquidator with the requirements of section 214(h) of *The Corporations Act*, CCSM c. 225 (the "**Corporations Act**") with respect to preparation and delivery of financial statements for the Companies.

5. THIS COURT FURTHER ORDERS that paragraph 5 of this Honourable Court's Order dated August 31, 2018 be and is hereby amended to extend the time period within which the Liquidator shall be required to apply to Court for approval of its final accounts pursuant to section 216(2) of the Corporations Act to the date on which all appeals in these proceedings have been decided.

**LIQUIDATOR’S FEES AND DISBURSEMENTS**

6. THIS COURT FURTHER ORDERS that the fees and disbursements of the Liquidator for the period of time from August 23, 2018 to January 13, 2022, the fees and disbursements of its legal counsel for the period of time from July 31, 2018 to December 21, 2021, and the fees and disbursements of the Claims Officer engaged with respect to the claims process of EPG in accordance with the Order dated November 21, 2017, and amended by the Order dated May 28, 2018 for the period of time from August 31, 2020 to June 14, 2021 (all as more particularly described in paragraphs 46 – 53 and Appendices Q, R and S of the Sixth Report) shall be and are hereby approved.

February \_\_\_\_, 2022

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TOEWS, J.

CONSENT AS TO FORM:

**PITBLADO LLP**

Per: \_\_\_\_\_  
Catherine Howden  
Lawyers for Pitblado LLP

CONSENT AS TO FORM:

**FAST TRIPPIER CLUNIE WITTMAN LLP**

Per: \_\_\_\_\_  
Faron J. Trippier  
Lawyers for Duanne Taylor, 5608067 Manitoba Ltd. and Fat Cat Farms Ltd.

CONSENT AS TO FORM:

**THOMPSON DORFMAN SWEATMAN LLP**

Per: \_\_\_\_\_  
Ross A. McFadyen  
Lawyers for Lincoln Wolfe, 5606269 Manitoba Ltd. and R.L. Wolfe Ltd.