

BETWEEN:

**LINCOLN WOLFE and 5606269 MANITOBA LTD.,**

Applicants,

– and –

**DUANNE TAYLOR, 5608067 MANITOBA LTD.,  
TAYLOR BROS. FARM LTD., and EDWIN POTATO GROWERS LTD.,**

Respondents.

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**NOTICE OF MOTION FOR LEAVE TO COMMENCE AN ACTION**

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### NOTICE OF MOTION

The Respondents, Duanne Taylor and 5608067 Manitoba Ltd., will make a motion before the Honourable Justice Toews, on Tuesday, the 8th day of September, 2020 at 9:00 Am ~~10:00~~ a.m., 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:

- (i) An Order for short leave for the hearing on this motion, if necessary;
- (ii) an Order granting leave to the Respondents, Duanne Taylor and 5608067 Manitoba Ltd., to commence an action against the Liquidator;
- (iii) an Order, if necessary, granting leave to Duanne Taylor and 5608067 Manitoba Ltd. to bring a derivative action against the Liquidator on behalf of Taylor Bros. Farm Ltd. and Edwin Potato Growers Ltd.;
- (iv) an Order unsealing the First Confidential Report of the Liquidator, dated October 31, 2017, Court Docket No. 44 and the Second Confidential Report of the Liquidator, dated March 26, 2018, Court Docket No. 57; and

- (v) such further and other relief as counsel may advise and this Honourable Court may admit.

THE GROUNDS FOR THIS MOTION are:

- (i) On April 28, 2017, the Court made an Order appointing Deloitte Restructuring Inc. ("**Deloitte**") a liquidator of the respondent corporations, Taylor Bros. Farm Ltd ("**TBF**") and Edwin Potato Growers Ltd. ("**EPG**"), without security (the "**April 28, 2017 Order**").
- (ii) Pursuant to the April 28, 2017 Order, no proceeding or enforcement process in any court or tribunal shall be commenced against Deloitte without consent of Deloitte or leave of the Court.
- (iii) On or about October 31, 2017, Deloitte filed a motion approving its liquidation plan, and filed the First Report of the Liquidator the same day. At the same time, Deloitte filed the First Confidential Report, which was not provided to the Respondents and further sealed by the Court by way of the Order dated November 21, 2017 (the "**November 21, 2017 Order**").
- (iv) On March 21, 2018, Deloitte filed a motion to have the sale transaction approved by the Court. In support of this Order, Deloitte filed the Second Confidential Report, which was not provided to the Respondents, and further sealed by the Court by way of the Order dated April 13, 2018.
- (v) By way of an Order dated April 13, 2018, the Court approved the sale transaction (the "**April 13, 2018 Order**"), despite the Respondents' objection and without providing the First or the Second Confidential Reports to the Respondents.
- (vi) The Respondents were denied and are denied the First and the Second Confidential Reports;
- (vii) Deloitte's sale of the lands of EPG and TBF was improvident;
- (viii) Deloitte failed to consider the interests of all creditors, secured or unsecured;

- (ix) Deloitte was negligent in disposing the land of TBF and EPG;
- (x) Deloitte breached its fiduciary duty to the Respondents;
- (xi) Deloitte preferred the interests of the Applicants to the detriment of the Respondents;
- (xii) S. 232 of *The Corporations Act*, C.C.S.M. c. C225; and
- (xiii) such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

- (i) the Affidavit of Duanne Taylor sworn August 31, 2015, filed;
- (ii) the Affidavit of Duanne Taylor sworn September 27, 2015, filed;
- (iii) the Affidavit of Duanne Taylor sworn January 20, 2016, filed;
- (iv) the Affidavit of Duanne Taylor, sworn November 17, 2017, filed;
- (v) the Affidavit of Duanne Taylor, sworn April 4, 2018, filed;
- (vi) the Affidavit of Duanne Taylor sworn June 14, 2018, filed;
- (vii) the Affidavit of Duanne Taylor, sworn August 30, 2018, filed;
- (viii) the Affidavit of Duanne Taylor, sworn September 3, 2020, filed;
- (ix) the Affidavit of Duanne Taylor, to be filed; and

- (x) such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

September 4, 2020

**FAST TRIPPIER CLUNIE WITTMAN LLP**

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