

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.,

Applicants,

- and -

**DUANNE TAYLOR and 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: WEDNESDAY, NOVEMBER 9, 2022 at 9 A.M.
BEFORE THE HONOURABLE MR. JUSTICE TOEWS**

FILED AUG 18 2022

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File No. 0056074.00008

Box No. 3

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BETWEEN:

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APPLICATION UNDER section 207 of *The Corporations Act*, C.C.S.M. c. C225

NOTICE OF MOTION

Deloitte Restructuring Inc. ("**Deloitte**"), court-appointed liquidator (the "**Liquidator**"), of the assets, undertakings and property (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 Wednesday, the 9th day of November, 2022 at 9 o'clock in the forenoon, or as soon after that time as the motion can be heard at the Law Courts, 408 York Avenue, Winnipeg, Manitoba.

THIS MOTION IS FOR:

1. An Order, substantially in the form of the draft order (the "**Draft Order**") attached hereto as Schedule "1", *inter alia*:
 - a. Approving the Seventh Report of the Liquidator dated August 18, 2022 (the "**Seventh Report**") and the activities and actions described therein, including the Liquidator's Statement of Receipts and Disbursements for the period of January 22, 2022 to August 8, 2022;

- b. Providing the direction of the Court pursuant to section 214(g) of *The Corporations Act*, C.C.S.M. c. C225 (the “**MCA**”):
- i. Authorizing the Liquidator to holdback \$80,000 (the “**Liquidator’s Holdback**”) in order to complete the administration of the EPG and TBF estates;
 - ii. Upon this Order being final, authorizing and directing the Liquidator to make the distributions described in paragraphs 20 and 23 of the Seventh Report (the “**Proposed Distributions**”), after retention of the Liquidator’s Holdback;
 - iii. Authorizing and directing the Liquidator to prepare and execute an irrevocable assignment (the “**Assignment**”) to R.L. Wolfe Ltd. (“**RLW**”) of all of the Liquidator’s and TBF’s right, title and interest in or to the class action commenced in The Court of Queen’s Bench, Winnipeg Centre against The Government of Manitoba in Suit No. CI 13-01-82597 (the “**Class Action**”) on the condition that any funds received shall correspondingly reduce the secured debt owed to RLW by TBF;
 - iv. Directing the Liquidator to transfer digital copies of the documents and records of the Companies (the “**Records**”) to counsel for Lincoln Wolfe and Duanne Taylor and upon such transfer permitting the Liquidator to destroy all Records; and
 - v. Directing the Liquidator to take no further steps pursuant to the MCA; and
- c. Approving the fees and disbursements of the Liquidator for the period of January 14, 2022 to August 3, 2022, the fees and disbursements of its legal counsel for the period of December 16, 2021 to July 31, 2022, the Estimated Liquidator Fees and the Estimated Legal Fees (as such terms are defined in the Seventh Report) (all of such professional fees and disbursements

hereinafter collectively described as the “**Professional Fees and Disbursements**”);

- d. Providing that upon completion of the matters set out above in paragraphs 1(b)(i) to (iv) hereof, the Liquidator paying the balance of the Liquidator’s Holdback to RLW and upon the Liquidator filing a certificate substantially in the form attached hereto as Schedule A to the draft order certifying that it has completed all such matters, the Liquidator shall be discharged as Liquidator of the Property of the Companies; provided however, that notwithstanding its discharge the Liquidator shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Deloitte in its capacity as Liquidator;
 - e. Releasing and discharging the Liquidator from any and all liability that the Liquidator now has or may have hereafter by reason of, or in any way arising out of, the acts and/or omissions of the Liquidator while acting in its capacity as Liquidator herein, save and except for any gross negligence or willful misconduct on the Liquidator’s part; and
 - f. Providing that no action or other proceeding shall be commenced against the Liquidator, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Liquidator, except with prior leave of this Court on notice to the Liquidator, and upon such terms as this Court may direct.
2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

1. By Order of this Court pronounced April 28th, 2017, the Honourable Mr. Justice Toews granted an Order (Appointing Liquidator) (the “**Liquidation Order**”) pursuant to section 207 of the MCA appointing Deloitte as Liquidator of the Property of the Companies.

APPROVAL OF THE LIQUIDATOR'S ACTIVITIES AND SEVENTH REPORT

2. The Liquidator's actions and activities, inclusive of the Liquidator's Statement of Receipts and Disbursements therein have been carried out diligently, appropriately and in a manner consistent with its powers and duties under the Liquidation Order and in accordance with the provisions of the MCA.
3. An Order approving of the activities of the Liquidator as set out in the Seventh Report is necessary, appropriate and in accordance with the standard practice of this Court in Court supervised proceedings of this nature.

LIQUIDATOR'S HOLDBACK AND PROPOSED DISTRIBUTIONS

4. Pursuant to section 214(g) of the MCA, the Liquidator may apply to the Court for directions if at any point it determines that the Companies are unable to pay or adequately provide for the discharge of their obligations.
5. The Liquidator has determined that both of the Companies are insolvent and are unable to pay or adequately discharge their obligations.
6. The Liquidator's Holdback is necessary in order to allow the Liquidator to administer the EPG and TBF estates in accordance with this Motion.
7. The Proposed Distributions reflect the respective priority claims against the Property of the Companies, as set out in further detail in paragraphs 20 and 23 of the Seventh Report.
8. The Liquidator obtained an independent legal opinion as to the validity, enforceability and priority of the RLW Security (as defined in the Seventh Report).
9. For the reasons set out in paragraph 20 and 23 of the Seventh Report, the Liquidator recommends to this Honourable Court that the Proposed Distributions are appropriate.

AUTHORIZATION OF FEES

10. Paragraph 15 of the Liquidation Order provides that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements.
11. Paragraph 16 of the Liquidation Order authorizes the Liquidator and its legal counsel to pass their respective accounts from time to time.
12. The Professional Fees and Disbursements are reasonable and at the respective standard rates and charges.

AUTHORIZATION OF THE ASSIGNMENT

13. TBF's interest in the Class Action Claim (as defined in the Seventh Report) is the only remaining asset of TBF and EPG with value.
14. The Liquidator has yet to receive the results of an "eligibility determination" with respect to the Class Action, and it may be more than 15 months before the eligibility determination results are received.
15. Given the extended time period over which the Class Action claims process is expected to continue, and in the interests of concluding these proceedings in a timely and cost-effective manner, the Liquidator recommends that the Class Action be assigned to RLW, on the condition that any funds received shall correspondingly reduce RLW's secured debt in respect of TBF.

ORDER APPROVING THE LIQUIDATOR'S DISCHARGE

16. As set out in the Seventh Report, subject to the payment of the Proposed Distributions, the Assignment, and the provision of digital copies of the Records to counsel to Lincoln Wolfe and Duanne Taylor, the administration of these Liquidation proceedings are substantially complete, and it is therefore appropriate for the Liquidator to apply for its discharge.

GENERALLY

17. The circumstances that exist make the Order sought by the Liquidator appropriate.
18. Paragraphs 2, 11, 15, 16, 17 and 22 of the Liquidation Order.
19. Rules 1.04, 2.03, 3.02, 16 and 37 of the Court of Queen's Bench Rules, Reg. 553/88, as amended.
20. Sections 214 and 216 of the MCA.
21. The inherent jurisdiction of this Court.
22. Such further and other grounds as counsel may advise and this Court permit.

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

1. The Order of the Honourable Mr. Justice Toews dated April 28, 2017;
2. Seventh Report of the Liquidator dated August 18, 2022; and
3. Such further material as counsel may advise and this Honourable Court may permit.

August 18, 2022

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Lawyers for the Liquidator

TO: Fast Trippier Clunie Wittman LLP
10 Donald Street
Winnipeg, MB R3C 1L5
Attention: Faron J. Trippier / Irina Vakurova
Counsel for the Respondents, Duanne Taylor and 5608067 Manitoba Ltd.

AND TO: Thompson Dorfman Sweatman LLP
1700-242 Hargrave Street
Winnipeg, MB R3C OV1
Attention: Ross A. McFadyen
Counsel for R.L. Wolfe Ltd. and the Applicants, Lincoln Wolfe and 5606269
Manitoba Ltd.

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

Schedule "1"

File No. CI 15-01-97066

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.,

Applicants,

- and -

**DUANNE TAYLOR and 5608067 MANITOBA LTD.,
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ORDER

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**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE MR.

)

WEDNESDAY, THE 9TH

JUSTICE TOEWS

)

DAY OF NOVEMBER, 2022

)

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.,

Applicants,

- and -

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

Respondents.

DISCHARGE ORDER

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the Court-appointed liquidator (the "**Liquidator**") of the assets, undertakings and property (the "**Property**") of Taylor Bros. Farm Ltd. ("**TBF**") and Edwin Potato Growers Ltd. ("**EPG**") (together the "**Companies**"), for an Order discharging the Liquidator and other relief was heard this day at the Law Courts, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Seventh Report of the Liquidator dated August 18, 2022 (the "**Seventh Report**"), and on hearing the submissions of counsel for the Liquidator, counsel for the Applicants and R.L. Wolfe Ltd., counsel for the Respondents, and counsel for Pitblado LLP, no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed:

1. THIS COURT ORDERS that capitalized terms not otherwise specifically defined herein shall have the meaning ascribed thereto in the Seventh Report.

2. THIS COURT ORDERS that the Seventh Report and the activities and actions of the Liquidator as described therein, including the Liquidator's Statement of Receipts and Disbursements for the period of January 22, 2022 to August 8, 2022 are hereby approved.
3. THIS COURT ORDERS, AUTHORIZES AND DIRECTS that the Liquidator shall holdback \$80,000 (the "**Liquidator's Holdback**") in order to complete the administration of the EPG and TBF estates.
4. THIS COURT ORDERS AND DIRECTS that upon this order being final, the Liquidator shall make distributions as set out and described in paragraphs 20 and 23 of the Seventh Report (the "**Proposed Distributions**"), after retention of the Liquidator's Holdback.
5. THIS COURT ORDERS, AUTHORIZES AND DIRECTS the Liquidator to prepare and execute an irrevocable assignment (the "**Assignment**") to R.L. Wolfe Ltd. ("**RLW**") of the Liquidator's and TBF's right, title and interest in or to the class action commenced in The Court of Queen's Bench, Winnipeg Centre against The Government of Manitoba in Suit No. CI13-01-82597 (the "**Class Action**") on the condition that any funds received shall correspondingly reduce RLW's secured debt in respect of TBF.
6. THIS COURT DIRECTS the Liquidator to transfer digital copies of the documents and records of the Companies (the "**Records**") to counsel for Lincoln Wolfe and Duanne Taylor and upon such transfer permitting the Liquidator to destroy all Records.
7. THIS COURT ORDERS AND DIRECTS that the Liquidator take no further steps pursuant to *The Corporations Act*, C.C.S.M. c. C225 with respect to these proceedings.
8. THIS COURT ORDERS that the fees and disbursements of the Liquidator for the period of January 14, 2022 to August 3, 2022, the fees and disbursements of its

legal counsel for the period of December 16, 2021 to July 31, 2022, the Estimated Liquidator Fees and the Estimated Legal Fees (all of such professional fees and disbursements hereinafter collectively described as the “**Professional Fees and Disbursements**”), are hereby approved.

9. THIS COURT ORDERS that upon the completion of the matters set out above in paragraphs 3 to 6 hereof, the Liquidator paying the balance of the Liquidator’s Holdback to RLW and upon the Liquidator filing a certificate substantially in the form attached hereto as **Schedule A** to this Order (the “**Liquidator’s Certificate**”) certifying that it has completed all such matters, the Liquidator shall be discharged as Liquidator of the Property of the Companies; provided however, that notwithstanding its discharge the Liquidator shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Deloitte in its capacity as Liquidator.
10. THIS COURT ORDERS AND DECLARES that Deloitte is hereby released and discharged from any and all liability that Deloitte now has or may hereafter have by reason of, or in any way arising out of, the acts and/or omissions of Deloitte while acting in its capacity as Liquidator herein, save and except for any gross negligence or willful misconduct on the Liquidator’s part.
11. THIS COURT ORDERS AND DECLARES that no action or other proceeding shall be commenced against the Liquidator, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Liquidator, except with prior leave of this Court on notice to the Liquidator, and upon such terms as this Court may direct.

_____, 2022

TOEWS, J.

CONSENT AS TO FORM:

FAST TRIPPIER CLUNIE WITTMAN LLP

Per: _____

Faron J. Trippier
Lawyers for Duanne Taylor and 5608067 Manitoba 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.

CONSENT AS TO FORM:

PITBLADO LLP

Per: _____

Catherine Howden
Lawyers for Pitblado LLP

SCHEDULE A

File No. CI 15-01-97066

**THE QUEEN'S BENCH
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BETWEEN:

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Respondents.

APPLICATION UNDER section 207 of *The Corporations Act*, C.C.S.M. c. C225

LIQUIDATOR'S DISCHARGE CERTIFICATE

A. Deloitte Restructuring Inc. was appointed Liquidator, without security, of the assets, undertakings and property of Taylor Bros. Farm Ltd. and Edwin Potato Growers Ltd. pursuant to an Order of the Court of Queen's Bench dated April 28, 2017 (the "**Liquidation Order**");

B. Unless otherwise indicated the Liquidator's Certificate shall have the same meaning as given to it in the Discharge Order of this Court pronounced November 9, 2022 (the "**Discharge Order**").

C. Pursuant to the Discharge Order, the Liquidator has completed the matters set out in paragraphs 3-6 of the Discharge Order and has paid the balance of the Liquidator's Holdback to RLW, as directed in the Discharge Order;

THE LIQUIDATOR CERTIFIES that as directed in the Discharge Order:

1. The Liquidator held back \$80,000 in order to complete the administration of the EPG and TBF estates;
2. The Liquidator made the Proposed Distributions after retention of the Liquidator's Holdback;
3. The Liquidator prepared and executed the Assignment to RLW of the Liquidator's and TBF's right, title and interest in or to the Class Action on the condition that any funds received shall correspondingly reduce RLW's secured debt in respect of TBF;
4. The Liquidator transferred digital copies of the Records to counsel for Lincoln Wolfe and Duanne Taylor; and
5. The Liquidator has paid the balance of the Liquidator's Holdback to RLW.

DATED at _____, Manitoba, this ____ day of _____, 2022.

Deloitte Restructuring Inc. in its capacity as Liquidator
of Taylor Bros. Farm Ltd. and Edwin Potato Growers
Ltd.

Per: _____
Name:
Title: