

COURT FILE NUMBER QBG 1337 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

PLAINTIFF BANK OF MONTREAL

DEFENDANTS TYLER SMITH, PAMELA SMITH, SMITH NORTHERN
RANCHING and 101197829 SASKATCHEWAN LTD.

NOTICE OF APPLICATION

(Advice and Directions Regarding Discharge of Receiver)

NOTICE TO RESPONDENTS: All parties listed in the enclosed Service List

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court. **This Notice of Application affects your rights. The Court has directed that you be provided with notice of the manner in which your rights are affected. Please read the entirety of this Notice of Application carefully. In particular, please refer to paragraph 10, below.**

To do so, you must be in Court when the application is heard as shown below:

| | |
|-------|---|
| Where | Court House, 520 Spadina Crescent East Saskatoon, Saskatchewan |
| Date | Tuesday, June 8, 2021 |
| Time | 9:00 a.m. |

Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, you must immediately contact the office of the local registrar at (306) 933-5135 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.

(Read the Notice at the end of this document to see what else you can do and when you must do it.)

Remedy claimed or sought:

1. Deloitte Restructuring Inc. (the "**Receiver**"), the Court-appointed Receiver of certain property (the "**Property**") of Tyler Smith, Pamela Smith, Smith Northern Ranching, and 101197829 Saskatchewan Ltd. (collectively, the "**Debtors**") pursuant to the Receivership Order granted in these proceedings by the Honourable Mr. Justice R.S. Smith on December 1, 2020 (the "**Receivership Order**"), applies to the Court for advice and directions respecting the discharge of the Receiver, pursuant to the direction of the Honourable Mr. Justice G.A. Meschishnick in his Lordship's Fiat dated May 31, 2021 in relation to this matter (the "**May 31 Fiat**").

2. Although not directly the subject of an application by the Receiver, it is expected that the following matters will be addressed during the scheduled hearing, namely:
 - (a) The form of Order amending the Receivership Order, as contemplated in paragraphs 9 through 11 of the Fiat delivered by Justice Meschishnick in these proceedings on April 7, 2021 (the "**April 7 Fiat**"); and
 - (b) The form of Order for the distribution of certain funds held by Debtors' counsel, as contemplated in paragraph 14 of the April 7 Fiat and paragraph 22 of the May 31 Fiat.
3. Such further and other relief as counsel may request and this Honourable Court may allow.

Grounds for making this application:

Relevant Procedural Background

4. On March 15, 2021, Richardson Pioneer Limited ("**Richardson Pioneer**") applied to the Court within these proceedings for, among other things, an Order permitting Richardson Pioneer to commence a legal action against the Debtors notwithstanding the stay provided for in the Receivership Order, and a Preservation Order which would have prevented the Debtors from disposing of the proceeds from the sale of certain lands owned by the Debtors except with the permission of the Court (the "**Lift Stay Application**").
5. In response to the Lift Stay Application (as well as certain other applications brought by the parties), the April 7 Fiat held, among other things, that the net proceeds from the sale of the Debtors' lands ("**Land Sale Proceeds**") comprise "Property" within the meaning of the Receivership Order.
6. On April 22, 2021, the Receiver applied to the Court for approval to make an interim distribution to Bank of Montreal ("**BMO**") from the receivership estate in the amount of \$1,881,236.00 (the "**Interim Distribution Application**").
7. On May 4, 2021, the Debtors applied to the Court for an Order which would have resulted in, among other things, the discharge of the Receiver (the "**Discharge Application**").
8. The Discharge Application (together with outstanding issues raised in prior applications) was the subject of a hearing before Justice Meschishnick on May 11, 2021. At that time, BMO, the Receiver, and Farm Credit Canada ("**FCC**") were content to have the Receiver discharged provided that the distribution of the Land Sale Proceeds, the Receiver's final distribution to BMO, and the Receiver's discharge, were implemented on certain specified terms. The only party objecting to the Receiver's discharge at the May 11, 2021 hearing was Richardson Pioneer.

9. On May 31, 2021, Justice Meschishnick's decision in the May 31 Fiat was released. Among other things, in the May 31 Fiat, Justice Meschishnick ruled that:
- (a) the remaining Land Sale Proceeds are to be distributed by payment of \$251,212.27 to FCC and \$86,542.55 to the Receiver;
 - (b) Richardson Pioneer is not entitled to an Order marshalling any of the current assets in the receivership estate for its benefit;
 - (c) BMO is entitled to the full benefit of the proceeds realized from the receivership estate to date, subject only to any amounts secured by the Receiver's Charge (established pursuant to the Receivership Order); and
 - (d) the making of the required payment to BMO (without compromising the payment of any amounts secured by the Receiver's Charge) will be facilitated in one of two ways:
 - (i) either Richardson Pioneer or another stakeholder (or group of stakeholders) will secure the costs of the receivership going forward; or
 - (ii) the Receiver will be discharged.

Formal Notice to Stakeholders

10. Paragraph 53 of the May 31 Fiat requires that the Receiver provide notice to the stakeholders in these proceedings of certain matters. Accordingly, **this Notice of Application shall serve as the Receiver's formal notice, to all parties listed on the enclosed Service List, of the following:**
- (a) The Receiver hereby inquires as to whether any stakeholder is prepared to secure the ongoing costs of the receivership.
 - (b) The Receiver is proposing to distribute the sum of **\$1,911,997.00** to Bank of Montreal.
 - (c) The remaining two (2) potential sources of recovery to the receivership estate if the receivership continues (which amounts will not be realized if the Receiver is discharged) are the following:
 - (i) the sum of \$500,561.72, which would be due and owing by Richardson Pioneer to the Receiver pursuant to the Order (Disclaimer of Contracts) granted in the receivership proceedings by the Honourable Mr. Justice B.J. Scherman on February 18, 2021 (the "**Disclaimer Order**"), but for Richardson Pioneer's appeal to the Saskatchewan Court of Appeal to overturn the Disclaimer Order which, if successful, will remove any possibility for the Receiver to recover any further amounts from Richardson Pioneer; and
 - (ii) the Debtors' equipment, to the extent (if any) that the same is:

- A. not exempt from seizure pursuant to provincial law; and
- B. not subject to first-priority claims by lessors and/or parties with purchase-money security interests.

The amount of value in the Debtors' equipment which may be available to the Receiver cannot be quantified at this time. This is due primarily to the fact that it is not clear at this time which items, if any, of the Debtors' equipment are exempt from seizure pursuant to provincial law. The question of whether and to what extent such exemptions exist will likely need to be determined by the Court at a future hearing.

- (d) If no stakeholder (or group of stakeholders) comes forward to underwrite the ongoing costs of the receivership, the Receiver will (as required by the May 31 Fiat) seek its discharge when the matter is heard in Court on June 8, 2021, in the form of the draft Order (Distribution and Discharge of Receiver) served and filed with this Notice of Application.
11. If any stakeholder (or group of stakeholders) is prepared to underwrite the ongoing costs of the Receivership (as contemplated in paragraph 51 of the May 31 Fiat), they must deliver, at or before 5:00 p.m. on Monday, June 7, 2021 the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00), in the form of a solicitor's trust cheque, certified cheque, or bank draft, to MLT Aikins LLP, 1201 – 409 3rd Avenue South, Saskatoon, SK S7K 5R5, Attention: Jeffrey M. Lee, Q.C. and Paul Olfert (the "**Funds Advanced**"), with the Funds Advanced to be received by the Receiver and dealt with and secured as Receiver's Borrowings pursuant to paragraph 20 of the Receivership Order.

Receiver's Application

12. Accordingly, this Notice of Application shall comprise the Receiver's application pursuant to paragraph 53(b) of the May 31 Fiat.
13. The Receiver interprets the May 31 Fiat as deciding that all of the funds in the Receivership Estate which are not required to satisfy amounts secured by the Receiver's Charge are to be distributed to BMO, such that the only remaining question to be decided is whether:
- (a) a stakeholder or group of stakeholders will underwrite the costs of the ongoing receivership proceedings; or
 - (b) the Receiver will be discharged.
14. It is in this context that the Receiver, pursuant to the express written direction of the Court, seeks advice and directing respecting its discharge in the form of the Order (Distribution and Discharge

of Receiver) filed. The Receiver is the servant of the Court and is prepared to either be discharged or to continue with its mandate, as long as adequate provision is made for the ongoing costs of the receivership proceedings.

Outstanding Matters

15. Given the positions taken by the various parties in these receivership proceedings, agreement upon the forms of Order implementing the directions given in decisions of the Court (such as the April 7 Fiat and the May 31 Fiat) have generally not been forthcoming.
16. Accordingly, the Receiver respectfully requests that the Court approve, at the June 8, 2021 hearing, its proposed form of Order in respect of certain outstanding matters; namely, an Order (Amending Receivership Order), which also speaks to the distribution of the remaining Land Sale Proceeds.
17. Such further and other grounds as counsel may advise and this Honourable Court may allow.

Material or evidence to be relied on:

18. This Notice of Application, with proof of service;
19. Fifth Report of the Receiver dated June 3, 2021;
20. Draft Order (Distribution and Discharge of Receiver);
21. Redline document showing the changes in the enclosed Draft Order (Distribution and Discharge of Receiver) from the Saskatchewan Template Distribution and Discharge Order;
22. Draft Order (Amending Receivership Order); and
23. Such further and other materials as counsel may advise and this Honourable Court may allow.

Applicable Acts and regulations:

24. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, Part XI.

25. *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, ss 11 and 65.

DATED at Saskatoon, Saskatchewan, this 3rd day of June, 2021.

MLT AIKINS LLP

Per: 

Jeffrey M. Lee, Q.C. and Paul Olfert, counsel for the Receiver, Deloitte Restructuring Inc.

NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

| | |
|---------------------------|--|
| Name of firm: | MLT Aikins LLP |
| Lawyer in charge of file: | Jeffrey M. Lee, Q.C. and Paul Olfert |
| Address of firm: | 1201, 409 3rd Avenue South, Saskatoon SK S7K 5R5 |
| Telephone number: | 306.975.7100 |
| Email address: | JMLee@mltaikins.com |
| File No: | 56074.16 |