

COURT FILE NUMBER Q.B.G. 1337 of 2020  
COURT COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
JUDICIAL CENTRE SASKATOON  
PLAINTIFF/APPLICANTS **BANK OF MONTREAL**  
DEFENDANTS/RESPONDENTS **TYLER SMITH, PAMELA SMITH, SMITH  
NOTHERN RANCHING, AND 101197829  
SASKATCHEWAN LTD.**  
DOCUMENT **THIRD REPORT OF DELOITTE RESTRUCTURING  
INC., IN ITS CAPACITY AS COURT APPOINTED  
RECEIVER OF TYLER SMITH, PAMELA SMITH,  
SMITH NOTHERN RANCHING, AND 101197829  
SASKATCHEWAN LTD.**

March 29, 2021

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**RECEIVER**  
Deloitte Restructuring Inc.  
Suite 2300, 360 Main Street  
Winnipeg, MB R3C 3Z3  
Brent Warga  
Telephone: (204) 942-0051  
Fax: (204) 947-2689  
E-mail: [bwarga@deloitte.ca](mailto:bwarga@deloitte.ca)

**COUNSEL TO THE RECEIVER**  
MLT Aikins LLP  
Suite 1201, 409 – 3<sup>rd</sup> Avenue South  
Saskatoon, SK S7K 5R5  
Jeff Lee, Q.C. / Paul Olfert  
Telephone: (306) 975-7136 / (306) 956-6970  
Fax: (306) 975-7145  
E-mail: [jmlee@mltaikins.com](mailto:jmlee@mltaikins.com) / [polfert@mltaikins.com](mailto:polfert@mltaikins.com)

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## INTRODUCTION

1. On November 19, 2020, Bank of Montreal (“**BMO**” or the “**Plaintiff**”) made an application to the Court of Queen’s Bench for Saskatchewan (the “**Court**”) seeking an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”), section 65(1) of *The Queen’s Bench Act*, 1998, SS 1998, c Q-1.01, and section 64(8) of the *Personal Property Security Act*, 1993, SS 1993, c P-6.2, to appoint Deloitte Restructuring Inc. (“**Deloitte**”) as receiver (the “**Receiver**”), without security, of all assets, undertakings and properties of Tyler Smith, Pamela Smith, Smith Northern Ranching, and 101197829 Saskatchewan Ltd. (collectively the “**Debtors**” or “**Smith Northern Ranching**”) acquired for or used in relation to the business carried on by the Debtors (the “**Property**”), specifically excluding any real property of the Debtors (the “**Lands**”). On December 1, 2020 (the “**Date of Receivership**”), the Honourable Justice R. S. Smith granted an order (the “**Receivership Order**”) appointing Deloitte as Receiver in respect of the Property. A copy of the Receivership Order and other information regarding the receivership proceedings can be accessed on the Receiver’s website at [www.insolvencies.deloitte.ca/en-ca/smithnorthernranching](http://www.insolvencies.deloitte.ca/en-ca/smithnorthernranching) (the “**Receiver’s Website**”).
2. This report constitutes the third report of the Receiver (the “**Third Report**”). The Third Report is being filed with respect to the following:
  - (a) The notice of application filed by Richardson Pioneer Ltd. (“**Richardson Pioneer**”) on March 15, 2021 (the “**Richardson Pioneer Application**”), wherein Richardson Pioneer sought, *inter alia*, leave to commence an action against the Debtors and a preservation order to prevent the Debtors from disposing of the net proceeds received, or to be received, from the sale of the Lands; and
  - (b) The notice of application filed by the Debtors on March 25, 2021 (the “**Debtors’ Application**”), seeking, *inter alia*, the discharge of the Receiver.

## TERMS OF REFERENCE

3. In preparing this Third Report, the Receiver has relied upon unaudited financial information, the books and records of the Debtors, and discussions with Tyler Smith (“**Mr. Smith**”), Pamela Smith (“**Mrs. Smith**”) (collectively the “**Smiths**”) and their financial advisors, interested parties, and the stakeholders of the Debtors.
4. The financial information of the Debtors has not been audited, reviewed or otherwise verified by the Receiver as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this Third Report may not disclose all significant matters about the Debtors or their financial position. Additionally, none of the Receiver’s procedures were intended to disclose defalcations or other irregularities. If the Receiver were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Receiver’s attention. Accordingly, the Receiver does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this Third Report.
5. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this Third Report. Any use which any party makes of this Third Report, or any reliance or decision to be made based on this Third Report, is the sole responsibility of such party.
6. Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.
7. Capitalized terms used in this Third Report but not defined herein are as defined in the Receivership Order, the first report of the Receiver dated January 8, 2021 (the “**First Report**”), and the second report of the Receiver dated February 1, 2021 (the “**Second Report**”).

## SALE OF LANDS

8. Paragraph 2 and 2.1 of the Receivership Order state the following:
  - (a) 2. Subject to paragraphs 2.1 and 2.2 of this Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**"), section 65(1) of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, and section 64(8) of *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 (the "**PPSA**") Deloitte Restructuring Inc. is hereby appointed Receiver (the "**Receiver**"), without security, of all of assets, undertakings and properties of the Debtors acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the "**Property**").
  - (b) 2.1. The Property shall not comprise any real property of the Debtors (the "**Lands**") including, without limitation, the Lands listed in Schedule "D" to this Order. Notwithstanding the foregoing, the Receiver shall be permitted to utilize any or all of the Lands (other than the residence of Tyler Smith and Pamela Smith located upon the Lands) and lands leased by the Debtors for the purposes of carrying out its mandate under this Order.
9. Although the Lands were expressly excluded from the receivership proceedings, the Receiver has, on a number of occasions since the Date of Receivership, inquired of the Debtors as to the status of any sale (or pending sale) transactions in respect of the Lands.
10. On December 4, 2020, the Receiver participated in a conference call with the Smiths and their financial advisor at that time, Doug Yaremko ("**Mr. Yaremko**"). During that call, the Receiver learned the following:
  - (a) On November 29, 2020, the Smiths had received an offer to purchase three (3) quarter sections of land near Prince Albert (the "**PA Lands**"), that the sale transaction was very near completion, and that the net sale proceeds of approximately \$0.6 million were to be applied to the Farm Credit Canada ("**FCC**") mortgage debt of approximately \$1.2 million, reducing the FCC mortgage debt to approximately \$0.6 million; and

- (b) The remaining Lands, comprising six (6) quarter sections (two (2) of which included the cattle operations, the yard site, and the Smiths' personal residence (the "**Home Quarter Lands**"), and four (4) of which were near Duck Lake (the "**Duck Lake Lands**")), were to be listed for sale with a real estate agent.
- 11. On December 12, 2020, Mr. Yaremko provided the Receiver with a listing agreement dated December 11, 2020 (the "**Listing Agreement**") for the Duck Lake Lands and Home Quarter Lands (which included certain grain bins and equipment that were subject to the receivership proceedings (the "**Receivership Assets**")), for a listing price of \$2.2 million. The Listing Agreement, attached hereto as Appendix A, refers to the following parcels of land:
  - (a) The Duck Lake Lands
    - i. SE 32-44-03 W3
    - ii. NE 32-44-03 W3
    - iii. NW 32-44-03 W3
    - iv. NW 33-44-03 W3
  - (b) The Home Quarter Lands
    - i. PtSW 20-45-03 W3
    - ii. PtSE 20-45-03 W3
- 12. Subsequent to December 12, 2020, the Receiver followed up with the Debtors on an infrequent, informal basis, for status updates on the sale of the Duck Lake Lands and the Home Quarter Lands, primarily as a result of the inclusion of the Receivership Assets in the Listing Agreement.
- 13. During the period of December 2020 to February 2021, the Receiver worked closely with the Debtors to liquidate the Debtors' owned cattle and to deliver the harvested crops to Richardson Pioneer. In mid-February 2021, as the Receiver was working to

compile a comprehensive equipment list in preparation for an equipment sales process, it became apparent to the Receiver that the Debtors were working with their advisors on a strategy to bring the receivership proceedings to a conclusion, with a view to having the Smiths continue their farming operations in the 2021 crop year and thereafter.

14. As the Smiths' degree of cooperation with the Receiver appeared to be dwindling, on March 5, 2021, the Receiver, the Receiver's legal counsel, MLT Aikins LLP ("**MLT Aikins**"), Mr. Smith, and the Smiths' legal counsel, Abrametz & Eggum ("**A&E**"), convened a conference call (the "**March 5, 2021 Call**") to discuss a number of outstanding action items in respect of which the Receiver required the Debtors' cooperation (the "**Outstanding Matters**"), one of which related to the status of the sale of any Lands. During the March 5, 2021 Call, A&E advised that the Duck Lake Lands were the subject of a pending sale transaction, and that the Home Quarter Lands, although still currently listed for sale, were to be removed from the Listing Agreement.
15. On March 9, 2021, the Receiver provided Mr. Smith and A&E a summary of the Outstanding Matters discussed on the March 5, 2021 Call by e-mail, attached hereto as Appendix B. The first item detailed therein requested that the Receiver be kept apprised of the closing of the sale of the Duck Lake Lands, the residual debts owing to FCC after the sale transaction (if any), and the status of the Home Quarter Lands.
16. The Receiver followed up by e-mail with Mr. Smith and A&E on March 10, 11, 12, 15, 16, 17, 18, 23, and 24, 2021, requesting the Debtors' cooperation in respect of the Outstanding Matters, but did not receive any substantive response.
17. On March 15, 2021, the Receiver was served with the Richardson Pioneer Application, seeking a preservation order for all sale proceeds received, or to be received, from the sale of the following Lands:
  - (a) The PA Lands (SE 14-47-26 W2, NW 12-47-26 W2, and SW 12-47-26 W2), which the Receiver understands were sold by the Debtors on or about December 15, 2020;
  - (b) The Duck Lake Lands (NW 33-44-03 W3, NE 32-44-03 W3, SE 32-44-03 W3,

and NW 32-44-03 W3), which the Receiver understands have since been sold by the Debtors on or about March 19, 2021 (as discussed in more detail below); and

- (c) The Home Quarter Lands (SW 20-45-03 W3 and SE 20-45-03 W3), which the Receiver understands were subject to the Listing Agreement, but which the Debtors intend to delist, as initially mentioned by the Smiths on the March 5, 2021 Call, and further discussed at the March 17, 2021 Court hearing (the “**March 17, 2021 Hearing**”).
18. Furthermore, based upon statements made by A&E and counsel for FCC, McKercher LLP (“**McKercher**”), in open Court during the March 17, 2021 Hearing, the Receiver understands that:
- (a) The sale proceeds from the PA Lands were paid to FCC in order to obtain the discharge of certain FCC mortgage(s) registered against title to the PA Lands; and
  - (b) The Debtors’ intention was to apply the sale proceeds from the Duck Lake Lands to satisfy obligations owed to FCC and secured by mortgages against the Duck Lake Lands and the Home Quarter Lands.
19. On March 26, 2021, A&E provided letter correspondence (the “**March 26, 2021 A&E Correspondence**”) to Duchin Bayda & Kroczyński (“**DBK**”) (counsel to Richardson Pioneer), Miller Thomson LLP (“**Miller Thomson**”) (counsel to BMO), McKercher, and MLT Aikins which included a statement of adjustments (the “**Statement of Adjustments**”) in regard to the sale of the Duck Lake Lands on March 19, 2021, attached hereto as Appendix C. According to the Statement of Adjustments, the purchase price of the Duck Lake Lands was \$700,000, \$305,210 of the sale proceeds have been paid to FCC to retire the Duck Lake Lands mortgage obligations, and the net proceeds of \$393,790 (which excludes the initial \$1,000 deposit) are being held in trust by A&E. To date, no accounting has been provided to the Receiver with respect to the sale of the PA Lands.
20. Prior to receiving the March 26, 2021 A&E Correspondence, on March 24, 2021, MLT



Aikins provided letter correspondence, attached hereto as Appendix D, to A&E, DBK, Miller Thomson, and McKercher, advising of the Receiver's position with respect to the Lands:

- (a) *“as the Receivership Order is presently drafted, proceeds from the sale of the Debtors’ Lands **do not** constitute “Property” for the purposes of the Receivership Order; and*
- (b) *“it is open to any creditor of the Debtors to apply to Court to amend or modify the scope of the Receivership Order to include the Debtors’ Lands (or proceeds thereof).*

#### **APPLICATION TO HAVE THE RECEIVER DISCHARGED**

21. On March 25, 2021, the Receiver was served with the Debtors’ Application, along with the affidavit of Mr. Smith sworn March 25, 2021 (the “**Smith Affidavit**”), seeking the following relief:

- (a) An Order that the appointment of Deloitte Restructuring Inc., as Receiver, be vacated and terminated;
- (b) An Order that the Receiver be discharged as Receiver of the Property;
- (c) That the Receiver prepare its final accounts for approval; and
- (d) An Order that the Receiver make payment to BMO of the balance of funds held along with an accounting thereof.

22. Paragraph 9 of the Smith Affidavit estimates that *“The total sum of money available for distribution by the Receiver would amount to approximately the following sums:*

- (a) *The Receiver's statement of February 23, 2021 - \$1,032,748.00; and*
- (b) *Contract value of canola - \$853,853.70*

*Total - \$1,886,601.70”.*

23. Further, paragraph 11 of the Smith Affidavit states that *“I do verily believe that the amount of \$1,886,601.70 is sufficient to discharge the Bank of Montreal indebtedness plus interest”*.
24. Attached hereto as Appendix E is the Statement of Receipts and Disbursements of the Receiver for the Period December 1, 2020 to March 26, 2021 (the **“R&D”**). As at March 26, 2021, the Receiver was holding \$1,841,774 in trust.
25. On March 26, 2021, the Receiver was provided with a payout statement from BMO setting out the total BMO indebtedness as at March 26, 2021, at \$1,881,236 (the **“BMO Indebtedness”**), with the caveat that not all of BMO’s legal fees were included within the statement and were expected to be materially greater. After considering the estimated Receiver’s fees (subsequent to March 9, 2021), the estimated Receiver’s legal counsel’s fees (subsequent to February 28, 2021), and certain estimated accrued operating costs (i.e. insurance, utilities, contract workers, etc.), there are insufficient funds available within the receivership estate to fully satisfy the BMO Indebtedness at this time.
26. The Receiver also brings to the attention of the Court the following:
  - (a) The remaining Property to be realized upon by the Receiver includes:
    - i) Feed inventory (valued at approximately \$0.2 million);
    - ii) Custom cattle receivable for the months of February and March 2021 (valued at approximately \$0.1 million);
    - iii) Leased equipment (valued at approximately \$2.3 million by the Debtors) and owned equipment (valued at approximately \$0.9 million by the Debtors);
    - iv) Five (5) owned cattle; and
    - v) Outstanding canola proceeds (valued at approximately \$0.5 million, being the difference between the contracted price and the delivery date opening spot market price) owing by Richardson Pioneer in accordance with the

February 18, 2021 Disclaimer of Contracts Order, which Order Richardson Pioneer is seeking an extension of time within which to appeal.

- (b) As at the date of this Third Report, the Receiver has not yet received an independent security review regarding the priority position of BMO relative to the other secured creditors of the Debtors.

## CONCLUSIONS

27. Based on the above, should an interested party believe that the proceeds from the sale of the Lands ought to be included in the receivership proceedings, the Receiver is of the view that an amendment to the Receivership Order is necessary. The Receiver has no objection and will take no position regarding such an application before the Court, subject to any comments the Receiver may have regarding the form of such Order.
28. As at the date of this Third Report, the Receiver is not certain if there are any other parties (other than BMO) who would oppose the termination of the receivership proceedings and the discharge of the Receiver.

All of which is respectfully submitted at Winnipeg, Manitoba, this 29<sup>th</sup> day of March 2021.

### DELOITTE RESTRUCTURING INC.

In its capacity as Receiver of  
Tyler Smith, Pamela Smith, Smith Northern Ranching,  
and 101197829 Saskatchewan Ltd.,  
and not in its personal capacity.



Per: Brent Warga, CPA, CA, CIRP, LIT  
Senior Vice-President

**Appendix A – December 11, 2020 Listing Agreement**



REALTOR®  
BETWEEN:

# SELLER'S MLS® BROKERAGE CONTRACT - #310

Developed & Provided by your Saskatchewan REALTORS® Association  
This form to be used with Data Entry Form 300/350/375/400/450/500/610 or 700.

Tyler Smith (306) 960-7759  
(Name of Owner(s): herein called Seller) (Phone) ( Do Not Publish)

Pamela Smith (306) 981-3850  
(Name of Owner(s): herein called Seller) (Phone) ( Do Not Publish)

Box 983 Duck Lake SK S0K 3R0 7ssmith@sasktel.net  
(Address) (Postal Code) (Email)

AND: Rosthern Agencies  
(Full Name of Seller's Brokerage: herein called Seller's Brokerage)

Box 66 Rosthern SK S0K 3R0 (306) 232-3511  
(Address) (Postal Code) (Phone)

**1. TERM OF CONTRACT**

- A. The Seller hereby lists **exclusively** with the Seller's Brokerage the property described in Paragraph 2. This Contract comes into full force and effect on mm 12 dd 14 yyyy 2020 until 11:59 p.m. on mm 04 dd 15 yyyy 2021 unless renewed in writing.
- B.  Does  Does not agree to allow OTHER members of the Association using information contained on the MLS® System to contact the Seller in the event this Seller's Brokerage contract EXPIRES WITHOUT THE PROPERTY HAVING SOLD, to discuss listing or otherwise marketing the property.
- C. There  are  are not exclusions or exceptions to the Seller's Brokerage's duties and obligations under this contract. Any such exclusions or exceptions are outlined in the attached Schedule "\_\_\_\_\_".
- D. The Seller's Brokerage is hereby authorized to obtain any and all information concerning the property from any person, corporation or governmental authority.

**2. PROPERTY**

A. Civic Address: \_\_\_\_\_ Duck Lake S0K 1J0  
Unit/Suite No. Building No. Street Name Street Type Street Direction City/Town Postal Code

B. Legal Description and/or Business Name: SE, NE, NW 32 44 03 W3, NW 33 44 03 W3, PtSW and PtSE 20 45 03 W3

**3. TERMS OF SALE**

A. Asking Price: 2200000.00 B. Possession Date: tbd  
C. Terms: cash

**4. LISTING SERVICE AND BUYER BROKERAGE. The Seller directs the Seller's Brokerage:**

- A. To list the property with the MLS® System of the Real Estate Association of which the Brokerage is a member and to cooperate with other Brokerages who are acting as Buyer's Brokerages. The Seller's Brokerage may publish the Seller's Property Condition Disclosure Statement (if attached).
- B. To allow a sales representative authorized by the Seller's Brokerage to make the agency disclosures required of the Seller's Brokerage.

**5. A. COLLECTION, USE AND DISCLOSURE OF PROPERTY AND PERSONAL INFORMATION**

The Seller consents to the collection, use and disclosure of property and personal information by the Seller's Brokerage and, with the permission of the Seller's Brokerage by any co-operating brokerages, for the purpose of listing and marketing the property defined as, but not limited to:

- (i) listing and advertising the property using any medium including the Internet;
- (ii) permission for listing agent to display auxiliary photos;
- (iii) disclosing property information to prospective buyers, brokers, salespersons and others who may assist in the sale of the property;
- (iv) the capture and use of the listing price, sale price, information found in the listing agreement, including the Seller's other personal information and other property-related information. This includes but is not limited to photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and property description; and
- (v) such other use of the seller's personal information as is consistent with listing and marketing of the property.

**B. COLLECTION, USE AND DISCLOSURE OF PROPERTY AND PERSONAL INFORMATION BY THE ASSOCIATION FOR THE OPERATION OF THE MULTIPLE LISTING SERVICE® SYSTEM**

The Seller consents to the placement and posting of property information by the Brokerage into the database(s) of the MLS® System of the Association, the Canadian Real Estate Association's REALTOR.ca site, or any third-party database, including databases supporting third party advertising of real estate. The seller further acknowledges that the Association may:

- (i) distribute the information to any persons authorized to use such service which may include other brokers, government departments, appraisers, municipal organizations and others;
- (ii) market the property, at its option, in any medium, including electronic media and the internet;
- (iii) compile, retain and publish any statistics including historical MLS® System data which may be used by licensed association members to conduct comparative market analyses; and
- (iv) make such other use of the information as the board deems appropriate in connection with the listing, marketing and selling of real estate.

**C. THE SELLER FURTHER ACKNOWLEDGES THAT THE OWNER OF THE DATABASE(S) MAY, DURING THE TERM OF THE LISTING AS WELL AS AFTER THE SALE OF THE PROPERTY USE, RETAIN, REPRODUCE AND DISCLOSE, THROUGH PUBLICATION OR PLACEMENT AND POSTING ON THE INTERNET, AND PROPERTY INFORMATION, INCLUDING SALE PRICE AND ANY STATISTICS OR THE RESULTS OF ANY ANALYSIS DERIVED THEREFROM, FOR ANY PURPOSE ASSOCIATED WITH THE LISTING, MARKETING, SALE OR PURCHASE OF REAL ESTATE OR THE ANALYSIS OF REAL ESTATE TRANSACTIONS.**

**D. LICENSING OF LISTING CONTENT**

- (i) The seller grants to the Brokerage a non-exclusive, irrevocable, royalty-free license to use, publish, display, reproduce and sub-license all photographs, images, videos, virtual tours, drawings, text, descriptions and any other copyrightable elements related to the property, submitted by the Seller to the Brokerage or the Brokerage's Salesperson (the "Seller Listing Content").
- (ii) The Seller acknowledges and agrees that as between the Seller and the Brokerage, any copyrightable elements relating to the property obtained or produced by the Brokerage or the Brokerage's Salesperson (the "Brokerage Listing Content") is owned exclusively by the Brokerage and the Seller has no interest, right or title to any Brokerage Listing Content.

**6. BROKERAGE'S REMUNERATION. The Seller agrees:**

A. To pay to the Seller's Brokerage a gross commission of 2%  
\_\_\_\_\_ the sale price of the property or one half of the deposit forfeited pursuant to a Contract of Purchase and Sale of the property, whichever is less, plus applicable taxes in respect of the commission (**commission + tax = remuneration**) if



- (i) during the term of this Contract the Seller and a Buyer enter a legally enforceable Contract of Purchase and Sale;
  - (ii) within 180 days of expiration of this Contract, the Seller and a Buyer enter into a legally enforceable Contract of Purchase and Sale, in respect of which the efforts of the Seller's Brokerage during the term of this Contract were an effective cause; or
  - (iii) a prospective Buyer offers in writing during the term of the Contract, to purchase the property on the terms and conditions described in Section 3 above, even if the Seller does not accept the offer;
- except that 6A(ii) above shall not apply if the Seller must pay commission on the sale to another Brokerage arising from a Brokerage Contract entered into by the Seller and that other Brokerage after the expiration of this Contract, even if the efforts of the Seller's Brokerage under this Contract were an effective cause of the sale.

B. The remuneration earned by the Seller's Brokerage shall be payable upon completion of the sale or when paragraph 6A(iii) above applies, seven days after demand by the Brokerage.

**7. ASSIGNMENT OF REMUNERATION**

- A. The Seller hereby irrevocably assigns to the Seller's Brokerage from the proceeds of sale of the property, the amount of remuneration due to the Seller's Brokerage and authorizes the Seller's Brokerage to retain from the deposit monies the amount of the Seller's Brokerage's remuneration.
- B. The Seller further hereby irrevocably and unconditionally directs and authorizes their solicitor, or any other solicitor acting on their behalf in this sale, to pay the aforesaid commission and taxes, less any deposit, from the proceeds of the sale when releasable. This shall be and constitute full and sufficient authority for so doing and appoints the Seller's Brokerage as the Seller's irrevocable agent to demand and receive payment thereof.
- C. I now encumber all of my interest in the Land, Buildings and Attached Goods for the benefit of the Brokerage to secure payment to the Brokerage of all money which may be owed by me to the Brokerage under this Agreement. I agree that the Brokerage is entitled to encumber the Land in accordance with the *Land Titles Act, 2000 (Saskatchewan)*.

**8. THE SELLER'S BROKERAGE AGREES WITH THE SELLER AS FOLLOWS:**

- A. To act only as the Brokerage for the Seller except where Limited Dual Agency exists.
- B. To provide information about the property to Buyer's Brokerages.
- C. Subject to 10B below, to exercise duties of loyalty, obedience, competence, confidentiality, accountability and disclosure to the Seller.
- D. To accept remuneration from the Buyer only with the knowledge and consent of the Seller.
- E. To assist in obtaining a Buyer for the property the Seller's Brokerage will offer to a Buyer's Brokerage a portion of the Seller's Brokerage's remuneration in the amount of 1% the sale price.

**9. THE SELLER**

- A.  Does agree to give the Seller's Brokerage authority to advertise the property and authority to permit or not permit other brokerages to advertise the property and to set the conditions, if any, thereof.
- B.  Does  Does not agree to allow the Seller's Brokerage to place "For Sale" sign upon the property.  
 Does  Does not agree to allow the Seller's Brokerage to place "Sold" sign upon the property.
- C. Agrees to allow a Buyer's Brokerage or a Seller's Brokerage to show the property to a prospective Buyer.
- D. Agrees to refer to the Seller's Brokerage all enquiries for the purchase of the property, and to deliver to the Seller's Brokerage all offers and Contracts of Purchase and Sale, with respect to the property which may be received during the term of this Exclusive Contract or arising by reason of the efforts of the Seller's Brokerage.

**10. THE SELLER ACKNOWLEDGES AND AGREES THAT:**

- A. It is not a breach of the Seller's Brokerage's duty of confidentiality if the publication of the information relating to the property by the MLS® System results in the information becoming known to members of the public, including a prospective Buyer(s) and Buyer's Brokerage.
- B. It is not a breach of duty to the Seller for the Seller's Brokerage to list, show or sell property of competing Sellers.
- C. This property is not listed with any other Brokerage.
- D. Another Brokerage representing only a Buyer does not owe fiduciary duties to the Seller.
- E. A Seller, who is a non-resident of Canada, must comply with *The Income Tax Act of Canada* upon completion of the sale.
- F. The REALTOR® shall disclose to the buyer all material defects about the physical condition of the property known to the REALTOR®.
- G. Seller's Brokerage will not be held liable in any manner whatsoever for any acts or omissions of other brokerages with respect to advertising.

**11. LIMITED DUAL AGENCY**

- The Seller agrees that the Seller's Brokerage may also act as agent for the Buyer of a property in which the Buyer is interested, in which case:
- A. The Seller's Brokerage shall disclose to the Seller his/her agency relationship with the Buyer prior to the Seller's Brokerage presenting a Contract of Purchase and Sale from that Buyer to the Seller, but shall not have to disclose such relationship before that time;
  - B. The duties of the Seller's Brokerage to the Seller and the Buyer will be modified by the limitations of Limited Dual Agency described in the Saskatchewan REALTORS® Association document entitled "Agency Disclosure" which the Seller acknowledges he/she has read and agreed to.

**12. MISCELLANEOUS PROVISIONS**


- "Sale" includes an exchange and "sale price" includes the value of property exchanged.
- "Period" or "date of expiration" of this Contract includes the period or date of expiration of any written extension.
- Interpretation of this Contract and all matters concerning its enforcement by the parties shall be governed by the laws of the Province of Saskatchewan.
- The parties acknowledge that this Contract fully sets out the terms of the agreement between them.
- This Contract shall be binding upon and benefit not only the parties but their respective heirs, executors, administrators, successors or assigns.
- This Contract shall automatically end if the Seller's Brokerage ceases to be a member of an Association.

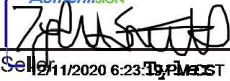
**13. ENTIRE AGREEMENT - THIS SELLER'S BROKERAGE CONTRACT MEANS AND INCLUDES THIS AGREEMENT AND THE DATA INPUT FORM (WHEN SIGNED BY THE SELLER) AND SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT (WHEN ATTACHED AND SIGNED BY THE SELLER) AND ANY SCHEDULE "A" (WHEN ATTACHED AND SIGNED BY THE SELLER).**


**BY SIGNING THIS CONTRACT THE SELLER ACKNOWLEDGES HAVING RECEIVED AND READ THE DOCUMENT PUBLISHED BY THE SASKATCHEWAN REALTORS® ASSOCIATION ENTITLED, "AGENCY DISCLOSURE". The Seller acknowledges having read and understood this Contract, that it accurately describes the agreement with the Seller's Brokerage, and that a copy of it has been received by the Seller this date.**

SIGNED at \_\_\_\_\_, on mm 12 dd 11 yyyy 2020.

ASSIGNED IN THE PRESENCE OF:

  
 12/11/2020 7:28:08 PM CST  
 Witness  
 12/11/2020 7:28:09 PM CST

  
 12/11/2020 6:23:15 PM CST  
 Seller  
 Pamela Smith  
 12/11/2020 6:14:25 PM CST

SELLER'S BROKERAGE  
 Per:   
 12/11/2020 7:28:16 PM CST  
 Sales Representative Carl Lehmann  
 Witness

**Appendix B – March 5, 2021 E-mail Correspondence (Outstanding Matters)**

## Warga, Brent

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**From:** Fritz, John  
**Sent:** Tuesday, March 9, 2021 10:30 AM  
**To:** Tyler Smith  
**Cc:** Petervabrametz; Jeff Lee; Paul Olfert; Warga, Brent  
**Subject:** Smith Northern Ranching et al. - Outstanding items from March 5, 2021 call

Tyler,

Further to our call on March 5, 2021, please find below a summary of the information you (and your counsel) have undertaken to provide the Receiver:

Category	Specific Requests	Status
1. Land Sale(s)	1(a) Please advise when the pending land sales close and the status of FCC's remaining balance outstanding, if any. As discussed on March 5, 2021, the Receivership estate requires that it be kept up to date regarding the status of the land base on which the farm operates (and efforts to list the land for sale).	
	1(b) Confirmation as to when the current listing for the "home yard site" (i.e. SW20-25-3 W2 and SE 20-45-3 W3) has been cancelled.	
2. Equipment (see attached Equipment Workbook)	2(a) Please identify any material equipment <b>not</b> listed therein.	
	2(b) Please identify any additional existing lessors' claims, the identity of those lessors, and the equipment subject to their interest (equipment with claims submitted by lessors to the Receiver have been listed therein).	
	2(c) Please identify the status and location of the equipment listed in the "Smith – Unidentified Equipment" tab.	
	2(d) Please identify any suggested changes to the equipment descriptions.	
	2(e) Please identify the equipment required for the care of the custom cattle and remaining five (5) owned cattle.	
3. Custom Cattle Operations	3(a) Please forward a copy of the February 2021 billing and confirm the expected timing for the payment of same.	
	3(b) Confirm the current feed quantities on hand and the expected feed to be consumed until June 1, 2021 (the presumed removal date for the custom cattle).	
	3(c) Identify the liquidation value of feed by type (i.e. silage, hay bales, and straw bales).	
	3(d) Clarify the basis for the November 2020 feed valuation.	
	3(e) Provide the estimated contract workers' costs necessary for the ongoing custom cattle operations and care of the remaining five (5) owned cattle.	
	3(f) Identify the estimated monthly profitability of the custom cattle operations to June 1, 2021; and	
	3(g) If of interest, provide a proposal to remove the custom cattle operations from the Receivership proceedings and to purchase feed from the Receiver for ongoing feeding.	
4. Residual Owned Cattle	4(a) Please keep the Receiver appraised as to any parties interested in purchasing the remaining four (4) bulls and one (1) cow.	
5. Canola Deliveries	5(a) Identify the source(s), by location, of the approximately 13,000 bushel decline in quantity from the previous estimate of approximately 96,000 (delivery summary attached).	
6. Smith's Ongoing	6(a) Provide a detailed listing of the ongoing assistance being provided to the	



Involvement with the Receivership	Receiver and the receivership proceedings, in addition to the care of the custom cattle and remaining five (5) owned cattle.	
	6(b) Propose a revised monthly contractor payment (for Pam and Tyler) to complete the aforementioned assistance to the Receiver, commencing in March 2021.	

Following your review, would you please provide an expected timeframe for the foregoing to be available (and indicate same in the “**status**” column). As certain of these items are expected to be readily available, please provide same at your earliest opportunity.

Regards,

**John R. Fritz LIT**

Deloitte | Financial Advisory  
 2300 – 360 Main Street  
 Winnipeg, MB R3C 3Z3  
 Phone: (204)942-0051 | Fax: (204)947-2689  
[www.deloitte.ca](http://www.deloitte.ca)



21-02-11 Smith Equipment List...    21-03-05 Canola Deliveries.pdf...

**Appendix C – March 26, 2021 Abrametz & Eggum Correspondence**

# Abrametz & Eggum

**Barristers, Solicitors, & Notaries Public**

#101 – 88 – 13<sup>th</sup> Street East

Prince Albert, Saskatchewan S6V 1C6

PETER V. ABRAMETZ, B.A., LL.B.

KRISTA L.L. EGGUM, B. COMM., LL.B.

(J.M. CUELENAERE, Q.C., 1910-1967)

Phone: (306) 763-7441

Facsimile: (306)764-2882

Email: [petervabrametz@inct2000.com](mailto:petervabrametz@inct2000.com)

Please refer to: Peter V. Abrametz

Our File: 20110-2

March 26, 2021

<b>Miller Thomson</b> Att: David Gerecke <a href="mailto:dgerecke@millerthomson.com">dgerecke@millerthomson.com</a>	<b>MLT Aikins</b> Att: Jeff Lee/ Paul Olfert <a href="mailto:jmlee@mltaikins.com">jmlee@mltaikins.com</a> <a href="mailto:polfert@mltaikins.com">polfert@mltaikins.com</a>
<b>McKercher LLP</b> Att: Janine Lavoie-Harding <a href="mailto:j.lavoie-harding@mckercher.ca">j.lavoie-harding@mckercher.ca</a>	<b>Duchin, Bayda &amp; Kroczyński</b> Att: Jim Kroczyński <a href="mailto:jim.kroczyński@dbklaw.com">jim.kroczyński@dbklaw.com</a>

Dear Sir/Madam:

**RE: BANK OF MONTREAL VS. SMITH ET AL**  
**Q.B.G. NO. 1337 OF 2020**  
**PLEASE REFER TO OUR FILE NO: 20110-2**

In accordance with the Fiat of the Honourable Mr. Justice Meschishnick dated March 22, 2021, we attach hereto Statement of Adjustments setting out the proceeds of sale of Smiths' four quarters of land, payments made to Farm Credit Corporation, payment to be made to Farm Credit Corporation, and other payments the Vendor intends to make.

So that there is no misunderstand, my position is that His Lordship has no jurisdiction over the proceeds of the land sales.

Likewise, I believe that there is no legal criteria for the concept of marshalling to be applied.

Having regard to our payment instructions, I believe that there are no sums that a preservation order would attach, even if it were appropriate to give one.

Yours very truly,

**ABRAMETZ & EGGUM**

Per:

PETER V. ABRAMETZ

PVA/bm

Encl.

c. The Honourable Mr. Justice Meschishnick  
(via Court of Queen's Bench email)

**STATEMENT OF ADJUSTMENTS**

VENDOR: Tyler Smith and Pamela Smith  
PURCHASER: John Neufeld  
LEGAL DESCRIPTION: Surface Parcel #133688188 se 32-44-3 W3M  
Mineral Parcel #149213820 SE 32-44-3 W3M  
Surface Parcel #133728509 NE 32-44-3 W3M  
Mineral Parcel #149213819 NE 32-44-3 W3M  
Surface Parcel #133728497 NW 32-44-3 W3M  
Mineral Parcel #149213842 NW 32-44-3 W3M  
Surface Parcel #133728521 NW 33-44-3 W3M  
CIVIC ADDRESS: R M of Duck Lake  
POSSESSION DATE: March 19, 2021

**CREDIT PURCHASER CREDIT VENDOR**

Purchase Price		700,000.00
Less Deposit	1,000.00	
Tax Adjustment (\$1,708.30 x 0/365) <i>Taxes adjusted as of January 1, 2021</i>		0.00
BALANCE DUE TO VENDER AS OF CLOSING DATE	<u>699,000.00</u> \$700,000.00	<u>700,000.00</u>

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Balance due to Vendor as of Closing Date	699,000.00
Less Farm Credit Canada - mortgage payout	(305,209.97)
<b>NET SALE PROCEEDS HELD IN TRUST</b>	<b><u>\$393,790.03</u></b>

**TO BE PAID:**

1. Farm Credit Canada	294,921.77
2. Rosthern Agencies	2,885.00
3. Krista L.L. Eggum Legal Prof Corp (legal fees on sale)	2,363.13
4. A & M Ventures Ltd.	25,787.08
5. 4 West Advisors (arranged FCC settlement)	19,523.93
6. Madden Bros Electric (farm wiring)	7,473.13
7. Peter V. Abrametz Legal Prof Corp. (retainer)	25,000.00
8. Balance to Lessors of farming equipment	15,835.99
<b>TOTAL</b>	<b>393,790.04</b>

**Appendix D – March 24, 2021 MLT Aikins LLP Correspondence**

March 24, 2021

*Via E-mail*

**Miller Thomson LLP**  
Attention: David Gerecke, Q.C.

**Duchin Bayda & Kroczyński**  
Attention: James Kroczyński

**Abrametz & Eggum**  
Attention: Peter V. Abrametz

**McKercher LLP**  
Attention: Janine Lavoie-Harding

Dear Sirs and Madam:

**Re: Bank of Montreal v Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (collectively, the Debtors”), QBG 1337 of 2020, Judicial Centre of Saskatoon**

At the March 17, 2021 hearing in the above-noted matter, Mr. Justice Meschishnick inquired as to the Receiver’s position on whether proceeds from the sale of the Debtors’ lands comprise “Property” within the meaning of the Receivership Order of the Honourable Mr. Justice R.S. Smith dated October 1, 2020 (the “**Receivership Order**”).<sup>1</sup>

For the reasons described below, the Receiver’s position is that:

- a) as the Receivership Order is presently drafted, proceeds from the sale of the Debtors’ lands **do not** constitute “Property” for the purposes of the Receivership Order; and

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<sup>1</sup> Paragraphs 2 and 2.1 of the Receivership Order read as follows (emphasis added):

2. Subject to paragraphs 2.1 and 2.2 of this Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”), section 65(1) of *The Queen’s Bench Act, 1998*, SS 1998, c Q-1.01, and section 64(8) of *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 (the “**PPSA**”) Deloitte Restructuring Inc. is hereby appointed Receiver (the “**Receiver**”), without security, of all of assets, undertakings and properties of the Debtors acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the “**Property**”).

2.1 The Property shall not comprise any real property of the Debtors (the “**Lands**”) including, without limitation, the Lands listed in Schedule “D” to this Order. Notwithstanding the foregoing, the Receiver shall be permitted to utilize any or all of the Lands (other than the residence of Tyler Smith and Pamela Smith located upon the Lands) and lands leased by the Debtors for the purposes of carrying out its mandate under this Order.

- b) it is open to any creditor of the Debtors to apply to Court to amend or modify the scope of the Receivership Order to include the Debtors' lands (or proceeds thereof).

The Receiver has reached this conclusion for three reasons.

First, a review of paragraphs 2 and 2.1 of the Receivership Order yields the conclusion that the scope of that Order is limited to a single class of property of the Debtors, namely: **personal property** (and proceeds derived therefrom). It is only personal property of the Debtors that constitutes "Property" as defined in the Receivership Order.

The fact that a sale of lands (real property) will generate cash proceeds (a form of personal property) does not change the scope of the Receivership Order (as expressed in paragraphs 2 and 2.1 thereof). The Receivership Order contemplates a single class of assets (assets, undertakings and properties of the Debtors, other than real property, which were acquired for, or used in relation to the business carried on by the Debtors) including (not plus) all proceeds thereof. As such, proceeds of Property can only be generated from the sale of Property.

Second, the suggestion that the lands of the Debtors are excluded from the scope of the Receivership Order, but the proceeds derived from the sale of such lands are included within the scope of the Receivership Order is unworkable and yields a number of practical difficulties which would render the administration of the receivership untenable, namely:

- a) the Receiver would have no control over the sale of the Debtors' lands and would not be entitled to notice of any such proposed sale, yet would somehow be expected immediately to gain control of the proceeds derived from a sale of the Debtors' lands (about which it would not be expected to have notice) forthwith upon closing of such a sale; and
- b) if proceeds derived from a sale of the Debtors' lands are within the scope of the Receivership Order, the Debtors are left unable to close a sale of their lands without going to Court for approval of the sale and direction as to the party entitled to receive the proceeds. The result of that state of affairs is to render meaningless the "carve out" of the Debtors' lands in paragraph 2.1 of the Receivership Order.

Third, Farm Credit Canada ("FCC") is the secured creditor which holds security on the Debtors' lands. As a result of *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*<sup>2</sup>, FCC may not obtain a receivership order (or any order for sale) in regard to the Debtors' lands without going through the 150-day statutory notice, mediation and court application process set out in Part II of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1 (the "SFSA"). The suggestion that the proceeds of sale of the Debtors' lands are caught by the Receivership Order is at odds with

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<sup>2</sup> [2015] 3 SCR 419.

Part II of the SFSA, which prohibits secured creditors from obtaining court orders over Saskatchewan farmland and its proceeds without complying with Part II of the SFSA.

If any creditors of the Debtors wish to apply to Court to amend, modify or expand the scope of the Receivership Order, the Receiver has no objection and will take no position regarding such an application.

We trust that this sets out the Receiver's position with clarity.

Sincerely,

**MLT AIKINS LLP**

Per:   
Jeffrey M. Lee, Q.C.

cc: MLT Aikins LLP, Attention: Paul Olfert and Marek Coutu  
Miller Thomson LLP, Attention: David Gerecke, Q.C., Wuraola Dasylva and Jacey Safnuk  
Duchyn Bayda Kroczyński, Attention: Jim Kroczyński  
Abrametz & Eggum, Attention: Peter Abrametz  
Deloitte Restructuring Inc., Attention: Brent Warga and John Fritz



**Appendix E – Statement of Receipts and Disbursements for the Period December 1, 2020 to March 26, 2021**

**TYLER SMITH, PAMELA SMITH, SMITH NORTHERN RANCHING, 101197829 SASKATCHEWAN LTD.  
IN RECEIVERSHIP**

**STATEMENT OF RECEIPTS AND DISBURSEMENTS**

For the Period December 1, 2020 to March 26, 2021

	<b>Amount</b>	<b>Notes</b>
<b>Receipts</b>		
Advance from Secured Creditor	\$ 100,000	
Accounts receivable	409,151	(1)
Cash on hand	66,826	(2)
Cattle sales (calves and bulls)	609,576	
Custom cattle revenue	119,798	(3)
Sale of market grains (Richardson Pioneer)	1,055,606	(4)
<b>Total Receipts</b>	<b>2,360,957</b>	
<b>Disbursements</b>		
Agent fees and disbursements	4,492	
Appraisal fees	1,200	
Bank fees	25	
Cattle sale costs (commissions, brand inspection, etc.)	30,616	
Contract workers	125,417	
Equipment repairs and maintenance	9,983	
Filing fees	143	
Fuel	33,161	
Grain check off fees	1,622	
GST paid on disbursements	4,125	
GST paid on legal fees and disbursements	2,243	
GST paid on Receiver fees and disbursements	6,041	
Insurance	15,957	
Interest	372	
Legal fees and disbursements	45,212	(5)
Livestock supplies	10,247	
Miscellaneous	327	
PST paid on disbursements	736	
PST paid on legal fees and disbursements	2,648	
Receiver fees and disbursements	120,823	(6)
Repayment of Receiver's Borrowing Certificate	100,000	
Utilities	3,794	
<b>Total Disbursements</b>	<b>519,183</b>	
<b>Excess of Receipts over Disbursements - funds held in trust as at March 26, 2021</b>	<b>\$ 1,841,774</b>	
<b>Estimated Receivership Obligations</b>		
Receiver's legal counsel's fees (excluding taxes) - to March 24, 2021	19,507	
Receiver's fees (excluding taxes) - to March 24, 2021	17,554	
Operating costs	40,000	(7)
<b>Subtotal</b>	<b>77,061</b>	
BMO Indebtedness as at March 26, 2021	1,881,236	
<b>Estimated Surplus / (Shortfall)</b>	<b>\$ (116,524)</b>	

**Notes:**

- (1) Collections from Richardson Pioneer with respect to unsettled shipments of canola (\$198K), oats (\$122K), and barley (\$89K) delivered prior to the date of receivership.
- (2) Primarily comprised of custom cattle receipts for the month of November 2020.
- (3) Includes custom cattle revenue for the months of December 2020 and January 2021.
- (4) The Receiver has received \$845,560.57 related to the sale of canola to Richardson Pioneer, based on contract pricing. The difference between the "date of delivery opening spot market price" and the "contract price" (approximately \$500K) is subject to appeal by Richardson Pioneer and will be determined in due course.
- (5) Excludes fees and disbursements of the Receiver's legal counsel subsequent to February 28, 2021 (approximately \$19,507.25 (plus taxes) to March 24, 2021).
- (6) Excludes fees and disbursements of the Receiver subsequent to March 9, 2021 (approximately \$17,554 (plus taxes) to March 24, 2021).
- (7) Estimated accrued operating costs (insurance, utilities, contract workers, etc.).