

CAISSE POPULAIRE POINT-AUX-ROCHES-TECUMESH INC. and Plaintiff

G.I. FARMS INC. et al.

Defendants

Court File No.: 35-1842432T

March 22, 2018

D. Magisano for the Receiver  
D. Reason for Caisse Populaire  
D. Freilheit initially for G.I. Farms  
Frank Porrone in person

1 At the outset Mr. Freilheit made an oral motion to be removed as counsel for G.I. Farms (the 'company') with its consent. That motion was granted.

2 He also asked that the motion be adjourned to allow the company to retain other counsel. The name of Stephen Yoker was mentioned. He is counsel of record for the company on a pre-receivership piece of litigation. However, he has not been retained by the company on this matter.

3 Mr. Porrone advised that he had contacted a large number of firms but none have been willing or able to act as joint counsel or work load considerations.

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
Proceeding commenced at LONDON

MOTION RECORD OF THE COURT APPOINTED  
RECEIVER  
(RETURNABLE MARCH 22, 2018)

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Lawyers for BDO Canada Limited, in its capacity  
as Court Appointed Receiver of G.I. Farms Inc.

④ In my view many of the issues cannot wait and must be dealt with today. I say that for these reasons:

- (a) the company's principal asset is 2980 Talbot Road South, Kingsville. It contains, among other things, a partially completed greenhouse and a residence occupied by Mr. Porrone, his spouse and their children (the 'Home');
- (b) the company is not generating any revenue;
- (c) the Receiver has fully utilized its existing borrowing power;
- (d) a December 14, 2017 agreement of purchase and sale ('APS') entered into by the company as seller and 8040478 Canada Limited ('804') as purchaser on the eve of the receivership did not close on March 15, 2018 as scheduled;
- (e) the transaction was - to put it bluntly - problematic from day 1. A stake has now been put through its heart.

⑤ I have carefully reviewed the Receiver's first report dated March 15, 2018 and the Appendices. I have carefully reviewed the Confidential Brief

as well, the affidavit of Peter Sciortino of Caisses Populaire sworn March 20, 2018 and the Receiver's motion and brief of authorities.

⑥ I have also listened to Mr. Porrone who maintains that there has been about \$4 million of damage to the greenhouse post receivership. He maintains that the Receiver be required to repair same as a precondition to sale. That allegation is a hotly contested one. While a live issue

it (the nature, extent, timing and dollar value of the alleged damage or responsibility for same), the Receiver does not have an obligation to effect those repairs before sale.

⑦ No reason has been advanced for delaying a sales process or conducting it in a manner other than as the Receiver proposes. In the circumstances, the relief sought in the following paragraphs of the Receiver's Amended Notice of Motion is granted:

- (a)(i) to the extent of the Proposed Sale Process described in paras. 90-102.
- Approval of the balance of the activities of the Receiver is adjourned to the next court attendance to allow the company yet more time to seek new counsel.
- (a)(ii) - the sealing order is essential to the Receiver's attempt to obtain a bona fide offer from a person who is not giving to information that would not ordinarily be available to a third party purchaser.
- (a)(iii) - it is imperative that the Receiver have additional funding available: see Appendix P to and para 128 of the Receiver's First Report;
- (a)(iv) - the appointment of BDO Canada ~~Inc~~ <sup>limited</sup> as monitor of the company has been ~~subsumed~~ <sup>subsumed</sup> in the December 20, 2017 Receivership Order and is no longer practically necessary in relation to any of the other entities named as defendants.

⑧ The Receiver's requests for relief as set forth in paragraphs (a)(i) and (a)(ii) is adjourned to the next attendance. I simply note that

2286514 Ontario Inc. (referred to as 2286513 Ontario Inc in the amended notice of motion). is a company seemingly controlled by Chrystie Parrone, Frank Parrone's spouse. That company did not appear today and has not responded to the Receiver's allegations.

9 I turn to the final two issues that were the subject of submissions: (i) an amount of \$15,000 which was retained by Mr. Freiheit's firm Lion Law from the \$50,000 non-refundable deposit paid by BOY and (ii) the Receiver's request for an order requiring the occupants of the Home to vacate it by no later than April 15, 2018.

10 It is not completely clear when Lion Law received the \$50,000 non-refundable deposit from BOY. The APA was signed by BOY on December 8 and accepted by the Company on December 14, 2017.

11 The motion for the appointment of a Receiver was argued on December 15, 2017 and the order was granted on December 20, 2017.

12 As I told the Company's former counsel during today's attendance nothing should have been done with any portion of the deposit without <sup>prior</sup> communication with and approval of the monitor or receiver. As the case was at the relevant time) or, failing approval, the court.

13 The court has and often will exercise the jurisdiction to allow a company to retain and pay counsel from funds caught by a receivership order. The Corporation of the City of Peterborough v. Kawartha Native Housing Society Inc. (2010), 104 O.R.(3d) 38 (C.A.) at paras. 31, 32, 39, 40.

⑭ Permission, rather than for purchase, should have been sought. Former counsel says that about \$9,000 remains in trust. The balance has been applied on account of post-receivership fees and expenses. A copy of the account(s) rendered or to be rendered to the Company shall be provided to the Receiver within 14 days (privileged information may be redacted) along with the remaining funds, without prejudice to the right of future counsel to seek from the receiver an accounting agreement, the court a retainer for future work.

⑮ Insofar as how law is concerned the court's expectation is this: any deduction shall relate to post-receivership fees or disbursements attributable to the company only and, of course, the principle of reasonableness applies.

⑯ I turn to the recent possession issue. In my view it is clear that the Receiver can demand recent possession on thirty days' written notice and that the Porrone family are obligated to comply. para. 6 (d).

⑰ Even if I am wrong, the court has jurisdiction to make the order sought. para. 4. The Home stands on land registered in the name of the company.

⑱ Given the history told by the Receiver and the e-mails attached as Appendices 4, through 7, 7, GG and ~~and~~ passed up today sent March 15, 2018, I wanted to satisfy myself that the request was made on a considered business basis and not to punish Mr. Porrone for conduct the Receiver characterizes as uncooperative or obstructive.

⑲ Having considered the material and having heard submissions, I accept that there is an understandable, rational, and compelling

one asset. A prospective purchaser will want to have full, ready and unimpeded access to all of it - the land, buildings, and any other structures, any tangible personal property.

②0 Furthermore, the Receiver has good reason to fear the unknown - face to face communication between a prospective purchaser and Mr. Porrone. The relationship has been a poor one. Blame need not be attributed. Differences of opinion are plentiful, long-standing and deep rooted.

②1 In the circumstances and unless otherwise agreed to by the parties in writing, Frank Porrone, Chryste Porrone, their children and any other occupant of the home shall vacate same by no later than 6 p.m. on Monday, April 23, 2018. In the meantime, they shall fully comply <sup>with</sup> Paragraphs 3 through 7 of the Receivership Order. Further, they shall not communicate, directly or indirectly (that includes by electronic means or through a solicitor) with any prospective purchaser, unless permission has been obtained, in advance, from the receiver in writing.

②2 while not seized of the entire matter I will make myself available when I can to deal with any issues arising from the implementation of the orders made.

J. Grace J.

Grace J.