

Court of Appeal No.:
Court File No.: 35-1842432T

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

CAISSE POPULAIRE POINTE-AUX-ROCHES-TECUMSEH INC.

Plaintiff
(Respondent)

- and -

**G.I. FARMS INC., VANTEC USA ONTARIO INC., 2287188 ONTARIO INC.,
2027512 ONTARIO INC. and 1690169 ONTARIO INC.**

Defendants
(Appellants)

NOTICE OF APPEAL

THE APPELLANTS, G.I. FARMS INC., VANTEC USA ONTARIO INC., also known as VANTEC USA LTD., 2287188 ONTARIO INC., 2027512 ONTARIO INC. and 1690169 ONTARIO INC., APPEAL to the Court of Appeal from the Order of the Honourable Justice Grace dated March 22nd, 2018, made at London, Ontario (herein “the Order”).

THE APPELLANTS ASK that the Order and related ruling be set aside and that Judgment be granted to the Appellants:

- (a) for an Order that G.I. Farms Inc. and the occupants of the Porrone Home (as that term is defined in the Order) including Franco Porrone, his spouse and their children, not be required to vacate the Porrone Home until the greenhouses and the Porrone Home is sold or until the Court of Appeal considers it just and convenient to do so;
- (b) for an Order that the real property of G.I. Farms Inc. including the greenhouse and the Porrone Home not be sold until at least any damage to the greenhouses is determined

by the Court, and any applicable insurance coverage on the greenhouses is identified by the Court, and in the event that any potentially insurable damage has occurred that an insurance claim has been submitted and a decision on coverage made, and in the event of an accepted insurance claim, the repair of the damage covered by the insurance;

- (c) for an Order extending the time and marketing for the sale of the greenhouses and the Porrone Home after proper disclosure, notice and a reasonable opportunity to reply to the Appellants, on such terms that this Court considers just and convenient to do so;
- (d) for an Order that the Receiver's borrowing limit and the release of the monitor be reconsidered after proper disclosure and proper notice has been given to the Appellant(s), together with a reasonable opportunity to reply;
- (e) for an Order requiring disclosure of all information and documents relied upon or to be relied upon with respect to any of the relief requested by the Respondent including but not limited to the Confidential Brief referred to in the Order, any damages to the greenhouses and any insurance on the greenhouses; and
- (f) for an Order specifically permitting Erik Quist and Quist Engineering to share and/or provide to the Defendants any information and/or documents in the possession of the Respondent relating to the greenhouses, and in particular any damage to the greenhouses.

THE GROUNDS OF APPEAL are as follows:

1. The moving parties appeal the ruling of the Honourable Justice Grace dated March 22, 2018.

2. In that decision, the learned Motions Judge:
 - (a) required all occupants of the Porrone Home (as that term is defined in the Order), including Franco Porrone, Chrystie Porrone, and their children, to vacate the Porrone Home on or before April 23, 2018.
 - (b) sealed the Confidential Brief of the Receiver dated March 16, 2018;
 - (c) approved the Sales Process in paragraphs 90 to 102 of the First Report of the Receiver;
 - (d) increased the Receivers' Borrowing Limit from \$250,000.00 to \$1,000,000.00;
 - (e) approved the report of BDO in its capacity as Monitor and released the Monitor from liability; and
 - (f) abridged the time for service of the Notice of Motion and validated service.
3. The Motions Judge erred (in law or in a reviewable exercise of discretion) by:
 - (a) ordering the Porrone Home to be vacated by all occupants on or before April 23, 2018;
 - (b) receiving into evidence, relying upon, and not requiring the disclosure of the "Confidential Brief" to the Defendants, Mr. Porrone and/or their counsel;
 - (c) approving the Sales Process set out in paragraphs 90 to 102 of the First Report of the Receiver dated March 15, 2018, without first determining any damage after the date of the Receivership Order and the availability of any insurance coverage therefore;
 - (d) failing to deal with at least any damage, and in particular snow load damage to the greenhouses, while the receiver and/or monitor was in possession of the Greenhouses, and any insurance coverage for same, prior to ordering the eviction and the Sale Process;
 - (e) increasing the Receiver's Borrowing Limit from \$250,000.00 to \$1,000,000.00 without proper disclosure of the allegations supporting same;

- (f) discharging and releasing the Monitor from liability, save and except gross negligence or wilful misconduct, without first determining the nature and extent of any damage to the greenhouses and in particular snow load damage, any insurance therefore, and the circumstances related thereto, and any liability as between the monitor and the Receiver with respect to such damage and any failure to make a proper claim for any damage covered by insurance;
- (g) approving a Sale Process that was exceedingly short for a unique property, the greenhouses, which require a significantly greater period of time and extent of exposure to justly or conveniently dispose of the real property comprising the greenhouses; and
- (h) granting the Order made March 22, 2018, and failing to grant an adjournment having regard to:
 - (i) the severity of the relief requested, especially the requested eviction order;
 - (ii) proceeding on the basis of the sealed “Confidential Brief”, a copy of which was not given to counsel for G.I. Farms Inc. or any of the Defendants, or Mr. Porrone or his family, against whom an eviction order was being sought;
 - (iii) the removal of counsel for the Defendants, in effect leaving the Defendants and indirectly Mr. Porrone and his family, as self-represented;
 - (iv) the lack of any immediate urgency;
 - (v) the lack of any meaningful opportunity to respond to the allegations of the Receiver on the Motion; and
 - (vi) any lack of the minimum notice required for a Motion as set out in the Rules of Civil Procedure.

4. The Motions Judge misapplied the test of “just and convenient” and misapprehended the evidence in making the Order.

THE BASIS FOR THE APPELLATE COURT’S JURISDICTION IS:

5. Sections 193(a), 193(c) and 193(e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3;
6. Sections 6(1)(b) and 6(2) of the *Court of Justice Act*;
7. Section 243(1), of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3;
8. Rules 31(1) and 32(2) of the *Bankruptcy and Insolvency General Rules*.
9. The Order appealed from involves in part a future right and/or the property involved in the appeal exceeds in value ten thousand (\$10,000.00 dollars).
10. Leave to appeal is not required for at least part of the requested relief, and leave is hereby requested any relief requested by the Appellants not permitted under Sections 193(a) or 193(c) of the *Bankruptcy and Insolvency Act*.

April 12, 2018

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CAISSE POPULAIRE POINTE-AUX-ROCHES-TECUMSEH INC. -and- G.I. FARMS INC. et al
Plaintiff
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Defendants
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Ontario
COURT OF APPEAL
Proceedings commenced at
TORONTO

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