

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY and INSOLVENCY

B E T W E E N :

BANK OF MONTREAL

Applicant

- and -

**597193 ONTARIO LTD., FRANK SCHROYENS,
MONIQUE SCHROYENS and DANIEL SCHROYENS**

Respondent

**FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED, IN ITS CAPACITY AS
RECEIVER OF 597193 ONTARIO LTD., FRANK SCHROYENS,
MONIQUE SCHROYENS and DANIEL SCHROYENS**

December 23, 2016

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1.1 Introduction

- 1.1.1 598193 Ontario Ltd (the “Debtor”) formerly operated as a grower, packer and distributor of shallots and other vegetables to grocery retailers in Canada. The Company is headquartered in Straffordville, Ontario, and had approximately 7 employees.
- 1.1.2 On a motion brought by BMO on December 8, 2016, the Ontario Superior Court of Justice (the “Court”), issued an order appointing BDO as Receiver (the “Receiver”) of the Property of Debtor and the Farms (as defined below) owned personally by the Frank Schroyens, Monique Schroyens and Daniel Schroyens, (the “Schroyens”), pursuant to subsection 243 of the BIA and section 101 of the Courts of Justice Act (the “Appointment Order”), substantially in the form of the Model Order. A copy of the Appointment Order is attached as **Appendix A**.
- 1.1.3 The Debtor rents approximately 326 tillable acres of land and a 21,000 square foot head office and warehouse located at 54884, 55016 and 55314 Jackson Line, Straffordville, ON from the Schroyens.
- 1.1.4 After several years of profitability, the Debtor’s business faced recent challenges with loss of the pepper and squash crop in 2015, due to frost, and the inability to buy seed for the 2016 crop year. The Debtor did not grow any vegetables in 2016 and is currently operating as an importer and distributor of shallots.
- 1.1.5 The directors of the Debtor are:
- (a) Mr. Frank Schroyens;
 - (b) Mr. Gunther Schroyens;
 - (c) Ms. Betty Schroyens; and,
 - (d) Mr. Daniel Schroyens (together the “Principals”).
- 1.1.6 On or about May, 2014, the Bank of Montreal (“BMO” of the “Bank”) entered into four credit facility agreements with the Debtor on which approximately \$4.4 million is owing. The facilities are as follows (the “BMO Credit Facility”):
- (a) An operating loan with a \$400,000 maximum;
 - (b) A non-revolving demand loan in the original principal amount of \$3,882,000;
 - (c) A non-revolving demand loan in the original principal amount of \$450,000; and,
 - (d) Corporate MasterCard with a limit of \$50,000.
- 1.1.7 As security for the BMO Credit Facility, BMO was granted the following security:
- General Security Agreement over the personal property of the Debtor dated May 2, 2014, covering all of the assets of the Debtor;

- security under section 427 of the *Bank Act* dated May 9, 2014;
 - a collateral mortgage from Frank Schroyens and Monique Schroyens in the amount of \$2,963,000 registered as instrument number CT103421 against the lands located at 54884 Jackson Line and 55016 Jackson Line;
 - a collateral mortgage from Frank Schroyens and Monique Schroyens in the amount of \$400,000 registered as instrument number CT103423 against the lands located at 54884 Jackson Line and 55016 Jackson Line;
 - a collateral mortgage from Daniel Schroyens in the amount of \$400,000 registered as instrument number CT103422 against the lands located at 55314 Jackson Line; and,
 - a collateral mortgage from Daniel Schroyens in the amount of \$919,000 registered as instrument number CT103424 against the lands located at 55314 Jackson Line.
- 1.1.8 Frank Schroyens, Monique Schroyens and Daniel Schroyens have guaranteed the liabilities of the Debtor to BMO to a maximum principal amount of \$4,782,000.
- 1.1.9 As of October 26, 2016, the Debtor was indebted to BMO in the approximate amount of \$4.4 million.
- 1.1.10 BMO issued formal demand for payment on July 18, 2016 and served Notice of Intention to Enforce Security on the Debtor, pursuant to section 244 of *The Bankruptcy and Insolvency Act* ("BIA") on the same day. The Debtor was also served with the notice pursuant to section 21 of the *Farm Debt Mediation Act* ("FDMA") on July 18, 2016.
- 1.1.11 The Appointment Order is in the form of the Model Order and empowered and authorized but did not obligate the Receiver to do, among other things, the following:
- (a) Take possession of and exercise control over all of the property.
 - (b) Take possession of and exercise control of any and all proceeds, receipts and disbursements arising out of or from the property.
 - (c) Receive, preserve, and protect the property, or any part or parts thereof, including, but not limited to, changing the locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable.
 - (d) Manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor.
 - (e) Receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor.
 - (f) Sell, convey, transfer, lease or assign the property or any part or parts thereof out of the ordinary course of business without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000 and with the approval of the Court in which the purchase price exceeds these monetary thresholds.

1.1.12 The Appointment Order also authorized the Receiver to market the Farms (as defined below) and the Debtor's assets subject to Court approval.

1.2 Purpose of Receiver's First Report

1.2.1 This constitutes the Receiver's first report to the Court in this matter (the "**First Report**") and it is filed to:

- report on the Receiver's activities;
- request approval of the Receiver's proposed sale process for the Debtor's assets;
- request approval of the Receiver's proposed sale process for the Farms; and,
- request the approval of the fees and disbursements of the Receiver.

2.1 Possession

2.1.1 Following its appointment the Receiver attended at the following locations (together the "Farms"):

- (i) 54884 Jackson Line in Straffordville¹ ON;
- (ii) 55016 Jackson Line in Straffordville² ON; and,
- (iii) 55314 Jackson Line in Straffordville³ ON.

The Farms are owned personally by the Schroyens. The Receiver met with Mr. Frank Schroyens, Mr. Gunther Schroyens and Ms. Monique Schroyens and served them with a copy of the Appointment Order. The Receiver noted that operations were in progress and that the Debtor has approximately 7 employees working for the Debtor.

2.1.2 The Receiver's counsel has registered a copy of the Appointment Order on title to the Farms.

2.1.3 The Receiver photographed the Farms, equipment and inventory in order to document the condition at the time of the Receiver's appointment and conducted a physical inventory of the Debtor's rolling stock and fixed assets.

2.1.4 A complete physical inventory was completed by the Receiver with the assistance of the Debtor's employees.

2.2 Receiver's Banking

2.2.1 After its appointment on December 8, 2016, the Receiver notified the Debtor's bank of its appointment and requested that all accounts be frozen for deposit only.

2.2.2 The Receiver immediately made arrangements for a new account for the Receiver to facilitate future receipts and disbursements with respect to the receivership administration.

2.3 Notice

2.3.1 The Receiver prepared and issued a combined notice pursuant to Section 245(1) and 246(1) of the BIA to the Office of the Superintendent of Bankruptcy and to all known creditors of the Company (the "Receiver's Notice"). A copy of the Receiver's Notice is attached hereto at **Appendix B**.

2.4 Insurance

2.4.1 The Receiver requested copies of the Debtor's insurance policies in respect of its assets and operations. The Receiver was provided with a copy of the Debtor's insurance policies held with Intact Insurance and sent a notice for the coverage to continue and for the Receiver to be added as an additional named insured.

¹ Owned by Frank and Monique Schroyens

² Owned by Frank and Monique Schroyens

³ Owned by Daniel Schroyens

2.4.2 The insurance company has confirmed that the Receiver has been added as an additional named insured.

2.5 Employees

2.5.1 Pursuant to paragraph 14 of the Appointment Order, the Debtor's employees remained employees of the Debtor after the appointment of the Receiver. Paragraph 14 of the Appointment Order also provided the Receiver with the authority to terminate the Debtor's employees. The Receiver continued the operations of the Debtor on a limited basis and will issue termination letters to employees as their services are no longer required. The Receiver will arranged to have the employee record of employment and T4's prepared and sent to any terminated employees.

2.6 Goods in Transit

2.6.1 As at the date of receivership the Debtor had two inbound shipments in transit (the "Goods in Transit") with Buckland Customs Brokers Ltd. ("Buckland"). Buckland was not paid for the shipping charges related to the Goods in Transit.

2.6.2 The Goods in Transit had a total landed cost of approximately \$75,000 and had not been pre-paid for by the Debtor.

2.6.3 The Receiver reviewed the Debtor's cashflow and determined that continuing the operations and distributing the shallots would provide positive cashflow.

2.6.4 The Receiver contacted Buckland and made the necessary arrangements to receive the Goods in Transit.

2.7 Land Severance

2.7.1 Prior to the appointment of the Receiver, the Schroyens applied to the County of Elgin to sever the following land:

- (i) The lands known municipally as 54884 Jackson Line from the lands known municipally as 55016 Jackson Line;
- (ii) The residence fronting on to 55016 Jackson Line together with 2.5 acres from the remaining land at 55016 Jackson Line; and,
- (iii) The residence fronting on to 55314 Jackson Line together with 9.5 acres from the remaining land at 55314 Jackson Line.

2.7.2 If all three severance applications are successful the Schroyens would own five separate lots.

2.7.3 As at the date of this report none of the severance applications have been completed; however, the County of Elgin has approved the following severances:

- (i) The lands known municipally as 54884 Jackson Line from the lands known municipally as 55016 Jackson Line; and,
- (ii) The residence fronting on to 55016 Jackson Line together with 2.5 acres from the remaining land at 55016 Jackson Line.

The severances will not be complete until all of the conditions in the County of Elgin approvals have been met.

2.7.4 Completing of the land severances potentially increases the marketability of the Farms as potential buyers could buy any or all of the lots. The Receiver will therefore continue with the applications and take the necessary steps to complete the severance, subject to the approval of the County of Elgin.

2.8 CRA

2.8.1 Following its appointment, the Receiver requested that CRA perform an audit of the Company's source deduction account up to the date of receivership. CRA has not yet scheduled the audit.

2.8.2 The Receiver requested a new HST account to be opened for the Receiver's reporting and remitting purposes.

2.9 Independent Counsel

2.9.1 The Receiver has retained Harrison Pensa LLP ("Harrison") as independent counsel. Harrison has reviewed the security documentation from BMO and provided the Receiver with an opinion on the validity, priority and enforceability of the security as amongst the secured creditors and as against the unsecured creditors.

2.9.2 In the opinion of Harrison, the security of BMO is perfected and enforceable as against the Debtor and the Receiver. In addition, the mortgage registered by BMO on title to the Farms is enforceable as against the Debtor, the Schroyens and the Receiver.

2.9.3 The Security opinion of Harrison is attached as **Appendix C**.

3.0

SALES AND ACCOUNTS RECEIVABLE

- 3.1.1 The Receiver has permitted the the Debtor to continue in business on a limited basis in order to maximize the recovery of the accounts receivable and other assets.
- 3.1.2 The Receiver has permitted the Debtor to continue to accept orders from existing customers for shallots under the same terms and conditions that were in place prior to the appointment of the Receiver.
- 3.1.3 From the date of its appointment to December 20, 2016, the Receiver has completed approximately \$41,600 in sales inclusive of HST. Due to the terms given on these sales, no collections on these sales have been made as of the date of this report.
- 3.1.4 As at the date of the Appointment Order, the books and records of the Debtor indicated that outstanding accounts receivable were approximately \$85,400. As at December 19, 2016 the Receiver has collected approximately \$37,900 in accounts receivable. No amounts have been identified as uncollectable. The net account receivable as at December 20, 2016 are approximately \$47,500 plus \$41,600 in Receiver sales for a total of \$89,100.

- 4.1 **597193 Ontario Ltd. Proposed Sales Process**
- 4.1.1 The Appointment Order empowered the Receiver to market any or all of the property of the Debtor.
- 4.1.2 The assets of the Debtor are summarized as:
- (i) Farming equipment
 - (ii) Packaging and shipping equipment
 - (iii) Truck and trailer
 - (iv) Inventory
- 4.1.3 The Receiver recommends the sale of the Debtor's assets by an invitation for proposals process conducted by the Receiver (the "**Sales Process**"). The timing of the commissioning of appraisals, the advertising of the Invitation for Offers, the distribution of the CIM's (as defined below) and deadline for offers will be set in the discretion of the Receiver. The invitation for proposals process will provide that there be a minimum 25 days between the date advertisements are placed and offers are accepted.
- 4.1.4 The Receiver is of the view that this approach is the most effective method of maximizing exposure of the Debtor's assets to the market and of ensuring the assets are sold in a commercially reasonable manner thus maximizing the recoveries for the various stakeholders of the Debtor. The Receiver will rely on an equipment appraisal commissioned following its appointment.
- 4.1.5 The Receiver intends to advertise the Invitation for Offers in both the print and online edition of The Globe and Mail, The Tillsonburg News, The London Free Press and the KW Record. In addition, the Receiver will circulate highlights of the Debtor's assets and the sale process to potential buyers identified by the Principals, auctioneers, liquidators and on its own internal network of BDO partners in ninety-five (95) BDO Canada offices across Canada.
- 4.1.6 Parties expressing an interest in obtaining detailed information about the Debtor's assets will be required to execute a Confidentiality and Non-Disclosure Agreement ("**NDA**").
- 4.1.7 The Receiver will prepare a Confidential Information Memorandum ("**CIM**") containing information relating to the Debtor, customer details, asset listing, historical financial information and terms and conditions of the Receiver's sale process.
- 4.1.8 The CIM will also make note of the fact that the Farms are being marketed for sale, will provide information on the Farms and direct any interested parties to contact the Receiver.
- 4.1.9 The Receiver will establish a data package ("**Data Package**") to make relevant information available to interested parties. Access to the Data Package will be restricted to parties who have executed the NDA. The Data Package will be sent to all interested parties by the Receiver.
- 4.1.10 Among other documents, the Data Package will contain the CIM, historical financial information, assets listing, customer lists, supplier agreements and a form of Agreement of Purchase and Sale to be used for the submission of offers.

4.1.11 The terms and conditions of the sale will include, *inter alia*, the following

- (i) That the process should not be construed as a 'Sale by Tender';
- (ii) The highest or any offer will not necessarily be accepted and the Receiver reserves the right to reject any or all offers without explanation;
- (iii) a deadline for the receipt of offers, but the Receiver shall have the discretion to accept an offer either before or after the deadline;
- (iv) Acceptance of all offers is subject to approval of the Court;
- (v) A deposit in certified funds equal to fifteen (15) per cent of the offer price must accompany all offers;
- (vi) The balance of the purchase price is to be paid by certified funds, direct deposit or wire transfer at the time of closing. The Receiver will not accept offers that include Vendor Take Back financing as payment of the purchase price or a portion thereof;
- (vii) Sale is on an "as is, where is" basis without representations and warranties of any kind;
- (viii) Offer to be submitted using the Receiver's draft terms and conditions and form of offer; and,
- (ix) Transfer of title will be by way of vesting order.

4.2 Farms Proposed Sales Process

- 4.2.1 The Appointment Order empowered the Receiver to market any or all of the Farms owned personally by the Schroyens.
- 4.2.2 The Receiver recommends obtaining listing proposals from at least three experienced agricultural relators and list the Farms for sale.
- 4.2.3 The proposed listing price and sales timeline will be determined in collaboration with the Receiver, realtors and the stakeholders.

- 5.1 **Appendix D**, attached, presents a summary of the Receiver's Statement of Receipts and Disbursements for the period December 8, 2016 to December 20, 2016. As is illustrated, receipts total approximately \$37,900, related to the collection of accounts receivable. The Receiver has made disbursements of approximately \$15,400, primarily related to payroll, packaging and freight. As at December 20, 2016 the Receiver has approximately \$22,500 in its trust account.

- 6.1 Pursuant to paragraph 18 of the Appointment Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and the fees and disbursements of its Counsel, constitute the "Receiver's Charge".
- 6.2 The fees and disbursements of the Receiver for the period from appointment through to December 17, 2016 are detailed in the affidavit of Michael J. Hanson, a copy of which is attached as **Appendix E**.
- 6.3 The Receiver has submitted one invoice as follows:
- 6.4 The Receiver's fees from the date of the Appointment Order through to December 17, 2016 encompass 57.5 hours at an average hourly rate of approximately \$353.74 and disbursements of \$634.52 for a total of \$20,974.52 prior to applicable taxes.
- 6.5 The Receiver is therefore requesting that the Court approve its total fees and disbursements inclusive of applicable taxes in the amount of \$23,701.21.

7.0

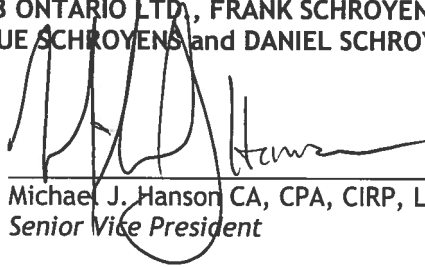
RECOMMENDATIONS AND ORDER SOUGHT

7.1 The Receiver respectfully submits this First Report to the Court in support of the Receiver's motion to:

- approve the First Report the activities of the Receiver as described herein;
- approve the proposed sales process for the Debtor's assets;
- approve the proposed sales process for the Farms; and,
- approve the fees and disbursements of the Receiver as described herein.

All of which is respectfully submitted this 23rd day of December, 2016.

**BDO CANADA LIMITED
COURT-APPOINTED RECEIVER OF
597193 ONTARIO LTD., FRANK SCHROYENS,
MONIQUE SCHROYENS and DANIEL SCHROYENS**



Per: Michael J. Hanson CA, CPA, CIRP, LIT
Senior Vice President