

File No. CI 24-01-45056

**THE KING'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3 AS AMENDED, AND SECTION 55
OF *THE COURT OF KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

**GENESUS INC., CAN-AM GENETICS INC. and
GENESUS GENETICS INC.,**

Respondents.

APPROVAL AND VESTING ORDER

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File No. 0128056.00004

THE KING'S BENCH

Winnipeg Centre

THE HONOURABLE MR.

)

FRIDAY, THE 26th

JUSTICE BOCK

)

DAY OF JULY, 2024

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3 AS AMENDED, AND SECTION 55
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**GENESUS INC., CAN-AM GENETICS INC. and
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Respondents.

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Genesus Inc. ("**Genesus**"), Can-Am Genetics Inc. ("**Can-Am**") and Genesus Genetics Inc. ("**GGI**", and together with Genesus and Can-Am, the "**Debtors**") for an order approving the sale transaction (the "**Reworked Transaction**") contemplated by an agreement of purchase and sale (the "**Reworked APA**") between the Receiver and Genesus Genetic Technology Inc. (the "**Purchaser**") dated July 23, 2024 and appended in a redacted form to the Second Report of the Receiver dated July 24, 2024 (the "**Second Report**") and in an unredacted form to the Confidential Supplement to the Second Report of the Receiver dated July 24, 2024 (the "**Confidential Supplement**") and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Reworked APA (the

"Purchased Assets"), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the First Report of the Receiver filed July 3, 2024, the Confidential Supplement to the First Report of the Receiver filed July 3, 2024, the Affidavit of Colby Ferbers sworn July 3, 2024, the Second Report, and the Confidential Supplement, and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser, counsel for the Bank of Montreal, counsel for Farm Credit Canada, and counsel for Design Genetics Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Kari Rios sworn July 25, 2024.

1. THIS COURT ORDERS AND DECLARES that the time for service of the Receiver's Notice of Motion and the supporting materials is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the Reworked Transaction is hereby approved, and the execution of the Reworked APA by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Reworked Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "1"** hereto (the **"Receiver's Certificate"**), all of the Receiver's and Debtors' right, title and interest in and to the Purchased Assets described in the Reworked APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or

filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Chartier dated June 11, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”).

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors’ records pertaining to the Debtors’ past and current employees, including personal information of the Target Employees (as defined in the Reworked APA). The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct or action other than in good faith pursuant to any applicable federal or provincial legislation.

8. THIS COURT AUTHORIZES AND DIRECTS the Receiver to assign the contracts (the “**Assigned Contracts**”) listed in Schedule “C” of the Reworked APA to the Purchaser.

9. THIS COURT ORDERS AND DECLARES that upon the delivery of the Receiver’s Certificate and payment of any Cure Costs (as defined in the Reworked APA) associated with such Assigned Contracts: (i) all of the rights and obligations of the Debtors under and to the Assigned Contracts shall be assigned, conveyed and transferred to, and assumed by, the Purchaser; and (ii) the assignment of the Assigned Contracts is hereby declared valid and binding upon all of the counterparties to the Assigned Contracts, notwithstanding any restriction, condition or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.

10. THIS COURT ORDERS AND DECLARES that the assignment and transfer of the Assigned Contracts shall be subject to the provisions herein directing that the Receiver’s and the Debtors’ rights, title and interests in the Purchased Assets shall vest absolutely

in the Purchaser free and clear of all Encumbrances in accordance with the provisions of this Order.

11. THIS COURT ORDERS AND DECLARES that, no counterparty under any Assigned Contract, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of any Assigned Contract shall make or pursue any demand, claim, action or suit or exercise any right or remedy under such Assigned Contract against the Purchaser relating to:

- (a) the Applicant having sought or obtained relief under the *Bankruptcy and Insolvency Act* (Canada) against the Debtors;
- (b) the insolvency of the Debtors; or
- (c) any failure by the Debtors to perform a non-monetary obligation under any Assigned Contract;

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the delivery of the Receiver's Certificate under the Assigned Agreements other than in respect of items (a) to (c) above.

12. THIS COURT ORDERS AND DECLARES that the Confidential Supplement be filed under seal, kept confidential and is not to form part of the public record, and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge, until:

- (a) further order of the Court; or
- (b) the Reworked Transaction has closed;

whichever shall first occur, at which time the Confidential Supplement shall be unsealed and thereafter form part of the public record.

13. THIS COURT ORDERS that the actions of the Receiver to date in respect of its administration of these receivership proceedings and the Second Report, including the

statements of receipts and disbursements contained in the Second Report and the activities of the Receiver described therein are hereby approved;

14. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

_____, 2024

Ted Bock Digitally signed by Ted Bock
Date: 2024.07.26 12:30:37
-05'00'

Bock, J.

I, ANJALI SANDHU, OF THE FIRM OF MLT AIKINS LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

Catherine Howden, Pitblado LLP, counsel for the Applicant;

Melanie LaBossiere, DLA Piper (Canada) LLP, counsel for ZF Investments and the Purchaser;

Charles Roy, Taylor McCaffrey LLP, counsel for Farm Credit Canada; and

Andrew Derwin, MLT Aikins LLP, counsel for Design Genetics Inc.

AS DIRECTED BY THE HONOURABLE MR. JUSTICE BOCK

Schedule “1” – Form of Receiver’s Certificate

File No. CI 24-01-45056

**THE KING’S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS
AMENDED, AND SECTION 55 OF *THE COURT OF KING’S BENCH*
ACT, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

**GENESUS INC., CAN-AM GENETICS INC. and
GENESUS GENETICS INC.,**

Respondents.

RECEIVER’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Mr. Justice Chartier of the Manitoba Court of King’s Bench (the “**Court**”) dated June 11, 2024, BDO Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Genesus Inc. (“**Genesus**”), Can-Am Genetics Inc. (“**Can-Am**”) and Genesus Genetics Inc. (“**GGI**”, and together with Genesus and Can-Am, the “**Debtors**”).
- B. Pursuant to an Order of the Court pronounced July 26, 2024, the Court approved the agreement of purchase and sale made as of July 23, 2024 (the “**Reworked APA**”) between the Receiver and Genesus Genetic Technology Inc. (the “**Purchaser**”), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Reworked Transaction has been completed to the satisfaction of the Receiver.

Original Court Copy

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Reworked APA.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Reworked APA;
2. The conditions to Closing the Reworked APA have been satisfied or waived by the Receiver and the Purchaser; and
3. The Reworked Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

BDO CANADA LIMITED, in its capacity as Receiver of the undertaking, property and assets of Genesus Inc., Can-Am Genetics Inc. and Genesus Genetics Inc., and not in its personal capacity

Per: _____
Name:
Title: