

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.

CROSS-EXAMINATION OF: ED BARRINGTON

CROSS-EXAMINATION BY: R. SCHWARTZ

CROSS-EXAMINATION DATE: FEBRUARY 27, 2025

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This is the cross-examinations on affidavits affirmed February 9, 2024, May 28, 2024, and January 15, 2025, of ED BARRINGTON, a representative of the above-named applicant, viva voce, on oath, had and taken by TESSA SCHNEIDER, an Official Court Reporter, in this Honourable Court, via Microsoft Teams, on the 27th of February, 2025.

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UNDERTAKINGS

****THE FOLLOWING IS A LIST OF UNDERTAKINGS AND REQUESTS
ENTERED IN THE TRANSCRIPT. THIS LIST IS PROVIDED FOR
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No.	Description	Page
1	TO PROVIDE DOCUMENTATION THAT WAS IN EFFECT INDICATING THE INTERNAL VALUATION OF THE COLLATERAL AS AT JANUARY OR FEBRUARY OF 2023, WHENEVER IT IS THAT SPECIAL LOANS FIRST BECAME INVOLVED (TAKEN UNDER ADVISEMENT)	7
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OBJECTIONS

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(PROCEEDINGS COMMENCED AT 9:58 A.M.)

ED BARRINGTON, Affirmed, Questioned by Mr. Schwartz

1 Q Good morning, Mr. Barrington.

2 A Good morning.

3 Q You're here today to be cross-examined on what
4 I think are a total of three affidavits: The
5 initial affidavit you filed or affirmed on
6 February 9th of 2024; a supplemental affidavit that
7 was affirmed -- in or, rather, on -- I'll get the
8 date in just a moment -- May 28th of 2024; and more
9 recently an affidavit filed specifically with
10 respect to the motion filed by my client, Sea Air,
11 on January 15th, 2025. Do I have that right?

12 A I believe so.

13 Q I didn't see any other affidavits from you on
14 the pocket, and I haven't been served with anything
15 else; so I think that's a complete record, at least
16 vis-à-vis your affidavits are concerned.

17 So if I understand what I read correctly, the
18 lending relationship between Bank of Montreal and
19 Genesus -- I'll use that term broadly to include
20 all the various Genesus entities -- began in 2011;
21 is that right?

1 A Sounds right.

2 4 Q And that continued continuously thereafter up
3 until at least until the date of the receivership
4 order made in June of 2024. Am I right about that
5 as well?

6 A The relationship was transferred to me earlier
7 than that.

8 5 Q No. I appreciate that. But the overall
9 lending relationship between BMO and Genesis
10 started in 2011 and continued up until at least
11 June of 2024?

12 A Yes.

13 6 Q From your initial affidavit of February 9th,
14 2024, I see that there's an initial lending
15 agreement or commitment in 2011, but that there
16 were a series of amending agreements in 2019, 2020,
17 2021, and 2022. Do you recall that, sir?

18 A I wasn't involved then, but yes.

19 7 Q Yeah. From your review in the file and as set
20 out in paragraph 8 of your first affidavit, that
21 certainly appears to be the case -- that there were
22 a series of amendments over the course of a number
23 of years?

24 A Yes.

25 8 Q All right. And I don't see from your

1 affidavits, generally -- the lending agreements
2 themselves aren't all attached. But as I
3 understand it, that Bank of Montreal prior to
4 September of 2023 did not take any mortgage
5 security from Genesus. Do I have that right?

6 A That sounds right. It was around then that
7 the mortgage was taken, yes.

8 9 Q I think the mortgage itself was actually taken
9 sometime thereafter. September 30th of 2023 is the
10 date of the --

11 A Right.

12 10 Q -- forbearance agreement. And I think a
13 mortgage was given and registered on behalf of
14 Bank of Montreal in October of that year.

15 The question that arises from that is why no
16 mortgage security prior to that date?

17 A I wasn't involved in the file, so I'm not sure
18 how the original deal was negotiated or subsequent
19 amendments, yeah.

20 11 Q Would environmental concerns be one of the
21 reasons that Bank of Montreal decided not to take a
22 mortgage prior to October of 2023?

23 MS. HOWDEN: Well, objection, Rick. I'm not
24 sure he can speculate on why it wasn't granted.
25 He's indicated he wasn't involved and, you know,

1 that there wasn't mortgage security up until the
2 mortgage that's at issue here.

3 **(OBJECTION TO QUESTION 1)**

4 BY MR. SCHWARTZ:

5 12 Q From your review of the file, Mr. Barrington,
6 either in preparation for today or in preparation
7 for the application to appoint a receiver, was
8 there anything that you saw that indicated that
9 Bank of Montreal had a concern with environmental
10 issues with respect to Genesis' operation?

11 A No.

12 13 Q But prior to taking the mortgage in October
13 of 2023, what collateral was secured to
14 Bank of Montreal?

15 MS. HOWDEN: Well, I don't know how he can
16 answer that. I mean, you've got all of the
17 security documents. I think they speak for
18 themselves.

19 MR. SCHWARTZ: Well, sure. But I'm here to
20 ask Mr. Barrington about what his understanding is.

21 A Do you want me to list -- I mean, it's
22 documented there. There's a ton of security
23 documents.

24 BY MR. SCHWARTZ:

25 14 Q All right. Let me help you out. I mean,

1 lawyers like to say these things aren't memory
2 tests; they sort of are. But you're right, and
3 Ms. Howden's certainly right that there are
4 security documents. And from those I see that the
5 Bank had security over the hog inventory owned by
6 Genesis; its equipment; its accounts receivable, it
7 various patents; and, no doubt, there are other
8 incidental bits of property that are part and
9 parcel to that.

10 The question that arises from that is how did
11 the Bank value that collateral internally as at the
12 date that special loans first became involved in
13 early 2023?

14 A Well, we would have been receiving, I believe,
15 regular reporting that outlines the accounts
16 receivables, inventory amounts. And then typically
17 we'll discount from what's reported -- which would
18 be market value, typically -- to a discounted value
19 that the Bank allocates value to.

20 15 Q Depending upon the collateral itself, that is,
21 the type of collateral, there would be a different
22 discount for different collateral, I presume?

23 A Typically, it's pretty standard to be
24 75 percent, but occasionally it's 50 percent of
25 inventory. 75 percent is typical of receivables.

1 16 Q Thank you. And there would be internal
2 documentation to that effect when you first became
3 involved in the file?

4 A There's internal reviews that are required by
5 us where it's documented.

6 17 Q I'd like to see whatever documentation that
7 was in effect that valued the collateral as at
8 January or February of 2023, whenever it is that
9 special loans first became involved. Will you
10 undertake to produce that?

11 MS. HOWDEN: I'll take it under advisement.

12 A It's an internal credit application.

13 BY MR. SCHWARTZ:

14 18 Q Whatever the documentation is, Mr. Barrington,
15 I'm interested in seeing what it was as at January,
16 February of 2023. Ms. Howden said that she'll get
17 back to me as to whether or not that undertaking --

18 MS. HOWDEN: Yeah. And to --

19 MR. SCHWARTZ: -- will be given.

20 MS. HOWDEN: Not to interrupt. Just to be
21 clear on what you're looking for, you want to know
22 what the internal valuation was at the time it
23 entered in special loans in February 2023?

24 MR. SCHWARTZ: Yes.

25 MS. HOWDEN: That's what you're looking for?

1 Okay. We'll take that under advisement.

2 MR. SCHWARTZ: Thank you.

3 **UNDERTAKING NO. 1: TO PROVIDE DOCUMENTATION THAT WAS IN**
4 **EFFECT INDICATING THE INTERNAL VALUATION OF THE**
5 **COLLATERAL AS AT JANUARY OR FEBRUARY OF 2023, WHENEVER IT**
6 **IS THAT SPECIAL LOANS FIRST BECAME INVOLVED**
7 **(TAKEN UNDER ADVISEMENT)**

8 BY MR. SCHWARTZ:

9 19 Q All right. As we've just discussed and is
10 apparent from your affidavits, more than one, your
11 involvement began in early 2023. And from what I
12 read, you had discussions with the principals of
13 Genesis including Mr. Long and Mr. Klippenstein?

14 A Yes. Jim Long was the Bank contact, so my
15 communication was primarily with Jim but also with
16 Trevor as needed on the day-to-day items.

17 20 Q Thanks. That was my next question, who your
18 primary contact was and the reason for each, so
19 thank you for that. I understand that as part and
20 parcel of your involvement -- or following your
21 initial involvement, the Bank retained BDO in March
22 of 2023. Do I have that right?

23 A Yes.

24 21 Q And I take it that BDO would have been
25 retained to provide the Bank, at least -- if not

1 the company as well -- with advice as to how it
2 might resolve -- how Genesus might resolve its
3 financial difficulties?

4 A I'd have to look at the engagement letter, but
5 the idea is to have BDO go in to communicate
6 clearly to the Bank what's happening, give an
7 opinion on our security, and ideally to help the
8 client get out of a difficult financial situation.

9 22 Q And there would have been reports and cash
10 flows produced as a result of that engagement, I
11 take it?

12 A Yes.

13 23 Q I'd like to see those as well. Do I have an
14 undertaking to provide them?

15 MS. HOWDEN: On what basis are you saying
16 they're relevant to the issue of the mortgage and
17 the motion that's before the Court?

18 MR. SCHWARTZ: Well, the Bank certainly
19 improved its security position as a result of the
20 forbearance agreement. I'd like to know what it
21 thought its security position was prior to the
22 forbearance agreement being entered into.

23 MS. HOWDEN: Well, you know, I think that
24 you're asking for a fairly broad period of time
25 here in terms of what BDO was reporting. I'm not

1 sure that it's particularly relevant. Clearly, the
2 company was insolvent at the time the forbearance
3 was entered into. You know, are you asking for
4 every report and cash flow that was prepared by BDO
5 throughout its retainer?

6 MR. SCHWARTZ: At this point I'm simply
7 looking for the initial report and cash flows.

8 MS. HOWDEN: Okay. We'll take that under
9 advisement.

10 MR. SCHWARTZ: Thank you.

11 **UNDERTAKING NO. 2: TO PROVIDE INITIAL REPORT AND CASH**
12 **FLows PREPARED BY BDO PERTAINING TO GENESUS AND PROVIDED**
13 **TO BANK OF MONTREAL**

14 **(TAKEN UNDER ADVISEMENT)**

15 BY MR. SCHWARTZ:

16 24 Q Jumping ahead just a little bit, but based
17 upon what I see in paragraph 6 of your
18 February 9th, 2024, affidavit, Mr. Lewis at BDO
19 indicated to you that there were approximately --
20 or almost 18,000 hogs in Genesis' inventory as at
21 January of 2024. Do you recall that, sir?

22 A I'm not looking at that particular paragraph,
23 but I seem to recall it was about that amount.

24 25 Q Did you have an understanding of what the
25 market value was at the time of those almost 18,000

1 hogs?

2 A It's probably documented in the independent
3 business review prepared by BDO.

4 26 Q I'd like to see that review as well if it's
5 different --

6 MS. HOWDEN: Sorry. I'm just trying to find
7 the paragraph you're referring to -- you were
8 cutting out a little bit, Rick -- in the affidavit.

9 MR. SCHWARTZ: It's paragraph 6 of the
10 February 9th affidavit. Sorry. It might be -- no,
11 that's right. The exact number is -- "17,702 live
12 hogs in its Manitoba facilities" is what that
13 paragraph says.

14 MS. HOWDEN: And you're asking what the
15 stated market value was at the time?

16 MR. SCHWARTZ: Yes. If the Bank had any
17 indication of what the value was of those hogs at
18 that time, presumably from BDO.

19 MS. HOWDEN: Okay. And you're wanting
20 disclosure of what their estimate of market value
21 was in January 2024?

22 MR. SCHWARTZ: Yes.

23 MS. HOWDEN: We'll take that under
24 advisement. I presume it's in the reports, but I
25 don't know if we have our hands on it. I'll have a

1 look.

2 MR. SCHWARTZ: Thank you.

3 **UNDERTAKING NO. 3: TO PROVIDE THE ESTIMATE OF THE MARKET**
4 **VALUE OF THE 17,702 LIVE HOGS IN GENESUS' MANITOBA**
5 **FACILITIES AS OF JANUARY 2024**
6 **(TAKEN UNDER ADVISEMENT)**

7 BY MR. SCHWARTZ:

8 27 Q And similarly -- and it's not in any of your
9 affidavits that I could see, Mr. Barrington -- but
10 I take it that you would have been continually
11 apprised of the size of the herd and the value of
12 the herd throughout your involvement?

13 A No. We tried. There was a period where there
14 was lack of reporting or inaccurate reporting. It
15 came to our attention under the forbearance
16 agreement that there was a significant amount of
17 inventory sold that didn't come to the
18 Bank of Montreal.

19 28 Q Yes, I saw that. But I'm interested more in
20 the period immediately prior to the forbearance
21 agreement being executed. So let me be more
22 specific, then, in my question. Do you have
23 anything on file to indicate the size of the herd
24 in September of 2023 and what the value of the herd
25 was at that time?

1 A I'm not sure.

2 29 Q If you could please undertake to look, and if
3 there is a valuation of the herd as at that date
4 both in terms of size and market value, I'd like to
5 see it, please.

6 MS. HOWDEN: Okay. We'll take that under
7 advisement as well.

8 MR. SCHWARTZ: Thanks.

9 **UNDERTAKING NO. 4: TO MAKE BEST EFFORTS TO PROVIDE ANY**
10 **DOCUMENTATION THAT WOULD SHOW THE VALUATION OF THE HERD**
11 **IN TERMS OF SIZE AND MARKET VALUE AS AT SEPTEMBER 2023**
12 **(TAKEN UNDER ADVISEMENT)**

13 BY MR. SCHWARTZ:

14 30 Q I'll refer you to paragraph 40 of your
15 February 9th, 2024, affidavit that deals
16 specifically with the forbearance agreement. Do
17 you have that affidavit in front of you?

18 A I do have the February 9th, 2024, affidavit,
19 yes.

20 31 Q Scroll to or turn to paragraph 40, please.
21 It's on page 26.

22 A Okay.

23 32 Q And you'll see it outlines or highlights a
24 number of the terms that are contained within the
25 forbearance agreement. I certainly don't intend to

1 walk you through all of the terms of the
2 forbearance agreement, but I do have a couple of
3 questions for you with respect to the forbearance
4 agreement, generally. First of all, why
5 \$8 million -- or why an \$8 million mortgage? Where
6 did that number come from?

7 A To essentially merit the Bank's exposure.

8 33 Q Just on that point, if I recall correctly, the
9 outstanding indebtedness to the Bank around the
10 time that you or that special loans became involved
11 was approximately \$7 million. Do I have that
12 right?

13 A That sounds about right.

14 34 Q All right. So that explains that. Why the
15 period of three and a half months? The forbearance
16 period or term specified in the agreement and as
17 outlined in paragraph 40(b) is almost exactly three
18 and a half months. Why that length of time?

19 A That's typical of a timeline for a forbearance
20 agreement to give shareholders in the company some
21 time to find alternate financing or a solution to
22 get the Bank of Montreal paid in full.

23 35 Q And, of course, one of the terms of the
24 forbearance agreement was in the event that there
25 was a default under the forbearance agreement or in

1 the event that the Bank's indebtedness wasn't paid
2 out in full by January 15th of 2024, Genesis
3 consented to the appointment of a receiver. Do I
4 have that right?

5 A Correct.

6 36 Q Okay. Paragraph 55 of that same affidavit.

7 A Okay.

8 37 Q Do you have that, sir?

9 A Yes.

10 38 Q It's 55(a), in particular, that I want to ask
11 you about. It says this: (as read)

12 That Genesis' inventory had dropped
13 in value from approximately
14 \$4.7 million to \$1.9 million
15 primarily due to the sale of the
16 St. Andrews property.

17 I don't quite get what inventory you're
18 referring to there. Is it the hog inventory, or is
19 it --

20 A It --

21 39 Q -- something else?

22 A Hog inventory.

23 40 Q And, again, the difficulty I have with that --
24 the word "inventory" suggests to me it was the hog
25 inventory, of course. But then it says this,

1 "Primarily due to the sale of the St. Andrews
2 property." Was there a sale of hogs associated
3 with the sale of the St. Andrews property?

4 A I believe so.

5 41 Q Thank you. Paragraph 59 of that same
6 affidavit.

7 A Okay.

8 42 Q You'll see the indication that as at
9 January 30th of 2024, Genesus' total indebtedness
10 to the Bank was just over \$6 million, and that, as
11 I understand it, is down approximately \$1 million
12 from the level of indebtedness that was present in
13 February of 2023. And how was that, sir? I mean,
14 the obvious answer is that the indebtedness was
15 paid down. But what was the source of the paydown?

16 A I believe one of the properties was sold. The
17 proceeds went first into FCC, some went to BDO to
18 pay professional fees, and then a smaller amount
19 came to BMO.

20 43 Q Thank you. Turn to your most recent
21 affidavit, paragraph 50 of that if you can get to
22 it.

23 A Do you know what page that's on?

24 44 Q I'll get that. Just a sec. It starts at
25 page 22. Just take a moment to review that, sir.

1 A Okay. Paragraph 50?

2 45 Q Yes.

3 A Okay.

4 46 Q The question I have for you, sir, is what
5 would the Bank have done differently had Genesis
6 not provided the mortgage?

7 A Consideration would have been given to a
8 receivership.

9 47 Q Earlier than February of 2024?

10 A Yes.

11 48 Q And the concern, of course, in an operation of
12 Genesis' sort is that you have live animals; right?

13 A Yes.

14 49 Q And those animals need to be cared for and
15 fed?

16 A Okay.

17 50 Q And the way to maximize the realization on
18 those animals and the assets, generally, would be
19 by way of sale en bloc, that is, the sale on a
20 going concern basis?

21 MS. HOWDEN: Well, you're asking him to
22 speculate generally. You have to ask him a
23 question that's specific to what was happening in
24 this particular case.

25 BY MR. SCHWARTZ:

1 51 Q Well, given Mr. Barrington's employment with
2 the Bank's special loans department, would it not
3 be fair to say, Mr. Barrington, that a sale en bloc
4 or as a going concern will generally result in a
5 much better realization than parceling out assets
6 individually?

7 A That's probably a better question for the
8 receiver, but I would think it would be.

9 52 Q All right. Wasn't that the Bank's intention,
10 though, in appointing a receiver is to ensure as
11 best as possible that a sales process could be
12 followed such that there would be an en bloc sale
13 if possible?

14 A It's out of my control when it goes to a
15 receiver. They try to maximize the return for the
16 Bank.

17 53 Q No. I appreciate that, sir. But once the
18 receiver's appointed, the Bank doesn't get to call
19 the shots anymore -- at least not a Court-appointed
20 receiver. But what I'm trying to determine is what
21 was in the Bank's mind in seeking to appoint a
22 receiver. Isn't it fair to say that the Bank's
23 intention was to maximize the realization by way of
24 an en bloc sale?

25 A I don't know. It's -- the receiver liquidates

1 the assets. The Bank has security over the assets,
2 and, essentially, the chips fall where they fall
3 once the receiver gets in there and liquidates the
4 assets for the Bank.

5 54 Q And, again, I appreciate that this is more in
6 the receiver's jurisdiction, but where is the Bank
7 at currently? What is the Bank currently owed?

8 A Probably still close to -- I think it's about
9 5.5 mil.

10 55 Q So there's been a further paydown?

11 A There was, yes. It was related to the selling
12 of the inventory to the Chinese entity.

13 MR. SCHWARTZ: All right. Those are my
14 questions. Thank you, Mr. Barrington. Subject to
15 the undertakings given, that's my examination.

16 -----
17 **(QUESTIONING CLOSED AT 10:22 A.M.)**
18 -----

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing is a complete and accurate transcription of the proceedings taken down by me in shorthand and transcribed by means of a computer-aided transcription to the best of my skill and ability.

Dated at the city of Winnipeg, province of Manitoba, this 12th day of March, 2025.

A handwritten signature in black ink that reads "Tessa Schneider". The signature is written in a cursive style with a large, sweeping initial 'T'.

Tessa Schneider

Official Court Reporter

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