

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

MLT AIKINS LLP

Barristers and Solicitors
30th Floor – 360 Main Street
Winnipeg, MB R3G 4G1

J.J. BURNELL / ANJALI SANDHU

Telephone: (204) 957-4663/(204) 957-4760
Facsimile: (204) 957-0840

File No. 0128056.00004

THE KING'S BENCH

Winnipeg Centre

THE HONOURABLE MR.

)

THURSDAY, THE 4th

JUSTICE CHARTIER

)

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
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

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 "**Transaction**") contemplated by an agreement of purchase and sale (the "**APA**") between the Receiver and Canada ZF Investments Inc. ("**ZF Investments**") dated June 28, 2024 and appended in a redacted form to the First Report of the Receiver dated July 2, 2024 (the "**First Report**") and in an unredacted form to the Confidential Supplement of the Receiver dated July 2, 2024 (the "**Confidential Supplement**"), and which APA was assigned to and assumed by Genesus Genetic Technology Inc. (the "**Purchaser**") pursuant to an Assignment and Assumption Agreement between ZF Investments and the Purchaser

effective as of July 3, 2024, and vesting in the Purchaser all of the Receiver's and the Debtors' right, title and interest in and to the assets described in the APA (the "**Purchased Assets**"), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the First Report, the Confidential Supplement and the Affidavit of Colby Ferbers sworn July 3, 2024, and this Court being advised that in accordance with the terms of the APA that the Purchaser had requested that additional contracts (the "**Additional Contracts**") be assigned to the Purchaser in accordance with their terms and on hearing the submissions of counsel for the Receiver, counsel for ZF Investments and 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 Klassen sworn July 3, 2024, filed, and the Affidavit of Service of Brittany Chapdelaine sworn July 4, 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 Transaction is hereby approved, and the execution of the 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 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 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; (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; and (iii) those Claims listed on Schedule “2” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “3”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Portage la Prairie Land Titles Office (“**PLTO**”) and the Brandon Land Titles Office (“**BLTO**”) of Transmissions in the form prescribed by *The Real Property Act* (Manitoba) duly executed by the Purchaser, and accompanied by a certified true copy of this Order, title to the real property identified in Schedule B hereto (the “**Real Property**”) shall vest in the Purchaser subject to all instruments registered on title at that time, other than those described in Schedule “3”, and the District Registrars are hereby directed to issue title accordingly.

5. THIS COURT ORDERS that this Order shall be accepted by the District Registrars notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

6. 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.

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

8. 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 Company's records pertaining to the Debtors' past and current employees, including personal information of the Target Employees (as defined in the 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.

9. 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.

10. THIS COURT AUTHORIZES AND DIRECTS the Receiver to assign the contracts listed in Schedule “C” of the APA to the Purchaser, excluding the Additional Contracts listed in **Schedule “4”** hereof (the “**Assigned Contracts**”).

11. THIS COURT ORDERS AND DECLARES that upon the delivery of the Receiver’s Certificate and payment of any Cure Costs 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.

12. 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.

13. 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.

14. 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 Receiver's Certificate has been filed;

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

15. THIS COURT ORDERS that the actions of the Receiver to date in respect of its administration of these receivership proceedings and the First Report, including the statements of receipts and disbursements contained in the First Report and the activities of the Receiver described therein are hereby approved;

16. 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

G.L. Chartier

Digitally signed by G.L.
Chartier
Date: 2024.07.05 08:06:57
-05'00'

Chartier, J.

I, J.J. BURNELL, 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;

Carole Hunter, DLA Piper (Canada) LLP, counsel for ZF Investments and the Purchaser;

Simon Garfinklel, 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 CHARTIER

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 4, 2024, the Court approved the agreement of purchase and sale made as of June 28, 2024 (the “**APA**”) between the Receiver and Canada ZF Investments Inc. (the “**ZF Investments**”), which APA was assigned to and assumed by Genesus Genetic Technology Inc.

(the “**Purchaser**”) pursuant to an Assignment and Assumption Agreement between ZF Investments and the Purchaser effective as of July 3, 2024, and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, 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 Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the 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 APA;
2. The conditions to Closing the APA have been satisfied or waived by the Receiver and the Purchaser;
3. The Receiver has received the Purchase Price less the Holdback Amount (each as defined in the APA); and
4. The Transaction has been completed to the satisfaction of the Receiver.
5. 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: _____

Schedule “2” – Claims to be deleted and expunged from title to Real Property

For Title Numbers: 1892437/2 and 1848166/2:

- a. Mortgage No. 1219289/2 (Genesis Inc.) (the “**Genesis Mortgage**”);
- b. Postponement of Rights No. 1228844/2 (Registered by Genesis Inc. postponing its right under the Genesis Mortgage to Manitoba Agricultural Credit Corp.);
- c. Mortgage No. 1503944/2 (Bank of Montreal); and
- d. Postponement of Rights No. 1505568/2 (Registered by Genesis Inc. postponing its rights under the Genesis Mortgage to Bank of Montreal)

For Title Number: 2316076/3:

- a. Mortgage No. 1230862/3 (Bank of Montreal);
- b. Certificate of Judgment No. 1232076/3 (Sea Air International Forwarders Limited);
and
- c. Certificate of Judgment No. 1232212/3 (Fermes Durand Farms Ltee.)

**Schedule “3” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

For Title Numbers: 1892437/2 and 1848166/2:

Caveat 1130601/2 (MTS Communications)

For Title Number: 2316076/3:

None

Schedule “4” – Additional Contracts

1. Pen Space Contract No 1602 dated October 4, 2016 between Genesis and Total Swine Genetics (TSG) Inc.
2. Semen Supply Agreement dated March, 2017 (executed on October 17, 2017) between Genesis and Magnum Swine Genetics Inc.
3. Letter of Understanding dated October 26, 2006 between Genesis and Big Stone A.I. Inc.
4. Custom Collection Agreement dated July 28, 2020 between Genesis and CCA.
5. Customer Collection Agreement dated February 1, 2018 between Genesis and Ostler.
6. Custom Collection Agreement dated September 2, 2018 between Genesis and Marke Semen Service.
7. Marketing Agreement dated October 5th, 2017 between Genesis and Genesis UK Limited.
8. Marketing Agreement dated August 1st, 2022 between Genesis and Glenmarshal Sires Ltd (“**Glenmarshal**”).
9. Boar Stud Production & Buy-Back Agreement dated May 1, 2020 between Genesis and Glenmarshal.
10. Marketing and Product Use Agreement dated April 1, 2021 among Genesis, Genesis Deutschland GmbH, and Genesis Belgie BV.