

COURT FILE NUMBER KBG-SA-01031-2024

COURT OF KING’S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

APPLICANT **CANADIAN IMPERIAL BANK OF
COMMERCE**

RESPONDENTS **CUSTOM AGRICULTURAL
INTELLIGENCE INCORPORATED,
GREEN CHEM CONSULTANTS INC.,
BERMMAN MICRONUTRIENT
INCORPORATED and BERMMAN HAVEN
INCORPORATED**

**IN THE MATTER OF THE RECEIVERSHIP OF CUSTOM AGRICULTURAL
INTELLIGENCE INCORPORATED, GREEN CHEM CONSULTANTS INC.,
BERMMAN MICRONUTRIENT INCORPORATED and BERMMAN HAVEN
INCORPORATED**

**BRIEF OF LAW ON BEHALF OF THE APPLICANT,
CANADIAN IMPERIAL BANK OF COMMERCE**

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I. INTRODUCTION

1. This Brief of Law is submitted on behalf of the Applicant, Canadian Imperial Bank of Commerce ("**CIBC**"), in support of its application pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), section 64(8) of *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 ("**PPSA**"), and section 10-15 of *The King’s Bench Act*, SS 2023, C.28 (the "**KB Act**") for a Second Amended and Restated Receivership Order appointing BDO Canada Limited ("**BDO**") as receiver of certain property, assets and undertakings of the Respondents, Custom Agriculture Intelligence Incorporated ("**Custom Ag**"), Green Chem Consultants Inc. ("**Green Chem**"), Bermman Micronutrient Incorporated ("**Bermman Micronutrient**"), and Bermman Haven Incorporated ("**Bermman Haven**"),

collectively with Custom Agriculture, Green Chem, and Bermman Micronutrient the “**Custom Ag Group**” or the “**Debtors**”) including all proceeds therein (the “**Property**”). Specifically, the Second Amended and Restated Order seeks to include the appointment of BDO as Receiver over three (3) additional parcels of land, namely:

Surface Parcel #203017643, Reference Land Description: Blk/Par A Plan No 102162765 Extension 0;

Surface Parcel #111656055, Reference Land Description: Blk/Par C Plan No 101350370 Extension 10; and

Surface Parcel #111656066, Reference Land Description: Blk/Par D Plan No 101350370 Extension 11.

(the “**Lands**”)

2. In accordance with the practice of using template orders in receivership proceedings, CIBC has filed a blacklined version the Amended and Restated Receivership Order which was granted using the Saskatchewan Template Receivership Order, which identifies the manner in which the draft Second Amended and Restated Receivership Order being requested varies from the Amended and Restated Receivership Order granted by Justice Rothery on October 4, 2024.

3. Unless otherwise defined herein, capitalized terms in this Brief of Law shall have the respective meanings ascribed to them in the Affidavit of Akriti Bhatnagar sworn on February 20, 2025 (the “**Bhatnagar Affidavit**”).

4. CIBC relies on the materials filed in support of this application which are referenced in the Notice of Application, returnable March 6, 2025, as well as the Affidavit of Manan Parikh sworn August 8, 2024 and Supplemental Affidavit of Manan Parikh sworn August 29, 2024, filed in favour of the Originating Application returnable on September 5, 2024.

II. FACTS

5. Custom Ag are the legal owners of the above noted Lands. The Lands were specifically carved out of the Amended and Restate Receivership Order by Justice Rothery as the Lands were farmland within the meaning of *The Saskatchewan Farm Security Act*.¹ As such, in order to enforce its security against the Lands, CIBC was required to commence a foreclosure action as the Lands could not be included within the receivership in first instance. CIBC served the required notices to seek leave to commence foreclosure proceedings as required under the *SFSA* on Custom Ag.

6. The parties attended mediation and the Farmland Security Board issued their report for the Court. On December 5, 2024, CIBC made an application under KBG-SA-01572-2024 seeking an order pursuant to section 11 of the *SFSA* that the *SFSA* not apply to the mortgage granted in favour of CIBC dated September 3, 2019 and registered September 6, 2019 with Information Service Corporation as Interest Register #123632377 against the Lands.

7. Justice Zerr granted the Order pursuant to section 11 of the *SFSA* indicating section 9(1)(d) of the *SFSA* did not apply and granted leave to CIBC to foreclose on the Lands.

8. Given the Court has granted Leave to Commence Foreclosure of the Lands, CIBC seeks a Second Amended and Restated Receivership Order to include the Lands as real estate controlled by the Receiver for Custom Ag and the Custom Ag Group as a whole. The Order of Justice Zerr is a recognition that:

- (a) Custom Agricultural Intelligence Incorporated has defaulted in repayment of the Mortgage;
- (b) Custom Agricultural Intelligence Incorporated has no reasonable possibility of meeting its obligations under the Mortgage; and,
- (c) Custom Agricultural Intelligence Incorporated is not making a sincere and reasonable effort to meet its obligations under the Mortgage.

¹ *The Saskatchewan Farm Security Act* SS 1998-99, c S-17.1 [*SFSA*].

III. ISSUES

9. CIBC respectfully submits that this application raises one (1) issue for determination by this Honourable Court, namely:

- (a) Should this Honourable Court grant the Second Amended and Restated Receivership Order granting BDO as receiver authority over the Lands?

IV. ARGUMENT

10. In Saskatchewan, the net effect of sections 9 and 11 of the *SFSA* is that no person shall commence an action for sale or possession of mortgaged farm land without first obtaining leave of the court under section 11 of the *SFSA*. In order to obtain such leave, section 12 of the *SFSA* stipulates that a mortgagee must first serve a statutory notice of intention, await the expiry of the 150-day notice period, and participate in a mandatory mediation process. It was confirmed by the Supreme Court of Canada in *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.* (SCC)² that the provisions of the *SFSA* continue to apply and do not frustrate the purpose of the *BIA*.³

11. Given the finding by the Supreme Court of Canada that the provisions of the *SFSA* did not frustrate the purpose of the *BIA*, secured creditors are required to fulfil the requirements of the *SFSA*, seeking leave to commence against the farm land prior to it being included in a receivership.

12. This is precisely the situation in the case at bar. CIBC, as secured creditor for the Lands, complied with section 12 of the *SFSA* by first serving a statutory notice of intention, awaiting the expiry of the 150-day notice period, and participating in a mandatory mediation process. The Farm Land Security Board authored its report, which was provided to the Court, and an application for leave to commence an action was made pursuant to section 11 of the *SFSA*. The outcome of the said application was this Court granting an order pursuant to section 11 of the *SFSA* that the *SFSA* not apply to the Lands.

² *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.*, 2015 SCC 53, 2015 CarswellSask 680 [Lemare Lake].

³ *Ibid.*, at para 73.

13. As the Lands are no longer subject to the provisions of the *SFSA*, CIBC submits that the most expedient and cost-effective manner to proceed is to request this Honourable Court to grant a Second Amended and Restated Receivership Order, allowing the Receiver to control the Lands for the purpose of selling the same through the court appointed receivership proceedings to recover the secured debt owing to CIBC.

V. CONCLUSION

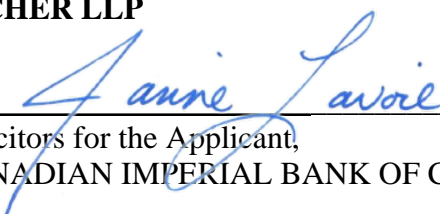
14. For all or the foregoing reasons, CIBC respectfully requests that this Honourable Court grant an Order in the form of the Second Amended and Restate Receivership Order, appointing the Receiver, BDO, over the Lands.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 27th day of February, 2025.

McKERCHER LLP

Per:


Solicitors for the Applicant,
CANADIAN IMPERIAL BANK OF COMMERCE

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IV. TABLE OF AUTHORITIES

Source	Pinpoint	Legal Principle
Cases		
<i>Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.</i> , 2015 SCC 53, 2015 CarswellSask 680	Para 73	The provisions of the <i>SFSA</i> continue to apply and do not frustrate the purpose of the <i>BIA</i> . The secured creditor is still required to seek leave under the <i>SFSA</i> to enforce against any lands that are subject to their security prior to obtaining the receivership order.
Statute		
<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3	Sections 183, 243	Statutory authority to appoint a receiver
<i>The King's Bench Act</i> , SS 2023, C.28	Sections 3-1, Section 10-15	The court has original jurisdiction throughout Saskatchewan with full power and authority to consider, hear, try and determine actions and matters A Court may make a receivership order where the Court deems it appropriate the order be made.
<i>The Personal Property Security Act</i> , 1993, SS 1993, c P-6.2	Section 64(8)	
<i>The Saskatchewan Farm Security Act</i> , SS 1988-89, c S-17	Sections 9 and 11	The prohibition on claims against farmlands without receiving an order that the Act does not apply
Other Authorities		
<i>The King's Bench Rules</i>	Section 6-41	A Court may make a receivership order where the Court deems it appropriate the order be made.