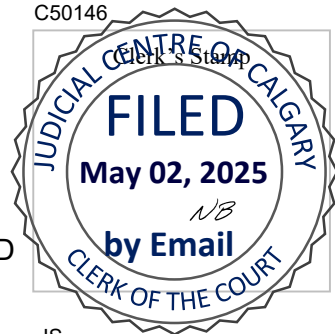


COURT FILE NUMBER 2401-01216
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ATB FINANCIAL
DEFENDANT APEX NUTRI-SOLUTIONS INC., 2175551
ALBERTA LTD., STEVEN HERBERT, DAVID
HERBERT, MURRAY HERBERT AND
CAROLYN HERBERT



JS
May 5, 2025

APPLICANT BDO CANADA LIMITED, in its capacity as
receiver and manager of APEX NUTRI-
SOLUTIONS INC., 2175551 ALBERTA
LTD., and certain property of MURRAY
HERBERT AND CAROLYN HERBERT

DOCUMENT **APPLICATION – Approval Order**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.693.5420 / 306.361.7770
Fax: 403.508.4349
Attention: Ryan Zahara / Paul Olfert
File: 0128056.00010

NOTICE TO RESPONDENT:

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date: May 5, 2025
Time: 1:30 p.m.
Where: Calgary Court Centre – VIA WEBEX
Before Whom: The Honourable Justice D.R. Mah

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought:

1. Capitalized terms not otherwise defined herein shall have the meaning given to them in the second report (the "**Second Report**") dated April 30, 2025 of BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of Apex Nutri-Solutions Inc., 2175551 Alberta Ltd., and certain property of Murray Herbert and Carolyn Herbert (collectively, the "**Debtors**").
2. An abridgement of the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.
3. An Order substantially in the form of **Schedule "A"** hereto :
 - a) approving the "**Agreement Respecting Sale**", the "**Sale Agreement**", and the transaction of purchase and sale pursuant thereto (the "**Sale Transaction**"), all as described in the Second Report, pursuant to which the Debtors propose to sell the lands described as the "**Initial Herbert Lands**" or "Parcel #1" and "Parcel #2" notwithstanding the governing Receivership Order;
 - b) authorizing and directing the Debtors to complete the Sale Transaction;
 - c) authorizing the Receiver to take additional steps which may be necessary or desirable to complete the Sale Transaction;
 - d) directing that the Receiver hold all funds received pursuant to section 3 of the Agreement Respecting Sale in trust pending further Order of the Court; and
 - e) approving the actions of the Receiver as described in the Supplement to the First Report of the Receiver and the Second Report of the Receiver.

Grounds for Making the Application:

Background

4. On February 20, 2025, BDO was appointed the interim receiver (the "**Interim Receivership**") in respect of Apex Nutri-Solutions Inc. and 2175551 Alberta Ltd.

5. On April 2, 2025, ATB obtained an order from the Court, appointing BDO as the Receiver over all of the assets, undertakings, and property of Apex, thereby terminating the Interim Receivership.
6. Also on April 2, 2025, ATB obtained an order from the Court, appointing BDO as the Receiver ("**Herbert Receivership Order**") over certain property, including all equipment, inventory, crops, fixtures, and proceeds thereof, of Murray and Carolyn Herbert, legally described as:

MERIDIAN 4 RANGE 20
TOWNSHIP 43 SECTION 24 QUARTER
NORTH EAST EXCEPTING THEREOUT
ALL MINES AND MINERALS AERA:
64.7 HECTARES (160 ACRES) MORE OR LESS

MERIDIAN 4 RANGE 20 TOWNSHIP 43
SECTION 26 QUARTER SOUTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS EXCEPTING
THEREOUT:
2.53 HECTARES (6.25 ACRES) MORE OR
LESS AS SHOWN ON RAILWAY PLAN 1983AJ AND BEING
TAKEN FOR RIGHT OF WAY OF THE CANADIAN NORTHERN RAILWAY COMPANY
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO WORK
THE SAME

MERIDIAN 4 RANGE 20
TOWNSHIP 43 SECTION 25 QUARTER
SOUTH EAST EXCEPTING THEREOUT
ALL MINES AND MINERALS AREA:
64.7 HECTARES (160 ACRES) MORE OR LESS

(the "**Herbert Lands**").

7. The Herbert Lands are registered in the names of Murray Herbert and Carolyn Herbert.

Sale of the Initial Herbert Lands

8. As more particularly described in the Second Report, following the granting of the Receivership Order, the Debtors solicited several offers for sale of the various Herbert Lands, including signing a conditional Agricultural Purchase Contract in respect of a proposed sale of the Initial Herbert Lands for \$2,300,000 (referred to as "**Offer #1**"). This sum should be sufficient to retire the Herberts' obligations to ATB Financial and the Receiver's Charge.

9. Although the Receivership Order granted the Receiver the exclusive authority to market the Herbert Lands for sale, given the rapidly approaching seeding season and additional cost, delay, and uncertainty which would have resulted in the Receiver attempting to negotiate its own sale agreement with the prospective purchasers, the Receiver recommends that the Court permit the Herberts to close the proposed sale transaction (subject to the terms of the Agreement Respecting Sale executed by the Receiver and the Herberts).
10. The Receiver understands that ATB Financial supports Offer #1.
11. The Sale Agreement contemplates closing on or before May 6, 2025. This closing date is critical as the prospective purchasers will want to take title before the spring seeding season is lost.

Approval of Activities of the Receiver to Date

12. All of the actions of the Receiver and its legal counsel in the course of the administration of the receivership of the Debtors are reasonable and appropriate in the circumstances.
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence To Be Relied Upon:

- (a) The Receivership Order granted by on April 2, 2025, filed;
- (b) Supplement to the First Report of the Receiver dated April 17, 2025, filed;
- (c) Second Report of the Receiver dated April 30, 2025, to be filed;
- (d) All pleadings, affidavits and other materials filed in this action;
- (e) The inherent jurisdiction of this Honourable Court to control its own process; and
- (f) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 6.47 (a), (d), (e) and (f), 11.27 and 13.5 of the Alberta *Rules of Court*.

Applicable Acts and Regulations:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended.

How the Application is Proposed to be Heard or Considered:

- (a) Via Webex before the Honourable Justice D.R. Mah, in Chambers. Webex particulars are attached to this Application as **Schedule "B"**.

WARNING TO THE RESPONDENT:

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

COURT FILE NUMBER	2401-01216	Clerk's Stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	ATB FINANCIAL	
DEFENDANTS	APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT	
APPLICANT	BDO CANADA LIMITED, in its capacity as receiver and manager of APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., and certain property of MURRAY HERBERT AND CAROLYN HERBERT	
DOCUMENT	APPROVAL ORDER (Sale of Lands)	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2100, 222 3 rd Avenue S.W. Calgary, Alberta T2P 0B4 Phone: 403.693.5420 / 306.361.7770 Fax: 403.508.4349 Attention: Ryan Zahara / Paul Olfert File: 0128056.00001	

DATE ON WHICH ORDER WAS PRONOUNCED:	MAY 5, 2025
LOCATION WHERE ORDER WAS PRONOUNCED:	EDMONTON, ALBERTA
NAME OF JUSTICE WHO MADE THIS ORDER:	HONOURABLE JUSTICE D.R. MAH

UPON THE APPLICATION of BDO Canada Limited., filed on May 1, 2025 (the "**Application**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, including the proceeds thereof, of Apex Nutri-Solutions Inc., 2175551 Alberta Ltd., and certain property of Murray Herbert, and Carolyn Herbert (collectively, the "**Debtors**"), for an Order: (i) approving the sale by Murray and Carolyn Herbert (the "**Herberts**") of certain lands which are subject to the Receivership Order granted on April 2, 2025 (the "**Receivership Order**"); (ii)

approving the Agreement Respecting Sale between the Receiver and the Debtors dated April 28, 2025; and (iii) approving the actions of the Receiver as described in the First Report of the Receiver, Supplement to the First Report of the Receiver, and Second Report of the Receiver; **AND UPON HAVING READ** the Application, the Receivership Order granted on April 2, 2025 (the "**Receivership Order**"), the Second Report of the Receiver and the Affidavit of Service of _____ sworn on ____, 2025; **AND UPON IT** appearing that all interested and affected parties have been served with notice of the Application; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

APPROVAL OF AGREEMENT RESPECTING SALE

2. The Agreement Respecting Sale ("**ARS**") between the Receiver and the Debtors, dated April 28, 2025, and the Agricultural Purchase Contract incorporated therein (the "**Sale Agreement**"), respecting the lands described in the Second Report as the "**Initial Herbert Lands**" or "Parcel #1" and "Parcel #2", namely:

MERIDIAN 4 RANGE 20
TOWNSHIP 43 SECTION 24 QUARTER
NORTH EAST EXCEPTING THEREOUT
ALL MINES AND MINERALS AREA:
64.7 HECTARES (160 ACRES) MORE OR LESS

and

MERIDIAN 4 RANGE 20
TOWNSHIP 43 SECTION 26 QUARTER
SOUTH EAST CONTAINING 64.7 HECTARES (160 ACRES)
MORE OR LESS EXCEPTING THEREOUT:
2.53 HECTARES (6.25 ACRES) MORE OR
LESS AS SHOWN ON RAILWAY PLAN 1983AJ AND BEING
TAKEN FOR RIGHT OF WAY OF THE CANADIAN NORTHERN RAILWAY
COMPANY

, as described in the Second Report of the Receiver, are hereby authorized and approved, with such minor amendments and modifications the Receiver may deem necessary.

3. The Debtors are hereby authorized and directed to complete the transaction of purchase and sale contemplated in the Sale Agreement (the "**Sale Transaction**"), on the terms and conditions described therein and as set out in the ARS unless modified with the consent of the Receiver in accordance with this Order.
4. The Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction of purchase and sale contemplated in the Sale Transaction.
5. The ARS, the Sale Agreement, and the Sale Transaction are hereby approved and ratified and it is hereby declared that they are commercially reasonable.
6. For greater certainty:
 - (a) the Receiver is not authorized or required to convey clear title, or to convey title at all, to any purchasers pursuant to the Sale Agreement;
 - (b) this Order does not serve to discharge any interests from title to the Initial Herbert Lands.
7. The Receiver shall hold all funds received pursuant to section 3 of the ARS in trust pending further order of this Honourable Court. For greater certainty, nothing in this Order shall serve to discharge either (a) the Receiver's Charge or (b) any claim that ATB Financial may have, from any proceeds from the sale of the Initial Herbert Lands.
8. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser(s) (or its nominee) all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser(s) (or its nominee) 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) to which the Debtors were entitled.

9. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtors, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtors; and
- (d) the provisions of any federal or provincial statute:

the sale and transfer of the Initial Herbert Lands to any purchasers 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 transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF RECEIVER'S ACTIONS

10. The actions taken by the Receiver, as described in the Supplement to the First Report of the Receiver and the Second Report of the Receiver, are hereby approved.

MISCELLANEOUS MATTERS

11. The Receiver, the Herberts, and ATB Financial shall each be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Sale Transaction.
12. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 order

and to provide such assistance to the Receiver, as an officer of the 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.

13. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

- (i) the persons listed on the service list created in these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
and

(b) Posting a copy of this Order on the Receiver's website at: www.bdo.ca;

and service on any other person is hereby dispensed with.

14. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

The Honourable Justice D.R. Mah
Justice of the Court of King's Bench of Alberta

SCHEDULE "B"

Schedule "B" – WebEx Details

File #(s): 2401 01216

Style of Cause: APEX NUTRI-SOLUTIONS INC v. ATB FINANCIAL

Date/Duration: May 5, 2025 01:30 PM

Total: 30 Minute(s)

Booking Type/List: Civil Justice Special/Seized

Purpose of Hearing: Application

Counsel: Ryan Zahara; Jarrett Arthur Cole Tilley, Derek Murray Pontin;

Special Requirements:

Requirements: Courtroom Required

Equipment: Video Conferencing

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link: <https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted.
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. Note: **Recording or rebroadcasting of the video is prohibited.**
5. Note: **It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**