Q.B.G. No 1461 of 2009
CANADA
PROVINCE OF SASKATCHEWAN

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,*
R.S.C. 1985, c. C-36 (the "CCAA")

AND IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF BIG SKY FARMS INC., DRYCAST SYSTEMS INC. and BIG SKY MANAGEMENT CONSULTING CORP.

AND IN THE MATTER OF NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT

BETWEEN:

BIG SKY FINISHERS (NO.1) INC.

APPLICANT

AND:

BIG SKY FARMS INC.

RESPONDENT

AFFIDAVIT OF JOHN BECKTON

I, John Beckton, of the City of Saskatoon, in the Province of Saskatchewan, Professional Agrologist, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of Big Sky Finishers (No. 1) Inc. ("Finishers") and as such I have personal knowledge of the facts and matters deposed to herein, except where stated to be based on information and belief, and where so stated I do verily believe the same to be true.

2. On Thursday, February 4, 2010 Finishers was served with a Notice by Debtor Company to Disclaim or Resiliate an Agreement ("Notice to Disclaim") with respect to agreements between Big Sky Farms Inc. ("Farms") and Finishers, namely the Contract Finishing Agreement (the "Contract Finishing Agreement") the Option Agreement (the "Option Agreement"), and the Indemnity Agreement (the "Indemnity Agreement"), each dated May 16, 2003.

3. Annexed hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the Notice to Disclaim.

4. Annexed hereto and marked as **Exhibits "B", "C",** and **"D"** to this my Affidavit are true copies of the Contract Finishing Agreement, the Option Agreement, and the Indemnity Agreement (hereinafter collectively the "Agreements"). I wish to note that my Affidavit sworn February 10, 2010 appended an unsigned copy of the Option Agreement. A signed copy is annexed hereto as **Exhibit "C".**

5. I have been informed by Robert F. Thornton, Q.C., counsel for Finishers, and I do verily believe, that pursuant to Section 32 of the *Companies' Creditors Arrangement Act* (the "CCAA") Finishers may apply to this Honourable Court for an Order that the Agreements are not to be disclaimed or resiliated. Finishers herein seeks such an Order.

6. Finishers is a public company, having some 125 shareholders, and its securities are traded over the counter. Finishers was established pursuant to an Initial Public Offering dated January 15, 2003. Annexed hereto and marked as **Exhibit "E"** to this my Affidavit is a true copy of the Prospectus ("Prospectus") pursuant to such Initial Public Offering.

7. The Prospectus was prepared and the Initial Public Offering was pursued for the purpose of purchasing hog barns from Farms pursuant to an Asset Purchase Agreement dated for reference the 14th day of January, 2003 (a true copy of which is annexed hereto as **Exhibit "F"**), and for the purposes of entering into the Contract Finishing Agreement, Option Agreement and Indemnity Agreement, which material contracts are described in pages 12 through 16 of the Prospectus.

8. Farms wished to sell 3 of its hog barns in order to raise capital in 2003.

9. The Initial Public Offering raised sufficient funds in order to purchase 2 of the hog barns, which were purchased pursuant to the Asset Purchase Agreement and which are identified in the Contract Finishing Agreement as Barn #1 and Barn #2 (collectively the "Barns"). The Barns are located near Ogema, Saskatchewan, approximately 60 miles south of Regina.

10. Since on or about the 16th day of May, 2003, Finishers has finished hogs for Farms at the Barns. The finishing of the hogs involves maintaining, feeding, caring for and finishing the hogs from weanlings of approximately 27 kilograms to full-grown market-weight hogs weighing approximately 118 kilograms. The finishing is done in accordance with directions, guidelines and protocols prescribed by Farms and in accordance with good animal husbandry practises and applicable laws.

11. Finishers pays for all expenses whatsoever involved in the finishing of the hogs, with the exception of feed, which is supplied by Farms. Farms retains ownership of the hogs.

12. Finishers presently employs 6 full-time barn technicians, with an annual payroll in excess of $200,000.00.

13. Finishers' suppliers include electricity and natural gas utilities and various local suppliers, including those involved in the repairs and maintenance of the Barns, as well as various other suppliers. As the Prospectus (**Exhibit "E"** to this my Affidavit) states at page 15 (6th bullet), Finishers pays:

> ...all costs associated with the ownership and operation of the Barns (other than those that are expressly for the account of [Farms] as provided in the Contract Finishing Agreement) including: light, water, gas and other utilities; property taxes; employee wages, salaries and benefits; cleaning, repair and maintenance expenses; insurance; and the cost of any capital improvements that [Finishers] may decide to make to the Barns, provided that no such capital improvements will be made without the prior consent of [Farms], which consent shall not be unreasonably withheld.

14. Annexed hereto and marked as **Exhibit "G"** to this my Affidavit is the Financial Statement of Finishers for its last fiscal year end of June 30, 2009.

15. Farms is the sole customer of Finishers. The Disclaimer or Resiliation of the Contract Finishing Agreement will cause very severe hardship to Finishers and leave nothing for its shareholders.

16. Section 3.2 of the Contract Finishing Agreement provides that Farms was to pay to Finishers a base fee in the amount of $620,000.00 per Barn per year, as adjusted pursuant to

Sections 3.3, 3.4, 3.5 and/or 3.6, as applicable (the "Base Fee"). As there are 2 Barns, this amount is $1,240,000.00 per year.

17. The term of the Contract Finishing Agreement was not to end until June 30, 2018.

18. Accordingly, the loss that Finishers will incur if the Contract Finishing Agreement is disclaimed or resiliated will be in excess of $9,000,000.00.

19. The disclaimer or resiliation of the Contract Finishing Agreement would, therefore, have a devastating economic effect upon Finishers.

20. The present financial difficulties of Farms were not due to the Contract Finishing Agreement that Farms had with Finishers, but, rather, resulted from the depressed hog market with low hog prices, high feed costs and the ramifications of the H1N1 virus concerns, which Farms has acknowledged throughout the CCAA proceedings and in its representations to its creditors.

21. There is no reasonable or rational economic reason for the termination of the Contract Finishing Agreement.

22. Each of the Barns can handle up to 12,000 hogs for finishing at one time (and can accommodate 3 rotations, or "turns" of hogs each year). There are no other barns of such size available in Saskatchewan.

23. If Farms does not use these Barns, Farms will have to go out of Province — and likely out of the Country, to the State of Iowa in the United States — in order to have its hogs finished. The transporting and finishing of hogs elsewhere would be at far greater cost to Farms than having Finishers finish the hogs pursuant to the Contract Finishing Agreement. Further, the United States has specific labeling laws — Country of Origin Labeling, or "COOL" — which add complexity and cost to the hog finishing process.

24. Farms has marketing contracts that it has to fill with such companies as Maple Leaf Foods, which contracts are being filled with hogs that are being finished at the Barns of Finishers.

25. Further, Farms has 5,600 sows in the area of Ogema which produce approximately 26 pigs per year, which results in a total of approximately 145,600 new-born pigs in very close proximity (a scant 3 miles) to the Barns of Finishers.

26. Further, Farms has a feed mill approximately one-half mile from the Barns of Finishers. Farms mills feed grown in the area. The feed mill would be significantly under-utilized if the Contract Finishing Agreement were disclaimed or resiliated.

27. The termination of the Contract Finishing Agreement, the Option Agreement or the Indemnity Agreement would not have a material impact on cost reduction.

28. Therefore, there are various reasons as noted above why there is no reasonable or rational economic reason for Farms to terminate the Contract Finishing Agreement with Finishers. It is to be noted that in paragraph 109 of his Affidavit dated the 29th day of October, 2009, Canute Tagseth, the Chief Financial Officer of Farms, after referring to the facilities owned and operated by Finishers (i.e., the Barns), states that they "are integral to the production system of [Farms]".

29. I echo those words of Canute Tagseth. The Barns are a component of an integrated design, the operation of which is of great value to Farms. Indeed, the Project (as that term is defined in the Prospectus, page 11) was implemented at Farms' initiative. I draw the Court's attention to page 1 of the Prospectus (**Exhibit "E"** to this my Affidavit), where it states that:

> [Farms] took the initiative in organizing [Finishers] and, pursuant to the *Securities Act*, is considered to be the "promoter" of [Finishers].

30. In promoting Finishers, Farms found an economical way to raise equity funds, to Farms' benefit. There was the further advantage to Farms of the benefit of the small business tax deduction, and no capital tax.

31. Farms recognized from the outset that the annual contract finishing fee would represent a steady income stream to Finishers. The Prospectus states as much at page 13 (2nd bullet):

> [Farms] then contracts to have [Finishers], for a term ending June 30, 2018, finish hogs in the Barns on behalf of [Farms], in return for which [Farms] pays an annual contract finishing fee to [Finishers]. As such, the contract finishing fee represents a relatively fixed, or readily determinable, revenue stream to [Finishers];

32. The hog market has very considerably improved since 2009.

33. The forecasts made by Farms in its CCAA proceedings reflect the very considerably improved and improving hog market.

34. The Plan of Compromise and Arrangement (the "Plan") dated December 29, 2009 pursuant to the CCAA, was made by Farms without Farms being of the position that it had to disclaim or resiliate the Contract Finishing Agreement, since no mention of that was made in the Plan. Farms did not seek to disclaim or resiliate the Contract Finishing Agreement, the Option Agreement or the Indemnity Agreement until February 4, 2010. It seems clear from this that the termination of the Agreements was not essential of the making of a viable Plan.

35. The Indemnity Agreement was entered into by Farms and Finishers and was required by Finishers as hog finishing produces a considerable amount of hog excrement, which involves very significant environmental issues. Pursuant to the terms of the Contract Finishing Agreement, Farms is to assist Finishers in dealing with the manure produced from the hog finishing operations at the Barns. Because environmental issues are serious Finishers requires that Farms deal with these problems and that Finishers be indemnified and saved harmless from all such environmental problems by the Indemnity Agreement. In that regard the Prospectus states as follows at page 16:

> Pursuant to the Indemnity, [Farms] agrees to indemnify [Finishers], its directors, officers and certain other related persons, from claims or losses resulting from environmental activity pertaining to the Project...

36. Considering all of the foregoing factors, Finishers does not believe that it is fair or reasonable that the Agreements be disclaimed or resiliated.

37. A contract finishing agreement such as the Contract Finishing Agreement gives the Barns far greater value and the termination of the Contract Finishing Agreement would destroy that value.

SWORN BEFORE ME at the City of Saskatoon, in the Province of Saskatchewan, this 18th day of February, 2010	)
	)
	)
	) JOHN BECKTON
A Commissioner for Oaths in and for Saskatchewan. Being a Solicitor.	)

This document was delivered by and whose address for service is Stevenson Hood Thornton Beaubier LLP, Barristers & Solicitors, 500, 123 – 2nd Avenue South, Saskatoon, Saskatchewan, S7K 7E6, telephone: (306) 244-0132, facsimile: (306) 653-1118, Lawyer in charge of file: Robert F. Thornton, Q.C., File No. 39462000.