File No. CI 15-01- 98054

THE QUEEN'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 Queen's Bench Act*, C.C.S.M. c. C280**

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER HOLDINGS LTD.

Defendants.

STATEMENT OF CLAIM

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File No. 180007-785/JMJD

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BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER HOLDINGS LTD.

Defendants.

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $750.00 for costs and have the costs assessed by the court.

C. DYSON
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA

Date: October 2, 2015 Issued by: ______________________

Deputy Registrar
100C – 408 York Avenue
Winnipeg, Manitoba
R3C 0P9

TO: KELLER & SONS FARMING LTD.
Box 760
Carberry MB R0K 0H0

AND TO: KELLER HOLDINGS LTD.
Box 760
Carberry MB R0K 0H0

CLAIM

1. The Plaintiff claims as against the Defendants:

   (a) Judgment in the amount of:

      (i) $15,830,004.47;

      (ii) Interest on the sum of $2,505,773.26 at the Plaintiff's prime lending rate for Canadian Dollar commercial loans as declared by the Plaintiff from time to time ("Prime") plus 6.0% per annum from September 18, 2015 until payment, both before and after default and judgment;

      (iii) Interest on the sum of $4,175,221.02 at 3.50% per annum, from September 18, 2015 calculated half-yearly, not in advance, both before and after maturity, default and judgment;

      (iv) Interest on the sum of $4,254,186.88 at 5.50% per annum from September 18, 2015 calculated half-yearly, not in advance, both before and after maturity, default and judgment;

      (v) Interest on the sum of $33,699.08 at 5.69% per annum from September 18, 2015 until payment, both before and after maturity, default and judgment;

      (vi) Interest on the sum of $4,294,812.25 at Prime plus 6.0% per annum from September 18, 2015 until payment, both before and after default and judgment;

      (vii) Interest on the sum of $533,858.85 at Prime plus 6.0% per annum from September 18, 2015 until payment, both before and after default and judgment;

(viii) Interest on the sum of $32,453.13 at 19.99% from September 18, 2015 until payment, compounded monthly, both before and after default and judgment;

(b) An Order appointing a Receiver (including, if necessary, a Receiver and Manager) over all of the property, assets and undertaking of each of the Defendants in accordance with the *Bankruptcy and Insolvency Act*, R.S.C.1985 c.B-3 as amended (the "BIA"), section 243 and *The Court of Queen's Bench Act*, C.C.S.M. c. C280, as amended (the "QBA"), section 55;

(c) Costs of this action on a solicitor and its own client basis;

(d) Such further and other relief as to this Honourable Court may seem just.

2. The plaintiff is a chartered bank, duly incorporated by a private act of the parliament of Canada, has its head office in the City of Montreal, in the Province of Quebec and carries on business in all of the provinces of Canada, pursuant to the provisions of the *Bank Act* (Canada) and does so carry on business in the City of Winnipeg, in the Province of Manitoba.

3. The Defendants Keller & Sons Farming Ltd. ("Keller") and Keller Holdings Ltd. ("Holdings") (Keller and Holdings collectively the "Keller Group") are corporations incorporated pursuant to the laws of the Province of Manitoba with their registered office in the City of Brandon, in the Province of Manitoba.

4. At the request of the Defendants and for valuable consideration, the Plaintiff provided Keller with credit facilities, particulars of which are known to the Defendants, particulars of which are as follows:

(a) A $3,000,000.00 revolving demand facility whereby Keller agreed to repay all loans upon demand with interest at Prime plus 6.0% per annum both before and after default and judgment;

(b) A mortgage loan in the principal sum of $4,550,000.00 repayable in monthly instalments together with interest at 3.50% per annum, calculated half-yearly, not in advance, both before and after maturity, default and judgment;

(c) A mortgage loan in the principal sum of $4,550,000.00 repayable in monthly instalments together with interest at 5.500% per annum, calculated half-yearly, not in advance, both before and after maturity, default and judgment;

(d) A term facility in the principal sum of $49,837.22 repayable in monthly instalments together with interest at 5.69% per annum both before and after maturity, default and judgment;

(e) A non-revolving term facility in the principal sum of $4,150,000.00 repayable monthly together with interest at Prime plus 6% per annum both before and after maturity, default and judgment;

(f) A non-revolving term facility in the principal sum of $3,300,000.00 repayable monthly together with interest at Prime plus 6% per annum both before and after maturity, default and judgment; and

(g) VISA business account up to a maximum of $100,000.00 where Keller would repay all credits advanced through VISA cards on demand with interest at the rate of 19.99% per annum, compounded monthly, both before and after default and judgment.

5. As security for payment of the aforesaid indebtedness, Keller delivered to the Plaintiff the following security:

(a) General Security Agreement dated May 25, 2011;

(b) General Assignment of Leases and Rents dated May 25, 2011;

(c) Specific Assignment of Contracts dated May 25, 2011;

(d) Real Property Mortgage No 1159694/4 dated May 25, 2011 as amended thereafter;

(e) Real Property Mortgage No. 1289048/2 dated May 25, 2011 as amended thereafter;

(f) Real Property Mortgage No. 1291925/2 dated July 13, 2011 as amended thereafter;

(g) Agreement as to Loans and Advances and Section 427 *Bank Act* security dated May 25, 2011;

(h) Bailee Agreement dated on or about May 25, 2011

(collectively the "Keller Security").

6. The provisions of the Keller Security included, *inter alia*, the following:

(a) As security for the repayment of the aforesaid indebtedness, Keller granted the Plaintiff mortgage and security interests over all of its present and after-acquired undertaking, property and assets;

(b) Upon default of repayment, Keller agreed that the Plaintiff may appoint a Receiver and/or Receiver-Manager over its undertaking, property and assets;

(c) Keller agreed to pay the Plaintiff's costs of enforcement and by any Receiver including reasonable solicitor's and advisor's costs and other legal expenses and Receiver remuneration.

7. As further security for the repayment of the indebtedness and for valuable consideration, Holdings executed a Guarantee and Postponement of Claim in favour of the Plaintiff whereby Holdings guaranteed the liabilities of Keller to the Plaintiff up to the principal amount of $30,000,000.00 plus interest from the date of demand (the "Guarantee").

8. The Guarantee contained, *inter alia*, the following terms and conditions:

(a) Holdings undertook to pay Keller's indebtedness to the Plaintiff forthwith upon demand;

(b) Holdings undertook to pay interest on the sum demanded at the rate or rates equal to the credit facilities extended by the Plaintiff to Keller both before and after maturity, default and judgment, together with costs on a solicitor and its own client basis.

9. As security for repayment of the indebtedness under the Guarantee, Holdings provided security to the Plaintiff, particulars of which are as follows:

(a) General Security Agreement dated May 25,2011;

(b) General Assignment of Leases and Rents dated May 25, 2011;

(c) Real Property Mortgage No. 1159697/4 dated May 25, 2011, as amended thereafter;

(d) Real Property Mortgage No. 1289056/2 dated May 25, 2011, as amended thereafter;

(collectively the "Holdings Security").

10. The Holdings Security contains, *inter alia*, the following terms and conditions:

(a) Holdings granted to the Plaintiff mortgages and security interests over all of its present and after-acquired undertaking, property and assets;

(b) Upon default, Holdings agreed that the Plaintiff may appoint a Receiver and/or Receiver-Manager over its undertaking, property and assets;

(c) Holdings agreed to pay the Plaintiff's costs of enforcement and by any Receiver including reasonable solicitor's and advisor's costs and other legal expenses and Receiver remuneration.

11. The Plaintiff says, as the facts are, that Keller has defaulted under the terms of the credit facilities.

12. The Plaintiff further says, as the facts are, that :

(a) the Plaintiff has made formal demand for payment upon Keller and has served it with a Notice of Intent to Realize on Security under the *Farm Debt Mediation Act*, S.C. 1997, c. 21 (the "FDMA Notice") and with a Notice of Intention to Enforce Security under the BIA, section 244 (the "BIA Notice");

(b) the Plaintiff has also made formal demand for payment upon Holdings pursuant to the Guarantee and has served it with an FDMA Notice and a BIA Notice;

(c) Keller and Holdings applied for a stay of proceedings under the FDMA which was initially granted by the Farm Debt Mediation Service ("FDMS"). The plaintiff advised FDMS that in its view, there was no possible benefit to having FDMS attempt to mediate a solution and requested that the stay of proceedings be terminated. The FDMS agreed with the Banks and terminated the stay of proceedings. Keller and Holdings then appealed the decision to terminate the stay of proceedings. However, subsequently, Keller and Holdings withdrew their appeal. As such, the provisions of the FDMA no longer apply to this matter;

(d) Keller and Holdings have also each waived the time periods prescribed by the BIA Notices;

(e) Subsequently the Plaintiff filed an Application for Leave pursuant to the terms of *The Family Farm Protection Act*, S.M. 1986-87, c.6 (the "FFPA");

(f) On October 2, 2015, the Plaintiff obtained an Order from the Court, with the consent of the Defendants, granting it leave under section 9 of the FFPA to, *inter alia*, commence or continue any and all remedies available to the Plaintiff at law or in equity under the Keller Security and/or the Holdings Security including, but not limited to, the appointment of a receiver or a receiver/manager;

(g) The amounts owing to the Plaintiff remain unpaid to date;

(h) Accordingly the Plaintiff is entitled to realize on the Keller Security and/or the Holdings Security including, *inter alia*, appointing a receiver or receiver and manager.

13. The Plaintiff says that after accounting for all amounts advanced to Keller, credits received and interest accrued, there remains due and owing as at September 18, 2015, the aggregate sum of $15,830,004.47 made up as follows (the loan balances being in the same order as the loans set out in paragraph 4 herein):

(a) Revolving demand facility in the principal sum of $2,505,773.26 together with interest on the said sum of $2,505,773.26 at Prime plus 6.0% per annum from September 18, 2015 until payment, both before and after default and judgment;

(b) Mortgage loan in the principal sum of $4,175,221.02 together with interest on the said sum of $4,175,221.02 at 3.50% per annum, calculated half-yearly, not in advance, both before and after maturity, default and judgment;

(c) Mortgage loan in the principal sum of $4,254,186.88 together with interest on the said sum of $4,254,186.88 at 5.5% per annum calculated half-yearly, not in advance, both before and after maturity, default and judgment;

(d) Non-revolving term facility in the principal sum of $33,699.08 together with interest on the said sum of $33,699.08 at 5.69% per annum from September 18, 2015 until payment, both before and after maturity, default and judgment;

(e) Non-revolving term facility in the principal sum of $4,294,812.25 together with interest on the said sum of $4,294,812.25 together with interest at Prime plus 6.0% per annum from September 18, 2015 until payment, both before and after maturity, default and judgment;

(f) Non-revolving term facility in the principal sum of $533,858.85 together with interest on the said sum of $533,858.85 together with interest at Prime plus 6.0% per annum from September 18, 2015 until payment, both before and after maturity, default and judgment;

(g) VISA facility in the principal sum of $32,453.13 together with interest on the said sum of $32,453.13 at 19.99% from September 18, 2015 until payment, both before and after default and judgment.

14. The Plaintiff says, as the facts are, that the appointment of a Receiver and/or Receiver and Manager is necessary for the protection of the Defendants' estate and the interests of the Plaintiff.

15. The Plaintiff further says that it is just and convenient to grant the relief sought.

16. The Plaintiff pleads and relies upon the BIA, section 243 and the QBA, section 55.

Date: October 2, 2015

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