

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.

NOTICE OF MOTION
BEFORE MR. JUSTICE CHARTIER
ON TUESDAY, JANUARY 26, 2016 at 2:00 P.m.

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
201 Portage Avenue, Suite 2200
Winnipeg MB R3B 3L3

(Matter No. 0138084 RAM)
(Ross A. McFadyen: 204-934-2378)
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KELLER & SONS FARMING LTD. and KELLER
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defendants.

NOTICE OF MOTION

ERNST & YOUNG INC. (the "Receiver"), in its capacity as receiver and
manager of the defendants, will make a motion before Mr. Justice Chartier on
Tuesday, the 26th day of January, 2016 at 2:00 p.m., or as soon after that time as the
motion can be heard at the Winnipeg Law Courts Building, 408 York Avenue in
Winnipeg, Manitoba.

THE MOTION IS FOR an Order substantially in the form of the draft
Order attached hereto and marked as Schedule "A", providing for:

1. If necessary, an Order that the time for service of this notice of motion and the materials related thereto is hereby abridged and that this motion is properly returnable on the stated hearing date with no further service required;
2. Approval of the First Report of the Receiver dated January 19, 2016 (the "First Report") and the activities of the Receiver described therein, including the Receiver's Interim Statement of Receipts and Disbursements (all capitalized terms not otherwise defined herein shall have the meanings set out in the First Report);
3. Sealing of the First Confidential Report of the Receiver dated January 19, 2016, (the "First Confidential Report");
4. Approval of the sales process for the assets of the defendants as described at paragraphs 81 through 110 of the First Report (the "Sales Process"), and all actions taken by the Receiver to date to implement such Sales Process;
5. An Order authorizing and directing the Receiver to continue to implement the Sales Process and to take such steps as it considers necessary or desirable in carrying out the Sales Process, including entering into an auction agreement with Ritchie Bros. Auctioneers (Canada) Ltd. ("Ritchie") with respect to the equipment of Keller & Sons Farming Ltd.;
6. An Order authorizing the Receiver to disclaim and terminate the Farm Lease agreement dated May 1, 2015 (the "Farm Lease") entered into between the

defendants and Shilo Farms Ltd. ("Shilo"), but only in so far as it relates to the lease of the machinery and equipment of the defendant Keller & Sons Farming Ltd.;

7. The advice and direction of this Court as it relates to potential contempt proceedings as against Calidon Financial Services Inc. ("Calidon") and its directors or officers in relation to Calidon's willful violation of the Receivership Order in causing the seizure of the following item of equipment: RBR Venturi 350 w/ FLX Applicator, 350HP, Cummins Engine, 6 Speed Allison Transmission, S/N: FA1506126 (the "Applicator") on or about October 26, 2015; and

8. Such further and other relief as the circumstances of this proceeding may require and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On October 8, 2015, this Court issued the Order (the "Receivership Order") appointing Ernst & Young Inc. as Receiver of the defendants, Keller & Sons Farming Ltd. and Keller Holdings Ltd. The Receiver has complied with the Receivership Order and its activities to date assisted the Court in the administration of the receivership of the defendants.

2. The information contained in the First Confidential Report is sensitive commercial information, and a sealing order is necessary as there is a real and substantial risk of harm to the interests of stakeholders in this proceeding in the event

such sensitive information is disclosed in advance of the completion of a transaction or transactions relating to the assets at issue.

3. The salutary effects of a sealing order with respect to the First Confidential Report outweigh any considerations relating to the public interest in open and accessible court proceedings.

4. The Receiver is of the opinion that the Sales Process is the most effective and efficient way to market the assets of the defendants.

5. All, or the vast majority, of the machinery and equipment that are the subject of the Farm Lease is not being used by Shilo, and will not need to be used by Shilo, prior to the end date for the lease of the machinery and equipment of March 31, 2016. It is the Receiver's opinion that it is just and equitable and in the overall best interest of the stakeholders that the Farm Lease, as it relates to machinery and equipment, be terminated so that the Receiver may proceed to market and sell the machinery and equipment in as efficient and timely a manner as possible.

6. Shilo has not provided the Receiver with its consent to terminate the Farm Lease as it relates to machinery and equipment, and the Receiver previously provided Shilo's counsel with an undertaking that it would not act to disclaim or terminate the Farm Lease without first obtaining the approval of this Court for any such action.

7. The Receiver is of the view that Calidon knowingly and willfully acted in breach of the Receivership Order when it caused the Applicator to be seized. The Receiver's view is that in order to protect the integrity of the receivership process and the rule of law, it is necessary to deal with Calidon's breach. The Receiver recognizes, however, that Calidon should be provided with a full opportunity to respond to the position of the Receiver.
8. Paragraphs 3, 9, 10 and 25 of the Receivership Order.
9. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.
10. Section 77 of *The Court of Queen's Bench Act*, C.C.S.M. c. C280.
11. Rules 3.02, 16.08, 37 and 60.10 of the *Queen's Bench Rules*, M.R. 553/88, as amended.
12. Such further and other grounds as counsel for the Receiver may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The First Report, dated January 19, 2016;
2. The First Confidential Report, dated January 19, 2016;
3. The Affidavit of Gary Ivany sworn October 2, 2015; and

4. Such further and other documentary evidence as counsel for the Receiver may advise and as this Honourable Court may permit.

January 19, 2016

Thompson Dorfman Sweatman LLP
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Ross A. McFadyen
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E-mail: ram@tdslaw.com
Counsel for the receiver and
manager of the defendants, Ernst &
Young Inc.

TO: THE SERVICE LIST (as of January 19, 2016)

SCHEDULE A

File No. CI 15-01-98054

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WINNIPEG CENTRE

IN THE MATTER OF: The Appointment of a Receiver pursuant to Section 243
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THE HONOURABLE) Tuesday, the 26th day of January,
) 2016
MR. JUSTICE CHARTIER)

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HOLDINGS LTD.,

defendants.

ORDER

THIS MOTION, made by Ernst & Young Inc. (the "Receiver"), in its capacity as receiver and manager of the defendants, for certain relief as set out in the Notice of Motion filed on behalf of the Receiver on January 19, 2016, was heard this day at the Winnipeg Law Courts Building, 408 York Avenue in Winnipeg, Manitoba.

ON READING the First Report of the Receiver January 19, 2016 (the "First Report") and the Confidential First Report of the Receiver dated January 19,

2016 (the "First Confidential Report"), and on hearing the submissions of counsel for the Receiver, the plaintiff and •, no one appearing for any other interested party, although properly served as appears from the Affidavit of Service of Ross A. McFadyen affirmed January 21, 2015:

1. THIS COURT ORDERS AND DECLARES that the time for service of the Notice of Motion, the First Report and the First Confidential Report and any other materials relating thereto is hereby abridged and validated and further service is hereby dispensed with.
2. THIS COURT APPROVES the First Report and the activities of the Receiver described therein, including the Receiver's Interim Statement of Receipts and Disbursements. All capitalized terms not otherwise defined herein shall have the meanings set out in the First Report.
3. THIS COURT ORDERS AND DECLARES that the First Confidential Report shall be treated as confidential and sealed and shall neither form part of the public record nor be disclosed to any party to this proceeding or otherwise, except:
 - (a) by further Order of the Court, following notice to the Receiver of such motion; or
 - (b) upon the date on which the Receiver files with the Court a written notice certifying that a transaction or transactions relating to all the

assets dealt with under the First Confidential Report have closed to the satisfaction of the Receiver;

whichever shall first occur, whereupon the First Confidential Report shall form part of the public record and no longer be sealed.

4. THIS COURT ORDERS AND DECLARES that the Sales Process described in paragraphs 81 through 110 of the First Report (the "Sales Process") shall be and is hereby authorized and approved and all actions taken by the Receiver to the date of the First Report to implement the Sales Process shall be and are hereby authorized and approved.

5. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to continue to implement the Sales Process, subject to further order of the Court, and to take such steps as it considers necessary or desirable in carrying out the Sales Process, including entering into an auction agreement with Ritchie Bros. Auctioneers (Canada) Ltd. ("Ritchie") with respect to the equipment of Keller & Sons Farming Ltd.

6. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to disclaim and terminate the Farm Lease agreement dated May 1, 2015 (the "Farm Lease") entered into between the defendants and Shilo Farms Ltd. ("Shilo"), but only in so far as it relates to the lease of the machinery and equipment of the defendant Keller & Sons Farming Ltd.

7. THIS COURT ORDERS AND DECLARES that at any point in time prior to its discharge, the Receiver is authorized to file a Notice of Motion seeking an order for a finding of contempt as against Calidon Financial Services Inc. ("Calidon") and any of its directors or officers, in relation to Calidon's allegedly willful violation of the Receivership Order in causing the seizure of the following item of equipment: RBR Venturi 350 w/ FLX Applicator, 350HP, Cummins Engine, 6 Speed Allison Transmission, S/N: FA1506126 (the "Applicator") on or about October 26, 2015. The Receiver is hereby authorized to serve such a Notice of Motion on Calidon by way of email directed to Monty Bergquist of Calidon at: monty@calidon.ca

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

9. THIS COURT ORDERS that this Order may be served by email or regular mail to all parties listed on the Service List and on any party that appeared at the hearing of this motion, and further service on any other party is hereby dispensed with. Approval as to the form of this Order by any interested parties is also hereby dispensed with.

January 26, 2016

JUSTICE CHARTIER