

Court File No. FM-22-16

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIERE
INSTANCE

JUDICIAL DISTRICT OF FREDERICTON

CIRCONSCRIPTION JUDICIAIRE
DE

IN THE MATTER OF THE RECEIVERSHIP OF:

Gray's Aqua Management Ltd., Gray Aqua Farms Ltd., Gray Aqua Group Ltd.,
Butter Cove Aqua Farms Ltd., Goblin Bay Aqua Farms Ltd., Jervis Island Aqua
Farms Ltd., Pass-My-Can Aqua Farms Ltd., Gray Aqua Processing Ltd., M. Gray
Holdings Ltd., 608672 N.B. Ltd., 608690 N.B. Ltd., 608691 N.B. Ltd.,
608715 NB Limited and 608716 NB Limited

- and -

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule
41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and
Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

ENTRE:

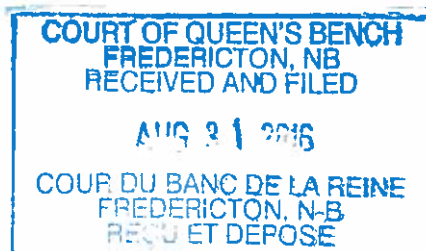
CALLIDUS CAPITAL CORPORATION

APPLICANT

- and -

GRAY'S AQUA MANAGEMENT LTD., GRAY AQUA FARMS LTD., GRAY AQUA
GROUP LTD., BUTTER COVE AQUA FARMS LTD., GOBLIN BAY AQUA FARMS
LTD., JERVIS ISLAND AQUA FARMS LTD., PASS-MY-CAN AQUA FARMS LTD.,
GRAY AQUA PROCESSING LTD., M. GRAY HOLDINGS LTD., 608672 N.B. LTD.,
608690 N.B. LTD., 608691 N.B. LTD., 608715 NB LIMITED and 608716 NB
LIMITED,

RESPONDENTS



NOTICE OF MOTION
(Form 37A)

AVIS DE MOTION
(Formule 37A)

To: 628228 N.B. Incorporated
3801 Route 105
Northampton NB E7N 1C7

DESTINAIRE:

047759 N.B. Ltd.
c/o Robert Creamer
Lawson Creamer
801-133 Prince William Street
Saint John, NB E2L 2B5

Callidus Capital Corporation
c/o Phil Taylor
Bay Wellington Tower Brookfield
Place
181 Bay Street Suite 4620
Toronto ON M5J 2T3

Ernst & Young Inc., as the Court appointed receiver and receiver-manager (the "Receiver") of the property, assets and undertaking (the "Property") of the Respondents, will apply to the Court of Queen's Bench, at 472 Queen Street, Fredericton, New Brunswick, on the 1st day of September, 2016, at 10:30 ~~a.m.~~/p.m. for the following relief:

1. An order abridging and validating the timing and method of service of the Notice of Motion and the Record on Motion so that this Motion is properly returnable and further service is dispensed with;
2. An order declaring that:
 - a. the Receiver is authorized and directed to depopulate the the fish inventory (the "Fish Inventory") located at Marine Aquaculture Site MF - 0044 (the "Site") either through the sale, destruction or other transfer of the Fish Inventory on such terms as the Receiver deems appropriate given the condition of the Fish Inventory and risk of environmental contamination if the Fish Inventory is not dealt with in a timely manner;
 - b. if the Receiver determines it can complete a sale of the Fish Inventory in order to depopulate the Site (the "Fish Inventory Depopulation Sale"),

the Receiver is authorized and directed to:

- i. complete negotiations and discussions with such parties as considered necessary by the Receiver, if any, to complete a Fish Inventory Depopulation Sale;
 - ii. enter into such agreements on such terms and conditions as the Receiver deems appropriate to complete a Fish Inventory Depopulation Sale;
 - iii. take such steps and execute such additional documents as may be necessary or desirable for the completion of the transactions required to complete a Fish Inventory Depopulation Sale;
- c. the Receiver, on being satisfied with the terms of any proposed Fish Inventory Depopulation Sale, is authorized and directed to complete such transaction and issue a Receiver's certificate in the form attached hereto as **Schedule "A"** (the "Receiver's Certificate") and to execute and deliver such other documents or take such additional actions as may be necessary or desirable to convey the estate's interest in the Fish Inventory;
- d. upon the delivery of a Receiver's Certificate, all right, title and interest in and to the Fish Inventory of the estate of the Respondents shall vest absolutely in the purchaser free and clear of and from any and all other interests, claims or encumbrances of any nature or kind;
- e. to the extent necessary, declaring that for the purposes of determining the nature and priority of claims, the net proceeds from the Fish Inventory Depopulation Sale (the "Proceeds") shall stand in the place and stead of the Fish Inventory sold, and that from and after the delivery of the Receiver's Certificate all claims and encumbrances shall attach to the Proceeds with the same priority as they had with respect to such Fish Inventory immediately prior to the sale;
- f. the Receiver may determine in its absolute discretion whether a Fish Inventory Depopulation Sale is possible or not and is under no obligation to pursue or complete such a sale;
- g. should the Receiver determine that a Fish Inventory Depopulation Sale

is not possible, the Receiver is hereby authorized and directed to take all such action as the Receiver deems appropriate to cause the Fish Inventory to be removed from the Site;

- h. the Receiver may terminate its occupation of the Site once it has completed the depopulation of the Fish Inventory or a Fish Inventory Depopulation Sale and shall have no liability in relation to the Site to any party whatsoever;
 - i. the Receiver may remove all personal property from the Site save and except the aquaculture cages, nets and floating house. The Receiver may remove the personal property immediately or at such time as the Receiver determines is appropriate up to and including one month after the date the Fish Inventory is removed from the Site;
 - j. the Receiver shall have no liability of any kind to any person whatsoever in connection with or arising from it taking any action in accordance with this Order in relation to the Fish Inventory;
 - k. the claim of 047759 NB Ltd. ("047759") in and to the Fish Inventory or any Proceeds thereof is extinguished save and except in so much as same is addressed in an agreement it has with the Receiver dated as of August 31, 2016; and
3. such further and other relief as may be just.

The grounds upon which the Applicant relies are as follows:

- 4. the relief sought by the Receiver is appropriate in the circumstances and is in accordance with the previous orders of the Court;
- 5. the Receiver inherited responsibility for the Fish Inventory on its appointment without knowledge of the condition or quantity of the Fish Inventory or to the competing security interest claim by 047759 in the Fish Inventory;
- 6. since its appointment the Receiver assessed, reviewed and generally carried out those activities set out in the Initial Order and those required by the *Rules of Court*, the *Bankruptcy and Insolvency Act* ("BIA") and other applicable legislation in its attempt to obtain the best possible result for the Respondent's estate and its stakeholders;

7. as part of the Receiver's management of the estate of the Respondents the Receiver has determined:
 - a. the Fish Inventory is subject to a sea lice infestation which has the potential to cause an environmental catastrophe; and
 - b. it is not economically viable to grow out the Fish Inventory.
8. the Receiver considers it to be in the best interests of the estate of the Respondents for the Receiver to complete a depopulation of the Fish Inventory as soon as possible in order to reduce the costs of the Receivership and manage the environmental risks related to the Fish Inventory;
9. the Receiver considers the relief being requested to be commercially reasonable;
10. the Receiver is requesting approval of it completing a depopulation of the Fish Inventory in advance as it will be operating under tight timelines given the daily expenses being incurred on an uneconomic operation and the potential for an environmental catastrophe;
11. the Receiver requires the relief requested herein to cease incurring costs which will not be recoverable and to manage the possibility of contamination from the sea lice;
12. no party has indicated it wishes to or will take over responsibility for the Fish Inventory;
13. 047759 claims a security interest in the assets of 628228 N.B. Incorporated ("628228") but has no interest in the assets of Gray Aqua;
14. 628228 has confirmed that any interest that it may have had in the Fish Inventory was disposed of and subordinated to Gray Aqua's interest in the Fish Inventory;
15. 047759 has consented to the relief being requested herein;
16. Such further and other grounds as Counsel may advise and this Honourable Court may permit.

The moving party will rely on:

- a. the *Rules of Court*, including Rules 1.03, 2.01, 2.02, 3.02, 37, 39 and 41 of the Rules of Court;
- b. the BIA, including sections 14.06, 247 and 249; and
- c. section 33 of the *Judicature Act*.

UPON the hearing of the motion the following affidavit or other documentary evidence will be presented:

- 1) Affidavit of Tim Gray, sworn to on the 30th day of August, 2016;
- 2) the first report of the Receiver executed on the 31st day of August 2016;
- 3) such further and other material as Counsel for the Respondent may advise and this Honourable Court may permit.

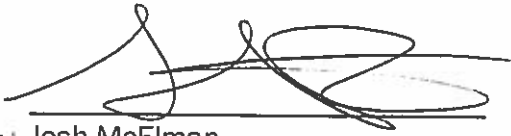
You are advised that:

- (a) you are entitled to issue documents and present evidence at the hearing in English or French or both;
- (b) the Respondent intends to proceed in the English language; and
- (c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least 7 days before the hearing.

Sachez que:

- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
- (b) le à l'intention d'utiliser la langue anglais; et
- (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez un aviser le greffier au moins 5 jours avant l'audience.

DATED at Fredericton, New Brunswick, this 31st day of August, 2016.


For: Josh McElman
Cox & Palmer, solicitors to the Receiver

COX & PALMER
Brunswick Square
1 Germain Street, Suite 1500
P.O. Box 1324
Saint John, NB E2L 4H8

Telephone: (506) 632-8900
Facsimile: (506) 632-8809
Email: jmcelman@coxandpalmer.com