

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.

DISCHARGE ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg MB R3C 0V1
(Matter No. 0138084 RAM)
(Ross A. McFadyen: 204-934-2378)
(Email: ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE) Wednesday, the 20th day of April,
) 2022
MR. JUSTICE CHARTIER)

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.

DISCHARGE ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of the Defendant Keller & Sons Farming Ltd. and Keller Holdings Ltd. for an Order discharging the Receiver and certain other relief, was heard this day at the Winnipeg Law Courts Building, 408 York Avenue in Winnipeg, Manitoba.

ON READING the Affidavit of Gary Ivany sworn October 2, 2015, the First Report of the Receiver dated January 19, 2016, the Second Report of the Receiver dated March 30, 2016, the Third Report of the Receiver dated August 5, 2016, the Fourth Report of the Receiver dated June 5, 2017, and the Fifth Report of the Receiver dated April 14, 2022 (the "**Fifth Report**"), and on hearing the submissions of counsel for the Receiver and counsel for the Plaintiff, no one else appearing for any other person on the Service List, although served as evidenced by the Affidavit of Service of Ross McFadyen affirmed April 19, 2022, filed:

1. THIS COURT ORDERS that time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that all the right, title and interest of the Receiver in and to the Residual Costs Award (as defined at paragraph 21 of the Fifth Report) be and is hereby assigned to the Plaintiff. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may reasonably be necessary or desirable to give further effect to the said assignment to the Plaintiff.
3. THIS COURT ORDERS that the conduct and activities of the Receiver, as set out in the Fifth Report, including the Receiver's Statement of Receipts and Disbursements, are hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel as set out in the Fifth Report (including such further fees and disbursements as may be paid out of the reserve amount as referenced at paragraph 71 of the Fifth Report), are hereby approved.

5. THIS COURT ORDERS that, subject to the payment of the further fees and disbursements of the Receiver and its counsel as outlined in the Fifth Report and as approved by this Court, the Receiver shall pay the monies remaining in its hands to the Plaintiff and to National Bank of Canada, as proposed at paragraphs 68 through 72 of the Fifth Report.

6. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 4 hereof and upon the Receiver filing a certificate substantially in the form attached hereto as Schedule A to this Order certifying that it has completed the other activities described in the Fifth Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Defendants, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceeding in favour of Ernst & Young Inc. in its capacity as Receiver.

7. THIS COURT ORDERS AND DECLARES THAT Ernst & Young Inc. is hereby released and discharged from any and all liability that Ernst & Young Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Ernst & Young Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Ernst & Young Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

8. THIS COURT ORDERS AND DECLARES that no action or other proceeding shall be commenced against the Receiver, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver, and upon such terms as this Court may direct.

April 28, 2022

G.L. CHARTIER

I, ROSS A. MCFADYEN OF THE FIRM OF THOMPSON DORFMAN SWEATMAN LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE PLAINTIFF, AS DIRECTED BY THE HONOURABLE MR. JUSTICE CHARTIER.

SCHEDULE "A"

FORM OF RECEIVER'S CERTIFICATE

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BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER
HOLDINGS LTD.,

Defendants.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Mr. Justice Schulman of the Manitoba Court of Queen's Bench (the "**Court**") dated October 8, 2015, Ernst & Young Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of the Defendants.

B. Pursuant to an Order of the Court dated April 20, 2022 (the "**Discharge Order**"), the Court ordered that upon the Receiver filing with the Court a certificate certifying that it has completed the distributions as authorized and directed by paragraph 5 of the said Discharge Order, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Defendants.

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the distributions as authorized and directed by paragraph 5 of the Discharge Order; and
2. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba on the day of , 2022.

ERNST & YOUNG INC., in its capacity as Receiver of the undertaking, property and assets of the Defendants KELLER & SONS FARMING LTD. and KELLER HOLDINGS LTD., and not in its personal capacity

per: _____

Name: Joe Healey, CPA, CA, FCIRP, LIT
Title: Senior Vice President