

COURT FILE NUMBER 0801-14675

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONAL BANK OF CANADA

DEFENDANTS MCGILLIVRAY & SERA FARMS LTD.,
626625 ALBERTA LTD., 626626 ALBERTA
LTD., BASTIAANSEN HOLDING COMPANY
LTD., JOS BASTIAANSEN, CORIEN
BASTIAANSEN, and BASSEM FARM
CORPORATION

DOCUMENT **APPLICATION**
(Final Distribution and Discharge Receiver)

Clerk's Stamp

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Norton Rose Fulbright Canada LLP
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CANADA

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Attention: Randal Van de Mosselaer

File No. 01139012-0001

NOTICE TO RESPONDENT(S): Service List

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday, May 20, 2014

Time: 2:00 p.m.

Where: Justices' Chambers

Before Whom: The Honourable Madam Justice B. E. C. Romaine

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Abridging time for service of these application materials, if necessary, and deeming service of the within Application to be good and sufficient and declaring that no further parties are required to be served;
2. An Order, substantially in the form attached hereto as Schedule "A":
 - 2.1 Authorizing and approving the Final Distribution (as that term is defined in the Ninth Report of the Receiver dated May 9, 2014 (the "Ninth Report")) and Receiver's Final Statement of Receipts and Disbursements (attached as Appendix "A" to the Ninth Report);
 - 2.2 Approving the transfer of the Unsecured Creditors' Fund (as that term is defined in the Ninth Report) to be administered in accordance with the June 23, 2009 Order in the within Action;
 - 2.3 approving the current and further fees and disbursements of the Receiver and those of the Receiver's legal counsel;
 - 2.4 approving the actions of the Receiver and those of the Receiver's legal counsel to date, as set out in the Receiver's Reports filed with the Court in this matter;
 - 2.5 discharging and relieving Ernst & Young Inc from its obligations, liabilities, responsibilities and duties in its capacity as Receiver in these proceedings upon the performance of duties incidental to the completion of these proceedings as described in the Ninth Report;
 - 2.6 granting leave to the Receiver to apply to this Court for advice and directions as may be necessary to carry out the terms of any orders granted at the within application; and
 - 2.7 granting such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.
3. Such further or other relief and directions as counsel may request and this Honourable Court may deem just and appropriate.

Grounds for making this application:

4. The Receiver was appointed receiver of the property, assets and undertaking of the Defendants by various Orders (the "Receivership Orders") granted in the within Action on February 23, 2009, March 16, 2009, March 23, 2009, and June 23, 2009;
5. On June 23, 2009 this Honourable Court approved a settlement with respect to the ownership and distribution of proceeds of certain inventory belonging to the Defendants, and established the Unsecured Creditors' Fund (as that term is defined in the June 23, 2009 Order in the within Action);
6. On December 11, 2009, the Receiver assigned the Defendants McGillivray and Sera Farms Ltd. ("MSF") and Bassem Farm Corporation ("Bassem") into bankruptcy pursuant to the provisions of the *Bankruptcy and Insolvency Act*, S.C. 1985, chap. B-3, as amended, and the Receiver was appointed Trustee in the bankruptcies of MSF and Bassem;
7. Park Lake Dairy Farms Ltd. and Friesland Farms Ltd. (collectively "Park Lake") and Westana Leasing Corporation ("Westana") are the sole remaining secured creditors of the MSF Defendants;

8. By Order of this Court dated October 12, 2012 this Court ordered that 53.3% of the remaining assets of the MSF Defendants be distributed to Park Lake and 46.7% of the remaining assets of the MSF Defendants be distributed to Westana;
9. By Order of this Court dated August 29, 2013 this Court ordered that an interim distribution be made to Park Lake and Westana;
10. The Receiver is now in a position to make a final distribution to Park Lake and Westana, and has completed, or is about to complete, all aspects concerning the administration of the receivership;
11. All of the actions in respect of the professional fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings are reasonable, have been validly incurred in connection with the discharge of the Receiver's obligations, which have been dutifully performed, and have now been completed or are about to be completed;
12. The Receiver is not aware of any reason that it should be required for any further purposes herein, and should be discharged as Receiver upon the conclusion of the remaining administrative duties.
13. The discharge of the Receiver at this time is just, appropriate and commercially reasonable.
14. The relief requested is just, appropriate and in the best interest of the administration of the receivership estate.

Material or evidence to be relied on:

15. The Receivership Orders granted in this Action,
16. the Ninth Report of the Receiver, filed,
17. the pleadings and proceedings filed herein; and
18. such further and other material as counsel may advise and this Honourable Court shall permit.

Applicable rules:

19. Rule 6.3

Any irregularity complained of or objection relied on:

20. None

How the application is proposed to be heard or considered:

21. In person

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

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DEFENDANTS MCGILLIVRAY & SERA FARMS LTD.,
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CORPORATION

DOCUMENT **ORDER**
(FINAL DISTRIBUTION AND DISCHARGE RECEIVER)

Clerk's Stamp

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT **NORTON ROSE FULBRIGHT CANADA LLP**
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Attention: Randal Van de Mosselaer

File No. 01139012-0001

DATE UPON WHICH ORDER WAS PRONOUNCED: Tuesday, May 20, 2014

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice B. E. C. Romaine

ORDER GRANTED: CALGARY, ALBERTA

UPON THE APPLICATION of counsel for Ernst & Young Inc. in its capacity as Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties the Defendants (collectively, the "**Debtors**"); **AND UPON** having read the Receiver's Ninth Report dated May 9, 2014, (the "**Ninth Report**"); **AND UPON** hearing counsel for the Receiver and from any other interested parties who may be present; **AND UPON** it appearing that the final distribution and discharge of the Receiver as proposed is just, fair and appropriate in all the circumstances and in the best interests of the administration of the receivership estate;

THE COURT HEREBY ORDERS AND DECLARES THAT:**Service**

1. Service of the notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and the time for service of this application is abridged to that actually given.

Final Distribution

2. The Final Statement of Receipts and Disbursements ("**R&D**") attached as Appendix A to the Ninth Report is hereby approved, and the Receiver is hereby authorized to make the Final Distributions, as that term is defined in the Ninth Report.

Discharge of the Receiver:

3. The current and further professional fees and disbursements of the Receiver and its legal counsel, as detailed in the Ninth Report are hereby approved.
4. The Receiver's actions and those of its legal counsel to date in respect of the administration of the receivership, and as described in the Ninth Report and the Reports previously filed in this Action, are hereby approved.
5. Upon the completion of the steps necessary to finalize the administration of the receivership, Ernst & Young Inc. shall be and is hereby unconditionally and absolutely discharged as Receiver of the Debtors' property, and all duties, responsibilities and obligations connected therewith.
6. The Receiver has satisfied its obligations under and pursuant to the terms of the orders granted in the within proceeding up to and including the date hereof, and Ernst & Young Inc., in its capacities as set forth in these proceedings, upon discharge as Receiver, shall not be liable for any act or omission on its part, or any reliance thereon, including without limitation, any act or omission pertaining to the discharge of its duties in these proceedings from time to time or with respect to any other duties or obligations, save and except for in cases of fraud, gross negligence, wilful misconduct on its part, or with leave of the Court as provided in paragraph 7 of this Order. Subject to the foregoing, any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

7. No action or other proceeding shall be commenced against Ernst & Young Inc. 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 the Court may direct.
8. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.
9. Service of this Order may be effected by sending a copy of this Order by email, facsimile transmission or by registered mail to the parties served with notice of this application and to the parties we were in attendance at this application.

The Honourable Justice B. E. C. Romaine
Of the Court of Queen's Bench of Alberta