

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

NATIONAL BANK OF CANADA

Plaintiff

- and -

Defendants

BEFORE THE HONOURABLE
MADAM JUSTICE C.A. KENT
IN CHAMBERS

) At Calgary Courts Centre, in the City of
) Calgary, in the Province of Alberta on
) Monday, the 23rd day of February, 2009.

ORDER

UPON the application of National Bank of Canada in respect of the Defendants McGillivray & Sera Farms Ltd. ("MSF"), 626625 Alberta Ltd., 626626 Alberta Ltd., Bastiaansen Holding Company Ltd., Jos Bastiaansen and Corien Bastiaansen (collectively, the "MSF Defendants") pursuant to a Notice of Motion filed November 26, 2008; AND UPON the application of National Bank of Canada in respect of the Defendant Bassem Farm Corporation ("Bassem") pursuant to a Notice of Motion filed February 12, 2009; AND UPON the cross-application of the MSF Defendants for a stay of the within action; AND UPON the cross-application of Bassem Farm Corporation ("Bassem") for an order discharging the Interim Order (the "Interim Order") granted in this Action on December 1, 2008; AND UPON reading the Affidavit of Murray D'Angelo filed November 26, 2008, the Supplemental Affidavit of Murray D'Angelo filed January 12, 2009, Affidavit #3 of Murray D'Angelo filed February 12, 2009, Affidavit #4 of Murray D'Angelo filed February 17, 2009 and Affidavit #5 of Murray D'Angelo filed February 18, 2009; AND UPON reading the Affidavit of Walter Semkuley sworn January 19, 2009 and filed in the within proceedings and the Supplemental Affidavit of Walter Semkuley sworn February 17, 2009 and filed in the within proceedings; AND UPON reading the two Affidavits of Jos Bastiaansen, both sworn January 16, 2009 and the Affidavit of Jos Bastiaansen sworn February 13, 2009, all filed in the within proceedings; AND UPON reading transcripts of the cross-examination of Jos Bastiaansen filed January 21, 2009 and responses to undertakings provided thereon; AND UPON reading transcripts of the cross-examination of Walter Semkuley filed January 21, 2009 and responses to undertakings provided thereon; AND UPON reading transcripts of the cross-examination of Murray D'Angelo filed in the within proceedings; AND UPON hearing counsel for the Plaintiff; AND UPON hearing counsel for the MSF Defendants; AND UPON hearing counsel for Bassem; AND UPON hearing counsel for Ernst & Young Inc.;

IT IS HEREBY ORDERED AND DECLARED THAT:

APPLICATION FOR CONTEMPT

1. The Plaintiff's application to have Bassem declared to be in contempt be and the same is hereby adjourned *sine die*.

STAY

2. The application to appoint a Receiver and Manager as against the MSF Defendants be and the same is hereby stayed to the earlier of: (i) 12:00 Noon on March 16, 2009 (the "**Notification Date**") and (ii) the date upon which counsel to the MSF Defendants advises counsel to the Plaintiff in writing (the "**Notice**") that the financing currently being applied for with The Toronto-Dominion Bank will not proceed, on the condition that an Order shall be granted appointing Ernst & Young Inc. as Receiver and Manager over all of the assets, property and undertaking of the MSF Defendants, if either, and on the earlier of, the following occurs: (a) the indebtedness to the National Bank of Canada has not then been indefeasibly paid in full on or before the Notification Date, or (b) Notice is provided.

INTERIM APPOINTMENT

3. Ernst & Young Inc. be and is hereby appointed Interim Receiver (the "**Interim Receiver**") over all accounts and proceeds generated from any sales of crop inventory in the possession or control of any of the Defendants including, without limitation, all Russet and Burbank potatoes, all Alberta Crown Potatoes, all potatoes presently situate at Agristar Inc., and all seed canola (the "**Proceeds**") whether arising on, before or subsequent to the date of this Order including, without limitation, all accounts receivable from Agristar Inc., McCain Foods and Maple Leaf Foods.
4. The Interim Receiver be and is hereby appointed interim receiver over the bank accounts (the "**Bank Accounts**") of Bassem including, without limitation, the bank account of Bassem located at The Toronto-Dominion Bank, Bow Island Branch, bearing account no. 5224974 with full authority to take possession and control thereof, including the power to make disbursements thereunder in accordance with the terms of this Order.
5. The Interim Receiver be and is hereby authorized, directed and empowered to:
 - (a) monitor all of the additional assets and undertaking of the MSF Defendants including, without limitation, all of the MSF Defendants' lands, buildings, fixtures, and rolling stock (the "**Property**") and no Person (as defined in paragraph 9 below) shall remove the rolling stock from the MSF Defendants' lands;
 - (b) monitor the crop inventory of the Defendants (the "**Inventory**");
 - (c) initiate preparations for the marketing and sale of the lands, buildings, business and undertaking of MSF but not list nor otherwise take any steps to market or sell the same;

- (d) pay from funds on deposit in the Bank Accounts to National Bank of Canada the sum of \$44,688.65 being the December payment (the "**December Payment**") owing to the Plaintiff pursuant to the Interim Order.
- 6. Subject to the December Payment being made, the Interim Order be and the same is hereby vacated.
- 7. All funds (the "**Funds**") received by the Interim Receiver under and pursuant to this Order shall be held by the Interim Receiver to be disbursed only in accordance with the terms of this Order and otherwise held pending further Order of this Court.
- 8. The Interim Receiver be and is hereby authorized to make payments from the Funds:
 - (a) to unsecured creditors of the MSF Defendants or Bassem for the express purpose of preserving, maintaining and selling the Inventory together with such payments to employees of MSF and Bassem in accordance with existing arrangements in this regard;
 - (b) unsecured creditors of Bassem as may be requested by Bassem and otherwise approved by the Interim Receiver or approved by further Order of this Court; and
 - (c) to pay such amounts to Mr. Semkuley as are agreed to by the Interim Receiver or approved by the Court.

To the extent there is a disagreement with respect to whether such payments are to be made in accordance with the provisions hereof, then the Interim Receiver is at liberty to apply for further advice and directions.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

- 9. (i) the Defendants, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Inventory, Bank Accounts or Property in such Person's possession or control, shall grant immediate and continued access to the Inventory, Bank Accounts or (with respect to the MSF Defendants Only) Property to the Interim Receiver, and shall deliver all such Bank Accounts to the Interim Receiver upon the Interim Receiver's request.
- 10. All Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Inventory or Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 11 or in paragraph 12 of this Order shall require the

delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure. For greater clarification, the Interim Receiver may only make, retain and take away copies of the Records, not originals of the Records. All original of the Records shall remain in that Person's possession or control unless otherwise ordered by further Order of this Court.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

11. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE MSF DEFENDANTS OR THE INVENTORY OR PROPERTY

12. No Proceeding against or in respect of the MSF Defendants or the Inventory or Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the MSF Defendants or the Inventory or Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 13.

NO EXERCISE OF RIGHTS OF REMEDIES

13. All rights and remedies (including, without limitation, set-off rights) against the MSF Defendants, the Interim Receiver, or affecting the Inventory or Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the MSF Defendants to carry on any business which the MSF Defendants are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the MSF Defendants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

14. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the MSF Defendants, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. All Persons having oral or written agreements with the MSF Defendants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all

computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the MSF Defendants are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver.

EMPLOYEES

16. Subject to employees' rights to terminate their employment, all employees of the MSF Defendants and Bassem shall remain the employees of the MSF Defendants and Bassem. The Interim Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

INTERIM RECEIVER'S ACCOUNTS

17. Any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property and that portion of the Inventory that is ultimately determined to be subject to the National Bank of Canada's security, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Interim Receiver's Charge**").
18. The Interim Receiver and its legal counsel shall pass their accounts from time to time.

GENERAL

19. The Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

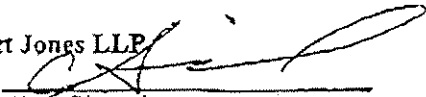
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20. Nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Defendants.


J.C.Q.B.A.

APPROVED AS ORDER GRANTED:

Bennett Jones LLP


Per: Chris Simard
Solicitors for Bassem Farm Corporation

Miles Davison LLP


Per: Terry Czechowsky
Solicitors for McGillivray & Sera Farms Ltd.,
626625 Alberta Ltd., 626626 Alberta Ltd.,
Bastiaansen Holding Company Ltd., Jos
Bastiaansen and Corien Bastiaansen

ENTERED THIS 4 DAY OF
~~March~~ FEBRUARY, A.D. 2009
J.A. BRANDT 
CLERK OF THE COURT

065093-403943
DOCS 11305302 v. 5

Action No: 0801-14675

2009

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

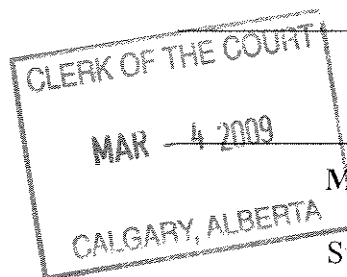
NATIONAL BANK OF CANADA

Plaintiff

- and -

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

Defendants



ORDER

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File No.: 065093-403945