

COURT FILE  
NUMBER

QBG No. 915 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL  
CENTRE

SASKATOON

Clerk's Stamp

IN THE MATTER OF THE RECEIVERSHIP OF BECKERLAND FARMS INC.

## **BRIEF OF LAW OF RESPONDENTS RE COMMERCIAL LIEN CLAIM**

### **I. INTRODUCTION**

1. This Brief of Law is submitted on behalf of S & D Solonenko Farms Ltd. ("Solonenko Farms") and Clarence Perpeluk ("Perpeluk") in support of a finding that MNP Ltd. (the "Receiver") does not hold a valid and subsisting commercial lien on grain owned by Solonenko Farms and Perpeluk, respectively or proceeds thereof.

### **II. FACTS AND BACKGROUND**

2. The facts are set out in the First Report of Receiver and the Affidavits of Clarence Perpeluk, Cortney Solonenko and Tyson Becker. A summary of salient facts is as follows:
  - a) Tyson Becker was the principal of Beckerland Farms Inc. ("Beckerland Inc."), Tyland Management Group Inc. ("Tyland"), and 102016217 Saskatchewan Ltd. (the "Numbered Co.");
  - b) Tyland operated the grain storage business up to June 1, 2018 and Beckerland Inc. merely acted as a holding company of assets;
  - c) Subsequent to June 1, 2018, Tyson Becker directed the Numbered Company to act as the operating company for the grain storage business;
  - d) All customers for the 2018/2019 storage season contracted with the Numbered Company for grain storage and paid fees to the Numbered Company;
  - e) The Numbered Company paid all operating costs associated with carrying on the grain

storage business;

- f) Neither Solonenko Farms nor Perpeluk entered into any agreement with Beckerland Inc. and neither were required to make payment to Beckerland Inc.;
- g) Neither Solonenko Farms nor Perpeluk were made aware that any payment was to be made to Beckerland Inc.;
- h) Both Solonenko Farms and Perpeluk paid the full value of the grain storage services to the Numbered Co.
- i) Tyson Becker was the directing mind of both the Numbered Co. and Beckerland Inc. at the time of the contract for grain storage services and he directed that the Numbered Co. provide the grain storage services without any requirement of customers to enter into any agreement with, or to any amount to, Beckerland Inc.; and
- j) The grain storage services in question included more than mere storage and included drying services, cooling services, monitoring services, loading and unloading services, trucking services and more.

### **III. ISSUES**

- 3. Solonenko Farms and Perpeluk present the following issue for the Court to address:
  - a) Whether the Receiver has no interest in the grain sale proceeds held at Shawn Patenaude Law.

### **IV. ARGUMENT**

- 4. The Receiver claims an interest in the grain proceeds held at Shawn Patenaude Law by virtue of a claim under *The Commercial Liens Act*, SS 2001, c C-15.1 (the "CLA"). The Receiver in its brief sets out sections 3 – 6 and 9 as the relevant sections. The respondents submit that the definition of "services" is also relevant:

"services" means any of the following types of services rendered for consideration in relation to goods:

- a) The provision of labour or materials for the purposes of restoring, improving or maintaining the condition and properties of goods and of salvaging goods;
  - b) The storage of goods;
  - c) The transportation, carriage and towage of goods.
5. The Respondents submit Beckerland Inc. cannot show that it meets the requirements of the CLA for having a valid lien for the following reasons:
  - a) There was no consideration in relation to goods as between the Respondents and Beckerland Inc. (Does not meet definition of “services”); and
  - b) Beckerland Inc. did not provide the services (Does not meet section 3).
6. Tyson Becker has confirmed that Beckerland Inc. was merely a holding corporation in the grain storage operation and that the Numbered Co. was the operating corporation. In this regard, the Respondents properly paid the Numbered Co. for the services rendered.
7. Furthermore, the funds were delivered to Tyson Becker who was the director and principal agent of Beckerland Inc. and therefore Beckerland Inc. had control of the funds when paid and could have directed payment to itself or to the Numbered Co. as would be appropriate. The Respondents submit the Receiver is bound by the actions of Beckerland Inc.’s agent, Tyson Becker.
8. The Respondent further submits the Receiver cannot be in any better position than where Beckerland Inc. would be without the receivership. Had insolvency proceedings not been commenced, it is unfathomable to think that this Court would entertain the notion that Tyson Becker, after having receiving payment on behalf of the Numbered Co., could switch hats and then attempt to force the Respondents to pay twice for the same services by simply taking the position that the wrong corporation was paid.

## **V. CONCLUSION**

9. For the above reasons, the Respondents request that the Receiver’s application as it relates to the grain proceeds held in trust be dismissed and that the Court confirm that payment of

said funds can be paid to the Respondents, respectively.

10. The Respondents submit that they should recover solicitor and client costs in any event of the cause. Through no fault of their own, the Respondents are required to defend the claim that they should pay twice for the same services.

All of which is respectively submitted this 22<sup>nd</sup> day of August, 2019.



**Shawn Patenaude, lawyer for  
Respondents**

#### **CONTACT INFORMATION AND ADDRESS FOR SERVICE**

**If prepared by a lawyer for the party:**

Name of firm:	Shawn Patenaude Law
Name of lawyer in charge of file:	Shawn Patenaude
Address of legal firms:	#9, 259 Hamilton Road, Yorkton, SK S3N 4C6
Telephone number:	306-782-4901
Fax number:	306-782-4905
E-mail address:	shawn@shawnpatenaudelaw.com