

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

B E T W E E N:

XQUISITE CAPITAL CORP.

Plaintiff

and

CRYSTAL FARMS LIMITED, JAMES GERALD TATOMIR, KRYSTAL MARTENS
and MILLIE ANN BARBERIO

Defendants

**SECOND REPORT TO THE COURT
SUBMITTED BY MNP LTD.
RECEIVER**

May 16, 2023

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1.0 Introduction and Purpose of Report

1.1. Introduction

1.1.1. Crystal Farms Limited (“**CFL**”) provided freight and logistics services to local greenhouses and operated a 270 acre vegetable and cash crop farm located outside Leamington, Ontario. CFL’s land holdings include five main ‘parcels’ which are comprised, in some cases, of multiple severed lots. The five main parcels are municipally (or legally) known as:

- (i) 1434-1436 Mersea Road D, Leamington Ontario (“**Parcel 1**”): Parcel 1 is considered the main farm and is comprised of two separate lots totaling 33 acres of land and has been improved with multiple outbuildings including the personal residence of Mr. James Tatomir;
- (ii) 1432 Mersea Road D, Leamington (“**Parcel 2**”): Parcel 2 is a personal residence occupied by Mr. Tatomir’s son.
- (iii) 1828 Mersea Road D, Leamington (“**Parcel 3**”): Parcel 3 is comprised of 12 acres of land and improved with one storage barn.
- (iv) 10 & 16 Mersea Road 19, Leamington (“**Parcel 4**”): Parcel 4 is comprised of 10 separate lots totaling 171 acres of land and has been improved with a residential dwelling and two storage barns.
- (v) Part Lot 19, concession D, Leamington (“**Parcel 5**”): Parcel 5 is comprised of two separate lots totalling 52 acres and is improved with a quonset hut for storage.

(collectively the “**Real Property**”).

1.1.2. A summary of CFL’s land holdings including their legal description and registered owner is attached as **Appendix A**.

1.1.2 As at August 16, 2022, CFL was indebted to Xquisite Capital Corp. (“**Xquisite**”) in the amount of \$4,144,104 plus accruing interest and costs of enforcement. As security for this indebtedness, Xquisite was granted the following:

- Charge/mortgage of land in the principal sum of \$4,800,000 and registered as instrument numbers CE1000226 and CE1000223 on April 4, 2021 over the Real Property.
- General security agreement March 24, 2021;
- Assignment of rents dated March 23, 2021 with respect to the Real Property;
- Postponements of claims and shareholder loans from James Gerald Tatomir (“**Tatomir**”) and Mildred Tatomir; and
- Postponement of non-arm’s debt from Krystal Martens (“**Martens**”) and Millie Ann Barberio (“**Barberio**”).

- 1.1.3** Tatomir, Barberio and Martens hold certain pieces of the Real Property in bare trust for CFL. As part of the lending arrangement between CFL and Xquisite, Barberio, Tatomir and Martens granted a mortgage of beneficial interest in the Real Property and thus have been named in this proceeding.
- 1.1.4** CFL’s logistics and farm operations have evolved as a multigenerational business. More recently, operational control has transitioned from Tatomir to his daughter, Barberio. The Receiver understands Barberio managed all aspects of CFL’s daily operations.
- 1.1.5** We understand CFL’s financial position has deteriorated rapidly over the last several years. Within months of receiving Xquisite’s funding, CFL had already breached various terms of its finance agreements and was unable to remedy defaults. As a result, on August 17, 2022 Xquisite demanded payment and issued a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* and Notice of Intention to Realize on Security pursuant to the *Farm Debt Mediation Act*.
- 1.1.6** On November 30, 2022, the Honourable Justice Dube issued an Order (the “**Appointment Order**”) appointing MNP Ltd. as receiver (the “**Receiver**”) of the assets, undertakings and properties of CFL and certain real property legally owned and held in bare trust for CFL by Tatomir, Barberio and Martens acquired for, or used in relation to CFL’s business (the “**Assets**”). A copy of the Appointment Order is attached as **Appendix B**. The Appointment Order is substantially in the form of the Model Receivership Order developed by the Commercial Court Users Committee.
- 1.1.7** The Appointing Order authorized but did not obligate the Receiver to, among other things:
- Take possession of and exercise control over the Assets and Real Property;
 - Manage, operate and carry on the business of CFL;
 - Initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Assets or Real Property, and to settle or compromise any such proceedings; and,
 - Market any or all the Assets and Real Property and negotiate such terms and conditions of sale as the Receiver may deem appropriate.
- 1.1.8** The Receiver has filed one previous report in this matter with Court dated March 13, 2023 (the “**First Report**”). The First Report included a confidential supplemental report which has been sealed by the Court. A copy of the First Report without appendices is attached as **Appendix C**. The First Report was submitted in support of the Receiver’s motion for, among other things, approval of a sale process for the Real Property and Assets. A copy of the Order of Justice Macfarlane dated March 28, 2023 approving the First Report and the sale process outlined therein is attached as **Appendix D** (the “**Sale Process Order**”).

1.2 Purpose of Receiver's Second Report

1.2.1 This constitutes the Receiver's second report to the Court (the "**Second Report**") in this matter and it is filed:

- i. to provide the Court with information on:
 - a. the Receiver's activities since the First Report; and
 - b. preliminary results of the Receiver's realization strategy in respect of certain of the Real Property and Assets;
- ii. in support of the Receiver's motion for Orders,
 - a) approving the Second Report and the confidential supplement thereto, along with the activities and conduct of the Receiver described therein;
 - b) approving the Agreement of Purchase and Sale dated April 27, 2023 between the Receiver, as vendor, and PKV Property Group Inc., as purchaser, in respect of Parcel 5 and authorizing the Receiver to complete the transaction contemplated therein (the "**Parcel 5 Transaction**")
 - c) vesting Parcel 5 in PKV Property Group Inc. ("**PKV**") free and clear of all encumbrances, other than permitted encumbrances;
 - d) approving the sale dated May 15, 2023 between the Receiver, as seller, and Craven Land & Cattle Co. Ltd., as buyer, in respect of a John Deere 9120 articulating four wheel drive tractor bearing serial number RW9120H040735 ("**Tractor**")
 - e) vesting the Tractor in Craven Land & Cattle Co. Ltd. ("**Craven**") free and clear of all encumbrances;
 - f) sealing the Confidential Supplement to the Second Report until i) completion of the Parcel 5 Transaction and the Tractor sale, or ii) further Order of the Court;
 - g) approving the Receiver's Statement of Receipts and Disbursements for the period November 30, 2022 to May 16, 2023;

2.0 Receiver Activities Since the First Report

2.1 Activities since the Second Report

2.1.1 Since the Second Report, the Receiver has undertaken and performed the following activities:

- (i) Initiated the sale process for the Real Property as approved by the Sale Process Order;
- (ii) Negotiated the terms of the proposed sale of Parcel 5 to PKV, the details of which are discussed later in this report;
- (iii) Negotiated the proposed sale of the Tractor to Craven, the details of which are discussed later in this report.
- (iv) Corresponded with the Canada Revenue Agency (“CRA”) to finalize its payroll and HST trust audits;
- (v) Oversaw the removal of third party owned personal property stored inside the barns on Parcel 1;
- (vi) Liaised with Barberio to return leased equipment to RCAP Leasing Inc. and Bank of Nova Scotia;
- (vii) Negotiated and settled the release of CFL’s interest in two leased highway ‘reefer’ trailers to Transit Trailer Leasing (“TTL”) for \$50,000;
- (viii) Negotiated a short-term land lease for 25 farmable acres at Parcel 1 for \$10,000;
- (ix) Reviewed the residential lease and liaised with the tenants of Parcel 4 regarding the sale process and to collect rents;
- (x) Liaised with the occupant of Parcel 2 regarding the sale process;
- (xi) Attended the premises periodically to inspect the Real Property and Assets.
- (xii) Liaised with Barberio on various matters including the status of CFL’s crop insurance claim, third party owned personal property and the tenancy/occupancy arrangements for Parcel 2 and Parcel 4;
- (xiii) Maintained a website at <https://mnpdebt.ca/en/corporate/corporate-engagements/crystal-farms-ltd> to post documents relating to the receivership that should be available to the public, including the Appointment Order;
- (xiv) Administered receivership estate banking, related transactions, and reconciliations and HST reporting; and,
- (xv) Addressed additional matters as they arose from time to time.

2.2 CRA’s Deemed Trust Claim

- 2.2.1 On January 17, 2023 and April 17, 2023 CRA submitted proofs of claim in the amount of \$5,638.04 and \$216,909.28 for outstanding HST and payroll source deductions respectively. Copies of the proofs of claim are attached as **Appendix E**.
- 2.2.2 CRA has advised the Receiver that a portion of its claim for unremitted payroll source deductions may be based on incomplete 2021 payroll records and that it may consider amending its claim at a later date if it determines there would be economic benefit in doing so.
- 2.2.3 The HST and payroll source deduction arrears are deemed trust property claims and rank in priority to all other creditor claims in respect of CFL’s personal property.

2.3 Real Property Sales Process

- 2.3.1 As discussed in the First Report, the Receiver determined that it may be unnecessary to realize all of the Real Property and Assets to fully satisfy all creditor claims. Pursuant to the Sale Process Order, the Receiver was authorized but not obligated to sell all Real Property and Assets. In consultation with Xquisite and Barberio, the Receiver implemented a sale strategy to delay realizing Parcel 1 (Parcel 1) and certain Assets pending the sale of all remaining parcels of land. Should the Receiver determine additional assets will need to be liquidated to cover known claims, it will consult stakeholders again to establish an alternate offering strategy in accordance with the Sale Process Order.
- 2.3.2 The Receiver initiated the sales process as approved in the Sale Process Order for Parcels 2-5 (collectively the “**Available Parcels**”).
- 2.3.3 The Available Parcels were listed for sale as follows on April 11, 2023:

Parcel No.	Initial Listing Price (\$)
Parcel 2	550,000.00
Parcel 3	400,000.00
Parcel 4	4,750,000.00
Parcel 5	1,575,000.00
	<u>7,275,000.00</u>

- 2.3.4 At the time of this report no offers have been received for Parcels 2, 3, or 4.
- 2.3.5 Two offers on Parcel 5 were received and negotiated within two weeks of listing the Available Parcels. Ultimately, the Receiver accepted an unconditional offer from PKV and entered into an agreement of purchase and sale dated April 27, 2023 (the “**PKV APS**”), subject to Court approval.
- 2.3.6 If approved, the PKV APS is to be completed one business day following the date upon which the approval and vesting order becomes final.
- 2.3.7 A redacted copy of the PKV APS is attached as **Appendix F**.
- 2.3.8 An unredacted copy of the PKV APS and details of the competing offer and appraised value are being provided to the Court via the Confidential Supplement to the Receiver’s Second Report (the “**Confidential Supplement**”). That information is being provided on a confidential basis to avoid any prejudice which would be caused by the disclosure of that information if the Parcel 5

Transaction is not approved or, if approved, not completed, and it becomes necessary for the Receiver to remarket Parcel 5. Accordingly, the Receiver is requesting a sealing order for the Confidential Supplement until such time as the Parcel 5 Transaction is completed.

2.3.9 Parcel 5 was marketed in accordance with the Sale Process Order. It is the Receiver’s view that Parcel 5 has been properly exposed to the market and completing the Parcel 5 Transaction will optimize the recovery from Parcel 5.

2.3.10 Xquisite is the senior secured lender to CFL and supports the Parcel 5 Transaction.

2.4 Encumbrances to be Vested Out

2.4.1 Copies of the parcel register for Parcel 5, comprised of two property identification numbers 75104-0140 and 74104-0141) as of December 2, 2022 are attached as **Appendix G**. The instruments and encumbrances to be deleted from title and vested out from Parcel 5 are as follows:

(i) 75104-0140

Reg. No.	Date	Instrument Type	Party To
CE641938	23/12/2014	Trans Personal Rep	Barberio, Millie Ann
CE917821	12/11/2019	Notice	CFL, Millie Ann Barberio
CE1000226	06/04/2021	Charge	Xquisite Capital Corp.
CE1000227	06/04/2021	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	02/12/2022	Application (Court Order)	MNP Ltd.

(ii) 75104-0141

Reg. No.	Date	Instrument Type	Party To
R1083375	18/04/1989	Trans Power Sale	Crystal Farms Limited
CE917821	12/11/2019	Notice	CFL, Millie Ann Barberio
CE1000226	06/04/2021	Charge	Xquisite Capital Corp.
CE1000227	06/04/2021	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	02/12/2022	Application (Court Order)	MNP Ltd.

2.5 Sale of Tractor

2.5.1 As discussed earlier in this report, the Receiver elected to delay marketing Parcel 1 and certain Assets pending the sale of the Available Parcels.

2.5.2 On May 2, 2023 Barberio advised the Receiver she had a party interested in purchasing the Tractor. In consultation with Xquisite, the Receiver determined the proposed sale to Craven would not prejudice CFL’s creditors and subsequently entered into an agreement of purchase and sale dated May 15, 2023 (the “**Craven APS**”). A redacted copy of the Craven APS is attached as **Appendix H**. Due to the confidential nature of the purchase price, the Receiver is disclosing same to the Court via the Confidential Supplement. The Confidential Supplement also contains a discussion of the appraisals of the Tractor commissioned by the Receiver.

2.5.3 Although Barberio initially indicated to the Receiver a preference to retain all machinery and equipment until the Real Property was fully realized, Barberio has since reconsidered and has expressed her support of the proposed Tractor sale.

2.5.4 Xquisite is the current senior secured lender over CFL’s personal property, including the Tractor, and supports the proposed sale of the Tractor to Craven.

2.6 Encumbrances to be Vested Out

2.6.1 A copy of a search of registrations against CFL under the *Personal Property Security Act* as of December 2, 2022 is attached as **Appendix I**. The registrations and encumbrances to be vested out from the Tractor (and no other personal property comprising the Assets) as disclosed by the search are as follows:

Registration No.	Secured Party	Collateral Classification
20180920 1839 1626 5801	Agricultural Credit Corporation	Inventory, Accounts, Other
20190306 1411 1462 1655 and 20221123 0905 1590 9512	Scotiabank	Inventory, Accounts, Other
20190801 1509 1902 8500	John Deere Financial Inc.	Equipment, Other
20190802 0944 1902 8666	John Deere Financial Inc.	Equipment, Other
20190827 1605 1901 2723	John Deere Financial Inc.	Equipment, Other
20200806 1034 8077 3187	RCAP Leasing Inc.	Equipment, Accounts, Other, Motor Vehicle Included
20200831 1149 1902 4705	LBEL Inc.	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
20210319 1059 1590 6771	Xquisite Capital Corp.	Accounts, Other
20210319 1101 1590 6778	Xquisite Capital Corp.	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
20210319 1237 1590 6798	Xquisite Capital Corp.	Accounts, Other
20210319 1238 1590 6799	Xquisite Capital Corp.	Accounts, Other
20210319 1238 1590 6800	Xquisite Capital Corp.	Accounts, Other
20210326 1703 1462 4758	Transit Trailer Leasing Limited	Equipment, Motor Vehicle Included
20210330 1438 1590 7591	Xquisite Capital Corp.	Accounts, Other
20210330 1441 1590 7593	Xquisite Capital Corp.	Accounts, Other
20210401 1056 1590 7844	Xquisite Capital Corp.	Accounts, Other
20220131 0816 4085 6599	The Bank of Nova Scotia	Equipment Other, Motor Vehicle Included

3.0 Receiver's Interim Statement of Receipts and Disbursements

- 3.1.1** Attached as **Appendix J** is a summary of the Receiver's Statement of Receipts and Disbursements for the period November 30, 2022 to May 16, 2023.
- 3.1.2** The Receiver has generated receipts of \$194,424 from the sale of grain and realizing equity in certain leased assets;
- 3.1.3** The Receiver has made disbursements of \$79,326 for insurance, utilities and appraisal fees and \$75,440 in respect of approved professional fees.
- 3.1.4** The Receiver has a balance of \$49,760 in the receivership bank account.

4.0 Order Sought

4.1.1 We submit this Second Report to the Court and respectfully request that the Court make an order as requested in paragraph 1.2.1 above.

All of which is respectfully submitted this 16 day of May, 2023.

**MNP Ltd. in its capacity as
Court Appointed Receiver of
Crystal Farms Limited
and not in its personal capacity**



Per: _____
Robert W. Smith CPA, CA, CIRP, LIT
Senior Vice President