

Q.B. No. 1096 of 2008

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3 AS AMENDED

AND IN THE MATTER OF THE PROPOSAL
OF FARM PURE SEEDS INC.

BEFORE THE HONOURABLE)
MADAME JUSTICE A. ROTHERY)

THURSDAY, THE 18TH
DAY OF SEPTEMBER, A.D. 2008

ORDER

Having read the Notice of Motion with proof of service on FCC-Farm Credit Corporation and RBC-Royal Bank of Canada

And having read the Affidavit of Allan Hardy and Andre Lizee, both filed and having heard John D. Hillson, counsel for the Applicant, FarmPure Seeds Inc (the "Applicant") and having heard Joel Hesje, Q.C., solicitor for FCC-Farm Credit Corporation and Ian Sutherland, solicitor for RBC, The Royal Bank of Canada, the Court was pleased to order as follows:

DIP FINANCING

1. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to borrow under credit facilities from Pickseed Canada Inc. (the "DIP Lender") and grant security in favour of the DIP Lender in order to maintain the Borrower's business and operations for a limited time and in order to enable the Borrower to make a proposal to its unsecured creditors under and in accordance with Part III - Division I of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA").

2. THIS COURT ORDERS THAT such credit facilities shall be on the terms and subject to the conditions set forth in the DIP Credit Agreement between the Applicant and the DIP Lender dated as of August 14, 2008 (the "DIP Credit Agreement") filed with this Court and shall be secured by the DIP Charges (established pursuant to paragraphs 3 and 4 hereof), the General Security Agreement and the Demand Collateral Mortgage, each dated as of August 14, 2008 and filed with this Court together with such additional mortgages, charges, hypothecs, security documents, guarantees and other documents (collectively, the "Security Documents"), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Credit Agreement and the Security Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

3. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefits of and is hereby granted a charge (the "Operating Charge") in an amount not to exceed \$200,000.00 on all present and after acquired real, immovable and personal property of the Applicant (the "Property"), which charge shall not exceed the aggregate amount owed to the DIP Lender under the Operating Facility (as defined in the DIP Credit Agreement). The Operating Charge shall have the priority set out in paragraph 7 hereof.

4. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefits of and is hereby granted a charge (the "PMSI Charge" and collectively with the Operating Charge, the "DIP Charges") in an amount not to exceed \$1,600,000.00 on all Inventory (as such term is defined in the *Personal Property Security Act* (Saskatchewan) of the Applicant, acquired by the Applicant from and after the effective date of the DIP Facilities, which charge shall not exceed the aggregate amount owed to the DIP Lender under the PMSI Facility (as defined in the DIP Credit Agreement). The PMSI Charge shall have the priority set out in paragraph 8 hereof.

5. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) The DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Operating Charge, the PMSI Charge or any of the Security Documents;
- (b) Upon the occurrence of a default or an event of default under the DIP Credit Agreement or the Security Documents, the DIP Lender may, upon one business day notice to the Applicant and the Proposal Trustee, exercise any and all of its rights and remedies against the Applicant, the Property and/or the Inventory under or pursuant to the DIP Credit Agreement or the Security Documents, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Credit Agreement or the Security Documents, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and upon the occurrence of a default or an event of default under the DIP Credit Agreement or the Security Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property, Inventory and the cash flow of the Applicant to repay amounts owing to the DIP Lender in accordance with the DIP Credit Agreement and the Security Documents, but subject to the priorities as set out in paragraphs 7 and 8 of this Order; and
- (c) The foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant, the Property or the Inventory.

6. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the Applicant and the DIP Lender, the rights of the DIP Lender shall be unaffected by any proposal filed by the Applicant under the BIA, with respect to any advances made under the DIP Credit Agreement.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

7. THIS COURT ORDERS that the Operating Charge created under this Order shall constitute a priority charge on all of the Property and shall rank in priority to all other security interests, trusts, liens, charges, writs of execution (whether registered or unregistered), and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any person in relation to the Property, regardless of whether or not such Encumbrances were created before or after the granting of this Order, other than the security interests granted by the Applicant in favour of Royal Bank of Canada and Farm Credit Canada.

8. THIS COURT ORDERS that the PMSI Charge created under this Order shall constitute a first ranking priority charge on all of the Inventory and shall rank in priority to all other Encumbrances in favour of any person in relation to the Inventory, regardless of whether or not such Encumbrances were created before or after the granting of this Order.

9. THIS COURT ORDERS that the filing, registration or perfection of the DIP Charges shall not be required, and that the DIP Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Charges coming into existence, notwithstanding the lack of any such filing, registration or perfection.

10. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrance over any Property or Inventory that rank in priority to, or *pari passu* with, the interests of the DIP Lender pursuant to the Security Documents, the Operating Charge or the PMSI Charge, unless the Applicant also obtains the prior written consent of the DIP Lender, or further Order of this Court.

11. THIS COURT ORDERS that the DIP Credit Agreement, the Security Documents and the DIP Charges shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made

pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) Neither the creation of the DIP Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the Security Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) The DIP Lender shall have no liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Credit Agreement, the creation of the DIP Charges, or the execution, delivery or performance of the Security Documents; and
- (c) The payments made by the Applicant pursuant to this Order, the DIP Credit Agreement or the Security Documents, and the granting of the DIP Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

COMEBACK CLAUSE

12. THIS COURT ORDERS that any interested party (including the Applicant or the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

NOTICE

13. THIS COURT ORDERS that the Applicant shall, within six (6) days of the date of entry of this Order, send by ordinary mail, facsimile or electronic mail a copy of this Order to its known judgment creditors, and shall promptly send a copy of this Order (a) to all parties appearing on this Application, and (b) to any other interested person requesting a copy of this Order.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan this 19th day of September, A.D. 2008.

DENNIS BEREZOWSKY
LOCAL REGISTRAR
LOCAL REGISTRAR

(Aml)
This Order was delivered by:

MacDermid Lamarsh
Barristers and Solicitors
320-728 Spadina Crescent East
SASKATOON SK S7K 3H2

Address for service: Same as above
Lawyer in charge of file: John D. (Jack) Hillson
Telephone: 652-9422
Facsimile: 242-1554

Robert B. Emigh, Q.C. (Canada)
 Randy T. Klein
 Jerry Katz (*)
 Penny-Lynn Tallis
 C. James W. Bias (Δ)
 John D. (Jack) Hillson
 Kerry M. O'Shea
 Kerry Allenby (Σ)
 Toni L. Rempel
 Stephanie L. Whitecloud



MacDermid Lamarsh
 BARRISTERS • SOLICITORS • MEDIATORS

Blair Knight (*)
 Jodi L. Resch (*)
 Patrick J. Bitz, Q.C. (1972 - 2007)
 (Δ) Registered Trademark Agent
 (*) Student - at - Law
 (*) of Saskatchewan and Alberta Bars
 (Σ) of Alberta Bar

FAX

NOTE: The information contained in this facsimile message is privileged and confidential information intended for the use of the addressee listed below and no one else. If you are not the intended recipient or the employer or agent responsible to deliver this message to the intended recipient, please do not use this transmission in any way, but contact the sender by telephone.

TO: NAIDA KORNUA - CIRP
Advisory Services

FROM:
JOHN D. (JACK) HILLSON

FIRM/COMPANY:
MEYERS NORRIS PENNY

FILE NO.: 22729-004

FAX NO.: 242-7844

FAX OPERATOR: REBECCA

DATE: September 22, 2008

FAX REPLY NO.: (306) 242-1554

This is the first of 7 pages. If all are not received, call (306) 652-9422 for assistance.

Original document: Retained on File Delivered By Mail Courier Picked Up

MESSAGE

Re: In the matter of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended and in the matter of the Proposal of FarmPure Seeds Inc.

Following this cover page is a copy of Order of Madame Justice A. Rothery issued on September 19, 2008.

INNOVATION & EXCELLENCE SINCE 1903

(p) 306.652.9422 (f) 306.242.1554
 (e) macmarsh@macmarsh.com
 (w) macdermidlamarsh.com

Celebrating 100 Years
 of Community & Professional Service

320 - 728 Spadina Crescent East,
 Saskatoon, Saskatchewan
 Canada • S7K 3H2