

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

MOTION RECORD

May 27, 2015

FOGLER, RUBINOFF LLP

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

gazeff@foglers.com

Tel: (416) 864-9700

Fax: (416) 941-8852

Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

TO: **ZEIFMAN PARTNERS INC.**
Receiver of Vandermeer Greenhouses Ltd.

AND TO: **FLETT BECCARIO**
Barristers and Solicitors
190 Division Street
PO Box 340
Welland, Ontario
L3B 5P9

J. Ross Macfarlane
jrmacfar@flettbeccario.com
Tel: (905) 732-4481
Fax: (905) 732-2020

Lawyers for Meridian Credit Union Limited

AND TO: **MNP LTD.**
432 Niagara Street
St. Catharines, ON
L2M 4W3

Douglas Stuiwe
doug.stuiwe@mnp.ca
Tel: (905) 937-0002
Fax: (905) 937-8371

Trustee for John Van Berkel

AND TO: **MNP LTD.**
432 Niagara Street
St. Catharines, ON
L2M 4W3

Douglas Stuiwe
doug.stuiwe@mnp.ca
Tel: (905) 937-0002
Fax: (905) 937-8371

Trustee for Anna Van Berkel

AND TO: **DEPARTMENT OF JUSTICE**

Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West
Suite 3400
Toronto ON
M5X 1K6

Diane Winters
diane.winters@justice.gc.ca

Tel: (416) 973-3172

Fax: (416) 973-0810

Lawyers for Canada Revenue Agency

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE**

Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON
L1H 8H5

Kevin O'Hara LL.M, Senior Counsel

kevin.ohara@ontario.ca

Tel: (905) 433-6934

Fax: (905) 463-4510

AND TO: **MARSHALL KIREWSKIE**

Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 2C7

Paul Marshall

pmarshall@bellnet.ca

Tel: (905) 842-5070x223

Cassandra Kirewskie

ckirewskie@bellnet.ca

Tel: (905) 842-5070x224

Fax: (905) 842-4123

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tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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Applicant

-and-

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NOTICE OF MOTION

Zeifman Partners Inc., in its capacity as Receiver of Vandermeer Greenhouses Ltd. (in such capacity, the “**Receiver**”), will make a Motion to a Judge presiding over the Commercial List on Monday June 1, 2015 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- (a) If necessary, an order abridging the time for service and filing of this notice of motion and the motion record and dispensing with the further service thereof;

- (b) Dismissing the Application to the Ontario Superior Court of Justice commenced by Richard Zirger *et al.* (collectively, the "**Zirger Group**") in Court File No. CV-15-522653 (the "**SCJ Application**"), with costs in favour of the Receiver and Meridian; or
- (c) In the alternative to subparagraph (b) above, scheduling the hearing of a Motion to dismiss the SCJ Application;
- (d) An order increasing the amount that the Receiver is authorized to borrow pursuant to Receiver's Certificates, from \$1,000,000 to \$2,000,000;
- (e) An order approving the activities and conduct of the Receiver and its legal counsel to date;
- (f) An order approving the fees and disbursements of the Receiver and its legal counsel to date; and
- (g) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Zeifman Partners Inc. was appointed as Receiver of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**") pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice dated February 21, 2014 (the "**Initial Order**"), on the Application of the Applicant, Meridian Credit Union Limited ("**Meridian**");

- (b) Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer also owns and operates an anaerobic digestion facility;
- (c) The Receiver anticipated completing a sale of the property of Vandermeer (the "**Property**") to Green Tower Industries Inc. ("**GTII**"), and entered into a three month lease agreement with GTII effective February 22, 2014 (the "**Lease**");
- (d) GTII failed to pay certain expenses and was thus in default of its obligations under the Lease. GTII failed to remedy its defaults, and the Lease and sale transaction were terminated effective April 28, 2014;
- (e) Since the termination of the Lease and proposed transaction with GTII, the Receiver has, among other things, communicated and negotiated with other prospective purchasers but has not yet completed a transaction;
- (f) The Receiver has borrowed \$1,000,000 under permitted borrowings pursuant to the Initial Order, as amended by the Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice dated December 2, 2014 (the "**December 2 Order**"), and consequently, no further funds may be borrowed. The Receiver's current borrowing limit has been exhausted for reasons that include the following:
 - (i) Borrowing was intended to be short term, pending completion of the transaction with GTII. However, the proposed transaction with GTII did not and will not close;

- (ii) Revenue generated during receivership and, in particular;
 - (1) revenue from the anaerobic digester was lower than expected; and
 - (2) Weak floral sales combined with operating costs that are difficult to reduce;
- (iii) The Receiver has been compelled to spend considerable time and resources responding to various correspondence and proceedings brought by members of the Zirger Group;
- (g) As a result of the above, the Receiver now requires additional funds to fund the cost of the receivership proceedings and expects that such borrowings will be for a longer period than initially anticipated;
- (h) The sum of \$2,000,000 is an appropriate limit for the Receiver's borrowing at this juncture;
- (i) Members of the Zirger Group have commenced a number of proceedings in respect of Vandermeer including, most recently, the SCJ Application;
- (j) The SCJ Application was stayed pursuant to the Endorsement of the Honourable Mr. Justice Morawetz dated April 2, 2015 and the Endorsement of the Honourable Mr. Justice Wilton-Siegel dated April 23, 2015;
- (k) The SCJ Application was frivolous, vexatious and had no reasonable prospect of success given the following factors:
 - (i) The Zirger Group's motion for an Order lifting the stay of proceedings was brought in the wrong court;

- (ii) The Zirger Group refused to serve the parties on the service list (other than the Receiver) in respect of its motion to lift the stay, despite the advice of counsel to the Receiver as well as the repeated requests of Meridian's counsel;
 - (iii) The SCJ Application was commenced in flagrant breach of the Initial Order and the stay of proceedings thereunder;
 - (iv) The *Farming and Food Production Protection Act* (Ontario) expressly prohibits any court from granting substantially all of the relief sought by the Zirger Group; and
 - (v) The Zirger Group failed to serve the SCJ Application materials on a number of parties including, in particular, the Board, against which the Zirger Group sought declaratory relief;
- (l) In addition to the items listed above at subparagraphs (k)(i) through (v), members of the Zirger Group have persistently engaged in conduct that unnecessarily increased costs including:
- (i) commencing and then voluntarily abandoning multiple proceedings in respect of the substantially the same issues, without legitimate cause or explanation; and
 - (ii) repeatedly soliciting available dates from the Receiver's counsel in respect of a hearing of a motion or other proceeding and then failing to proceed with same, without legitimate cause or explanation;

- (m) The Receiver has conducted itself and the affairs of Vandermeer in accordance with the Initial Order and the December 2 Order and fees and disbursements have been incurred in the course of same, particulars of which are set out in the Fourth Report of the Receiver dated May 27, 2015 (the "**Fourth Report**");
- (n) A representative of each of the Receiver and its counsel has sworn an Affidavit in support of the request for approval of fees and disbursements, and copies of such Affidavits are included in the Fourth Report;
- (o) The fees and disbursements of the Receiver and its counsel are fair and reasonable;
- (p) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (q) Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended;
- (r) Rule 37 of the *Rules of Civil Procedure*; and
- (s) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) Second Report of the Receiver dated March 30, 2015;
- (b) Third Report of the Receiver dated April 17, 2015;
- (c) Fourth Report of the Receiver dated May 27, 2015; and

- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 27, 2015

FOGLER, RUBINOFF LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)
gazeff@foglers.com

Tel: (416) 864-9700
Fax: (416) 941-8852

Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

TO: **ZEIFMAN PARTNERS INC.**
Receiver of Vandermeer Greenhouses Ltd.

AND TO: **FLETT BECCARIO**
Barristers and Solicitors
190 Division Street
PO Box 340
Welland, Ontario
L3B 5P9

J. Ross Macfarlane
jrmacfar@flettbeccario.com
Tel: (905) 732-4481
Fax: (905) 732-2020

Lawyers for Meridian Credit Union Limited

AND TO: **MNP LTD.**
432 Niagara Street
St. Catherines, ON
L2M 4W3

Douglas Stuiwe
doug.stuiwe@mnp.ca
Tel: (905) 937-0002
Fax: (905) 937-8371

Trustee for John Van Berkel

AND TO: **MNP LTD.**
432 Niagara Street
St. Catherines, ON
L2M 4W3

Douglas Stuiwe
doug.stuiwe@mnp.ca
Tel: (905) 937-0002
Fax: (905) 937-8371

Trustee for Anna Van Berkel

AND TO: **DEPARTMENT OF JUSTICE**
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West
Suite 3400
Toronto ON
M5X 1K6

Diane Winters
diane.winters@justice.gc.ca
Tel: (416) 973-3172
Fax: (416) 973-0810

Lawyers for Canada Revenue Agency

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE**

Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON
L1H 8H5

Kevin O'Hara LL.M, Senior Counsel
kevin.ohara@ontario.ca
Tel: (905) 433-6934
Fax: (905) 463-4510

AND TO: **MARSHALL KIREWSKIE**

Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 2C7

Paul Marshall
pmarshall@bellnet.ca
Tel: (905) 842-5070x223

Cassandra Kirewskie
ckirewskie@bellnet.ca
Tel: (905) 842-5070x224
Fax: (905) 842-4123

MERIDIAN CREDIT UNION LIMITED
Applicant

-and- VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

FOGLER, RUBINOFF LLP

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

gazeff@foglers.com

Tel: (416) 864-9700

Fax: (416) 941-8852

Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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**FOURTH REPORT OF ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014 (the "**Initial Order**", a copy of which is attached hereto as **Exhibit "A"**), on the Application of the Applicant, Meridian Credit Union Limited ("**Meridian**"), Zeifman Partners Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**").

2. Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area is a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse and two

residences. Vandermeer also owns and operates an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

PURPOSE OF REPORT

3. The Receiver has filed this Fourth Report in order to update the Court regarding its activities and in support of a Motion seeking an Order, among other things:

- (a) Dismissing the Application commenced by Richard Zirger *et al.* (collectively, the "**Zirger Group**") in Court File No. CV-15-522653 (the "**SCJ Application**"), with costs in favour of the Receiver and Meridian; or
- (b) In the alternative to subparagraph (a) above, scheduling the hearing of a Motion to dismiss the SCJ Application;
- (c) Authorizing the Receiver to borrow an amount of up to \$2,000,000 in order to fund the cost of the receivership proceeding;
- (d) Approving the activities and conduct of the Receiver and its counsel as disclosed herein; and
- (e) Approving the fees and disbursements of the Receiver and its legal counsel.

RECEIVER'S ACTIVITIES

4. Since the filing of the First Report of the Receiver dated November 17, 2014 (the "**First Report**"), the Receiver has engaged in the following activities:

- (a) Communicated with creditors and other stakeholders;

- (b) Responded to and managed legal claims commenced by third parties against Vandermeer and the Receiver, among others;
- (c) Managed various operational matters including staffing and human resources as well as the purchase of mixers and accessories for operations;
- (d) Repaired and replaced digester equipment as required from time to time, including replacing mixers and cables on certain existing mixers;
- (e) Selectively reduced inventory as a conservatory and protective measure;
- (f) Updated the Receiver's Confidential Information Memorandum for potential purchasers;
- (g) Negotiated with a potential tenant for a sublease of certain space within the greenhouse;
- (h) Filed an application and negotiated grants through the AgriStability income-replacement program;
- (i) Managed matters related to the curtailment and supply of gas to the facility;
- (j) Communicated with third parties expressing interest in acquiring Vandermeer's property and delivered a "sign back" in respect of offer received;
- (k) Communicated with the Ontario Ministry of the Environment and Climate Change (the "MOE") on an ongoing basis in respect of Vandermeer's Certificate of Approval;

- (l) Engaged and managed consultants as required from time to time; and
- (m) Negotiated potential transaction terms with prospective purchasers of the Property.

STATUS OF ZIRGER PROCEEDINGS

5. The Receiver seeks an Order dismissing the SCJ Application, with costs in favour of the Receiver. The events related to the various legal proceedings commenced by members of the Zirger Group are described in detail in the Second Report of the Receiver dated March 30, 2015 (the "**Second Report**") and the Third Report of the Receiver dated April 17, 2015 (the "**Third Report**"). Copies of the Second Report and the Third Report are attached hereto (without exhibits) as **Exhibits "B"** and **"C"**, respectively.

6. In addition, attached hereto as **Exhibit "D"** is a summary chronology of events related to the Zirger Group and its activities including the various legal and administrative proceedings commenced by its members.

7. The Receiver had agreed to attend a motion to be brought by the Zirger Group on April 2, 2015 for an Order lifting the stay of proceedings. However, on March 27, 2015, the Receiver's counsel received a full banker's box containing the Zirger Group's materials, including a nine volume application record (the "**Application Record**") filed in connection with the SCJ Application, as well as a Supplementary Affidavit, Factum and Book of Authorities.

8. The Notice of Application included in the Application Record (the "**Notice of Application**", a copy of which is attached hereto as **Exhibit "E"**) was issued by the Ontario Superior Court of Justice on February 24, 2015 and was returnable April 2, 2015. The Notice of Application indicated that the Zirger Group was seeking a broad range of orders that went far

beyond a request for leave to proceed. In particular, the Zirger Group sought various Orders under the *Farming and Food Production Protection Act* (Ontario) (the "FFPPA") prohibiting the Receiver from engaging in certain agricultural activities.

9. The Receiver did not consent to the issuance of the Notice of Application or the commencement of the SCJ Application. Furthermore, the Zirger Group had not been granted authority by Order issued by this Honourable Court to do so. Consequently, the SCJ Application was commenced in breach of the Initial Order.

10. The SCJ Application was, on its face, returnable Thursday April 2, 2015. The Receiver's counsel contacted counsel to the Zirger Group to advise of the inappropriateness of the Zirger Group's conduct in breaching the stay of proceedings, its late delivery of its voluminous materials and its failure to bring the matter before the Commercial List, as well as the Receiver's intention to attend before the Commercial List at a 9:30 chambers attendance on Tuesday March 31, 2015. A copy of a letter dated March 27, 2015 from the Receiver's counsel to the Zirger Group's counsel is attached hereto as **Exhibit "F"**.

11. On March 31, 2015, counsel to each of the Receiver, Meridian and the Zirger Group attended in chambers before the Honourable Mr. Justice McEwen, who referred the matter to the Judge hearing the SCJ Application.

12. Following the attendance before the Honourable Mr. Justice McEwen, by letter dated April 1, 2015, the Receiver's counsel requested that the Zirger Group consent to an adjournment of the SCJ Application returnable April 2, 2015. A copy of the letter dated April 1, 2015 is attached hereto as **Exhibit "G"**.

13. The Zirger Group did not consent to the requested adjournment. Accordingly, on April 2, 2015, the parties attended before the Honourable Mr. Justice Morawetz, who stayed the SCJ Application and directed the Zirger Group to bring a Motion to lift the stay in the Commercial List. A copy of the Endorsement of the Honourable Mr. Justice Morawetz dated April 2, 2015 is attached hereto as **Exhibit "H"**.

14. On April 23, 2015, the parties attended before the Honourable Mr. Justice Wilton-Siegel. The stay of proceedings was not lifted for the purpose of the SCJ Application. Instead, the Honourable Mr. Justice Wilton-Siegel issued an Endorsement, on the consent of the Receiver and the Zirger Group, directing that, among other things, the stay under the Initial Order be lifted to permit the Zirger Group to commence a proceeding before the Normal Farm Practices Protection Board (the "**Board**"). A copy of the Endorsement of the Honourable Mr. Justice Wilton-Siegel dated April 23, 2015 is attached hereto at **Exhibit "I"**.

15. On May 8, 2015, the Zirger Group delivered a copy of its latest Application (the "**Board Application**") to the Board. Attached hereto as **Exhibit "J"** is a copy of a letter dated May 8, 2015 from the Zirger Group's counsel to the Board, enclosing the Board Application.

16. Attached hereto as **Exhibit "K"** is a copy of a letter dated May 19, 2015 from the Zirger Group's counsel to the Board, raising concerns regarding the Board's impartiality and requesting certain information and accommodations from the Board.

17. The letter to the Board dated May 19, 2015 references an earlier letter from the Zirger Group's counsel to the Board, pursuant to which an earlier application by members of the Zirger Group to the Board was voluntarily withdrawn. Attached hereto as **Exhibit "L"** is a copy of a letter dated December 7, 2012 from the Zirger Group's counsel to the Board.

18. The Receiver's counsel has requested available dates from the Zirger Group's counsel for the hearing of the Motion to dismiss the SCJ Application. By letter to the Receiver's counsel dated May 19, 2015 (a copy of which is attached hereto as **Exhibit "M"**), the Zirger Group's counsel declined to provide available dates for the hearing until the Zirger Group has reviewed the relevant materials. Consequently, in the alternative to an Order dismissing the SCJ Application, the Receiver seeks an Order scheduling the hearing of the Motion.

COSTS UNNECESSARILY INCURRED

19. The Zirger Group's abandoned proceedings and other conduct have resulted in a significant amount of costs thrown away. The Receiver is of the view that an award of costs is appropriate for the following reasons:

- (a) The SCJ Application was the third proceeding in respect of Vandermeer's operations commenced by members of the Zirger Group. Each such proceeding has dealt with substantially the same complaints. The first two proceedings were voluntarily withdrawn by the Zirger Group;
- (b) Since July 2014, the Receiver provided dates for the hearing of a lift stay motion in at least six (6) different instances, yet in each such instance the Zirger Group failed to proceed, without explanation;
- (c) The Zirger Group's motion for an Order lifting the stay of proceedings was brought in the wrong court, despite the advice of counsel to the Receiver as well as counsel to Meridian;

- (d) The Zirger Group refused to serve the parties on the service list (other than the Receiver), despite the advice of counsel to the Receiver as well as the repeated requests of Meridian's counsel. Accordingly, the motion returnable April 2, 2015 could not have properly proceeded on that date;
- (e) The SCJ Application was commenced in flagrant breach of the Initial Order and the stay of proceedings thereunder. The Zirger Group refused to consent to the Receiver's request for an adjournment of the April 2, 2015 hearing, despite its late service of the voluminous Application Record. Consequently, between the date of service (*i.e.*, March 27, 2015) and the return date of April 2, 2015, the Receiver had to review a significant amount of material unrelated to a simple motion to lift the stay of proceedings, expending substantial estate resources;
- (f) The SCJ Application had no reasonable prospect of success, insofar as the FFPPA expressly prohibits any court from granting substantially all of the relief sought by the Zirger Group thereunder; and
- (g) The Zirger Group failed to serve the SCJ Application materials on a number of parties including, in particular, the Board, against which the Zirger Group sought declaratory relief. Accordingly, the SCJ Application could not have properly proceeded at the attendance on April 23, 2015.

20. Attached hereto as **Exhibit "N"** is a schedule setting out the approximate amounts incurred in response to the Zirger Group's conduct since the commencement of this proceeding. The schedule indicates that a total of approximately \$55,000.00 has been spent in response to the Zirger Group's activities, conduct and correspondence since July 2014. Such costs do not include the

significant costs incurred by Zeifman and paid by Meridian prior to the court appointment under the Initial Order, in responding to an application to the Board that was ultimately voluntary withdrawn.

EFFORTS TO SELL PROPERTY

21. Pursuant to the Initial Order, the Receiver was authorized to market the Property for sale.

22. Since the date of the First Report, the Receiver has received expressions of interest as well as an offer to purchase the Property. The Receiver has communicated with such third parties, and delivered a "sign back" in response to the offer received. Despite such efforts, thus far the Property has not been sold.

23. The Receiver has continued to update the Confidential Information Memorandum for potential purchasers.

MISCELLANEOUS

24. The Receiver has undertaken the following additional activities since the date of the First Report:

(a) Negotiated grants through AgriStability, a margin-based program which enables producers to protect farm operations against large declines in farm income. A program payment is triggered when a producer's margin (*i.e.*, allowable revenue less allowable expenses) in the program year drops below the producer's average margin from previous years;

(b) Managed matters related to the curtailment and supply of gas to the greenhouse facility;

- (c) Communicated with the MOE on an ongoing basis in respect of Vandermeer's Certificate of Approval; and
- (d) Engaged and managed consultants as required from time to time.

RECEIPTS & DISBURSEMENTS

25. Attached hereto as **Exhibit "O"** is a copy of the Receiver's statement of receipts and disbursements for the period between February 24, 2014 and April 23, 2015 (the "**R&D Statement**").

APPROVAL OF FEES AND DISBURSEMENTS

26. The Receiver seeks approval of its fees and disbursements as well as those of its legal counsel, Fogler, Rubinoff LLP.

27. The Receiver's accounts for the period between November 1, 2014 and April 30, 2015 include the amounts of \$90,792.75 in fees and \$1,432.41 in disbursements plus Harmonized Sales Tax ("**HST**") in the amount of \$11,989.27, for a total amount of \$104,214.43 (the "**Receiver's Accounts**"). Attached hereto as **Exhibit "P"** is the Affidavit of Allan Rutman of Zeifman Partners LLP sworn May 26, 2015 incorporating copies of the Receiver's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver.

28. The accounts of the Receiver's legal counsel for the period between November 1, 2014 and April 30, 2015 include the amounts of \$59,805.00 in fees and \$1,809.30 in disbursements plus HST in the amount of \$7,976.85, for a total amount of \$69,591.15 (the "**Counsel Accounts**"). Attached hereto as **Exhibit "Q"** is the Affidavit of Gregory Azeff of Fogler, Rubinoff LLP,

counsel to the Receiver, sworn May 27, 2015, incorporating copies of the Counsel Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver's legal counsel.

INCREASE TO BORROWING LIMIT

29. The Initial Order authorized the Receiver to borrow an amount of up to \$250,000 in order to fund the receivership. Pursuant to the Order of the Honourable Mr. Justice Newbould dated December 2, 2014 (a copy of which is attached hereto as **Exhibit "R"**), the Initial Order was amended to increase the amount that the Receiver is authorized to borrow from \$250,000 to \$1,000,000.

30. As shown in the R&D Statement, the Receiver requires additional funding to complete the receivership.

31. The Receiver's borrowing limit has been exceeded for reasons that include the following:

- (a) Counsel for the Receiver has had to engage with third party litigants (*i.e.*, the Zirger Group) to an extent substantially beyond what would have been foreseeable at earlier stages of the Receivership;
- (b) The receivership proceedings have continued for a longer period than had initially been anticipated;
- (c) Lower than expected revenue from the anaerobic digester; and
- (d) Weak floral sales combined with operating costs that have proved difficult to reduce.

32. The Receiver recommends that this Honourable Court grant an Order increasing the borrowing limit by the amount of \$1,000,000, to a maximum amount of \$2,000,000.

CONCLUSION

33. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Dismissing the SCJ Application, with costs in favour of the Receiver and Meridian;
- (b) In the alternative to subparagraph (a), scheduling the Receiver's Motion for an Order dismissing the SCJ Application;
- (c) Authorizing the Receiver to borrow an amount of up to \$2,000,000 in order to fund the cost of the receivership proceeding;
- (d) Approving the activities and conduct of the Receiver and its counsel as disclosed herein; and
- (e) Approving the fees and disbursements of the Receiver and its legal counsel.

May 27, 2015



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**FOURTH REPORT OF ZEIFMAN
PARTNERS INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER**

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

Tel: 416-365-3716

Fax: 416-941-8852

Lawyers for Zeifman Partners Inc.

tab A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 21ST
JUSTICE SPENCE) DAY OF FEBRUARY, 2014

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Zeifman Partners Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Bernie Huber sworn January 31, 2014 and February 19, 2014 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Lawyers for Richard Zirger and Judi Zirger, no one appearing for ~~(NAME)~~ ^{any other person on the service list} although duly served as appears from the affidavit of service of Jaime Henderson sworn February 11, 2014 and February 20, 2014 and on reading the consent of Zeifman Partners Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Zeifman Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to 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 Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its 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 Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the 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 business or

affairs of the Debtor, 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 Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 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 Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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 RECEIVER

10. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

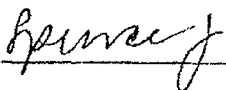
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

ENTERED AT / INSCRIT A TORONTO
IN / BOOK NO.:
LE / DANS LE REGISTRE NO.:

FEB 21 2016

ND



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$_____

1. THIS IS TO CERTIFY that Zeifman Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties Vandermeer Greenhouses Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ of MONTH, 20YR (the "Order") made in an action having Court file number _____-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of MONTH, 20YR.

ZEIFMAN PARTNERS INC., solely in its
capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MERIDIAN CREDIT UNION LIMITED

Plaintiff

-and

Court File No. CV-14-10443-00CL
VANDERMEER GREENHOUSES LTD.

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

ORDER

FLETT BECCARIO
Barristers & Solicitors
190 Division Street
P.O. Box 340
Welland, Ontario
L3B 5P9

Tel: 905-732-4481
Fax: 905-732-2020

Lawyers for the plaintiff

J. ROSS MACFARLANE
LSUC# 36417N

tab B

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

**SECOND REPORT OF ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014 (the "**Initial Order**", a copy of which is attached hereto as **Exhibit "A"**), on the application of Meridian Credit Union Limited ("**Meridian**"), Zeifman Partners Inc. ("**Zeifman**") was appointed as Receiver (in such capacity, the "**Receiver**") of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**").
2. Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area is a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse (the

"Greenhouse") and two residences. Vandermeer also owns and operates an anaerobic digestion facility (the "**Anaerobic Digester**") capable of producing over 8,000 kwh of electricity a day.

3. Prior to the Initial Order, Zeifman had been acting as a receiver privately-appointed by Meridian.

PURPOSE OF REPORT

4. The Receiver has filed this Second Report on an urgent basis in order to advise the Court of certain developments in this proceeding, and to seek an Order, among other things:

- (a) Dismissing or staying the application against Zeifman Partners Inc. commenced on February 24, 2015 by James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, George Lepp, Erica Lepp, Richard Zirger, Judy Zirger, Dan Lavallo, Dino Lavallo, Mary Lavallo, Joan Bourk and Larry Bourk (collectively, the "**Zirger Group**") before the Ontario Superior Court of Justice in Toronto in Court File No. CV15-523653 (the "**Application**");
- (b) Directing the Zirger Group to serve its materials on all parties on the service list in this proceeding (the "**Service List**"), including, in particular, Meridian;
- (c) Directing that the Receiver be indemnified in respect of costs in an amount determined by this Honourable Court to be reasonable and appropriate; and
- (d) Approving the activities and conduct of the Receiver and its counsel as disclosed herein.

BACKGROUND

5. In 2012, Richard Zirger and Judy Zirger made an application to the Normal Farm Practices Protection Board (“**NFPPB**”) dealing with substantially the same issues that are now complained of by the Zirger Group. Richard Zirger and Judy Zirger withdrew that complaint more than two years ago, on December 7, 2012.

6. Pursuant to a Statement of Claim dated December 19, 2013 (the “**Zirger Claim**”), Richard Zirger and Judi Zirger commenced an action against Vandermeer, Meridian and various other parties. A copy of the Zirger Claim is attached hereto as **Exhibit "B"**.

7. On October 23, 2014, the Receiver was provided with a copy of a Notice of Discontinuance dated October 23, 2014 in respect of the Zirger Claim. A copy of the Notice of Discontinuance is attached hereto as **Exhibit "C"**.

8. By letter dated July 22, 2014, Ms. Cassandra Kirewskie of Marshall Kirewskie, legal counsel to Richard Zirger and Judy Zirger, contacted Gregory Azeff of Fogler, Rubinoff LLP, counsel to the Receiver, to advise that an application for leave to commence a proceeding before the NFPPB was being brought on behalf of Richard Zirger, Judy Zirger and a number of other individuals, and to request advice regarding available hearing dates for same. A copy of the letter dated July 22, 2014 is attached hereto as **Exhibit "D"**.

9. By email dated July 23, 2014 from Mr. Azeff to Ms. Kirewskie, the Receiver provided seven (7) acceptable dates in August and September for the hearing. A copy of the email dated July 23, 2014 is attached hereto as **Exhibit "E"**.

10. By letter to the Receiver's counsel dated September 10, 2014, Ms. Kirewskie advised that her clients would not be proceeding with their application for leave to proceed before the Normal Farm Practices and Protection Board on September 18, 2014. Ms. Kirewskie requested advice regarding the Receiver's availability for a hearing in late October and early November, 2014. A copy of the letter dated September 10, 2014 is attached hereto as **Exhibit "F"**.

11. By letter dated September 10, 2014 from Mr. Azeff to Ms. Kirewskie, the Receiver provided its advice regarding available dates for the hearing in late October and early November, 2014. A copy of the letter dated September 10, 2014 is attached hereto as **Exhibit "G"**.

12. By letter to the Receiver's counsel dated September 29, 2014, Cassandra Kirewskie took the position that the Receiver had not replied to her correspondence of September 10, 2014, and advised that in the event she did not hear from the Receiver prior to October 2, 2014, the matter would be set down for a hearing on a date in November 2014, without regard to the Receiver's availability. A copy of the letter dated September 29, 2014 is attached hereto as **Exhibit "H"**.

13. By letter dated September 29, 2014 from Gregory Azeff to Cassandra Kirewskie, the Receiver reminded Ms. Kirewskie that it had in fact responded to her letter of September 10, 2014, and provided her with a copy of such response. The Receiver also advised as to its availability for a hearing in November 2014. A copy of the letter dated September 29, 2014 (without enclosures) is attached hereto as **Exhibit "I"**.

14. Under cover of letter dated January 16, 2015, Ms. Kirewskie delivered to the Receiver a set of draft affidavits, without exhibits, prepared in connection with a proceeding that she hoped to commence, and again requested the Receiver's consent for it to do so. A copy of the letter dated January 16, 2015 (without enclosures) is attached hereto as **Exhibit "J"**.

15. By letter dated January 27, 2015, the Receiver requested copies of the exhibits to the draft affidavits. A copy of the Receiver's letter dated January 27, 2015 as **Exhibit "K"**.

16. By letter dated January 27, 2015, the Zirger Group refused the Receiver's request for copies of the exhibits to the draft affidavits, and requested dates for the hearing of a motion to lift the stay of proceedings. A copy of the Zirger Group's letter dated January 27, 2015 as **Exhibit "L"**.

17. By letter dated January 29, 2015, the Receiver confirmed its availability for a hearing of the Zirger Group's motion during the weeks of February 23 and March 9, 2015. A copy of the Receiver's letter dated January 29, 2015 is attached hereto as **Exhibit "M"**.

18. By letter dated February 6, 2015, the Zirger Group requested the Receiver's availability for the entire month of March (after March 9) and the first week of April, 2015. A copy of the Zirger Group's letter dated February 6, 2015 is attached hereto as **Exhibit "N"**.

19. By letter dated February 12, 2015, the Receiver confirmed its availability for a hearing of the Zirger Group's motion for the entire month of March (after March 9) and the first week of April, 2015, providing a total of 12 available dates during that period. A copy of the Receiver's letter dated February 12, 2015 is attached hereto as **Exhibit "O"**.

20. By letter dated February 13, 2015, Ms. Kirewskie advised that the Zirger Group's motion for leave would proceed on March 25, 2015. A copy of Ms. Kirewskie's letter dated February 13, 2015 is attached hereto as **Exhibit "P"**.

21. By letter dated February 5, 2015 (but delivered March 6, 2015), the Zirger Group confirmed that its motion for leave would proceed on April 2, 2015. A copy of the Zirger Group's letter dated February 5, 2015 is attached hereto as **Exhibit "Q"**.

LATE DELIVERY OF MOTION MATERIALS

22. As of March 26, 2015, the Zirger Group had not served its motion materials (or otherwise contacted the Receiver since March 6, 2015). Accordingly, at approximately 10:36 a.m. on Thursday March 26, 2015, the Receiver sent a letter to Ms. Kirewskie, advising that the Zirger Group was in breach of the Ontario *Rules of Civil Procedure* regarding service deadlines, and requesting that the Zirger Group confirm that the motion would not be proceeding on Thursday April 2, 2015. A copy of letter dated March 26, 2015 is attached hereto as **Exhibit "R"**.

23. At approximately 9:30 p.m. on Thursday March 26, 2015, Ms. Kirewskie sent a letter (by facsimile transmission) to Mr. Azeff, advising that the Zirger Group intended to proceed with its motion on Thursday April 2, 2015, and that its materials would be delivered the next day. The letter did not come to Mr. Azeff's attention until the next morning (*i.e.*, on Friday March 27, 2015). A copy of Ms. Kirewskie's letter dated March 26, 2015 is attached hereto as **Exhibit "S"**.

24. In light of Ms. Kirewskie's response, by letter sent (by email) in the morning of March 27, 2015, Mr. Azeff requested her availability for a chambers attendance before the Commercial List on either Monday March 30th or Tuesday March 31st. A copy of Mr. Azeff's letter sent the morning of March 27, 2015 is attached hereto as **Exhibit "T"**.

APPLICATION RECORD

25. Ms. Kirewskie did not respond to Mr. Azeff's letter of March 27, 2015. However, at approximately 3:45 pm on Friday March 27, 2015, the Receiver's counsel received a full banker's

box containing the Zirger Group's materials, including a nine volume application record (the "**Application Record**") filed in connection with the Application, as well as a Supplementary Affidavit, Factum and Book of Authorities.

26. Meridian's counsel has previously raised these issues with Ms. Kirewskie. Attached hereto as **Exhibits "U"** and **"V"**, respectively, are copies of letters from Meridian's counsel to Ms. Kirewskie dated September 18 and 26, 2014.

27. The Notice of Application included in the Application Record (the "**Notice of Application**", a copy of which is attached hereto as **Exhibit "W"**)) was issued by the Ontario Superior Court of Justice on February 24, 2015 and is returnable April 2, 2015. The Notice of Application indicates that the Zirger Group is seeking a broad range of orders that go far beyond a request for leave to proceed, and includes grounds of relief under the *Farming and Food Production Protection Act* (Ontario), the *Environmental Protection Act* (Ontario), the *Planning Act* (Ontario), the *Greenbelt Act* (Ontario), the *Nutrient Management Act* (Ontario) and the *Green Energy Act* (Ontario).

BREACH OF INITIAL ORDER

28. The Receiver did not consent to the issuance of the Notice of Application or the commencement of the Application, and is not aware of any Order issued by this Honourable Court granting the Zirger Group the authority to do so. Until the late afternoon of March 27, 2015, the Receiver was not aware that the Application had been commenced. The Receiver has consented only to dates for the hearing of a motion for leave to proceed.

29. The Zirger Group (including its legal counsel, Ms. Kirewskie, in particular) knew of the Initial Order and was aware of the stay of proceedings and its effects. In fact, Ms. Kirewskie and

her partner, Paul Marshall, were present in Court when the Initial Order was made. The Zirger Group had the Notice of Application issued and commenced the Application despite such knowledge and awareness, in a deliberate and flagrant breach of the Initial Order.

URGENT NEED TO ATTEND COURT

30. The Application Record was delivered to the offices of Fogler, Rubinoff LLP late in the afternoon on Friday March 27, 2015 and the Application is, on its face, returnable Thursday April 2, 2015 (unless and until otherwise ordered by this Honourable Court). Mr. Azeff immediately wrote to Ms. Kirewskie to advise of the inappropriateness of the Zirger Party's conduct in breaching the stay of proceedings, its late delivery of its voluminous materials and its failure to bring the matter before the Commercial List. Mr. Azeff notified Ms. Kirewskie of his intention to attend before the Commercial List at a 9:30 chambers attendance on Tuesday March 31, 2015. A copy of Mr. Azeff's second letter of March 27, 2015 is attached hereto as **Exhibit "X"**.

31. In the interim, out of an abundance of caution the Receiver has had to commence its review of a significant amount of material in a very brief period of time, expending further estate resources. However, due to the late service and large volume of materials, the Receiver's counsel will have no ability to properly review and consider the Application Record and other materials, conduct any cross-examinations of the Zirger Group's affiants, or prepare and file any meaningful written responding materials.

COST AWARD

32. Since July 2014, the Receiver's counsel has attempted to accommodate the Zirger Group's supposed desire to proceed with a motion for leave. Upon receipt of each request by the Zirger

Group for dates available for the Zirger Group's motion, the Receiver's counsel responded promptly and provided a number of options. Once confirmed, the Receiver and its counsel reserved the date in their respective calendars. In some instances the Zirger Group did not even notify the Receiver that it would not be proceeding; it simply didn't serve materials and took no further steps. In other instances, the Zirger Group notified the Receiver shortly before the hearing date that it would not be proceeding as previously scheduled, and requested that the Receiver provide new dates.

33. As a direct result of the Zirger Group's pattern of repeatedly requesting dates and then failing to proceed, and other conduct in this proceeding, the Zirger Group has continuously and cavalierly wasted estate resources. In particular, the circumstances surrounding commencement of the Application and delivery of the Application Record, in flagrant breach of the Initial Order, are such that the Receiver is of the view that it would be fair and appropriate for this Honourable Court to hold the Zirger Party responsible for the resulting costs incurred by the Receiver.

34. Attached hereto as **Exhibit "Y"** is a schedule setting out the approximate amounts incurred in response to the Zirger Group's conduct since the commencement of this proceeding. The schedule indicates that a total of approximately \$24,000.00 has been spent in response to the Zirger Group's activities, conduct and correspondence since July 2014, including an amount of approximately \$6,596.00 incurred in connection with the preparation of this Second Report (but not including the associated urgent attendance before the Commercial List). Such costs do not include the significant costs incurred by Zeifman and paid by Meridian prior to the court appointment under the Initial Order, in responding to the NFPPB application that was ultimately withdrawn.

REFUSAL TO SERVE MATERIALS ON SERVICE LIST

35. The Zirger Group has refused to serve its materials on Meridian, despite it being the applicant in this proceeding and the repeated requests of both Meridian and the Receiver that it do so. Attached hereto as **Exhibit "Z"** is a copy of an email correspondence trail among the parties, in which the Receiver's counsel and Meridian's counsel request that Ms. Kirewskie serve the Zirger Group's materials on Meridian.

36. Meridian is the highest-ranking secured creditor, and is owed a substantial amount by Vandermeer. Meridian was the applicant for the Initial Order, is on the Service List and clearly has an interest in any proceeding by the Zirger Group in connection with Vandermeer and its outcome. The Receiver is not aware of any legitimate basis upon which the Zirger Group can refuse to serve its materials on Meridian and the parties on the Service List.

37. The Receiver recommends that this Honourable Court issue an Order directing the Zirger Group to serve any materials filed in this proceeding or any other proceeding in respect of Vandermeer in the future on all parties on the Service List including, in particular, Meridian.

CONCLUSION

38. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Dismissing or staying the Application commenced by the Zirger Group;
- (b) Directing the Zirger Group to serve any materials it may file in this proceeding in the future on all parties on the Service List, including, in particular, Meridian;

- (c) Directing that the Receiver be indemnified in respect of costs in an amount determined by this Honourable Court to be reasonable and appropriate; and
- (d) Approving the activities and conduct of the Receiver and its counsel as disclosed herein.

March 30, 2015



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**SECOND REPORT OF ZEIFMAN
PARTNERS INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER**

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)
Tel: 416-365-3716
Fax: 416-941-8852

Lawyers for Zeifman Partners Inc.

tab C

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

**THIRD REPORT OF ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014 (the "**Initial Order**", a copy of which is attached hereto as **Exhibit "A"**), on the application of Meridian Credit Union Limited ("**Meridian**"), Zeifman Partners Inc. ("**Zeifman**") was appointed as Receiver (in such capacity, the "**Receiver**") of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**").

2. Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area is a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse (the "**Greenhouse**") and two residences. Vandermeer also owns and operates an anaerobic digestion facility (the "**Anaerobic Digester**") capable of producing over 8,000 kwh of electricity a day.

3. Prior to the Initial Order, Zeifman had been acting as a receiver privately-appointed by Meridian. The private appointment commenced on July 19, 2011.

PURPOSE OF REPORT

4. The Receiver has filed this Third Report in response to a Motion brought by James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, George Lepp, Erica Lepp, Richard Zirger, Judy Zirger, Dan Lavalle, Dino Lavalle, Mary Lavalle, Joan Bourk and Larry Bourk (collectively, the "**Zirger Group**") for an Order lifting the stay of proceedings under the Initial Order, to allow the Zirger Group to proceed with an application against Zeifman Partners Inc. before the Ontario Superior Court of Justice in Toronto in Court File No. CV-15-523653 commenced February 24, 2015 (the "**Zirger Application**").

BACKGROUND

5. The Zirger Application is the latest in a succession of proceedings in respect of Vandermeer commenced by Richard Zirger and Judy Zirger (together, the "**Zirgers**"), who reside on an adjacent property.

6. On May 15, 2012, the Zirgers commenced an application (the "**NFPPB Application**") to the Normal Farm Practices Protection Board (the "**NFPPB**"). The NFPPB Application dealt with substantially the same issues that are now complained of by the Zirger Group in the Zirger Application, and involved many of the individuals included in the Zirger Group. A copy of the NFPPB Application is attached hereto as **Exhibit "B"**.

7. The Zirgers voluntarily withdrew the NFPPB Application more than two years ago, on December 7, 2012. A copy of a letter from the NFPPB dated December 21, 2012 confirming the withdrawal is attached hereto as **Exhibit "C"**.

8. Pursuant to a Statement of Claim dated December 19, 2013 (the "**Zirger Claim**"), the Zirgers commenced an action against Vandermeer, Meridian and various other parties. The Zirger Claim dealt with substantially the same issues that are now complained of by the Zirger Group in the Zirger Application. A copy of the Zirger Claim is attached hereto as **Exhibit "D"**.

9. On October 23, 2014, the Receiver was provided with a copy of a Notice of Discontinuance dated October 23, 2014 in respect of the Zirger Claim. A copy of the Notice of Discontinuance is attached hereto as **Exhibit "E"**.

10. On July 22, 2014, Ms. Cassandra Kirewskie of Marshall Kirewskie, legal counsel to the Zirger Group (and to the Zirgers in connection with the NFPPB Application and Zirger Claim), contacted the Receiver's counsel to advise that an application for leave to commence a proceeding before the NFPPB was being brought on behalf of the Zirgers and a number of other individuals, and to request advice regarding available hearing dates for same.

11. The Receiver's counsel provided a list of acceptable dates in August and September for the hearing. However, the Zirger Group did not proceed at that time. In fact, on at least six (6) different occasions since July 2014, the Zirger Group has requested that the Receiver provide available dates for the hearing. On each such occasion the Receiver confirmed its availability for the hearing, yet the Zirger Group failed to proceed. A full chronology in this regard (including the relevant correspondence) is set out in the Receiver's Second Report dated March 30, 2015 (the "**Second Report**", a copy of which is attached hereto (without exhibits) as **Exhibit "F"**).

12. Also attached as **Exhibit "G"** hereto for ease of reference is a copy of the First Report of the Receiver dated November 17, 2014, (without exhibits).

THE LIFT STAY MOTION

13. In January of 2015, the Zirger Group delivered to the Receiver a set of draft affidavits, without exhibits, prepared in support of the Zirger Application, and again requested that the Receiver consent to the matter proceeding. The Receiver declined to provide its consent.

14. By letter delivered March 6, 2015, the Zirger Group confirmed that its motion to lift the stay would proceed on Thursday April 2, 2015. As of Thursday March 26, 2015, the Zirger Group had not served its motion materials (or otherwise contacted the Receiver since March 6, 2015). Accordingly, the Receiver sent a letter to the Zirger Group's counsel, advising that the Zirger Group was in breach of the Ontario *Rules of Civil Procedure* regarding service deadlines, and requesting confirmation that the motion would not be proceeding on Thursday April 2, 2015.

15. At approximately 3:45 pm on Friday March 27, 2015, the Receiver's counsel received a full banker's box containing the Zirger Group's materials, including a nine volume application record (the "**Application Record**") filed in connection with the Application, as well as a Supplementary Affidavit, Factum and Book of Authorities.

16. The Notice of Application included in the Application Record (the "**Notice of Application**", a copy of which is attached hereto as **Exhibit "H"**) was issued by the Ontario Superior Court of Justice on February 24, 2015 and is returnable April 2, 2015. The Notice of Application indicates that the Zirger Group is seeking a broad range of orders that go far beyond a request for leave to proceed, and includes grounds of relief under the *Farming and Food Production Protection Act* (Ontario), the *Environmental Protection Act* (Ontario), the *Planning Act* (Ontario), the *Greenbelt Act* (Ontario), the *Nutrient Management Act* (Ontario) and the *Green Energy Act* (Ontario).

17. The Receiver did not consent to the issuance of the Notice of Application or the commencement of the Application, and is not aware of any Order issued by this Honourable Court granting the Zirger Group the authority to proceed in this manner. Until the late afternoon of March 27, 2015, the Receiver was not aware that the Application had been commenced. The Receiver had consented only to a dates for the hearing of a motion for an order lifting the stay, and had been awaiting a properly constituted motion, and service of proper motion materials.

URGENT ATTENDANCE

18. The Receiver anticipated being served with a motion record in respect of (and confined to) a properly-constituted motion to lift the stay of proceedings so that the Zirger Group could proceed with the Zirger Application.

19. However, no such Motion Record was received. Instead, an Application Record was delivered to the offices of the Receiver's counsel late in the afternoon on Friday March 27, 2015 and was, on its face, returnable Thursday April 2, 2015.

20. The Receiver's counsel immediately wrote to the Zirger Group regarding the inappropriateness of the Zirger Party's conduct in breaching the stay of proceedings, its late delivery of its voluminous materials and its failure to bring the matter before the Commercial List. The Receiver advised that it was arranging an urgent attendance before the Commercial List at a 9:30 chambers attendance on Tuesday March 31, 2015.

21. In the interim, out of an abundance of caution the Receiver had to commence its review of a significant amount of material in a very brief period of time, expending further estate resources. However, due to the late service and large volume of materials, the Receiver's counsel had no ability to properly review and consider the Application Record and other materials,

conduct any cross-examinations of the Zirger Group's affiants, or prepare and file any meaningful written responding materials prior to the April 2, 2015 hearing date.

22. On March 31, 2015, counsel to the Receiver, Meridian and the Zirger Group attended in chambers before the Honourable Mr. Justice McEwen, who declined to make an Order and instead referred the matter to the Judge hearing the Zirger Group's motion.

23. Following the attendance before the Honourable Mr. Justice McEwen, by letter dated April 1, 2015, the Receiver's counsel requested that the Zirger Group consent to an adjournment of its Motion returnable April 2, 2015. A copy of the letter dated April 1, 2015 is attached hereto as **Exhibit "I"**.

24. The Zirger Party did not consent to the requested adjournment. Accordingly, on April 2, 2015, the parties attended before the Honourable Mr. Justice Morawetz, who adjourned the Motion and directed the Zirger Group to bring a Motion to lift the stay in the Commercial List. A copy of the Endorsement of the Honourable Mr. Justice Morawetz dated April 2, 2015 is attached hereto as **Exhibit "J"**.

NO MERIT TO ZIRGER APPLICATION

25. As described above, the Notice of Application indicates that the Zirger Group is seeking a broad range of relief under a number of environment and farming-related statutes. Based on the Receiver's review of the Zirger Application Record and included Affidavits, the Receiver is of the view that there is no merit to the Zirger Group's claims, and that the Zirger Application is frivolous and vexatious.

26. Firstly, the Affidavits filed in support of the Zirger Application are rife with hearsay, expert-type scientific testimony from unqualified individuals, bald allegations without substantiation, baseless speculation, mischaracterizations and other serious deficiencies. In addition, a number of the complaints made by the Moving Parties relate to incidents that pre-date the Receiver's involvement in Vandermeer and which are likely barred by the *Limitations Act* (Ontario). For example:

- (a) At paragraphs 24 and 25 to the Affidavit of Judi Zirger sworn January 7, 2015 (the "**Judi Zirger Affidavit**"), the affiant makes allegations and complaints regarding incidents in 2011, which would be barred under the *Limitations Act* (Ontario). The affiant had every opportunity to proceed before the NFPPB in respect of her complaints and in fact, was specifically advised to do so at the time, yet she did not proceed;
- (b) At paragraph 96 to the Affidavit of Richard Zirger sworn January 7, 2015 (the "**Richard Zirger Affidavit**"), the affiant states his belief that Vandermeer is "...still inputting chicken waste and that it may also have returned to using DAF as a feedstock." This allegation is unequivocally false;
- (c) At paragraph 96 to the Richard Zirger Affidavit, the affiant baldly speculates that "non-agricultural source materials" are being used in the digester, and then purports to give scientific evidence (based on unspecified "readings on the internet") regarding the impact of using non-agricultural source materials. In fact, almost two-thirds of the materials used in the digester are agricultural source materials, and in any event all inputs are organic in nature and the digester is

operated within the parameters authorized pursuant to the Certificate of Approval issued by the MOE. The non-agricultural source materials used in the digester are comprised of non-purchased grocery store fruits and vegetables, and baked goods;

- (d) At paragraph 187 to the Richard Zirger Affidavit, the affiant states that Vandermeer operates "...around the clock, 24/7/365." This is simply incorrect;
- (e) At paragraph 227 to the Richard Zirger Affidavit, the affiant baldly speculates that Vandermeer's water catch basin is directed connected to the municipal "Sloma Drain". In fact, Vandermeer's water system for the digester is a closed loop system that is not connected in any way to the Sloma Drain. The Zirger Group is aware that the municipality has investigated this allegation and determined it has no merit whatsoever;
- (f) At paragraph 15 to the Supplemental Affidavit of Richard Zirger sworn April 14, 2015, the affiant purports to give scientific evidence regarding an insect referred to as "spotted wing drosophila". There is no evidence that this type of insect is present at Vandermeer. The affiant has no relevant expert credentials; and
- (g) At paragraph 3 to the Judi Zirger Affidavit, the affiant claims that she believes that Vandermeer is the cause of certain disturbances including odours. The affiant neglects to mention that her residence is in the midst of active farms including a chicken farm less than a kilometre away.

27. Secondly, the complaints that form the basis of the Zirger Application are not new, and over the past few years have been repeatedly communicated by members of the Zirger Group to

the Ontario Ministry of the Environment and Climate Change (the "MOE"), which administers several pieces of legislation relied upon by the Zirger Group and has primary responsibility for environment-related matters in Ontario.

28. Despite more than 40 complaints made to the MOE by members of the Zirger Group regarding the issues that form the basis of the Zirger Application, the MOE has declined to prosecute or issue any orders in response, and the Receiver is not aware of any MOE investigation regarding such complaints.

29. Thirdly, the Zirger Group makes serious unsubstantiated and inflammatory allegations against the integrity and independence of the NFPPB, apparently based upon the fact that the NFPPB was not prepared to concede to the Zirger Group's demand that Vandermeer cease operations. In short, it appears that the Zirger Group is now asking the Court to usurp the roles of the MOE and NFPPB because the Zirger Group does not like their responses to the the Zirger Group's complaints.

30. Fourth, the Zirger Group takes the position that Vandermeer is not operating as a farm, but bases its position on speculation and incorrect facts. For example, at paragraph 106 to the Affidavit of Judi Zirger sworn January 7, 2015, the affiant claims that she believes that Vandermeer's income is "...solely or predominantly from the sale of energy...". In fact, the majority of Vandermeer's income greenhouse operations and the sale of chrysanthemums. The digester is an integral part of the greenhouse operations, insofar as it contributes to the economic viability of the greenhouse operations by reducing heating costs and subsidizing operations.

31. Fifth, the Zirger Group claims that the Receiver has deliberately ignored the concerns of its members. This is simply incorrect. For example, the Receiver has undertaken the following:

- (a) Enhanced security and oversight at the facility, including inspecting the perimeter of the property four times per day for damage, suspicious activity, odours, noises or other causes for concern;
- (b) Implemented improvements to the digester, the effect of which was to reduce the opportunity for odour emissions and noise;
- (c) Paved driveway to enhance access for trucks and avoid disturbances to neighbours;
- (d) Insulated generator to alleviate noise concerns from neighbours;
- (e) Repaired generator exhaust muffler;
- (f) Installed biofilter to reduce odour emissions from digestate processing;
- (g) Ceased storing DAF; and
- (h) Minimized pet food storage, and began storing same in the warehouse.

32. However, these steps have not been satisfactory to the Zirger Group. The Zirger Group initially withdrew from participating in the Working Group because, as noted in a letter from the Zirger Group's counsel to the NFPPB dated May 15, 2012 (a copy of which is attached hereto as **Exhibit "K"**), the Working Group lacked "...the power to order that the digester cease operating." The complete termination of the digester operations remains the Zirger Group's ultimate objective.

NO URGENCY

33. Finally, the Zirger Group's claim that there is any urgency to their complaints is belied by the inexplicable delays and previously-abandoned proceedings that its members have commenced over the past 3 years or more.

34. If the Zirger Application is permitted to proceed, it would have a significantly adverse impact on the administration of the receivership, insofar as it will result in substantial delay, distraction and additional cost.

COSTS THROWN AWAY

35. Since July 2014, the Receiver's counsel has attempted to accommodate the Zirger Group's expressed desire to proceed with a motion for leave. Upon receipt of each request by the Zirger Group for dates available for the Zirger Group's motion, the Receiver's counsel responded promptly and provided a number of options. Once confirmed, the Receiver and its counsel reserved the date in their respective calendars. In some instances the Zirger Group did not even notify the Receiver that it would not be proceeding; it simply didn't serve materials and took no further steps. In other instances, the Zirger Group notified the Receiver shortly before the hearing date that it would not be proceeding as previously scheduled, and requested that the Receiver provide new dates. Accordingly, all related costs were wasted.

36. As determined by the Honourable Mr. Justice Morawetz at the April 2, 2015 attendance, the proper venue for a motion to lift the stay of proceedings was before the Commercial List, within the receivership proceeding, on proper notice to all parties on the service list. The Zirger Group initially proceeded in the wrong court and refused to serve its materials on any party other than the Receiver, despite the repeated requests in this regard from Meridian's counsel.

37. As a direct result of the Zirger Group's pattern of repeatedly requesting dates and then failing to proceed, and other conduct in this proceeding, the Zirger Group has continuously and cavalierly wasted estate resources. In particular, the circumstances surrounding commencement of the Application and delivery of the Application Record, in flagrant breach of the Initial Order, are such that the Receiver is of the view that it would be fair and appropriate for this Honourable Court to hold the Zirger Group responsible for the resulting costs incurred by the Receiver.

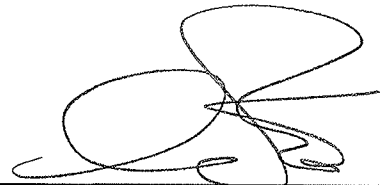
CONCLUSION

38. The Receiver has attempted to work with members of the community and other stakeholders to address concerns regarding Vandermeer's operations. The Receiver has operated Vandermeer within the parameters of the Certificate of Approval and, as described above, has taken steps to continuously improve the operations and facility.

39. However, such actions have done little, if anything, to appease the members of the Zirger Group, and it has become abundantly clear to the Receiver that the Zirger Group will only be satisfied if the digester ceases operating. The termination of the digester operations would have a very detrimental effect on the economic viability of the business.

40. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order dismissing the Zirger Group's Motion for an Order lifting the stay of proceedings.

April 17, 2015



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**THIRD REPORT OF ZEIFMAN
PARTNERS INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER**

Fogler, Rubinoff LLP

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

Tel: 416-365-3716
Fax: 416-941-8852

Lawyers for Zeifman Partners Inc.

tab D

Chronology of Events

DATE	EVENT
July 19, 2011	Meridian privately appoints Zeifman Partners Inc. as Receiver
May 15, 2012	Richard & Judy Zirger file First NFPPB Application
December 7, 2012	Richard & Judy Zirger withdraw First NFPPB Application
December 19, 2013	Richard & Judy Zirger commence SCJ Action
February 21, 2014	Court appoints Zeifman Partners Inc. as Receiver
July 22, 2014	Kirewskie requests available dates for motion for leave to proceed with NFPPB Application
July 23, 2014	Receiver provides dates in August and September
September 10, 2014	Kirewskie advises that motion for leave will not proceed on September 18, 2014, and requests available dates in October and November
September 10, 2014	Receiver provides dates in October and November
September 29, 2014	Kirewskie requests available dates in November for motion for leave to proceed with NFPPB Application
September 29, 2014	Receiver provides dates in November
October 23, 2014	Richard & Judy Zirger discontinue SCJ Action
January 16, 2015	Kirewskie delivers draft affidavits for SCJ Application
January 27, 2015	Kirewskie requests available dates in February and March for motion for leave to proceed with SCJ Application
January 29, 2015	Receiver provides dates in February and March
February 6, 2015	Kirewskie requests available dates in March and April for motion for leave to proceed with SCJ Application
February 12, 2015	Receiver provides dates in March and April
February 13, 2015	Kirewskie advises that motion for leave to proceed with SCJ Application will be heard on March 25, 2015

DATE	EVENT
March 6, 2015	Kirewskie advises that motion for leave to proceed with SCJ Application will be heard on April 2, 2015
March 26, 2015	Receiver requests that Kirewskie confirm motion for leave will not be heard on April 2, 2015 as materials not yet served
March 26, 2015	Kirewskie advises that motion will proceed on April 2, 2015
March 27, 2015	Kirewskie delivers nine (9) volume SCJ Application record
March 31, 2015	Parties attend before McEwen J.
April 1, 2015	Receiver requests that Kirewskie consent to adjournment of motion for leave returnable April 2, 2015
April 2, 2015	Parties attend before Morawetz RSJ.
April 23, 2015	Parties attend before Wilton-Siegel J.
May 8, 2015	Kirewskie serves Second NFPPB Application

tab E

02-15-533653
Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JAMES DELL, SOPHIE DELL, RON QUEVILLON, CHARLENE QUEVILLON, GEORGE
LEPP, ERICA LEPP, RICHARD ZIRGER, JUDY ZIRGER, DAN LAVALLE, DINO
LAVALLE, MARY LAVALLE, JOAN BOURK and, LARRY BOURK

Applicants

- and -

ZEIFMAN PARTNERS INC. as operator of the waste disposal site at 2021 Four Mile Creek
Road, Niagara on the Lake

Respondent

APPLICATION UNDER Rule: 14.05(3), Rule 72.03 and Rule 75.06 of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION will be heard on *April 2, 2015 at 10 am* in the forenoon or as soon thereafter as the application may be heard at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATED: February 24, 2015

ISSUED BY: 
Local Registrar

Address of Court Office:
393 University Avenue
10th Floor
TORONTO
M5G 1E6

TO: Zeifman & Partners
c/o Greg Azeff
Fogler, Rubinoff
77 King Street West
Suite 3000, P.O. Box 95
TD Centre
Toronto M5K 1G8

APPLICATION

1. The Applicants make an application for:
 - a) an Order lifting the stay of proceedings dated February 24, 2014;
 - b) an Order pursuant to ss. 2 and 5 the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1 declaring that the following disturbances coming from 2021 Four Mile Creek Road, Niagara on the Lake (“the Vandermeer farm”) do not result from normal farm practices:
 - i) putrid, sharp and pungent odours that are frequent, offensive, intense and lingering;
 - ii) visible and invisible dust and floating and falling particles of solid material with unknown combustion, respiratory, health, environmental and explosion risks;
 - iii) unusual numbers of unsanitary and irritating flies, seagulls, rats and mice that leave droppings everywhere, including on produce grown for human consumption;
 - iv) smoke and other emissions which pose a health and food safety hazard to food crops;
 - v) frequent loud noises;
 - vi) bright lights;
 - vii) strong vibrations;
 - c) an Order for the Respondent, who is currently operating the Vandermeer farm, anaerobic digester and waste disposal site, to cease the following practices as they are the cause of the disturbances listed above:
 - i) operating 24/7/365;
 - ii) operating without adequate noise and odour abatement technology;
 - iii) authorizing commercial waste disposal trucks to enter the Vandermeer farm;
 - iv) operating without taking appropriate measures to protect neighbouring farms from contamination to soil, air, water and crops;
 - v) receiving, storing, inputting, processing and/or land applying any wastes that were not generated on the Vandermeer farm;
 - vi) receiving, storing, inputting, processing and/or land applying grape pomace that was not received from a “farm operation” as defined by O. Reg. 347 of the *Environmental Protection Act*;

- vii) receiving, storing, inputting, processing and/or land applying agricultural waste that was not received from a “farm operation” as defined by O. Reg. 347 of the *Environmental Protection Act*;
- viii) receiving, storing, inputting, processing and/or land applying “off-farm anaerobic digestion materials” that were not generated at an agricultural operation and that were received from an outside source as described in O. Reg. 347 of the *Environmental Protection Act*;
- ix) receiving, storing, inputting, processing and/or land applying any wastes that were not generated by and received from a local farm operation within a 5 kilometer radius of the Vandermeer farm;
- x) inputting any materials in the digester that do not meet the legal classification of exempt agricultural materials as set out in Ont. Reg. 347 of the *Environmental Protection Act*;
- xi) inputting more than 50% of off-farm wastes into the digester;
- xii) inputting an inconsistent and variable feedstock which is the cause of many disturbances such as odourous burps from changes in the feedstock;
- xiii) receiving, storing, inputting and/ or land applying any wastes that have strong odours, such as: grape pomace; DAF; fats, oil and grease (“FOG”); spoiled peppers; spoiled dog food; spoiled and off-spec foods;
- xiv) inputting any wastes that have not been content tested and which are not a pathogen free and odourless agricultural feedstock generated at and received from an Ontario farm operation;
- xv) storing feedstock and digestate in open bunkers and close to watercourses, the Sloma Municipal Drain and Four Mile Creek;
- xvi) processing non-farm wastes;
- xvii) operating an open flare;
- xviii) venting raw biogas;
- xix) land applying non-farm wastes and/ or land applying digestate in a manner that contravenes O.Reg. 267/03;
- xx) opening the feedstock and/or digestate storage containers and leaving their contents exposed to the open air;

d) in the alternative, an Order for the Respondent to modify the following practices:

i) operating 24/7/365:

The Applicants ask this Court for an Order that the Respondent:

- minimize traffic movements on the farm by only operating between the hours of 7 am and 7 pm;
- be prohibited from operating any machinery or equipment that generates disturbances outside these hours;
- the waste disposal site be closed on weekends and holidays for the same reasons;
- the waste disposal site have seasonal rest and dormant periods annually when the greenhouses' energy requirements are reduced and when the potential for the Respondent's activities to cause harm to the Applicants' crops are at the greatest;

ii) truck deliveries and other sources of noise:

The Applicants ask this Court for an Order that the Respondent:

- take fresh steps to minimize the noise disturbances from truck deliveries, pumps, compressors, generators, the power plant and overall scheme of the operation;

iii) receiving off-farm wastes:

The Applicants ask this Court for an Order that the Respondent:

- weigh and record the weight of all loads entering the farm to ensure compliance with the Vandermeer Certificate of Approval and post this information on-line on website available to the Applicants and other concerned residents on a weekly basis;
- monitor and screen its feedstock for disease;
- carefully and thoroughly wash all vehicles, tires, clothes and footwear off as they leave the Vandermeer farm;
- take appropriate preventative measures to ensure that any waste materials it receives have been adequately pasteurized as the digester's feedstock contains plant and animal pathogens and parasites that may be dangerous to human health and crops;
- only use Vandermeer farm wastes to power the digester to reduce the amount of traffic, noise, dust, vibrations and other disturbances on and near the Vandermeer farm and to reduce the risks of contamination from the pathogenic content of the feedstock and digestate; or, in the alternative, that the Respondent minimize the impact of transporting

any local farm wastes onto the Vandermeer farm through logistics and the use of alternative methods of transportation;

- the Respondent post all of its monitoring data on line on a weekly basis to ensure compliance with this Order;

iv) storing wastes:

The Applicants ask this Court for an Order that the Respondent:

- totally enclose the Vandermeer storage facilities and keep the digester feedstock and digestate covered at all times to prevent odours and pathogens from escaping;
- ensure that the buildings on the site be made airtight to eliminate odours escaping through the building envelope;
- install the best available technology for eliminating or abating odours from its storage facilities and also from any other part of its operation or activities that create odour;
- ensure that the feedstock is stored for a maximum of 10 days to enhance bio-security and to reduce the risk of cross-contamination;
- store only farm wastes as a feedstock for the digester to enhance bio-security and to reduce the risk of cross-contamination as well as the amount of traffic, noise, dust, vibrations and other disturbances on and near the Vandermeer farm;
- minimize the impact of run-off through soil erosion avoidance techniques and the use of a storage cover at all times;
- have a vegetated filter strip designed, engineered and constructed by a qualified person to intercept and treat runoff by settling, filtration, dilution, adsorption of pollutants and infiltration into the soil as set out in the O. Reg. 267/03 of the *Nutrient Management Act, 2002*, S.O. 2002, c.4;

v) Inputting non-farm wastes:

The Applicants ask this Court for an Order that:

- the Respondent use only on-farm agricultural wastes to power the digester to reduce the amount of traffic, noise, dust, vibrations and other disturbances on and near the Vandermeer farm;
- the Respondent be prohibited from receiving, storing, inputting, processing any wastes that were not generated by and received from a local farm operation;
- the Respondent totally enclose its storage facilities and keep its feedstock covered at all times to prevent odours and pathogens from escaping;
- the Respondent input a consistent, pathogen free and odourless feedstock;

vi) Processing wastes:

The Applicants ask this Court for an Order that:

- The Respondent avoid drastic changes to the feedstock to reduce the number of biogas “burps” and to reduce odours, control pathogens and reduce the risk of cross-contamination;
- the Respondent take appropriate preventative measures to ensure that any waste materials it processes at the Vandermeer farm have been properly pre-treated and/or pasteurized as the digester’s feedstock contains plant and animal pathogens and parasites that may be dangerous to human health and crops;
- the Respondent implement a practice to test all wastes prior to their processing;
- the Respondent implement such testing and inspection on site;
- the Respondent check moisture loads for health and safety reasons;

vii) Land applying digestate:

The Applicants ask this Court for an Order that:

- any resultant waste material that is not land applied on the Vandermeer farm be transported by carriers or brokers who have a Certificate of Approval to do so and appropriate training and that spill procedures will be in place;
- the Respondent be required to test all materials that leave the farm and that it be required to share the findings of such testing with the Applicants as soon as such material leaves the Vandermeer farm;
- the Respondent implement a practice to test all digestate and other resulting products to alleviate the risk of cross-contamination;
- the Respondent implement such testing and inspection on site;
- the Respondent create a Nutrient Management Plan for the storage, handling and disposal of its digestate that governs the location, rates and time of year its digestate may be land applied which complies with the *Nutrient Management Act, 2002*, S.O. 2002, c.4 and Regulations;
- the Respondent use or dispose of the digestate in a manner that prevents excess run-off to underground or surface waters;
- the Respondent use only safe and approved methods of transporting the digestate;

viii) lighting:

The Applicants ask this Court for an Order that the Respondent:

- take fresh steps to minimize the light disturbances from truck deliveries and the industrial type spot lighting around the farm;
- take steps to address the visual impact of its activities by creating an appropriately sized berm and planting mature trees to screen and reduce the wind flow, reduce noise, light and dust disturbances;

ix) operating without a bio-filter:

The Applicants ask this Court for an Order that:

- the Respondent be required to purchase two bio-filters, one of which is to be installed immediately and the other which is to be stored on site, together with spare parts as a contingency to ensure that it is continuously taking all available measures to reduce the odour disturbances resulting from its activities;
- that such bio-filters will reflect the best available technology;

x) operating an open flare:

The Applicants ask this Court for an Order that:

- The Respondent enclose the flare to reduce the risk of fire, explosion and emissions as such smoke and lights are disturbances which are uncontrolled and unregulated;

xi) Contingency measures:

The Applicants ask this Court for an Order that the Respondent:

- take appropriate measures to be able to isolate the waste disposal site in the event of a catastrophe, fire, explosion, contamination or other emergency;
- e) an Order pursuant to s. 2(1.1) of the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1 declaring that the Respondent's receipt of wastes, treatment, nutrient management, storage, management, transport, land application and records keeping practices are inconsistent with O. Reg. 267/03 of the *Nutrient Management Act, 2002*, S.O. 2002, c.4 and as such are not normal farm practices;
- f) an Order for the Respondent to disclose all of its records pertaining to its financial, maintenance and operational records;
- g) an Order declaring that the Normal Farm Practices and Protection Board is biased;
- h) an Order that this Honourable Court assume jurisdiction of this matter and hear it;

- i) costs on a substantial indemnity scale; and,
 - j) such other and further relief as counsel may advise and this Honourable Court permit.
2. The grounds for this application are that:
- a) the Applicants are tender fruit growers and/or residents who live in close proximity to the Vandermeer farm;
 - b) the Certificate of Approval the Ministry of Environment (“the MOE”) granted to the owner of the Vandermeer farm on October 30, 2009 converts the entire farm to a waste disposal site;
 - c) the Applicants are experiencing the following disturbances:
 - i) putrid odours;
 - ii) smoke and other emissions;
 - iii) excessive noise;
 - iv) vibrations;
 - v) unusually large numbers of seagulls, rats and mice;
 - vi) bright lights; and,
 - vii) swarms of flies;
 - d) the Applicants believe that the Respondent’s practices on the Vandermeer farm are the source of these disturbances as follows:
 - i) **putrid odours** from the materials used to feed the digester and from feedstock stored in open bunkers, which the Applicants believe includes: food waste from Tim Horton’s; spoiled and off-spec pet food waste; grape pomace from off-farm anaerobic digestion materials; rotting produce; fat, oil and grease from unknown sources; silage; chicken parts and manure; rodents; spoiled soft drinks; and, waste water from food processing;
 - ii) **smoke and other emissions** from the diesel generator, the feedstock storage bunkers, the digester and the open flare which often runs 24 hours a day for as many as 12 days on end to burn excess gas and which gives the rural neighbourhood an industrial appearance and which places the waste disposal site at risk of explosion;
 - iii) **excessive noise** heard both outside and within the Applicants’ homes with the doors and windows closed. Noise from: machinery; vehicles; trucks and traffic; loaders banging; pumps; the tractor used to move feedstock; the generator; and the bird audio-deterrent used to scare birds away from the feed bunkers;
 - iv) **vibrations**, the source of which is unclear but must include vibrations from machinery and vehicular traffic;
 - v) **unusually large numbers of seagulls** which paint outdoor furniture, bbq’s, cars, walkways, decks, patios, trees and everything in their path white with seagull droppings and make it impossible for the Applicants to have the benefit of and to

- enjoy the use of their outdoor spaces, creating a health hazard and risking the safety of the Applicants' food crops;
- vi) **bright lights** that enter homes at odd hours disturbing residents and preventing them from getting a restful night's sleep;
- vii) **swarms of flies** which leave their droppings everywhere, and make it impossible for the Applicants to have the benefit of and to enjoy the use of their outdoor spaces, creating a health hazard and risking the safety of the Applicants' food crops; and,
- vii) **unusually large numbers of rats and mice** whose presence threatens the food safety of crops intended for human consumption and who live in such large numbers that a snowy owl has taken up residence near the site as it provides a stable source of food;
- e) both the MOE and the Ministry of Agriculture ("OMAFRA") have confirmed that the Vandermeer farm is the source of these disturbances;
- f) the Respondent had been operating the Vandermeer farm as a private receiver from July 19, 2011 until it was appointed the Receiver of Vandermeer Greenhouses' business and assets on February 24, 2014;
- g) as the Applicants are not creditors of Vandermeer, they were denied standing in the receivership application;
- h) the December 2, 2014 Order approving the Respondent's activities as Receiver does not approve of the practices that are the subject of this application;
- i) no Court or tribunal has considered whether the disturbances coming from the site are as a result of normal farm practices;
- j) the MOE and OMAFRA have repeatedly told the Applicants that they should seek such a determination;
- k) the Receiver is receiving, storing, processing and land applying wastes that the Applicants believe violate the Certificate of Approval and other applicable laws;
- l) the Vandermeer waste disposal site is permitted to operate without any time restrictions, that is 24 hours a day, 7 days a week, 365 days a year when other neighbouring farms do not create disturbances at night, weekends or holidays and when other anaerobic digester projects have limited hours of operation and even industrial waste disposal sites are not permitted to operate continuously;
- m) the Applicants have worked with the owner, the Town of Niagara on the Lake, the Region of Niagara, the MOE and OMAFRA to mitigate these and other nuisances but, despite any changes that have been made to the site and its operation, the practices on the site continue to deprive the Applicants of the use and enjoyment of their homes, properties and farms;

- n) the Respondent's practices threaten some of the Applicants' livelihoods as they believe, and have in some cases been advised, that the emissions and other disturbances coming from the site are damaging their crops and rendering them unsafe for human consumption;
- o) the Applicants believe that the Respondent is not using the legally required percentage of on-farm and/ or agricultural source materials to feed the digester, as such, the Applicants believe that the activities on the site are not normal farm practices;
- p) this Honourable Court has jurisdiction to decide whether the activities on the site are normal farm practices as the Normal Farm Practices Board cannot give the Applicants a fair hearing;
- q) the Applicants state that the factual elements required to prove a violation of Ontario law are under the control of the Respondent or of a government agency. Without government cooperation, the Applicants have little possibility of meeting the evidentiary burden imposed by the *Act*, and would therefore effectively be denied access to the courts. And since Ontario law creates no alternative mechanism for resolving this type of disputes, the Applicants would be unable to obtain relief in respect of significant land-use disturbances. The Applicants state that this represents an unacceptably broad encroachment on traditional common law rights and as a result, require disclosure of all of the records pertaining to the farm and digester's operation, which are in the possession of the Respondent. The Applicants have no access to this information. While they have attempted to inform themselves through FOI requests, the MOE has not released all of its information to them, refused continuing access and required them to make a separate request for information from May 21012 (the date of their request) to the present;
- r) If this Court does not hear the Applicants' application, the Applicants will never have recourse against the effect on have to wait until the Respondent concludes a sale of the site to challenge the legality of the activities being carried on there, which would deprive the Applicants of their legal rights;
- s) the Receiver has been operating the digester since July 2011 and in that time, has only disclosed one potential purchaser, Green Tower Industries, a waste disposal and management company based in Quebec, not a farmer, who decided not to complete the purchase for reasons unknown to the Applicants;
- t) it could be years before the Vandermeer farm is sold, if ever;
- u) the Applicants will continue to suffer a greater and on-going inconvenience from not having the nature of the activities legally determined than the Respondent would from having this Court consider whether the practices on the site are normal farm practices;
- v) the Applicants will be denied access to justice if their application is not heard;

- w) *The Farming and Food Production Protection Act*, 1998, S.O. 1998, Ch.1, ss. 2(1.2) and 5;
- x) *The Environmental Protection Act*, R.S.O., c. E. 19;
- y) *The Planning Act*,
- z) *The Greenbelt Act, 2005*, S.O. 2005, c.1;
- aa) *The Nutrient Management Act, 2002*, S.O. 2002, c. 4;
- bb) *The Green Energy Act, 2009*, S.O. 2009, c. 12, Sched. A.; and
- cc) Rules 1, 2, 14, 38, 39 and 59 of the *Ontario Rules of Civil Procedure*.

3. The following documentary evidence will be used at the hearing of the application:

- i) the affidavit of Richard Zirger, sworn January 7, 2015;
- ii) the affidavit of Judi Zirger, sworn January 7, 2015;
- iii) the affidavit of Sophie Dell, sworn January 9, 2015;
- iv) the affidavit of Charlene Quevillon, sworn February 19, 2015;
- v) the affidavit of Ron Quevillon, sworn February 19, 2015;
- vi) the affidavit of Nick Kirewskie, sworn February 24, 2015; and,
- vii) such further and other materials as counsel may submit and this Honourable Court permit.

February 24, 2015

Marshall Kirewskie
Barristers & Solicitors
201 – 88 Dunn Street
Oakville, ON
L6J 3C7

Paul Marshall
LSUC #: 33983T

Cassandra Kirewskie
LSUC #: 36765H

Tel: (905) 842-5070
Fax: (905) 842-4123

Counsel for the Applicants

Zirger et al. - and - Zeifman Partners Inc.

Court File No.:

**SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO**

NOTICE OF APPLICATION

**Marshall Kirewskie
Barristers & Solicitors**
201 – 88 Dunn Street
Oakville, Ontario
L6J 3C7

Paul Marshall (#33983T)
Tel: (905) 842-5070x223
Cassandra Kirewskie (#36765H)
Tel: (905) 842-5070x224
Fax: (905) 842-4123

Solicitors for the Applicants

tab F



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

March 27, 2015

Reply To: Greg Azeff
Direct Dial: 416.365.3716
E-mail: gazeff@foglers.com
Our File No. 14/3857

VIA EMAIL

Marshall Kirewskie
Barristers and Solicitors
88 Dunn Street, Suite 201
Oakville, ON
L6J 3C7

Attn: Cassandra Kirewskie

Dear Ms. Kirewskie:

Re: Richard Zirger, Judi Zirger, James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Robert Zirger, Sharon Zirger, George Lepp, Erica Lepp and Mark Lepp v. Vandermeer Greenhouses and Niagara Anaerobic Digester Inc. 2021 Four Mile Creek Road, Niagara on the Lake

We have received your materials. Specifically, at approximately 3:30 pm on Friday afternoon we received a full banker's box containing a 9 volume Application record, plus a factum and book of authorities, for an Application returnable next Thursday.

You have contemplated a motion for leave to proceed for almost a year, yet you have completely disregarded the service requirements in Rules of Civil Procedure. Furthermore, it appears that you have now commenced the Application itself, without first obtaining leave, in flagrant breach of the Initial Order (a copy of which is enclosed herein for your convenience). You have also elected to proceed in the wrong court; the Initial Order requires that you bring any motion for leave in the Commercial List. We have previously advised you of same.

Finally, we note that you have also continued with your refusal to add Mr. Macfarlane to the service list, despite his – and our – repeated requests that you do so. As you know, Mr. Macfarlane's client, Meridian Credit Union, was the creditor that originally brought the motion to have the Receiver appointed. We know of no legitimate basis for your refusal.

In light of your late service, by letter dated March 26, 2015 we quite reasonably requested an adjournment. You refused, despite that fact that at the time of that refusal you still hadn't served your materials.

You are advised that we have reserved time before the Commercial List on Tuesday March 31, 2015 for a 9:30 attendance to deal with this matter, and we will seek all of our costs against you.

Please advise as to whether you intend to attend.

Yours truly,

FOGLER, RUBINOFF LLP


Greg Azeff
GA/ce

cc: Ross Macfarlane

tab G

fogler
rubinoff

Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

April 1, 2015

Reply To: Greg Azeff
Direct Dial: 416.365.3716
E-mail: gazeff@foglers.com
Our File No. 14/3857

VIA EMAIL

Marshall Kirewskie
Barristers and Solicitors
88 Dunn Street, Suite 201
Oakville, ON
L6J 3C7

Attn: Cassandra Kirewskie

Dear Ms. Kirewskie:

Re: Richard Zirger, Judi Zirger, James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Robert Zirger, Sharon Zirger, George Lepp, Erica Lepp and Mark Lepp v. Vandermeer Greenhouses and Niagara Anaerobic Digester Inc. 2021 Four Mile Creek Road, Niagara on the Lake

We are prepared to have your Application adjourned *sine die* provided that you agree to bring a proper motion to lift the stay of proceedings, within the receivership proceeding, before the Commercial List, as mandated by paragraph 29 of the Initial Order. You will also agree to bring any such motion on proper notice to the service list in the receivership proceeding.

We have no issue with an expedited timeline for the hearing of such a motion. If you are granted leave to proceed, then you can bring your Application back on.

If these conditions are not acceptable to you, then we will attend tomorrow to request that your Application be dismissed in its entirety and will seek costs.

Please advise.

Yours truly,

FOGLER, RUBINOFF LLP


Greg Azeff
GA/ce

cc: Allan Rutman

tab H

FILE/DIRECTION/ORDER

BEFORE JUDGE RSS MURAWETZ

COURT FILE # CV - 15 - 522653

Ziger

Plaintiff(s)

Vs

Zeifman

Defendant(s)

COUNSEL: Paul Marshall + Cassandra Kirovskire Phone No: _____
for Applicant

Greg Bzeff and Joshua Freeman Phone No: _____
for Respondent

J. Ross MacFarlane for Recusal

A) REPORTED SETTLED () COUNSEL TO TAKE DISMISSAL ORDER.

B) NOT READY; ADJOURN TO: _____

D) NOT READY; STRUCK OFF THE LIST ()

C) OTHER: _____

The Application has been issued in contravention of the Recusal

Order - Paragraph 7. The Application is stayed pending the return

of a proper motion for leave to be brought in the Recusal process

in order to the Service List. Service to effected in accordance
(See Peoples v Rose & Shain, 2012 ONSC 7319
* para. 17

with the E-Service Protocol used in Commercial List matters.

Scheduling to be done through Commercial List Office

Costs of today to be addressed by the judge hearing
the leave motion.

April 2, 2015

DATE

[Signature] RSS

JUDGE'S SIGNATURE

tab I

Court File Number: CV-14-10443-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Meredeeen Credit Union Limited

Plaintiff(s)

AND

Vandermeer Greenhouses Ltd.

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
 Adjourned to: _____
 Time Table approved (as follows):

On consent, it is agreed that the stay under the
Review Order is lifted to permit the applicants to
commence ~~an action~~ ^{a proceeding} before the Farm Practice
Protection Board pursuant to s. 5 of the Farming
and Food Production Protection Act, 1998. The
motion for leave to bring the application before
me this morning is adjourned sine die and the
stay of the application ordered by Morawetz R.S.J.
dated April 2, 2015 is continued pending further

April 23/15
Date

Cr. Hon. M.J.
Judge's Signature

Additional Pages 1

Court File Number: CV-14-10443-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

order of the court without prejudice to the applicant to bring forward the motion and the application or to ~~the~~ any other party to bring a motion for dismissal thereof, and in either case, ~~of~~ without prejudice to the right of any party to seek their costs of the application and the motion.

tab J



88 Dunn Street, Suite 201
Oakville, ON L6J 3C7
T 905.842.5070
F 905.842.4123
mklaw@bellnet.ca

Paul David Marshall, B.A., B.Ed., LL.B.
p.marshall@bellnet.ca

Cassandra Kirewskie, M.A., LL.B.
ckirewskie@bellnet.ca

Nick Kirewskie, Office Manager
mklaw@bellnet.ca

May 8, 2015

By Fax to: (519) 826-3259

Finbar Desir, P.Eng.
Secretary
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph, Ontario
N1G 4Y2

Dear Mr. Desir:

RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp, Erica Lepp v. Zeifman Partners as operator of 2021 Four Mile Creek Road, Niagara on the Lake

We represent the parties listed above. As you know, our clients have been experiencing unusual vibrations, noises, odours and other disturbances. Having attended at Vandermeer Working Group meetings, you are no doubt aware that the source of these and other disturbances is the on-farm anaerobic digester being operated by Zeifman Partners as Vandermeer's Court appointed Receiver.

In April 2014, we attempted to file an application with the Board for a determination as to whether the practices on the Vandermeer farm are normal farm practices. At the time, the Board advised that the Receiver's stay of proceedings prohibited the Applicants from filing their application. The Board directed us to obtain the Receiver's consent or a Court Order lifting the stay before it would accept our application for filing. As the Receiver refused its consent, the Applicants made numerous *Freedom of Information* requests in an effort to obtain sufficient evidence to prove to the Court that their claims are well founded and not frivolous and vexatious.

The Applicants' motion to lift the stay was heard on April 23rd. In Chambers, Mr. Justice Wilton Siegel gave his view that our clients had an automatic right to be heard by the Board, notwithstanding the stay and the Receiver's opposition to the filing of our application last year. As a result, he pressed the Receiver for its consent, which it gave. We have enclosed a copy of Justice Wilton Siegel's Endorsement lifting the stay for your information.

We have enclosed a copy of our Notice of Application. We would like to request the Board's earliest available hearing dates as the growing season is underway and the Applicants believe that many of the disturbances are harmful to their crops. As we view this as an urgent application, we will make every effort to ensure that the application can be heard quickly.

The Applicants would also like to make an appointment for a pre-hearing Conference. We believe that it would be beneficial to define the issues and to decide on the procedure to be adopted. We would also like to move for an Order concerning the disclosure of evidence. Given the many steps that have preceded this hearing, we believe that the parties should be able to agree on some basic facts that will expedite a hearing. To simplify and shorten the proceedings, we would like to ask for an Order that interrogatories and witness statements be exchanged. Could you kindly advise as to the dates available to hold a pre-hearing Conference so that we may obtain the Board's direction on these matters?

Can you also confirm that the proceedings will be recorded? And finally, could you please provide us with a current listing of all the Board's members?

Thank you.

Sincerely,



Cassandra Kirewskie

/nk

Encl.

c. Greg Azeit, counsel for Vandcrmeer's Receiver, Zeifman Partners
Clients

Court File Number: CV-14-10443-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Meridian Credit Union Limited
Plaintiff(s)

AND

Vandermeer Greenhouses Ltd.
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows): _____

On consent, it is agreed that the stay under the
 Renewal Order is lifted to permit the applicants to
 commence ~~an action~~ ^{a proceeding} before the Farm Practices
 Protection Board pursuant to s. 5 of the Farming
 and Food Production Protection Act, 1998. The
 motion for leave to bring the application before
 me this morning is adjourned sine die and the
 stay of the application ordered by Morawetz R.S.J.
 dated April 2, 2015 is continued pending further

April 23/15
Date

Car. Ken - R.S.J.
Judge's Signature

Additional Pages 1

Court File Number: CV-14-10443-0001

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

order of the court without prejudice to the applicant to bring forward the motion and the application or to any other party to bring a motion for dismissal thereof, and in either case, without prejudice to the right of any party to seek their costs of the application and the motion.

NORMAL FARM PRACTICES PROTECTION BOARD

IN THE MATTER OF a hearing under the *Farming and Food Production and Protection Act*, 1998, S.O. 1998, Ch.1;

AND IN THE MATTER OF an application for a determination as to whether the disturbances from 2021 Four Mile Creek Road, Niagara on the Lake, result from a normal farm practice;

B E T W E E N:

JAMES DELL, SOPHIE DELL, RON QUEVILLON, CHARLENE QUEVILLON, DINO LAVALLE, MARY LAVALLE, DAN LAVALLE, LARRY BOURK, JOAN BOURK, RICHARD ZIRGER, JUDI ZIRGER, ROBERT ZIRGER, SHARON ZIRGER, GEORGE LEPP, CINDI LEPP, MARK LEPP, ERICA LEPP

Applicants

- and -

ZEIFMAN PARTNERS INC. as operator of the waste disposal site at 2021 Four Mile Creek Road, Niagara on the Lake

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION will come on for a hearing before the Normal Farm Practices Protection Board (the "Board") at a date and time to be determined by the Board.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you should forthwith prepare a notice of appearance in a form similar to Form 38A prescribed by the Ontario Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, with the Board and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE BOARD OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a

copy of the evidence on the Applicants' lawyer and file it with proof of service, with the Board, as directed.

IF YOU FAIL TO APPEAR AT THE HEARING, A DECISION MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

DATED: May 8, 2015

TO: Zeifman & Partners
c/o Greg Azeff
Fogler, Rubinoff
77 King Street West
Suite 3000, P.O. Box 95
TD Centre
Toronto M5K 1G8

APPLICATION

1. The Applicants make an application for:

- a) an Order pursuant to ss. 2 and 5 the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1 declaring that the following disturbances coming from 2021 Four Mile Creek Road, Niagara on the Lake ("the Vandermeer farm") do not result from normal farm practices:
 - i) putrid, sharp and pungent odours that are frequent, offensive, intense and lingering;
 - ii) visible and invisible dust and floating and falling particles of solid material with unknown combustion, respiratory, health, environmental and explosion risks;
 - iii) unusual numbers of unsanitary and irritating flies, seagulls, rats and mice that leave droppings everywhere, including on produce grown for human consumption;
 - iv) smoke and other emissions which pose a health and food safety hazard to food crops;
 - v) frequent loud noises;
 - vi) bright lights; and,
 - vii) strong vibrations;
- b) an Order for the Respondent, who is currently operating the Vandermeer farm, anaerobic digester and waste disposal site, to cease the following practices as they are the cause of the disturbances listed above:
 - i) any and all practices that violate the Vandermeer Certificate of Approval;;
 - ii) any and all practices that cause odour, dust, noise, smoke, emissions, vibrations, vectors and vermin;
 - iii) any and all practices and types and scale of uses that are incompatible with the *Ontario Greenbelt Plan, The Provincial Policy Statement, 2014* and OMAFRA's *Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas*;
 - iv) any and all practices that violate the Town of Niagara on the Lake's Official Plan and zoning by-laws;
 - v) any and all practices and activities that impair, inconvenience or hinder surrounding agricultural operations;
 - vi) any and all practices that drain into and/or contaminate local waters;
 - vii) all use of unapproved trucks on-farm;

- viii) all delivery and land applications of digestate without a Certificate of Approval;
- ix) operating without openly communicating what is being stored, inputted, and processed on-farm;
- x) operating without disclosing the content and final destination of the digestate;
- xi) operating 24/7/365;
- xii) operating without adequate noise and odour abatement technology;
- xiii) authorizing commercial waste disposal trucks to enter the Vandermeer farm;
- xiv) authorizing uncovered trucks to enter the Vandermeer farm;
- xv) operating without taking appropriate measures to protect neighbouring farms from contamination to soil, air, water and crops;
- xvi) receiving, storing, inputting, processing and/or land applying any wastes that were not generated on the Vandermeer farm;
- xvii) receiving, storing, inputting, processing and/or land applying grape pomace that was not received from a "farm operation" as defined by O. Reg. 347 of the *Environmental Protection Act*;
- xviii) receiving, storing, inputting, processing and/or land applying agricultural waste that was not received from a "farm operation" as defined by O. Reg. 347 of the *Environmental Protection Act*;
- xix) receiving, storing, inputting, processing and/or land applying "off-farm anaerobic digestion materials" that were not generated at an agricultural operation and that were received from an outside source as described in O. Reg. 347 of the *Environmental Protection Act*;
- xx) receiving, storing, inputting, processing and/or land applying any wastes that were not generated by and received from a local farm operation within a 5 kilometer radius of the Vandermeer farm;
- xxi) inputting any materials in the digester that do not meet the legal classification of exempt agricultural materials as set out in Ont. Reg. 347 of the *Environmental Protection Act*;
- xxii) inputting more than 50% by volume of off-farm wastes into the digester;
- xxiii) inputting an inconsistent and variable feedstock;

- xxiv) receiving, storing, inputting and/ or land applying any wastes that have strong odours, such as: grape pomace; DAF; fats, oil and grease ("FOG"); spoiled peppers; spoiled dog food; spoiled and off-spec foods;
 - xxv) inputting any wastes that have not been content tested and which are not a pathogen free and odourless agricultural feedstock generated at and received from an Ontario farm operation;
 - xxvi) storing feedstock and digestate in open bunkers and close to watercourses, the Sloma Municipal Drain and Four Mile Creek;
 - xxvii) operating without appropriate wastewater management;
 - xxviii) processing non-farm wastes;
 - xxix) operating an open flare;
 - xxx) venting raw biogas;
 - xxxi) land applying non-farm wastes and/ or land applying digestate in a manner that contravenes O.Reg. 267/03;
 - xxxii) opening the feedstock and/or digestate storage containers and leaving their contents exposed to the open air;
- c) in the alternative, an Order for the Respondent to modify the following practices:
- i) operating 24/7/365:

The Applicants ask this Court for an Order that the Respondent:

- minimize traffic movements on the farm by only operating between the hours of 7 am and 5 pm from Monday to Friday;
- be prohibited from operating any machinery or equipment that generates disturbances outside these hours;
- close the waste disposal site on weekends and holidays for the same reasons;
- impose seasonal rest and dormant periods on the site annually when the greenhouses' energy requirements are reduced and when the potential for the Respondent's activities to cause harm to the Applicants' crops are at the greatest;

- ii) truck deliveries and other sources of noise:

The Applicants ask this Court for an Order that the Respondent:

- take fresh steps to minimize the noise disturbances from truck deliveries, pumps, compressors, generators, the power plant and overall scheme of the operation;

iii) receiving off-farm wastes:

The Applicants ask this Court for an Order that the Respondent:

- weigh and record the weight of all loads entering the farm to ensure compliance with the Vandermeer Certificate of Approval and post this information on-line on a website available to the Applicants and other concerned residents on a weekly basis;
- monitor and screen its feedstock for disease;
- carefully and thoroughly wash all vehicles, tires, clothes and footwear off as they leave the Vandermeer farm;
- take appropriate preventative measures to ensure that any waste materials it receives have been adequately pasteurized as the digester's feedstock contains plant and animal pathogens and parasites that may be dangerous to human health and crops;
- only use Vandermeer farm wastes to power the digester to reduce the amount of traffic, noise, dust, vibrations and other disturbances on and near the Vandermeer farm and to reduce the risks of contamination from the pathogenic content of the feedstock and digestate; or, in the alternative, that the Respondent minimize the impact of transporting any local farm wastes onto the Vandermeer farm through logistics and the use of alternative methods of transportation;
- the Respondent post all of its monitoring data on line on a weekly basis to ensure compliance with this Order;

iv) storing wastes:

The Applicants ask this Court for an Order that the Respondent:

- totally enclose the Vandermeer storage facilities and keep the digester feedstock and digestate covered at all times to prevent odours and pathogens from escaping;
- ensure that the buildings on the site be made airtight to eliminate odours escaping through the building envelope;
- install the best available technology for eliminating or abating odours from its storage facilities and from any other part of its operation or activities that create odour;
- ensure that the feedstock is stored for a maximum of 10 days to enhance bio-security and to reduce the risk of cross-contamination;
- store only farm wastes as a feedstock for the digester to enhance bio-security and to reduce the risk of cross-contamination as well as the

amount of traffic, noise, dust, vibrations and other disturbances on and near the Vandermeer farm;

- minimize the impact of run-off through soil erosion avoidance techniques and the use of a storage cover at all times;
- have a vegetated filter strip designed, engineered and constructed by a qualified person to intercept and treat runoff by settling, filtration, dilution, adsorption of pollutants and infiltration into the soil as set out in the O. Reg. 267/03 of the *Nutrient Management Act, 2002*, S.O. 2002, c.4;

v) Inputting non-farm wastes:

The Applicants ask this Court for an Order that:

- the Respondent use only on-farm agricultural wastes to power the digester to reduce the amount of traffic, noise, dust, vibrations and other disturbances on and near the Vandermeer farm;
- the Respondent be prohibited from receiving, storing, inputting, processing any wastes that were not generated by and received from a local farm operation;
- the Respondent totally enclose its storage facilities and keep its feedstock covered at all times to prevent odours and pathogens from escaping;
- the Respondent input a consistent, pathogen free and odourless feedstock;

vi) Processing wastes:

The Applicants ask this Court for an Order that:

- The Respondent avoid drastic changes to the feedstock to reduce the number of biogas "burps" and to reduce odours, control pathogens and reduce the risk of cross-contamination;
- the Respondent take appropriate preventative measures to ensure that any waste materials it processes at the Vandermeer farm have been properly pre-treated and/or pasteurized as the digester's feedstock contains plant and animal pathogens and parasites that may be dangerous to human health and crops;
- the Respondent implement a practice to test all wastes prior to their processing;
- the Respondent implement such testing and inspection on site;
- the Respondent check moisture loads for health and safety reasons;

vii) Land applying digestate:

The Applicants ask this Court for an Order that:

- any resultant waste material that is not land applied on the Vandermeer farm be transported by carriers or brokers who have a Certificate of Approval to do so and appropriate training and that spill procedures will be in place;
- the Respondent be required to test all materials that leave the farm and that it be required to share the findings of such testing with the Applicants as soon as such material leaves the Vandermeer farm;
- the Respondent implement a practice to test all digestate and other resulting products to alleviate the risk of cross-contamination;
- the Respondent implement such testing and inspection on site;
- the Respondent create a Nutrient Management Plan for the storage, handling and disposal of its digestate that governs the location, rates and time of year its digestate may be land applied which complies with the *Nutrient Management Act, 2002*, S.O. 2002, c.4 and Regulations;
- the Respondent use or dispose of the digestate in a manner that prevents excess run-off to underground or surface waters;
- the Respondent use only safe and approved methods of transporting the digestate;

viii) lighting:

The Applicants ask this Court for an Order that the Respondent:

- take fresh steps to minimize the light disturbances from truck deliveries and the industrial type spot lighting around the farm;
- take steps to address the visual impact of its activities by creating an appropriately sized berm and planting mature trees to screen and reduce the wind flow, reduce noise, light and dust disturbances;

ix) operating without a bio-filter:

The Applicants ask this Court for an Order that:

- the Respondent be required to purchase two bio-filters, one of which is to be installed immediately and the other which is to be stored on site, together with spare parts as a contingency to ensure that it is continuously taking all available measures to reduce the odour disturbances resulting from its activities;
- that such bio-filters will reflect the best available technology;

x) operating an open flare:

The Applicants ask this Court for an Order that:

- The Respondent enclose the flare to reduce the risk of fire, explosion and emissions as such smoke and lights are disturbances which are uncontrolled and unregulated;

xi) Contingency measures:

The Applicants ask this Court for an Order that the Respondent:

- take appropriate measures to be able to isolate the waste disposal site in the event of a catastrophe, fire, explosion, contamination or other emergency;
- d) an Order pursuant to s. 2(1.1) of the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1 declaring that the Respondent's receipt of wastes, treatment, nutrient management, storage, management, transport, land application and records keeping practices are inconsistent with O. Reg. 267/03 of the *Nutrient Management Act, 2002*, S.O. 2002, c.4 and as such are not normal farm practices;
- e) an Order for the Respondent to disclose all of its financial, maintenance and operational records for the past two years, including all of those which it is under an obligation to keep and provide to the Ministry of the Environment;
- f) costs on a substantial indemnity scale; and,
- g) such other and further relief as counsel may advise and this Board permit.
2. The grounds for this application are that:
- a) the Applicants are tender fruit growers and/or residents who live in close proximity to the Vandermeer farm;
- b) the Certificate of Approval the Ministry of Environment ("the MOE") granted to the owner of the Vandermeer farm on October 30, 2009 converts the entire 6.7 hectare farm to a non-agricultural use, that is to a waste disposal site;
- c) the Applicants are experiencing the following disturbances:
- i) putrid odours;
 - ii) smoke and other emissions;
 - iii) excessive noise;
 - iv) vibrations;
 - v) unusually large numbers of seagulls, rats and mice;
 - vi) bright lights; and,
 - vii) swarms of flies;

- d) the Applicants believe that the Respondent's practices on the Vandermeer farm are the source of these disturbances as follows:
- i) **putrid odours** from the materials used to feed the digester and from feedstock stored in open bunkers, which the Applicants believe includes: food waste from Tim Horton's; spoiled and off-spec pet food waste; grape pomace from off-farm anaerobic digestion materials; rotting produce; fat, oil and grease from unknown sources; silage; chicken parts and manure; rodents; spoiled soft drinks; and, waste water from food processing;
 - ii) **smoke and other emissions** from the diesel generator, the feedstock storage bunkers, the digester and the open flare which often runs 24 hours a day for as many as 12 days on end to burn excess gas and which gives the rural neighbourhood an industrial appearance and which places the waste disposal site at risk of explosion;
 - iii) **excessive noise** heard both outside and within the Applicants' homes with the doors and windows closed. Noise from: machinery; vehicles; trucks and traffic; loaders banging; pumps; the tractor used to move feedstock; the generator; and the bird audio-deterrent used to scare birds away from the feed bunkers;
 - iv) **vibrations**, the source of which is unclear but must include vibrations from machinery and vehicular traffic;
 - v) **unusually large numbers of seagulls** which paint outdoor furniture, bbq's, cars, walkways, decks, patios, trees and everything in their path white with seagull droppings and make it impossible for the Applicants to have the benefit of and to enjoy the use of their outdoor spaces, creating a health hazard and risking the safety of the Applicants' food crops;
 - vi) **bright lights** that enter homes at odd hours disturbing residents and preventing them from getting a restful night's sleep;
 - vii) **swarms of flies** which leave their droppings everywhere, and make it impossible for the Applicants to have the benefit of and to enjoy the use of their outdoor spaces, creating a health hazard and risking the safety of the Applicants' food crops; and,
 - vii) **unusually large numbers of rats and mice** whose presence threatens the food safety of crops intended for human consumption and who live in such large numbers that a snowy owl has taken up residence near the site as it provides a stable source of food;
- e) both the MOE and the Ministry of Agriculture ("OMAFRA") have confirmed that the Vandermeer farm is the source of these disturbances;
- f) the Respondent had been operating the Vandermeer farm as a private receiver from July 19, 2011 until it was appointed the Receiver of Vandermeer Greenhouses' business and assets on February 24, 2014;
- g) the MOE and OMAFRA have repeatedly told the Applicants that they should seek a ruling as to whether the disturbances are as a result of normal farm practices;
- h) the Receiver is receiving, storing, processing and land applying wastes that the Applicants believe violate the Certificate of Approval and other applicable laws;

- i) the Vandermeer waste disposal site is permitted to operate without any time restrictions, that is 24 hours a day, 7 days a week, 365 days a year when other neighbouring farms do not create disturbances at night, weekends or holidays and when other anaerobic digester projects have limited hours of operation and even industrial waste disposal sites are not permitted to operate continuously;
- j) the Applicants have worked with the owner, the Town of Niagara on the Lake, the Region of Niagara, the MOE and OMAFRA to mitigate these and other nuisances but, despite any changes that have been made to the site and its operation, the practices on the site continue to deprive the Applicants of the use and enjoyment of their homes, properties and farms;
- k) the Respondent's practices threaten some of the Applicants' livelihoods as they believe, and have in some cases been advised, that the emissions and other disturbances coming from the site are damaging their crops and rendering them unsafe for human consumption;
- l) the Applicants believe that the Respondent is not using the legally required percentage of on-farm and/ or agricultural source materials to feed the digester, as such, the Applicants believe that the activities on the site are not normal farm practices;
- m) the Applicants state that the factual elements required to prove a violation of Ontario law are under the control of the Respondent or of a government agency;
- n) the Applicants state that the Receiver's use of the Vandermeer farm represents an unacceptably broad encroachment on traditional common law rights and as a result, requires disclosure of all of the operational, financial and maintenance records pertaining to the farm and anaerobic digester for the past two years, which are solely in the possession of the Respondent Receiver;
- o) without an effective Order for the disclosure of relevant evidence, the Board will not be able to hear the issues fairly and the Applicants will be denied access to justice;
- p) *The Farming and Food Production Protection Act*, 1998, S.O. 1998, Ch.1, ss. 2(1.2) and 5;
- q) *The Environmental Protection Act*, R.S.O., c. E. 19;
- r) *The Planning Act*, R.S.O. c. P. 13;
- s) *The Greenbelt Act, 2005*, S.O. 2005, c.1;
- t) *The Nutrient Management Act, 2002*, S.O. 2002, c. 4;
- u) *The Green Energy Act, 2009*, S.O. 2009, c. 12, Sched. A.; and,

v) The Board's *Rules of Practice and Procedure*.

3. The following documentary evidence will be used at the hearing of the application:
 - i) the witness statements and/or oral evidence of the Applicants;
 - ii) the interested parties' application record for leave to lift the stay of proceedings, if and as required; and,
 - iii) such further and other materials as counsel may submit and this Honourable Board permit.

tab K



88 Dunn Street, Suite 201
Oakville, ON L6J 3C7
T 905.842.5070
F 905.842.4123
mklaw@bellnet.ca

Paul David Marshall, B.A., B.Ed., LL.B.
p.marshall@bellnet.ca

Cassandra Kirewskie, M.A., LL.B.
ckirewskie@bellnet.ca

Nick Kirewskie, Office Manager
mklaw@bellnet.ca

May 19, 2015

By Fax to: (519) 826-3259

Finbar Desir, P.Eng.
Secretary
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph, Ontario
N1G 4Y2

Dear Mr. Desir:

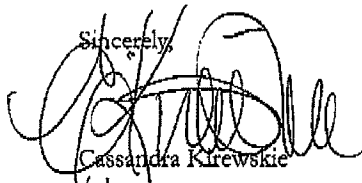
RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavalle, Mary Lavalle, Dan Lavalle, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp, Erica Lepp v. Zeifman Partners as operator of 2021 Four Mile Creek Road, Niagata on the Lake

Further to our letter of May 8th, it has come to our attention that Jake DeBruyn has been advised of our application. As neither he nor his employer, the Ministry of Agriculture, is a party to our application, could you please explain how he was made aware of it, by whom and why? We have raised our concerns about the Board's lack of structural independence and perceived biases in the past and are deeply concerned that advance notice of our application may be prejudicial to our clients, especially as Mr. DeBruyn is likely to be a witness for the Receiver and obviously conducted his recent site visit with our application and its allegations on his mind.

Would you confirm that your office will take active, fresh steps to ensure that its handling of this matter is beyond reproach? Our clients' faith in the Board's integrity hangs in the balance.

Would you also kindly advise as to when our application will be heard? Almost two weeks have passed since it was served and we have had no further correspondence from your office.

Thank you.

Sincerely,

Cassandra Kirewskie
/nk

- c. Greg Azeff, counsel for Vandermeer's Receiver, Zeifman Partners
Clients

tab L



Marshall Kirewskie
Barristers & Solicitors

Paul David Marshall
B.A., B.Ed., LL.B.
E-mail: p.marshall@bellnet.ca

Cassandra Kirewskie
M.A., LL.B.
E-mail: ckirewskie@bellnet.ca

Nick Kirewskie
OFFICE MANAGER
E-mail: mklaw@bellnet.ca

December 7, 2012

By Regular Mail & Fax to: (519) 826-3259

Normal Farm Practices Protection Board
OMAFRA
1 Stone Road West
Guelph, Ontario
N1G 4Y2

Dear Board:

**RE: Vandermeer Nurseries' Anaerobic Digester
2021 Four Mile Creek Road Niagara on the Lake L0S 1J0
Certificate of Approval #9512-7QNNZJ (October 30, 2009)**

We are writing to withdraw our application. We are concerned that the Board is not impartial.

The reasons for our concerns are as follows:

A. The Minister of Agriculture ("OMAFRA") has an interest in the outcome of these proceedings.

The Board cannot hear this application fairly as OMAFRA was involved in the project that gives rise to it and has an interest in these proceedings.

OMAFRA supports anaerobic digestion and sets some of the regulatory standards for digesters in Ontario. OMAFRA participated in the decision making process that led the digester's construction and may also have funded the project as we understand that the Vandermeers received government grants to build their digester.

OMAFRA has been working with the Respondent to respond to public complaints about the stench and other disturbances coming from the Vandermeer property and to attempt to ameliorate these. One of OMAFRA's engineers is a witness for the Respondent.

Despite making a request for information in May of 2012, OMAFRA has still not released any documents concerning its involvement in the project.

Given its institutional relationship with OMAFRA, the Board may also have an interest in the outcome of these proceedings.

B. The Board lacks structural independence

The Board's structure, physical location and letterhead create a reasonable apprehension of bias.

OMAFRA appoints the Board and provides the physical space and institutional infrastructure for the Board to operate. The Board shares its letterhead with OMAFRA. It holds out to the public that it is a part of OMAFRA and that it shares, or has an interest in upholding, OMAFRA's policies and procedures.

As the Board cannot fairly review decisions made by the entity which created, empowers, funds and appoints its members, it is not the proper forum to determine whether the activities being carried on at the Vandermeer property are normal farm practices.

C. Bias

Since OMAFRA shares its premises with the Board, it is possible that members of the Board have pre-existing relationships with some of the individuals involved in this matter, and in particular, with individuals who made decisions or developed relevant policies. The Board may have outside knowledge or involvement in the matter before it. At the very least, its shared premises raise a reasonable apprehension of bias.

At our last appearance on November 13th, we advised the Board that we are contemplating litigation against the parties that were responsible for the decision to approve of the anaerobic digester being located on the Vandermeer property. Vice Chair Little was very hostile about this suggestion and aggressively questioned counsel to explain the rationale for our lawsuit. These inappropriate comments and behaviour cast doubt on the Board's impartiality.

D. Errors of Law

We are of the view that the Board has made significant and substantial pre-hearing orders that adversely impact on the final hearing over which it presides.

We are concerned that the Board ordered the adjournment to be pre-emptory on the Applicants (but not on the Respondent) when it had been advised that the Applicants have not received any documents from OMAFRA in response to their May 2012 FOI request and I advised that I am not available on the first day of the hearing as I am in court on another matter. Secondly, the Board erred when it decided to limit disclosure without hearing any evidence or argument on point.

There was no evidence before the Board as to the specific content of the information the Respondent sought to protect or any evidence of any real and substantial risks that the Respondent would be harmed by meeting its legal obligation to disclose all relevant documents. Such harms were purely speculative and should have been weighed against the public's *Charter* protected rights in an open and fair hearing. The Board failed to hear any argument on point. Consequently, it erred when it ruled on the Respondent's entitlement to withhold relevant documents from the Applicants.

The Board's decision gives any potential buyer of the Respondent's property and business more disclosure as to the real nature of the activities being conducted there than the Applicants who live next door and who have had to commence legal proceedings to regain the use and enjoyment of their home.

While the Respondent has refused to provide its financial statements and Vice Chair Little has stated that we do not need this kind of information to prove that the Respondent's activities are not a normal farm practice, understanding the source and amount of the Respondent's revenue is a key to determining whether it is carrying out a normal farm practice or operating a waste disposal facility and selling energy. The Board's decision, based as it is on a complete absence of an evidentiary foundation, fails to pay sufficient attention to the public importance of open court records. Open justice is the hallmark of a democratic society.

Third, the Board erred when it ordered the Applicants and their counsel to give an undertaking as a precondition to obtaining relevant, admissible and material evidence.

The consequences for failing to respect an undertaking are very grave and personal, contempt proceedings or discipline by the Law Society. The giving of an undertaking is not to be taken lightly, especially in circumstances as these where the underlying reason for the request have not been tested.

Indeed, the Applicants FOI requests are not a substitute for the disclosure we were entitled to receive from the Respondent but which are now our only means of obtaining the information we need to properly prepare our case. We made a timely request to OMAFRA to obtain these documents, there is no reason we should not have had them in advance of the hearing.

Following our appearances on November 13th, counsel for the Respondent wrote to us alleging personal knowledge of the state of our FOI Request to OMAFRA. As it turns out, he appears to have been better informed than we were.

While we made a request of OMAFRA in May 2012, we have still not received any disclosure. From correspondence dated September 7, 2012, we understood that OMAFRA could not release any documents until third party appeals had been dealt with. As we did not hear anything further, we assumed that our disclosure was being held up by a third party appeal. It offends our sense of justice that the Respondent obtained confidential information about our clients' FOI request before we did and without our knowledge or approval. That impropriety is compounded by the fact that the information he was apparently given was not communicated to

us by OMAFRA and may have been known to the Board. We only learned that the third party appeal process had run its course and that subject to payment of the appropriate fees, OMAFRA was ready to deliver documents after we wrote to OMAFRA to confirm Mr. Macfarlane's information. These improprieties are further compounded by the fact that only after a second written request did the Respondent disclose that it was the third party who had objected to the disclosure of documents.

In our view, the Board exceeded its jurisdiction and pre-judged the case when it ordered that it would supervise the questions the Applicants wished to ask of the Respondents through written interrogatories. The Board's decisions have made it impossible for us to know the case that has to be met.

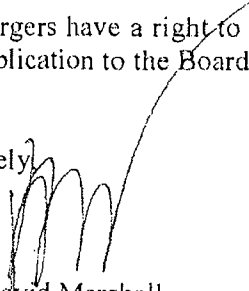
Finally, we have grave concerns about the very aggressive approach the Board has taken to scheduling. The Board had great difficulty granting an adjournment on a first request and in the absence of proper disclosure. Given the fact that the Board has taken a very restrictive view of our evidentiary entitlement and is fully aware that our only means of obtaining the evidence we require is through a process OMAFRA controls and over which we have no control and cannot predict the timing of, we find the Board's decision to Order the hearing date on a peremptory basis very unfair. The fact that I advised the Board that I am unavailable on the first day as I have a prior court appointment also strongly suggests that the Board is not committed to a fair hearing of this matter.

We have not made this decision lightly. Our clients, Richard and Judi Zirger, wake up every day to obnoxious odours, disturbing vibrations and loud noises. The trucks bringing waste to the Vandermeer property operate around the clock, 24/7, 365 days a year. Instead of enjoying quiet country living, the Zirgers are contending with rats and abnormal bird and insect populations. They cannot enjoy the outdoor environment at their family farm as the stench chases them, their friends and family indoors.

The Zirgers end each day listening to the noises created by their neighbour's waste treatment plant and watching the intermittent flare that burns excess gas, signalling a problem at the plant and highlighting the potential for a biogas explosion. Emissions from the digester have left residue on their crops, rendering them unmarketable. None of the adult Zirger children wishes to continue the family farm; their property value has undoubtedly dropped substantially.

The Zirgers have a right to have their complaints heard by impartial body. We are withdrawing our application to the Board.

Sincerely,


Paul David Marshall
/nk

tab M



88 Dunn Street, Suite 201
Oakville, ON L6J 3C7
T 905.842.5070
F 905.842.4123
mklaw@bellnet.ca

Paul David Marshall, B.A., B.Ed., LL.B.
p.marshall@bellnet.ca

Cassandra Kirewskie, M.A., LL.B.
ckirewskie@bellnet.ca

Nick Kirewskie, Office Manager
mklaw@bellnet.ca

May 19, 2015

BY FAX TO: 416-941-8852

Gregory Ryan Azeff
Fogler Rubinoff LLP
3000 - 77 King Street West
PO Box 95
Toronto, ON
M5K 1G8

Dear Mr. Azeff:

RE: James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Richard Zirger, Judi Zirger, Robert Zirger, Sharon Zirger, George Lepp, Cindi Lepp, Mark Lepp and Erica Lepp v. Zeifman Partners as operator of 2021 Four Mile Creek Road, Niagara on the Lake

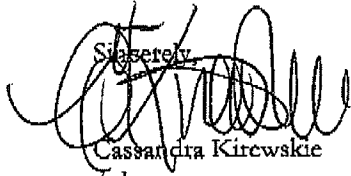
On May 15th, the Friday before the long weekend, your assistant emailed seeking my approval to sign a motion request form on my behalf. I responded promptly noting that we would not give such permission without a proper request and in the absence of knowing what the motion was for. We did not receive your response until our return to the office this morning. Was it really necessary for you to note at 11:26 am today that your office had not yet received a reply?

With respect, without having received a copy of your motion record, we do not "know" what your motion is for. We are not available on June 1st. We are available on June 18, 23 and 24th. Having said that, we cannot say whether the motion can go ahead without examinations until we have received a copy of your materials.

We see no reason to move to dismiss the Superior Court file now when it is effectively stayed. It could be dealt with after the resolution of the Farm Board Hearing. Your client's decision to bring a motion to dismiss the application now increases our costs unnecessarily.

When we appeared before Mr. Justice Wilton Siegel, he advised you that your client would have to provide to us copies of all of the records it is under a legal obligation to keep and to provide to the MOE. We are formally requesting copies of those now.

We look forward to hearing from you.


Sincerely,
Cassandra Kirewskie
/nk

cc: Kim Groombridge, MOECC
Finbar Desir, Secretary, Normal Farm Practices Board
Clients

tab N

	Fees
Zeifman Partners Inc.	\$23,166.00
Fogler, Rubinoff LLP	\$25,496.00
Amount	\$48,662.00
HST	\$6,326.06
Total	\$54,988.06

tab 0

Zeifman Partners Inc., Court Appointed Receiver of Vandermeer Greenhouses Ltd.
Interim Statement of Receipts and Disbursements
For the Period from February 21, 2014 to April 23, 2015

	<u>Receivership Accounts</u>
	<u>CAD</u>
Cash Receipts	
Revenues from Operations	\$ 765,157
Total Receipts	<u>765,157</u>
Cash Disbursements	
Payroll	422,712
Utilities	383,387
Professional Fees	310,944
Repairs & Maintenance	234,082
Direct Material Purchases	170,468
Insurance	112,104
Bank Charges and Interest	89,597
Office and General	26,975
Total Disbursements	<u>1,750,269</u>
Cash inflow/(outflow) from Operations	<u>\$ (985,112)</u>

tab P

Court File No. CV-14-10443-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

AFFIDAVIT OF ALLAN A. RUTMAN

(Affirmed May 26, 2015)

I, **Allan A. Rutman**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am President of Zeifman Partners Inc. and, as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Pursuant to the Order of the Honourable Mr. Justice Spence dated February 21, 2014 (the “**Receivership Order**”), Zeifman Partners Inc. was appointed as receiver (the “**Receiver**”) of all the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (“**Vandermeer**” or the “**Debtor**”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) and section 243(1) of the *Bankruptcy and Insolvency Act* (Canada).

3. The total amount of professional fees being claimed for work performed by the Receiver for the period November 1, 2014 to April 30, 2015 inclusive (the “**Fee Period**”) is CAD \$90,792.75 plus disbursements of CAD \$1,432.41 plus Harmonized Sales Tax of CAD \$11,989.27 totalling CAD \$104,214.43. Attached hereto as **Exhibit “A”** to this Affidavit are true copies of all bills of costs rendered by the Receiver on a periodic basis during the Fee Period, inclusive of details of the individuals involved in the administration of the Debtor estate and the hours and applicable rates claimed. Attached hereto as **Exhibit “B”** to this Affidavit is a summary of the bills of costs.

4. Details of the activities undertaken and services provided by the Receiver in connection with the administration of the Debtor estate is described in the First through Fourth Reports to the Court of the Receiver.

5. In the course of performing its duties pursuant to the Receivership Order, the Receiver and its staff have expended a total of 248.30 hours during the Fee Period. Attached hereto as **Exhibit “C”** to this Affidavit is a schedule setting out the personnel involved in the administration of the Debtor estate and the hours and applicable rates claimed for the Fee Period.

6. The Receiver has not received any remuneration or consideration other than the amount claimed herein.


7. The hourly billing rates outlined in **Exhibit “C”** to this Affidavit are comparable to the hourly rates charged by Zeifman Partners Inc. for services rendered in relation to similar proceedings.

8. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services.

9. I verily believe that the fees and disbursements incurred by the Receiver were fair and reasonable in the circumstances.

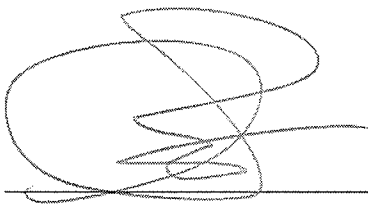
10. This Affidavit is sworn in support of the Receiver's request for approval of the Receiver's bills of costs rendered during the Fee Period, and for no other or improper purpose.

AFFIRMED BEFORE ME at the City
of Toronto, ON, on *May 26*, 2015.



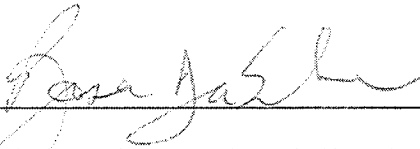
A Commissioner, etc.

Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zeifman
Partners Inc., Trustee in Bankruptcy.
Expires November 3, 2016.



Allan A. Rutman

This is Exhibit "A" to the Affidavit of
Allan A. Rutman sworn on May 26, 2015

A handwritten signature in cursive script, appearing to read "Rosa DaSilva", is written over a horizontal line.

A Commissioner for the taking of affidavits, etc.

**Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zeifman
Partners Inc., Trustee in Bankruptcy,
Expires November 3, 2016.**

ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41635

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from November 1, 2014 to November 30, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	9.50 hours @ \$600.00 per hour	\$ 5,700.00
B. Rutman	B.R.	11.00 hours @ \$197.00 per hour	\$ 2,167.00
M. Stojanovic	M.S.	3.25 hours @ \$185.00 per hour	\$ 601.25
R. DaSilva	R.D.	11.25 hours @ \$185.00 per hour	\$ 2,081.25
P. Valente	P.V.	0.05 hours @ \$165.00 per hour	\$ 8.25
			<u>\$ 10,557.75</u>
Miscellaneous disbursements			<u>\$ 93.98</u>
Subtotal			\$ 10,651.73
H.S.T.			<u>\$ 1,384.72</u>
Total Balance Due			<u>\$ 12,036.45</u>

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
11/3/2014	R.D.	1.00	Banking administration.
11/4/2014	A.R.	0.25	Email correspondence with D. Robinson re: grinder schedule. Email correspondence to G. Azeff re: sale package.
11/4/2014	R.D.	2.00	Banking administration.
11/5/2014	A.R.	0.25	Review legal bill. Discussion with B. Rutman re: operations.
11/5/2014	B.R.	0.50	Update bank transaction schedule to October 31, 2014.
11/5/2014	R.D.	0.25	Banking administration.
11/6/2014	A.R.	3.00	Attendance at premises. Meeting with D. Robinson re: various operational issues. Review and amend draft report to court; email exchange with counsel re: same.
11/6/2014	R.D.	0.25	Banking administration.
11/7/2014	B.R.	1.00	Update bank schedule, update R&D relating to date from court appointed receivership.
11/10/2014	B.R.	0.25	Calculate payroll taxes for October payroll taxes payment.
11/10/2014	R.D.	0.25	Banking administration.
11/11/2014	A.R.	1.25	Review and provide comments re: Court Report to G. Azeff. Review Affidavit of Fees; forward same to G. Azeff. Email correspondence with G. Azeff re: seizing 2013 MB Sprinter.
11/11/2014	R.D.	2.25	Banking administration. Prepare Affidavit of Fees.
11/12/2014	A.R.	1.75	Review and amend Report to Court; various email correspondence with G. Azeff re: same. Email correspondence with G. Azeff re: 2013 MB Sprinter lease agreement.
11/12/2014	B.R.	0.75	Update bank schedule.
11/13/2014	A.R.	0.25	Review updated R&D; forward to G. Azeff.
11/13/2014	M.S.	0.50	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
11/13/2014	R.D.	0.75	Banking administration.
11/14/2014	A.R.	0.50	Email correspondence with B. Huber and counsel re: Court Report. Review R&D. Email exchange and discussion with B. Rutman re: amendments to R&D and professional fees.
11/14/2014	B.R.	2.00	File HST returns for September and October 2014. Email correspondence and discussion with A. Rutman re: queries relating to R&D; update same. Update R&D.
11/14/2014	M.S.	1.00	Banking administration. Prepare September bank reconciliations.
11/14/2014	P.V.	0.05	Prepare payment to CRA re: payroll taxes.
11/16/2014	B.R.	1.00	Update post court appointed receivership R&D.
11/17/2014	A.R.	0.50	Email correspondence to B. Huber in response to various queries relating to Court Report. Email correspondence with counsel re: finalization and execution of Court Report; review exhibits. Attendance at Foglers re: execution of Court Report.
11/17/2014	R.D.	0.50	Engaged in discussion and email correspondence with A. Rutman and B. Rutman re: updated R&D and outstanding fees.
11/18/2014	B.R.	0.75	Update bank schedule.
11/18/2014	M.S.	1.50	Banking administration. Prepare October bank reconciliations.
11/18/2014	R.D.	1.50	Banking administration.
11/20/2014	A.R.	0.25	Email correspondence to B. Huber re: queries relating to draft court report. Review email correspondence from D. Robinson re: update on various digester repairs.
11/20/2014	R.D.	0.25	Banking administration.
11/24/2014	A.R.	0.50	Email correspondence to D. Robinson and B. Rutman re: update on operational issues.
11/24/2014	B.R.	0.25	Discussion with D. Robinson regarding timetable for Grinder delivery and installation; and removal of Johan from salary.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
11/24/2014	R.D.	1.00	Banking administration.
11/25/2014	A.R.	0.50	Review NOTL Hydro October generation report. Review email correspondence re: motion record.
11/25/2014	B.R.	0.75	Update bank schedule.
11/25/2014	R.D.	1.00	Banking administration.
11/26/2014	B.R.	0.25	File WSIB for October 2014.
11/27/2014	A.R.	0.50	Various email exchange with B. Rutman re: estimates for Wessuc mixer repairs. Review insurance extension documentation.
11/27/2014	B.R.	2.00	Work on report to Meridian. Discussion with D. Robinson regarding operations, digester, greenhouse and maceration equipment. Discuss options relating to the cleaning of mixers.
11/27/2014	R.D.	0.25	Banking administration.
11/28/2014	M.S.	0.25	Review HUB policy extension to February 2015; correspondence with A. Rutman re: same. Correspondence with supplier.
11/30/2014	B.R.	1.50	Work on report to Meridian.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41640

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from December 1, 2014 to December 31, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	9.50 hours @ \$600.00 per hour	\$ 5,700.00
B. Rutman	B.R.	12.00 hours @ \$197.00 per hour	\$ 2,364.00
M. Stojanovic	M.S.	1.50 hours @ \$185.00 per hour	\$ 277.50
R. DaSilva	R.D.	9.00 hours @ \$185.00 per hour	\$ 1,665.00
			\$ 10,006.50
Miscellaneous disbursements			\$ 326.33
Subtotal			\$ 10,332.83
H.S.T.			\$ 1,343.27
Total Balance Due			\$ 11,676.10

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
12/1/2014	B.R.	3.25	Work on report to Meridian; update all schedules for report.
12/1/2014	R.D.	1.25	Banking administration.
12/2/2014	A.R.	1.50	Review and amend report to Meridian; discussions with B. Rutman re: same. Review email correspondence from counsel re: update on motion.
12/2/2014	B.R.	1.75	Work on report to Meridian. Update inventory listing and bank schedule.
12/2/2014	R.D.	0.50	Banking administration.
12/3/2014	A.R.	1.00	Further review and amendments to Report to Meridian; discussions with B. Rutman re: same.
12/3/2014	B.R.	0.25	Final review of Meridian report.
12/3/2014	R.D.	0.25	Banking administration.
12/4/2014	A.R.	1.25	Discussion with B. Rutman re: amendments to schedules to report. Review amendments to report; finalize same and forward to B. Huber.
12/4/2014	B.R.	1.00	Review and amend report to Meridian.
12/4/2014	M.S.	0.25	Engaged in matters re: WSIB payment.
12/4/2014	R.D.	1.00	Banking administration.
12/5/2014	A.R.	0.75	Various email exchange with potential purchaser J. Ward re: sale of digester.
12/5/2014	B.R.	0.25	Discussion with D. Robinson regarding maceration equipment shipment.
12/8/2014	A.R.	1.00	Email correspondence with B. Huber re: J. Ward's interest in digester. Email correspondence to J. Ward re: sale of facility. Review Enbridge bill; email correspondence to B. Rutman re: same.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
12/8/2014	B.R.	0.25	Discussion with D. Robinson re: Wessuc invoice and greenhouse activity relating to closing a section of the greenhouse for the winter period.
12/8/2014	R.D.	1.00	Banking administration.
12/9/2014	B.R.	1.00	Update bank schedule.
12/9/2014	R.D.	0.25	Banking administration.
12/10/2014	B.R.	0.50	Prepare ROE form for Johan, mail copy to government.
12/15/2014	A.R.	0.75	Email exchange with B. Rutman re: November hydro generation and Wessuc detailed invoice.
12/15/2014	R.D.	1.50	Banking administration.
12/16/2014	A.R.	0.50	Email exchange with B. Rutman re: electricity costs and Global adjustment charges.
12/16/2014	B.R.	0.50	Update bank schedule.
12/16/2014	B.R.	0.50	Email correspondence and discussion with A. Rutman re: electricity cost for the period and Global adjustment charges.
12/17/2014	A.R.	0.75	Email exchange with D. Robinson re: Grinder and Equipment Delivery.
12/18/2014	B.R.	0.50	Complete forms relating to shipping of Titus maceration equipment across the border.
12/18/2014	M.S.	0.25	Banking administration.
12/19/2014	B.R.	0.50	Discussion with D. Robinson regarding transportation of Maceration equipment.
12/19/2014	M.S.	0.25	Banking administration.
12/22/2014	A.R.	0.25	Discussion with B. Rutman re: operations. Review email correspondence re: Titus Equipment Delivery.
12/22/2014	B.R.	0.50	Update bank schedule.
12/22/2014	R.D.	1.00	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
12/23/2014	A.R.	0.50	Various email correspondence with B. Rutman re: delivery of Titus Grinder and brokerage fees.
12/23/2014	R.D.	0.75	Banking administration.
12/24/2014	A.R.	0.50	Engaged in various email correspondence with staff re: final payment to Titus re: grinder and transfer of funds from CDN to US account.
12/24/2014	B.R.	0.50	Discussion with D. Robinson regarding Custom Broker and shipping of Maceration equipment. Verify wire transfer information and provide to M. Stojanovic.
12/24/2014	M.S.	0.75	Engaged in matters re: wire transfers of funds in relation to Titus Inc. payment and brokerage fees including preparation of all instructions to Meridian; email correspondence with same; discussions re: various details. Banking administration.
12/29/2014	B.R.	0.75	File WSIB for November 2014. Update bank schedule.
12/29/2014	R.D.	1.00	Banking administration.
12/30/2014	A.R.	0.75	Email correspondence and call with D. Robinson re: update on Titus equipment.
12/30/2014	R.D.	0.50	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41644

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from January 1, 2015 to January 31, 2015.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	4.75 hours @	\$600.00 per hour	\$ 2,850.00
B. Rutman	B.R.	12.00 hours @	\$197.00 per hour	\$ 2,364.00
M. Stojanovic	M.S.	1.50 hours @	\$185.00 per hour	\$ 277.50
R. DaSilva	R.D.	7.50 hours @	\$185.00 per hour	\$ 1,387.50
				\$ 6,879.00
Miscellaneous disbursements				\$ 318.66
				\$ 7,197.66
H.S.T.				\$ 935.70
Total Balance Due				\$ 8,133.36

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
1/2/2015	A.R.	0.50	Email correspondence with D. Robinson re: update on Titus equipment.
1/2/2015	B.R.	0.75	Update bank schedule as at December 31, 2014.
1/5/2015	A.R.	0.25	Email exchange with D. Robinson re: update on grinder.
1/5/2015	R.D.	1.50	Banking administration.
1/6/2015	A.R.	0.25	Review email correspondence from Enbridge re: revenue adjustment and credit on account. Email correspondence with D. Robinson re: update on grinder.
1/6/2015	B.R.	0.50	Update bank schedule.
1/7/2015	A.R.	0.50	Email correspondence to D. Robinson re: update on grinder.
1/8/2015	A.R.	0.25	Review email correspondence from D. Robinson re: update on operations.
1/8/2015	M.S.	0.25	Banking administration; prepare November bank reconciliation for USD account.
1/9/2015	M.S.	0.75	Banking administration; prepare November bank reconciliation for Cad account.
1/12/2015	A.R.	0.75	Call with neighbour re: claim of tool shop flooding due to water running off of greenhouse roof; call with D. Robinson to discuss same.
1/12/2015	R.D.	1.50	Banking administration.
1/13/2015	A.R.	0.50	Email correspondence and discussion with B. Rutman re: update on operations.
1/13/2015	B.R.	4.50	Attendance at greenhouse. View greenhouse planting, closed off section, mother stock, new digester equipment (maceration). Discuss activity with Darryl. Calculate payroll taxes for the period and update bank schedule.
1/14/2015	M.S.	0.25	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
1/14/2015	R.D.	0.50	Draft 246(2) Notice.
1/15/2015	R.D.	0.50	Banking administration.
1/16/2015	A.R.	0.25	Email correspondence with D. Robinson re: update on digester operation.
1/19/2015	B.R.	0.75	Update court appointed R&D to December 31, 2014.
1/19/2015	R.D.	1.50	Banking administration.
1/20/2015	A.R.	0.25	Review 246(2) notice.
1/20/2015	B.R.	2.25	Update bank schedule, update post court appointed receivership R&D to December 31, 2014.
1/20/2015	R.D.	0.75	Amend R&D. Forward draft 246(2) notice to A. Rutman for review. Banking administration.
1/23/2015	A.R.	0.50	Email correspondence with B. Rutman and M. Stojanovic re: insurance policies.
1/23/2015	M.S.	0.25	Banking administration.
1/26/2015	R.D.	1.00	Banking administration.
1/27/2015	A.R.	0.25	Email correspondence with B. Rutman re: insurance policy.
1/27/2015	B.R.	0.50	Prepare WSIB payment, call insurance Company.
1/27/2015	R.D.	0.25	Banking administration.
1/28/2015	B.R.	0.25	Discussion with insurance company.
1/29/2015	B.R.	1.75	Update bank transaction schedule, discussion with Rosa re: draft letter to allow Darryl to get CVOR. Discussion with Darryl regarding CVOR and information relating to memo on affidavit. Speak with insurance broker.
1/30/2015	A.R.	0.50	Email correspondence with B. Rutman and D. Robinson re: heating costs. Review memorandum re: update on operations.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
1/30/2015	B.R.	0.75	Provide driver abstract information and vehicle information to insurance company. Update memo and request additional information from Kyle, update memo for cost relating to digester improvements.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41647

To: Professional services rendered in respect of the Court Appointed Receivership of Vandermeer Greenhouses Ltd. from January 1, 2015 to January 31, 2015 relating to the Zirger claim/action and request for consent of filing application re: Normal Farm Practices.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	13.50 hours @ \$600.00 per hour	\$ 8,100.00
B. Rutman	B.R.	3.00 hours @ \$197.00 per hour	\$ 591.00
			<hr/>
			\$ 8,691.00
H.S.T.			<hr/>
			\$ 1,129.83
Total Balance Due			<hr/> <hr/>
			\$ 9,820.83

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
1/9/2015	A.R.	0.25	Email correspondence with D. Robinson re: Paul Cline's response to neighbours re: current construction activities and update on digester.
1/14/2015	A.R.	0.75	Review correspondence from Zirger counsel re: request for consent of filing application re: Normal Farm Practices; email correspondence with D. Robinson re: same.
1/15/2015	A.R.	0.50	Email exchange with D. Robinson re: Zirgers and various neighbours to Vandermeer and update on digester operation.
1/19/2015	A.R.	1.00	Review Affidavits of various neighbours and correspondence from counsel. Email correspondence with D. Robinson and B. Rutman re: same.
1/20/2015	A.R.	0.25	Email correspondence to G. Azeff re: neighbour Affidavits.
1/21/2015	A.R.	1.00	Email correspondence with B. Rutman and D. Robinson re: digester operations and discussions with MOE.
1/22/2015	A.R.	1.75	Email correspondence to B. Huber and counsel re: update from D. Robinson re: grinder equipment and discussions with P. Cline of MOE. Review email correspondence from D. Robinson re: updates.
1/22/2015	B.R.	0.50	Discussion with Darryl regarding Zirger Affidavit.
1/23/2015	A.R.	3.00	Review Affidavits; engaged in various email correspondence with counsel re: CofA and scheduling of conference call to discuss same.
1/26/2015	A.R.	1.50	Conference call with counsel re: neighbour Affidavits and CofA. Follow up call with G. Azeff. Discussions with staff re: original application filed for CofA.
1/26/2015	B.R.	2.00	Review affidavit from Richard and Judy Zirger. Formulate point form memo contradicting their claims. Discussion with Darryl regarding digester and energy production.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
1/27/2015	A.R.	2.00	Review Affidavits. Review file documentation; forward various documentation to Albert Engel. Discussion and email correspondence with D. Robinson.
1/27/2015	B.R.	0.25	Discussion with D. Robinson regarding memo on affidavits and digester.
1/28/2015	A.R.	0.75	Discussion with B. Rutman re: response to neighbour allegations. Call and email correspondence with G. Azeff re: draft letter to Ms. Kirewskie.
1/28/2015	B.R.	0.25	Review Kyle's adjustment to memo regarding affidavits.
1/29/2015	A.R.	0.75	Email correspondence to G. Azeff re: draft correspondence to Ms. Kirewskie. Call with G. Azeff. Call with B. Rutman.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41653

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from February 1, 2015 to February 28, 2015.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	10.00 hours @	\$600.00 per hour	\$	6,000.00
B. Rutman	B.R.	15.50 hours @	\$197.00 per hour	\$	3,053.50
M. Stojanovic	M.S.	1.25 hours @	\$185.00 per hour	\$	231.25
R. DaSilva	R.D.	7.75 hours @	\$185.00 per hour	\$	1,433.75
				\$	10,718.50
Miscellaneous disbursements				\$	201.63
				\$	10,920.13
H.S.T.				\$	1,419.62
Total Balance Due				\$	12,339.75

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/3/2015	A.R.	0.25	Review email correspondence from B. Huber re: request for update on various issues; discussion with B. Rutman re: same.
2/3/2015	R.D.	1.00	Banking administration.
2/4/2015	A.R.	2.50	Attendance at premises. Discussion with D. Robinson re: various matters. Email correspondence to B. Huber re: update on various matters.
2/4/2015	B.R.	0.75	Work on January 31, 2015 bank R&D, income statements and repair and maintenance schedule.
2/4/2015	R.D.	0.50	Banking administration.
2/5/2015	B.R.	4.25	Draft report to Meridian.
2/5/2015	R.D.	0.75	Banking administration.
2/6/2015	A.R.	0.50	Review email correspondence from G. Azeff re: interested party in leasing greenhouse; email correspondence with D. Robinson re: same.
2/6/2015	B.R.	1.00	Work on report to Meridian.
2/9/2015	A.R.	1.75	Review draft report to Meridian. Email correspondence and discussions with B. Rutman re: report.
2/9/2015	B.R.	1.25	Deal with insurance matters, update bank schedule and report to Meridian.
2/9/2015	R.D.	1.00	Banking administration.
2/10/2015	A.R.	1.00	Further review and finalization of report; forward same to B. Huber. Email correspondence re: potential interest of leasing greenhouse.
2/10/2015	B.R.	0.50	Update Court Appointed R&D.
2/10/2015	R.D.	0.25	Banking administration.
2/11/2015	A.R.	0.50	Call with interested party re: leasing facilities. Call with D. Robinson.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/11/2015	B.R.	0.25	Calculate payroll taxes for February and prepare payment.
2/12/2015	A.R.	0.50	Call with interested party in leasing facilities; follow up email correspondence with D. Robinson re: rental per square footage.
2/12/2015	B.R.	0.50	Update bank schedule.
2/12/2015	R.D.	0.75	Banking administration.
2/13/2015	M.S.	0.25	Banking administration.
2/16/2015	B.R.	2.25	Work on income statement (2013 and 2014) for digester operations and greenhouse operations. Prepare income statement forecast for digester operations.
2/17/2015	A.R.	1.50	Email correspondence with B. Huber re: interested parties; updated financial information and updated CIM. Review updated financial information; discussions with B. Rutman re: same. Email correspondence to interested party re: leasing greenhouse and cost per square footage. Email correspondence with D. Robinson re: Enbridge curtailment. Email correspondence with interested party re: leasing facilities, additional costs and site visit; email correspondence with D. Robinson re: same.
2/17/2015	B.R.	2.50	Work on income statements (digester and greenhouse operations) for 2012, 2013, 2014. Work on cash flow forecast for digester and greenhouse operations.
2/17/2015	R.D.	1.50	Banking administration.
2/18/2015	A.R.	1.00	Review amendments to sale package; discussion with staff re: same. Forward draft sale package to B. Huber for review.
2/18/2015	M.S.	0.50	Prepare December bank reconciliations.
2/18/2015	R.D.	0.50	Banking administration.
2/19/2015	M.S.	0.50	Prepare January bank reconciliations.
2/20/2015	B.R.	0.50	Update bank schedule.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/23/2015	A.R.	0.25	Email correspondence with D. Robinson re: interested leasing party.
2/23/2015	R.D.	1.00	Banking administration.
2/24/2015	A.R.	0.25	Email correspondence with B. Rutman and D. Robinson re: Enbridge curtailment.
2/24/2015	B.R.	0.50	Review T4 information prepared.
2/24/2015	B.R.	1.25	Update bank schedule.
2/24/2015	R.D.	0.50	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41654

To: Professional services rendered in respect of the Court Appointed Receivership of Vandermeer Greenhouses Ltd. from February 1, 2015 to February 28, 2015 relating to the Zirger claim/action and request for consent of filing application re: Normal Farm Practices.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	10.00 hours @ \$600.00 per hour	\$ 6,000.00
			<u>\$ 6,000.00</u>
H.S.T.			<u>\$ 780.00</u>
Total Balance Due			<u>\$ 6,780.00</u>

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/2/2015	A.R.	0.50	Email exchange with D. Robinson re: MOE and discussions with P. Cline. Email memorandum to G. Azeff re: issues relating to Affidavit material.
2/3/2015	A.R.	0.50	Review email correspondence from D. Robinson re: chronological order of grinder discussions with P. Cline. Review correspondence from G. Azeff to neighbours counsel.
2/4/2015	A.R.	0.50	Review and amend memorandums re: operations and grinder discussions with P. Cline.
2/9/2015	A.R.	0.25	Review response letter from C. Kireweski to G. Azeff re: neighbour allegations.
2/10/2015	A.R.	0.25	Review email correspondence from D. Robinson re: update on digester and correspondence from OMAFRA re: hammer mill.
2/20/2015	A.R.	1.50	Email exchange with B. Huber re: MOE and requirement to amend CofA. Email correspondence with G. Azeff. Email exchange with D. Robinson re: discussions with P. Cline of MOE. Review correspondence from P. Cline re: requirement to amend CofA; discussion with D. Robinson re: same.
2/23/2015	A.R.	1.50	Engaged in various email correspondence with counsel, B. Huber and D. Robinson re: MOE/CofA amendment issues.
2/24/2015	A.R.	2.00	Conference call with counsel and D. Robinson re: MOE/CofA matter. Email correspondence to B. Huber re: update. Engaged in email correspondence with C. Riepma re: retrieval of original CofA application.
2/25/2015	A.R.	2.00	Call with D. Robinson. Various email exchange with C. Riepma re: CofA application; email correspondence with staff and D. Robinson re: same.
2/26/2015	A.R.	1.00	Email correspondence to counsel re: CofA application. Review and provide various documentation re: application. Email exchange with C. Riepma and D. Robinson re: original application.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41658

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from March 1, 2015 to March 31, 2015.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	13.00 hours @	\$600.00 per hour	\$ 7,800.00
B. Rutman	B.R.	12.50 hours @	\$197.00 per hour	\$ 2,462.50
R. DaSilva	R.D.	7.25 hours @	\$185.00 per hour	\$ 1,341.25
				<u>\$ 11,603.75</u>
Miscellaneous disbursements				\$ 206.12
				<u>\$ 11,809.87</u>
H.S.T.				\$ 1,535.28
				<u>\$ 13,345.15</u>

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zcifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/2/2015	A.R.	0.75	Call with D. Robinson. Email correspondence to B. Huber re: party interested in leasing greenhouse; email exchange with interested party.
3/2/2015	B.R.	0.25	Discussion with R. DaSilva re: preparation of payroll cheques and various disbursements.
3/2/2015	B.R.	0.75	Update bank schedule for February 2015 and general schedule.
3/2/2015	R.D.	1.00	Banking administration.
3/3/2015	A.R.	1.00	Email exchange with B. Huber re: leasing greenhouse; email exchange with D. Robinson re: same.
3/4/2015	A.R.	1.00	Attendance at premises. Discussions with D. Robinson re: various operational issues.
3/4/2015	B.R.	1.00	File HST for November, December and January.
3/5/2015	R.D.	0.25	Banking administration.
3/9/2015	A.R.	0.50	Forward amended sale package to counsel. Email exchange with B. Rutman re: liquid digestate.
3/9/2015	B.R.	2.25	Prepare payroll cheques, other invoice cheques and payroll remittance. Courier cheques to the greenhouse. Discuss issue regarding emptying of liquid digestate with D. Robinson.
3/11/2015	B.R.	1.00	Deal with insurance, discuss tanker rental with D. Robinson, prepare EHT filing for 2015 and payroll taxes calculation.
3/12/2015	A.R.	1.00	Review amended sale package; discussions with B. Rutman re: same. Email correspondence with B. Huber re: amended sale package and potential interested parties.
3/12/2015	B.R.	1.25	Update sales package.
3/13/2015	A.R.	0.50	Finalize information package; forward same to B. Huber.
3/13/2015	B.R.	0.50	Update sales package.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/16/2015	B.R.	1.00	Prepare payroll cheques and various other disbursements.
3/17/2015	A.R.	1.75	Attendance at premises. Discussions with D. Robinson re: various operational issues.
3/17/2015	B.R.	0.75	Update bank schedule.
3/18/2015	A.R.	0.25	Email correspondence with B. Rutman and D. Robinson re: electricity charges.
3/19/2015	A.R.	0.50	Engaged in various email correspondence with B. Huber and D. Robinson re: offer from Ekgrata Inc. in Trust.
3/20/2015	A.R.	1.25	Review offer. Conference call with B. Huber and D. Robinson. Discuss offer with counsel; review revised document; email correspondence with B. Huber re: same.
3/23/2015	A.R.	0.50	Email correspondence with B. Rutman re: Enbridge bill and mixer issues.
3/23/2015	R.D.	1.00	Banking administration.
3/24/2015	A.R.	0.50	Review Enbridge bill; discussions with staff re: historical costs.
3/24/2015	B.R.	0.25	Check AVG temperature for February 2015 vs. February 2014.
3/24/2015	B.R.	0.25	Prepare WSIB remittance.
3/24/2015	R.D.	0.50	Banking administration.
3/25/2015	A.R.	0.25	Discussion with B. Rutman re: digester.
3/25/2015	B.R.	0.50	Discussion with D. Robinson regarding digester repairs required due to cable problem in secondary vessel and heating pressure valve.
3/25/2015	R.D.	2.00	Banking administration.
3/26/2015	A.R.	0.75	Email correspondence to B. Huber and D. Robinson re: no sign back on offers. Discussions with B. Rutman re: mixer issues.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/26/2015	B.R.	0.50	Discussion with D. Robinson regarding digester repairs and heat exchange.
3/26/2015	B.R.	1.00	Update bank schedule.
3/26/2015	R.D.	0.50	Banking administration.
3/27/2015	A.R.	1.00	Email correspondence to B. Huber re: mixer issues in secondary vessel; email correspondence and discussions with B. Rutman and D. Robinson re: quotes to repair mixer.
3/27/2015	B.R.	0.75	Matters re: digester repairs, discussion with A. Rutman and D. Robinson re: same. Provide update on quotes based on conversation with D. Robinson.
3/30/2015	A.R.	0.75	Call and email correspondence with D. Robinson re: mixer issues. Email correspondence with B. Huber re: mixers.
3/30/2015	R.D.	1.50	Banking administration.
3/31/2015	A.R.	0.75	Email correspondence with D. Robinson re: update on potential purchaser. Email correspondence with M. Klid re: parties interested in leasing greenhouse, cost per square footage and security. Email correspondence with D. Robinson re: fencing costs.
3/31/2015	B.R.	0.50	Update bank schedule.
3/31/2015	R.D.	0.50	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41661

To: Professional services rendered in respect of the Court Appointed Receivership of Vandermeer Greenhouses Ltd. from March 1, 2015 to March 31, 2015 relating to the Zirger claim/action and request for consent of filing application re: Normal Farm Practices.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	12.50 hours @	\$600.00 per hour	\$ 7,500.00
				\$ 7,500.00
H.S.T.				\$ 975.00
Total Balance Due				\$ 8,475.00

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/2/2015	A.R.	1.00	Review email correspondence from counsel re: CofA application and draft correspondence to MOE. Call with Foglers.
3/4/2015	A.R.	2.25	Meeting with C. Riepma and D. Robinson re: CofA application. Email correspondence to counsel re: update on meeting with C. Riepma and retaining his services and matters relating to CofA application. Review correspondence from Marshall Kirewskie and email correspondence from G. Azeff re: court confirmation of leave motion.
3/5/2015	A.R.	1.25	Email correspondence with B. Huber re: retrieval of original application material and update on discussions with C. Riepma and matters relating to CofA application. Email exchange with C. Riepma re: steps going forward.
3/6/2015	A.R.	0.50	Email correspondence with G. Azeff re: leave motion. Review correspondence from C. Riepma re: original CofA application; forward same to counsel.
3/9/2015	A.R.	0.75	Call with counsel. Email draft MOE letter to C. Riepma. Call with C. Riepma. Forward original CofA application material to B. Huber.
3/10/2015	A.R.	1.00	Review email correspondence from C. Riepma re: update on discussions with MOE re: CofA application; email exchange with counsel re: same. Provide instructions to C. Riepma re: steps going forward.
3/16/2015	A.R.	1.00	Engaged in various calls with C. Riepma and D. Robinson. Review email correspondence from C. Riepma re: draft report.
3/17/2015	A.R.	2.00	Receive and review draft Riepma report; forward to counsel, B. Huber and D. Robinson for comments.
3/18/2015	A.R.	0.75	Call with C. Riepma. Forward C. Riepma final report to B. Huber and counsel.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/25/2015	A.R.	0.25	Email correspondence with G. Azeff re: update on Kirewskie leave motion.
3/30/2015	A.R.	1.50	Review and execute Second Report to Court; forward same to counsel; email correspondence with counsel. Review Zirger et al Notice of Application.
3/31/2015	A.R.	0.25	Call with G. Azeff re: court hearing.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

N:\Trustee\CLIENTS\Vandermeer\Receivership\Billings\Court Appointment Bills\Invoice 41661 - March 2015-Normal Firm Practice.docx

ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41664

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from April 1, 2015 to April 30, 2015.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	10.25 hours @	\$600.00 per hour	\$	6,150.00
B. Rutman	B.R.	11.00 hours @	\$197.00 per hour	\$	2,167.00
R. DaSilva	R.D.	10.25 hours @	\$185.00 per hour	\$	1,896.25
				\$	10,213.25
Miscellaneous disbursements				\$	285.69
				\$	10,498.94
H.S.T.				\$	1,364.86
Total Balance Due				\$	11,863.80

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/1/2015	A.R.	0.50	Email correspondence with B. Huber re: mixer issues. Email correspondence with B. Rutman re: Agristability application.
4/2/2015	A.R.	0.50	Call and email correspondence with D. Robinson re: security costs. Email correspondence with B. Rutman re: Enbridge charges.
4/2/2015	B.R.	0.75	Matters re: heating costs, check average historical temperature for period, compare to prior period, discussion with D. Robinson regarding curtailment.
4/6/2015	A.R.	0.50	Email correspondence with B. Rutman re: gas analyzer repair cost and update on Agristability application.
4/6/2015	B.R.	0.50	Updated bank schedule.
4/6/2015	R.D.	0.50	Banking administration.
4/7/2015	A.R.	0.25	Email correspondence to M. Klid re: update on leasing greenhouse. Review email correspondence from B. Rutman re: update on Agristability application.
4/13/2015	A.R.	0.75	Engaged in various email correspondence re: Orchard rental; discussions with B. Rutman re: same. Email exchange with M. Klid re: update on leasing greenhouse.
4/13/2015	B.R.	0.25	Updated bank schedule.
4/13/2015	B.R.	0.75	Payroll taxes calculation and payment preparation, orchard rental schedule and details.
4/13/2015	R.D.	1.25	Banking administration.
4/14/2015	A.R.	0.50	Email exchange with B. Rutman re: repair issues.
4/14/2015	R.D.	1.00	Banking administration.
4/16/2015	A.R.	1.00	Engaged in email correspondence with potential purchaser Solar Income Fund; organize meeting. Email correspondence to M. Klid re: update on leasing greenhouse.
4/16/2015	B.R.	1.00	Bank schedule update.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/16/2015	R.D.	1.50	Banking administration. Call and email correspondence with Meridian re: SM Hewitt wire payment. Email exchange with D. Robinson re: various payments. Discussions with B. Rutman re: various payments.
4/20/2015	A.R.	1.00	Meeting with Solar Income Trust; forward confidentiality agreement. Email exchange with B. Huber re: potential purchaser.
4/20/2015	R.D.	0.75	Banking administration.
4/21/2015	A.R.	0.50	Email exchange with potential purchaser; forward sale package. Email correspondence to B. Huber re: update on potential purchaser and leasing greenhouse.
4/21/2015	B.R.	0.50	Update bank schedule.
4/22/2015	A.R.	0.25	Email exchange with B. Rutman re: NOTL March generation.
4/23/2015	A.R.	0.50	Email correspondence to M. Klid and Alex Tsui re: leasing greenhouse.
4/23/2015	B.R.	0.75	Update bank schedule.
4/23/2015	R.D.	2.50	Banking administration.
4/24/2015	A.R.	0.50	Email exchange with B. Huber re: updated Receiver's R&D. Discussions with B. Rutman re: updated R&D. Email correspondence to G. Azeff re: additional borrowing required.
4/24/2015	B.R.	2.50	Update court appointed R&D and prepare accounts payable listing as of April 24, 2015.
4/27/2015	A.R.	0.50	Email exchange with G. Azeff re: preparation of draft report and draft lease agreement.
4/27/2015	B.R.	1.75	Gather information for WSIB audit.
4/27/2015	R.D.	1.25	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/28/2015	A.R.	2.00	Call with J. Walters of Xylem re: mixer repairs. Email correspondence and call with D. Robinson re: mixer repair issues; email exchange with B. Rutman re: same. Forward draft R&D to G. Azeff. Draft Receiver's Activities for Report. Email exchange with B. Rutman re: update on Agristability funds; email correspondence with B. Huber re: same.
4/28/2015	B.R.	1.00	Gather information for WSIB audit.
4/28/2015	B.R.	0.25	Update bank schedule.
4/28/2015	R.D.	1.50	Banking administration.
4/29/2015	B.R.	0.25	Call with WSIB auditor.
4/30/2015	A.R.	1.00	Meeting with Medical Marijuana Grower re: leasing greenhouse. Call with D. Robinson re: various matters; arrange for attendance.
4/30/2015	B.R.	0.75	Prepare yearly expense schedule for Vandermeer operations (2014).

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41665

To: Professional services rendered in respect of the Court Appointed Receivership of Vandermeer Greenhouses Ltd. from April 1, 2015 to April 30, 2015 relating to the Zirger claim/action and request for consent of filing application re: Normal Farm Practices.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	12.75 hours @ \$600.00 per hour	\$ 7,650.00
B. Rutman	B.R.	4.00 hours @ \$197.00 per hour	\$ 788.00
R. DaSilva	R.D.	1.00 hours @ \$185.00 per hour	\$ 185.00
			<hr/>
			\$ 8,623.00
H.S.T.			\$ 1,120.99
			<hr/>
Total Balance Due			\$ 9,743.99

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/1/2015	A.R.	0.50	Reviewed Marshall Kirewski correspondence; email correspondence with counsel re: same. Call and email correspondence with G. Azeff re: update on Zirger et al motion.
4/2/2015	A.R.	0.50	Call with G. Azeff re: update on court hearing. Email exchange with D. Robinson re: update on court hearing.
4/8/2015	A.R.	1.00	Email correspondence with C. Riepma re: update on response from MOE. Review correspondence from Marshall Kirewski re: request for agreement statement of facts and outstanding issues; email correspondence and call with G. Azeff re: same.
4/9/2015	A.R.	1.00	Review correspondence from Zirgers counsel to R. Macfarlane; review R. Macfarlane response. Review correspondence from Zirgers counsel to Court re: requirement to scan 11 Volume Motion Record; email exchange with G. Azeff re: same.
4/14/2015	A.R.	1.50	Engaged in calls with counsel and D. Robinson re: legal pleadings; review same. Email correspondence with B. Rutman and D. Robinson re: meeting at Foglers re: Zirger claim.
4/15/2015	A.R.	0.50	Email correspondence to G. Azeff re: Zirger affidavits.
4/16/2015	R.D.	1.00	Review documentation re: Zirger claim affidavits; discussions with A. Rutman re: same.
4/17/2015	A.R.	4.50	Attendance and meeting at Foglers with G. Azeff, D. Robinson and B. Rutman re: Zirger application. Review Third Report to Court. Forward various Normal Farm Practice documentation to G. Azeff.
4/17/2015	B.R.	4.00	Meet with counsel to discuss Zirger lawsuit.
4/21/2015	A.R.	0.25	Review Supplementary Affidavit of Nick Kirewski; email correspondence to G. Azeff re: same.
4/23/2015	A.R.	0.25	Email exchange and call with G. Azeff re: court outcome.

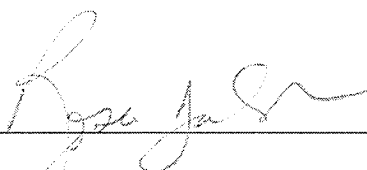
ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/24/2015	A.R.	1.25	Email exchange with B. Huber re: court outcome. Email exchange and call with G. Azeff re: court outcome re: Zirgers et al.
4/29/2015	A.R.	1.50	Attendance at premises. Discussions with D. Robinson re: matters relating to Zirger motion.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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This is Exhibit "B" to the Affidavit of
Allan A. Rutman sworn on May 26, 2015



A Commissioner for the taking of affidavits, etc.

Rosa DeSilva a Commissioner, etc.,
Province of Ontario for Zeifman
Partners Inc. Trustee in Bankruptcy,
Expires November 3, 2016.

Vandermeer Greenhouses Ltd.
 Summary of Receiver's Fees
 November 1, 2014 to April 30, 2015

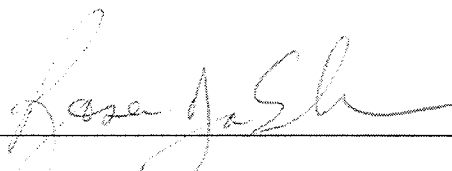
Exhibit B

<u>REGULAR OPERATIONS</u>	<u>Invoice #</u>	<u>Fees</u>	<u>Disbursements</u>	<u>HST</u>	<u>Total</u>
November 1 - 30, 2014	41635	\$ 10,557.75	\$ 93.98	\$ 1,384.72	\$ 12,036.45
December 1 - 31, 2014	41640	10,006.50	326.33	1,343.27	11,676.10
January 1 - 31, 2015	41644	6,879.00	318.66	935.70	8,133.36
February 1 - 28, 2015	41653	10,718.50	201.63	1,419.62	12,339.75
March 1 - 31, 2015	41658	11,603.75	206.12	1,535.28	13,345.15
April 1 - 30, 2015	41664	10,213.25	285.69	1,364.86	11,863.80
		<u>\$ 59,978.75</u>	<u>\$ 1,432.41</u>	<u>\$ 7,983.45</u>	<u>\$ 69,394.61</u>

<u>ZIRGER CLAIM/NORMAL FARM PRACTICES</u>	<u>Invoice #</u>	<u>Fees</u>	<u>Disbursements</u>	<u>HST</u>	<u>Total</u>
January 1 - 31, 2015	41647	\$ 8,691.00	\$ -	\$ 1,129.83	\$ 9,820.83
February 1 - 28, 2015	41654	6,000.00	-	780.00	6,780.00
March 1 - 31, 2015	41661	7,500.00	-	975.00	8,475.00
April 1 - 30, 2015	41665	8,623.00	-	1,120.99	9,743.99
		<u>\$ 30,814.00</u>	<u>\$ -</u>	<u>\$ 4,005.82</u>	<u>\$ 34,819.82</u>

TOTAL FEES		<u>\$ 90,792.75</u>	<u>\$ 1,432.41</u>	<u>\$ 11,989.27</u>	<u>\$ 104,214.43</u>
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This is Exhibit "C" to the Affidavit of
Allan A. Rutman sworn on May 26, 2015

A handwritten signature in cursive script, appearing to read "Rosa DaSilva", written over a horizontal line.

A Commissioner for the taking of affidavits, etc.

**Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zelfman
Partners Inc., Trustee in Bankruptcy,
Expires November 3, 2016.**

Vandermeer Greenhouses Ltd.
 Receiver's Personnel Summary
 For the Period November 1, 2014 to April 30, 2015

Exhibit C

REGULAR OPERATIONS

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
A. Rutman	57.00	\$ 600.00	\$ 34,200.00
B. Rutman	74.00	\$ 197.00	\$ 14,578.00
M. Stojanovic	7.50	\$ 185.00	\$ 1,387.50
R. DaSilva	53.00	\$ 185.00	\$ 9,805.00
P. Valente	0.05	\$ 165.00	\$ 8.25
	<u>191.55</u>		<u>\$ 59,978.75</u>

ZIRGER CLAIM/NORMAL FARM PRACTICES

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
A. Rutman	48.75	\$ 600.00	\$ 29,250.00
B. Rutman	7.00	\$ 197.00	\$ 1,379.00
R. DaSilva	1.00	\$ 185.00	\$ 185.00
	<u>56.75</u>		<u>\$ 30,814.00</u>
TOTAL	<u>248.30</u>		<u>\$ 90,792.75</u>

AVERAGE HOURLY RATE

\$ 365.66

tab Q

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

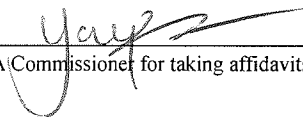
**AFFIDAVIT OF GREGORY AZEFF
SWORN MAY 27, 2015**

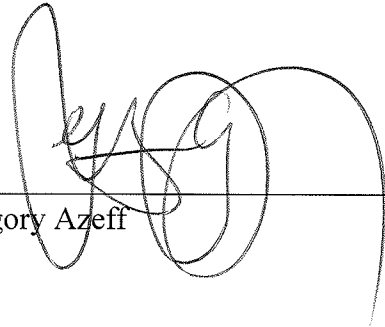
I, Gregory Azeff, of the City of Toronto, Province of Ontario, Barrister and Solicitor, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer with the law firm of Fogler, Rubinoff LLP ("FR"), lawyers for Zeifman Partners Inc. in its capacity as Receiver of Vandermeer Greenhouses Ltd. (the "Receiver") and in such capacity I have knowledge of the matters hereinafter deposed to. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I believe I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. Attached hereto as **Exhibit "A"** is a true copy of the invoices issued to the Receiver by FR for fees and disbursements incurred by FR in the course of the receivership proceedings between November 1, 2014 and April 30, 2015. The total fees charged by FR during that period were \$59,805.00, plus disbursements of \$1,809.30, plus Harmonized Sales Tax in the amount of \$7,976.85, for a total of \$69,591.15.

3. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.
4. Attached hereto as **Exhibit "C"** is a schedule summarizing the respective years of call and billing rates of each of the lawyers at FR who acted for the Receiver.
5. To the best of my knowledge, the rates charged by FR throughout the course of this proceeding are comparable to those charged by other law firms in Toronto for the provision of similar services.
6. The hourly billing rates outlined in Exhibit "C" to this affidavit are comparable to the hourly rates charged by FR for services rendered in similar proceedings.
7. I make the affidavit in support of a motion by the Receiver for, among other things, approval of the fees and disbursements of the Receiver's counsel.

SWORN before me at the City of Toronto, in the Province of Ontario, this 27th day of May, 2015.


A Commissioner for taking affidavits.
YOUNG, PARK
Barristers & Solicitors


Gregory Azeff

This is Exhibit "A" referred to in the Affidavit of Gregory Azeff
sworn May 27, 2015



Commissioner for Taking Affidavits (or as may be)

YOUNG PARK

EXHIBIT "A"
DETAILED INVOICES

December 2, 2014

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

fogler
 rubinoff

Our File: Z0290 / 143857
Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Nov-03-14	GA	Continue drafting Report.	1.10
Nov-04-14	GA	Draft Report.	0.70
Nov-06-14	GA	Further revisions to Report; Review file for additional information.	0.80
Nov-07-14	GA	Review and revise Report.	0.30
Nov-10-14	GA	Discussion with J. Freeman; Review changes to Report; Revise Report.	0.80
Nov-11-14	GA	Finalize Report; Correspondence with A. Rutman; Discussion with J. Freeman re fee affidavit; Draft fee affidavit.	0.90
Nov-12-14	GA	Draft fee affidavit; Continue drafting Report; Draft Notice of Motion; Research re distress rights; Review and respond to correspondence; Continue preparing materials for motion; Email to R. MacFarlane.	2.40
Nov-13-14	GA	Telephone call with R. Macfarlane; Review R&D; Collect exhibits for Report; Review and revise Report; Additional telephone call with R. Macfarlane.	0.70
Nov-14-14	GA	Review exhibits to Report; Review and respond to email; Preparing motion materials.	0.40
Nov-17-14	GA	Review and finalize draft Report.	0.50
Nov-18-14	GA	Discussion with J. Freeman re next steps; Finalize draft Notice of Motion and Order; Review First Report and exhibits.	1.40
Nov-19-14	GA	Review Affidavit of A. Rutman; Correspondence with R. Macfarlane re motion; Discussion with J. Freeman re motion; Review and revise motion materials.	0.60
Nov-20-14	GA	Meet with J. Freeman re motion.	0.20
Nov-24-14	VSF	Bankruptcy searches.	0.50

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Nov-24-14	JRF	Reviewed and revised draft notice of motion and order for motion to increase borrowing limit and approve accounts/conduct of receiver/counsel.	0.30
Nov-24-14	GA	Review final set of draft materials; Review Bankruptcy search; Discussion with J. Freeman.	0.70
Nov-25-14	VSF	Commercial motion record.	0.60

OUR FEE HEREIN \$5,624.50

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
JRF	0.30	340.00	102.00
GA	11.50	475.00	5,462.50
VSF	1.10	54.55	60.00

Disbursements

Taxable	Binding Supplies	\$19.10
Exempt	File Notice of Motion/Application	\$127.00
Taxable	Prints	\$77.70
Taxable	Scanning	\$218.60
Taxable	Telephone	\$2.20
Taxable	The Printing House	\$68.00

Total Disbursements	\$512.60
Total Fees and Disbursements	\$6,137.10
HST @ 13% on Fees and Taxable Disbursements	\$781.32
Total Fees, Disbursements and Taxes this Bill	\$6,918.42

Balance Due: \$6,918.42

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

Greg Azeff

December 23, 2014

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

fogler
 rubinoff

Our File: Z0290 / 143857
Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Dec-01-14	JRF	Preparation and review of draft order; Review of materials for hearing.	0.50
Dec-01-14	GA	Discussion with J. Freeman re motion.	0.20
Dec-02-14	JRF	Preparation for motion to increase borrowing limit, approve conduct/fees of receiver and lawyer, etc.; Attended on motion for same; Report to G. Azeff re: same; Report to client via email.	1.70
Dec-02-14	GA	Discussion with J. Freeman re motion.	0.20
Dec-04-14	JRF	Confirmation re: service of Order/Endorsement.	0.10

OUR FEE HEREIN \$972.00

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
JRF	2.30	340.00	782.00
GA	0.40	475.00	190.00

Disbursements

Taxable Telephone \$16.00

Total Disbursements	\$16.00
Total Fees and Disbursements	\$988.00
HST @ 13% on Fees and Taxable Disbursements	\$128.44
Total Fees, Disbursements and Taxes this Bill	\$1,116.44

fogler
rubinoff

Balance Due: \$1,116.44

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

Greg Azeff

February 13, 2015

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

fogler
 rubinoff

Our File: Z0290 / 143857
 Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Jan-19-15	GA	Review and consider correspondence; Review Affidavits.	0.80
Jan-24-15	AME	read lawyer's letter; Sophie Dell affidavit; pages 1 to 12 of Richard Zirger Affidavit.	0.70
Jan-25-15	AME	read pages 12 to 66 of Richard Zirger draft affidavit; Nick Kirewskie draft affidavit; Judy Zirger draft affidavit; Charlene Quevillon draft affidavit; reviewed CofA again.	3.20
Jan-26-15	AME	conference with Greg Azeff in prep for client call.	0.50
Jan-26-15	AME	conference with Alan, Darrel and Greg about situation.	1.20
Jan-26-15	GA	Telephone call with A. Engel; Conference call with A. Rutman, D. Robinson and A. Engel; Review materials.	1.70
Jan-27-15	GA	Letter to C. Kirewskie re Exhibits; Telephone call with R. MacFarlane; Review letter from Kirewskie and draft response.	1.10
Jan-27-15	GA	Meet with A. Engel and S. Berger; Review and consider case; Letter to C. Kirewskie.	0.50
Jan-28-15	GA	Discussion with A. Rutman re letter.	0.20
Jan-29-15	GA	Review materials; Telephone call with A. Rutman; Review and revise letter to C. Kirewskie.	0.50

OUR FEE HEREIN

\$4,932.00

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
GA	4.80	485.00	2,328.00
AME	5.60	465.00	2,604.00

Disbursements

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Taxable	Faxes	\$5.80	
Taxable	Prints	\$6.90	
Taxable	Scanning	\$48.40	
Taxable	Transaction Levy Surcharge	\$50.00	
	Total Disbursements		\$111.10
	Total Fees and Disbursements		\$5,043.10
	HST @ 13% on Fees and Taxable Disbursements		\$655.60
	Total Fees, Disbursements and Taxes this Bill		\$5,698.70
		Balance Due:	\$5,698.70

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

Greg Azeff

April 9, 2015

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
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fogler
 rubinoff

Our File: Z0290 / 143857
 Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Feb-12-15	GA	Review and revise letter to C. Kirewskie.	0.20
Feb-17-15	GA	Review correspondence from C. Kirewskie; Discussion with A. Engel re status.	0.30
Feb-18-15	GA	Review correspondence and consider next steps.	0.30
Feb-22-15	AME	reviewed February 20, 2015 letter from MOE and emails from Greg.	0.30
Feb-22-15	AME	call with Greg about the issue.	0.20
Feb-23-15	GA	Review and respond to correspondence; Research re [REDACTED] [REDACTED] Telephone call with A. Engel.	1.10
Feb-24-15	AME	conference call with clients.	0.90
Feb-24-15	AME	[REDACTED]	0.50
Feb-24-15	GA	Discussion with A. Engel; Conference call with A. Rutman, A. Engel and D. Robinson.	0.80
Feb-25-15	GA	Prepare for meeting; Discussion with A. Engel.	0.50
Feb-26-15	AME	researched [REDACTED]	1.00
Feb-26-15	AME	travel to Vandermeer Greenhouses location.	2.00
Feb-26-15	AME	site visit with Darryl Robinson and Greg Azeff.	2.00
Feb-26-15	AME	travel back from site visit.	2.00
Feb-26-15	AK	Research [REDACTED] [REDACTED]	1.00
Feb-26-15	GA	Travel to and attend site visit at Vandermeer.	4.50
Feb-27-15	AME	reviewed [REDACTED]	1.30
Feb-27-15	AME	drafted response letter to MOE and emailed client for review.	1.30
Feb-27-15	GA	Review draft email from A. Engel; Review [REDACTED] [REDACTED]	0.90
Feb-28-15	AME	read and responded to client email about draft letter to MOE.	0.40

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Mar-01-15	AK	Review case law on [REDACTED]	6.00
Mar-02-15	AME	conference with Allan about draft letter to MOE.	0.40
Mar-02-15	AME	updated draft letter with Greg's comments and forwarded to client.	0.40
Mar-02-15	AK	Research case law on [REDACTED]	0.80
Mar-03-15	AME	call with Darryl to review the [REDACTED]	1.60
Mar-04-15	GA	Review correspondence from C. Kirewskie; Review and consider correspondence re MOE.	0.40
Mar-05-15	GA	Review and consider correspondence; Discussion with A. Engel.	0.40
Mar-06-15	GA	Review documents from A. Rutman; Correspondence with R. Macfarlane.	0.40
Mar-09-15	AME	call with Allan Rutman about [REDACTED]	0.40
Mar-10-15	GA	Review correspondence re [REDACTED]	0.70
		[REDACTED] Review draft Affidavits delivered by Kirewskie; Consider responding materials.	
Mar-17-15	AME	reviewed draft from [REDACTED]	0.40
Mar-18-15	AME	reviewed email [REDACTED]	0.20
Mar-20-15	GA	Review and revise Offer; Telephone call with A. Rutman; Draft additional language for Offer.	0.30
Mar-23-15	GA	Email exchange with R. MacFarlane; Disucssion with A. Engel.	0.30
Mar-26-15	GA	Letter to C. Kirewskie re Motion.	0.20
Mar-27-15	GA	Review and respond to correspondence; Draft letters (2) to C. Kirewskie; Review application record.	0.80
Mar-27-15	GA	Draft Notice of Motion; Review Rules.	0.80
Mar-28-15	GA	Draft Report; Review and consider correspondence; Review and revise Report and Notice of Motion.	3.00
Mar-29-15	GA	Review Application materials; Review and respond to correspondence; Continue preparing motion materials.	3.10
Mar-30-15	JRF	Conferences with G. Azeff and preparation for/re: appearance of 9:30 appointment on March 31, Application on April 2 and motion to have same dismissed because of stay.	0.80
Mar-30-15	GA	Review and revise draft Report; Review and respond to email correspondence; Telephone call with A. Rutman re [REDACTED]	4.60
		Finalize Report; Review and revise Notice of Motion; Draft Order; Finalize Motion Record; Prepare for motion tomorrow.	
Mar-31-15	JRS	Delivery to court for motion.	0.40

OUR FEE HEREIN

\$20,931.50

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
JRF	0.80	350.00	280.00
GA	23.60	485.00	11,446.00
AME	15.30	465.00	7,114.50
AK	7.80	255.00	1,989.00
JRS	0.40	255.00	102.00

Disbursements

fogler
rubinoff

Taxable	Binding Supplies	\$37.70	
Taxable	Faxes	\$9.15	
Exempt	Filing Fee	\$127.00	
Taxable	Scanning	\$82.40	
	Total Disbursements		\$256.25
	Total Fees and Disbursements		\$21,187.75
	HST @ 13% on Fees and Taxable Disbursements		\$2,737.90
	Total Fees, Disbursements and Taxes this Bill		\$23,925.65
		Balance Due:	\$23,925.65

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**


Greg Azeff

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

May 6, 2015

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

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 RUBINOFF

Our File: Z0290 / 143857
Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Mar-25-15	GA	Review and respond to correspondence.	0.10
Mar-31-15	JRF	Attendance on commercial list at 9:30 appointment re: application being brought, motion to lift stay requested in advance of same, Receiver's motion to dismiss appeal and appropriate venue/timing for the hearing of each; Attended to the filing of Receiver's motion materials for same; Review exchange of correspondence between counsel and assistance with preparation of letters from Fogler, Rubinoff; Telephone call/conferences with G. Azeff re: same.	2.00
Mar-31-15	GA	Prepare for, travel to, and attend court; Letter to C. Kirewskie.	1.50
Mar-31-15	GA	Reviewing Application Record (returnable Thursday, April 12, 2015); Prepare factum.	0.60
Apr-01-15	GA	Draft letter to Kirewskie; Research re [REDACTED] [REDACTED] Prepare Affidavit.	0.70
Apr-02-15	GA	Prepare for, travel to and attend motion at 361 University Avenue; Telephone call with A. Rutman.	1.40
Apr-07-15	GA	Review and respond to correspondence; Telephone call with A. Rutman; Discussion with A. Engel re motion.	0.40
Apr-08-15	MG	Meeting with Greg Azeff; research on [REDACTED]	1.50
Apr-08-15	GA	Meet with Martine Garland re factum and required research; Review and respond to correspondence; Letter to C. Kirewskie.	0.50
Apr-09-15	MG	Review application material and factum; research and review caselaw on [REDACTED] research on [REDACTED]	4.30
Apr-09-15	GA	Review and consider correspondence from C. Kirewskie; Review Application Record; Research re [REDACTED] Review and respond to correspondence.	0.80
Apr-11-15	MG	Research on [REDACTED]	0.70

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Apr-13-15	MG	Review Notice of Application, First Report of Receiver and other client documents.	1.00
Apr-13-15	GA	Review Application Record; Review correspondence re lease.	1.60
Apr-14-15	AME	conference with Greg about [REDACTED]	0.80
Apr-14-15	MG	Review Application Record; prepare factum.	4.80
Apr-14-15	GA	Review motion materials; Draft Third Report; Review factum; Review correspondence; Telephone call with A. Rutman.	3.60
Apr-15-15	AME	Reviewed Zirger's most recent affidavit.	0.30
Apr-15-15	AME	conference with Greg about [REDACTED] [REDACTED] [REDACTED]	0.50
Apr-15-15	MG	Prepare factum; further research on [REDACTED] [REDACTED]	3.60
Apr-15-15	GA	Mark up factum; Continue drafting Third Report; Meet with M. Garland re factum and status; Letter to C. Kirewskie.	1.40
Apr-15-15	GA	Meet with A. Engel re motion; Review correspondence re MOE.	0.50
Apr-16-15	MG	Prepare factum; further review of Application Record; research on [REDACTED]	6.80
Apr-16-15	GA	Review Moving Parties' Brief of Authorities; Telephone call with R. Macfarlane re motion; Review and respond to email; Continue drafting Third Report and factum.	1.90
Apr-17-15	MG	Meeting with clients; review and revise factum; prepare book of authorities; discussions with Greg Azeff.	7.00
Apr-17-15	GA	Attend meeting with A. Rutman, B. Rutman and D. Robinson re Report and Motion; Finalize Report; Review and revise factum; Finalize factum.	5.50
Apr-20-15	GA	Review draft Affidavit from Meridian; Respond to correspondence; Review Responding Motion Record; Preparing for motion.	1.70
Apr-21-15	VSF	Attend commercial motion reports.	0.60
Apr-21-15	GA	Review Supplementary Responding Record, including Third Affidavit of N. Kirewskie; Preparing for motion re lifting stay of proceedings.	2.80
Apr-22-15	VSF	Pull file/re-file motion records for new motion.	0.60
Apr-22-15	GA	Preparing oral submissions; Review case book and factum; Review new materials.	2.50
Apr-23-15	AME	conference with Greg about results of motion.	0.20
Apr-23-15	MG	Attend motion.	3.00
Apr-23-15	GA	Prepare for, travel to and attend motion at 330 University Avenue.	3.00
Apr-24-15	GA	Discussion with A. Rutman re various issues.	0.20
Apr-27-15	GA	Review and respond to correspondence; Meet with J. Schwartz re materials for next motion; Consider items for next Report.	0.50
Apr-28-15	ACK	Call with G. Azeff regarding [REDACTED] E-mails with client regarding same.	0.30
Apr-28-15	GA	Discussion with A. Kolandjian re [REDACTED] Review and respond to email; Consider contents of Fourth Report.	0.40
Apr-29-15	GA	Review activities summary from A. Rutman; Add to Report.	0.60
Apr-30-15	JBS	Review file; review FFPPA; review November 2014 motion record including First Report;	2.00
Apr-30-15	GA	Consider proposal from R. Macfarlane; Drafting Fourth Report.	0.70

OUR FEE HEREIN

\$27,345.00

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
ACK	0.30	350.00	105.00
JBS	2.00	290.00	580.00
JRF	2.00	350.00	700.00
MG	32.70	275.00	8,992.50
GA	32.90	485.00	15,956.50
VSF	1.20	145.00	174.00
AME	1.80	465.00	837.00

Disbursements

Taxable	Binding Supplies	\$90.40
Taxable	Faxes	\$75.75
Taxable	Prints	\$595.20
Taxable	Scanning	\$84.00
Taxable	The Printing House	\$68.00

Total Disbursements	\$913.35
Total Fees and Disbursements	\$28,258.35
HST @ 13% on Fees and Taxable Disbursements	\$3,673.59
Total Fees, Disbursements and Taxes this Bill	\$31,931.94

Balance Due: \$31,931.94

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**



Greg Azeff

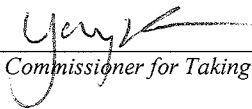
THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

This is Exhibit "B" referred to in the Affidavit of Gregory Azeff
sworn May 27, 2015



Commissioner for Taking Affidavits (or as may be)

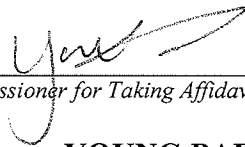
YOUNG PARK

EXHIBIT "B"

SUMMARY OF FEES FOR THE PERIOD NOVEMBER 1, 2014 TO APRIL 30, 2015

Invoice No.	Fees	Disbursements	HST	Hours	Average Hourly Rate	Total
21402005	\$5,624.50	\$512.60	\$781.32	12.9	\$290	\$6,918.42
21403192	\$972.00	\$16.00	\$128.44	2.7	\$408	\$1,116.44
21501747	\$4,932.00	\$111.10	\$655.60	10.40	\$475	\$5,698.70
21504385	\$20,931.50	\$256.25	\$2,737.90	47.90	\$362	\$23,925.65
21505762	\$27,345.00	\$913.35	\$3,673.59	72.90	\$337	\$31,931.94
	\$59,805.00	\$1,809.30	\$7,976.85	146.80	\$374	\$69,591.15

This is Exhibit "C" referred to in the Affidavit of Gregory Azeff
sworn May 27, 2015



Commissioner for Taking Affidavits (or as may be)

YOUNG PARK

EXHIBIT "C"

BILLING RATES OF FOGLER, RUBINOFF LLP FOR THE PERIOD NOVEMBER 1, 2014 TO APRIL 30, 2015

Timekeeper	Hourly Rate	Year of Call
Gregory R. Azeff	\$475.00	2002
Albert M. Engel	\$465.00	2002
Alex Kolandjian	\$350.00	2008
Joshua Freeman	\$340.00	2008
Jared B. Schwartz	\$290.00	2013
Martine Garland	\$275.00	2014
Annsley Keston	\$255.00	Articling Student
Jordan R. Schwartz	\$255.00	Articling Student
V. Shane Findley	\$230.00	Litigation Clerk

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF GREGORY AZEFF
SWORN MAY 27, 2015

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

Tel: 416-365-3716

Fax: 416-941-8852

Lawyers for Zeifman Partners Inc.

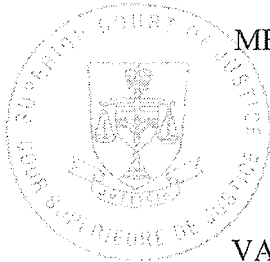
tab R

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE *NEWMAN*)

TUESDAY, THE 2nd
DAY OF DECEMBER, 2014

BETWEEN:



MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as Receiver (in such capacity, the "Receiver") of Vandermeer Greenhouses Ltd. ("Vandermeer"), was heard this day at the court house, 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, the First Report of the Receiver dated November 17, 2014 (the "First Report"), filed, and upon hearing submissions of counsel for the Receiver, no one else attending,

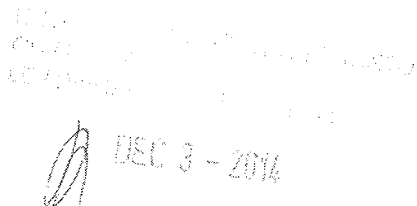
1. **THIS COURT ORDERS** that the time for service and filing of this Notice of Motion and the Motion Record be and they are hereby abridged and dispensing with further service thereof.

2. **THIS COURT ORDERS** that paragraph 20 of the Initial Order be and is hereby amended to increase the amount that the Receiver is authorized to borrow pursuant to Receiver's Certificates from \$250,000 to \$1,000,000.

3. **THIS COURT ORDERS** that the activities and conduct of the Receiver and its legal counsel, as disclosed in the First Report, be and they are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel, as disclosed in the First Report, be and they are hereby approved.




DEC 3 - 2016

MERIDIAN CREDIT UNION LIMITED
Applicant

-and- VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

Fogler, Rubinoff LLP

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

gazeff@foglers.com

Tel: (905) 365-9700

Fax: (905) 941-8852

Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 1st
JUSTICE)
) DAY OF JUNE, 2015

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as Receiver (in such capacity, the "**Receiver**") of Vandermeer Greenhouses Ltd. ("**Vandermeer**"), was heard this day at the court house, 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, the Second Report of the Receiver dated March 30, 2015 (the "**Second Report**"), the Third Report of the Receiver dated April 17, 2015 (the "**Third Report**") and Fourth Report of the Receiver dated May 27, 2015 (the "**Fourth Report**"), filed,

and upon hearing submissions of counsel for the Receiver, counsel to Meridian Credit Union, and counsel to ●, no one else attending,

1. **THIS COURT ORDERS** that the time for service and filing of this Notice of Motion and the Motion Record be and they are hereby abridged and dispensing with further service thereof.

2. **THIS COURT ORDERS** that paragraph 20 of the Initial Order be and is hereby amended to increase the amount that the Receiver is authorized to borrow pursuant to Receiver's Certificates from \$1,000,000 to \$2,000,000.

3. **THIS COURT ORDERS** that the activities and conduct of the Receiver and its legal counsel, as disclosed in the Second Report, the Third Report and the Fourth Report, be and they are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel, as disclosed in the Fourth Report, be and they are hereby approved.

MERIDIAN CREDIT UNION LIMITED
Applicant

-and- VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)
gazeff@foglrs.com

Tel: (905) 365-9700
Fax: (905) 941-8852

Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

Fogler, Rubinoff LLP

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)

gazeff@foglers.com

Tel: 416-365-3716

Fax: 416-941-8852

Lawyers for Zeifman Partners Inc.