
Court of Appeal for Saskatchewan
Docket: CACV4757

Citation: *Farms and Families of North America Inc. v AgraCity Crop & Nutrition Ltd.*, 2026 SKCA 58

Date: 2026-04-29

Between:

Farms and Families of North America Inc. and James Mann

*Applicants/Prospective Appellants
(Respondents)*

And

**AgraCity Crop & Nutrition Ltd., Ernst & Young Inc., in its capacity as Monitor of
AgraCity Crop & Nutrition Ltd., and United Farmers of Alberta Co-operative
Limited**

*Respondents/Prospective Respondents
(Applicants)*

Before: McCreary J.A. (in Chambers)

Disposition: Applications dismissed

Written reasons by: The Honourable Justice Meghan R. McCreary

On application from: KBG-SA-01435-2025, Saskatoon (SKKB)
Application heard: April 22, 2026

Counsel: Kathleen Jenkins for Farms and Families of North America Inc.
James Mann for himself
Daniel Cherian for AgraCity Crop & Nutrition Ltd.
Paul Fedoroff for Ernst & Young, in its capacity as Monitor of AgraCity
Crop & Nutrition Ltd.
Pantelis Kyriakakis for United Farmers of Alberta Co-operative Limited

McCreary J.A.

I. INTRODUCTION

[1] Farms and Families of North America Inc. [FNA] and James Mann apply for leave to appeal from two orders from two separate judges of the Court of King's Bench in proceedings brought under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA]. These are:

- (a) March 25, 2026 Sale Approval and Vesting Order: *AgraCity Crop & Nutrition Ltd. v Farms & Families of North America Inc.* (25 March 2026), Saskatoon KBG-SA-01435-2025 (SKKB) [SAVO]; and,
- (b) March 12, 2026 order imposing restrictions on FNA and James Mann requiring them to pay certain costs: *AgraCity Crop & Nutrition Ltd. v Farms & Families of North America Inc.*, 2026 SKKB 56 [Costs and Restrictions Order].

[2] The right to appeal from an order made under the CCAA exists in s. 13 of the CCAA as follows:

13 Except in Yukon, any *person* dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

(Emphasis added)

[3] FNA and James Mann raise 10 proposed grounds of appeal, several of which overlap. To avoid repetition, I have condensed some of the grounds. In respect of the SAVO order, FNA and James Mann contend that:

- (a) The judge erred in law and breached the applicants' right to procedural fairness by proceeding with the application for the SAVO and granting the SAVO, and by dismissing the applicants' cross-application, in circumstances where the applicants did not have a meaningful opportunity to be heard, having been served on a short return date while their legal counsel was unavailable;
- (b) The judge erred in law and exceeded the Court's jurisdiction by approving relief affecting the assets of NewAgco Inc. and Viking Crop Protection Partners Inc., and

by extinguishing ownership, property, trust or beneficial claims to those assets, notwithstanding that there continues to be active and unresolved litigation concerning the ownership of those assets (QB File 1262 of 2019);

- (c) The judge erred in law and exceeded the Court's jurisdiction by approving relief affecting the assets of FNA that are not part of the assets of the CCAA Entities¹;
- (d) The judge erred in law and in mixed fact and law by granting the SAVO notwithstanding the alleged failure to provide timely notice of the proposed transaction to Genesis Grain & Fertilizer Limited Partnership investors, which deprived those investors of an opportunity to participate before the SAVO was approved; and,
- (e) The judge erred in law and mixed fact and law by granting the release in favour of the Monitor in the SAVO despite the applicants' allegations that Genesis Grain & Fertilizer Limited Partnership investors had not received timely notice of the proposed transaction.

[4] In respect of the Costs and Restrictions Order, FNA and James Mann argue that:

- (a) The judge erred in law and in mixed fact and law by awarding costs of \$45,000, including amounts relating to applications that were not heard on the merits; and,
- (b) The judge erred in law and mixed fact and law by imposing a restriction preventing the applicants from bringing further applications until the costs award was paid.

[5] Finally, at the hearing of the leave application, counsel for FNA argued that the judge who granted the SAVO erred in law by including 101187148 Saskatchewan Ltd., Genesis Grain & Fertilizer GP Inc., and Genesis Operating GP Inc. in the SAVO. FNA contends that these entities

¹ The CCAA Entities are AgraCity Crop & Nutrition Ltd., MPower Logistics Ltd., NewAgCo Inc., CarbonTerra Ltd., Agronomax Farm Management Solutions Inc., 14492676 Canada Inc., Viking Crop Production Partners Inc., 101114752 Saskatchewan Ltd., 101072497 Saskatchewan Ltd., Catalyst Technologies Ltd., 101187148 Saskatchewan Ltd., FNA AgraCity Holdings Ltd., together with the "Genesis Entities", which are Genesis Grain & Fertilizer GP Inc., Genesis Operating GP Inc. (together the "Genesis General Partners"), Genesis Grain & Fertilizer Limited Partnership, and Genesis G&F Operating LP (together, the "Stay LPs"). These parties are also referred to as the "AgraCity Group".

could not be included in the SAVO because they were not owned and controlled solely by AgraCity Crop & Nutrition Ltd. [AgraCity].

[6] Leave to appeal in CCAA proceedings is granted sparingly. This Court has set out the test for leave to appeal from an order made under the CCAA as follows (*Stomp Pork Farm Ltd., Re*, 2008 SKCA 73):

[15] In a series of cases emanating first from British Columbia and then from Quebec, Alberta and Ontario, there has developed a consensus among the Courts of Appeal that leave to appeal an order or decision made under the CCAA should be granted only where there are serious and arguable grounds that are of real significance and interest to the parties and to the practice in general. The test is often expressed as a four-part one:

1. whether the issue on appeal is of significance to the practice;
2. whether the issue raised is of significance to the action itself;
3. whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and,
4. whether the appeal will unduly hinder the progress of the action.

(Footnotes omitted)

See also *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119 at para 6.

[7] Following a hearing on April 22, 2026, and having considered the test for leave set out above as it relates to the record before me in this case, I dismissed the application for leave to appeal, with reasons to follow. Given that result, it was unnecessary for me to consider the application for a stay.

[8] My reasons for dismissing the application for leave to appeal are below.

II. BACKGROUND

[9] In keeping with the parties' memorandums of law, I will refer to the entities involved in this matter as follows:

- (a) Collectively as "Initial CCAA Applicants": AgraCity Crop & Nutrition Ltd., MPower Logistics Ltd, NewAgco Inc., CarbonTerra Ltd., Agronomax Farm Management Solutions Inc., 14492676 Canada Inc., Viking Crop Protection Partners Inc., 10114752 Saskatchewan Ltd., 101072497 Saskatchewan Ltd.,

Catalyst Technologies Ltd., 101187148 Saskatchewan Ltd., and FNA AgraCity Holdings Ltd;

- (b) Collectively as “Genesis GPs”: Genesis Grain & Fertilizer GP Inc. and Genesis Operating GP Inc.;
- (c) Collectively as “Genesis LPs”: Genesis Grain & Fertilizer Limited Partnership and Genesis G&F Operating LP;
- (d) Collectively as the “Genesis Entities”: the Genesis GPs and the Genesis LPs; and
- (e) Collectively as the “AgraCity Group”: the Initial CCAA Applicants and the Genesis Entities.

[10] The proceedings arose from the insolvency of various corporate entities, including, but not limited to AgraCity. A Monitor, Ernst & Young Inc. [Monitor], was appointed under s. 11.7 of the CCAA on December 1, 2025.

[11] AgraCity experienced significant financial difficulty in mid-2025. It was unable to deliver approximately \$32 million worth of product to its customers because it lacked sufficient liquidity to buy that product. This led to AgraCity announcing that it was cancelling orders and issuing credit to its customers. According to Jason Mann, President and CEO of AgraCity, one significant factor in AgraCity’s financial difficulties was the ongoing litigation between AgraCity and FNA and James Mann, which had caused AgraCity to incur millions in legal fees since 2017.

[12] Once AgraCity made the announcement that it was cancelling orders in June of 2025, it became mostly insolvent. AgraCity and its related entities then applied for creditor protection on November 26, 2025.

[13] On December 1, 2025, a judge of the Court of King’s Bench granted an initial order in respect of the Initial CCAA Applicants under the CCAA.

[14] On December 11, 2025, the judge made two orders:

- (a) an Amended and Restated Initial Order [ARIO], which, among other things:
 - (i) brought the Genesis Entities into the CCAA proceedings; and, (ii) approved the

Interim Financing Term Sheet, dated December 5, 2025, among the AgraCity Group and the United Farmers of Alberta Co-operative Limited [UFA] (in its capacity as interim lender) and the corresponding interim financing facility; and

- (b) a Sales and Investment Solicitation Process approval order [SISP], which, among other things: (i) approved the subscription agreement dated December 10, 2025 [Stalking Horse Agreement] between AgraCity Group and UFA or its nominee [Stalking Horse Bidder]; (ii) approved the SISP, the terms of which incorporated the inclusion of the Genesis Entities in the SISP, and the “Topping Bid” right of the Stalking Horse Bidder; and (c) granting a charge over the property, to secure the break fee payable under the Stalking Horse Agreement [Break Fee].

[15] The SISP and the ARIO have not been appealed.

[16] Pursuant to the SISP, interested parties were required to submit bids by February 6, 2026. The Monitor received six compliant phase I letters of intent, and five phase II bids. The Monitor extended the time to give all potential bidders more time to conduct due diligent checks and to submit their binding bids.

[17] FNA and James Mann submitted a participation letter but were unable to qualify as an eligible bidder because they did not provide evidence of sufficient financial ability to complete a transaction if they won the bid.

[18] According to Jason Mann, when James Mann and FNA were not qualified as bidders, James Mann sent out emails to various stakeholders saying that AgraCity was misusing customer money, among other allegations. This was contrary to an earlier order of the Court of King’s Bench which prohibited James Mann from communicating in this way.

[19] As I noted, FNA and James Mann did not appeal from either the ARIO or the SISP. However, they did bring several applications attacking the CCAA proceedings between January and March of 2026, all of which were dismissed, prior to the application that led to the SAVO.

[20] Some of James Mann’s conduct led AgraCity to apply for and obtain an interim order prohibiting FNA and James Mann from contacting CCAA Entities without the Monitor’s

permission (Order of Smith J. of February 24, 2026). Justice Smith modified that order on March 5, 2026, to allow FNA and James Mann to communicate with stakeholders to try to raise capital to put in a bid under the SISP.

[21] On March 12, 2026, a judge made the Costs and Restrictions Order, ordering costs against FNA and James Mann of \$25,000. At that time, there was also evidence before the Court that FNA and James Mann had incurred \$58,000 in unpaid costs orders against them in the Court of King's Bench and owed \$62,327 in costs from matters in the Court of Appeal. The judge further ordered that FNA and James Mann were prohibited from bringing further applications in the CCAA proceedings until they had paid \$45,000 of the total outstanding costs, unless there was an emergency matter and then only with leave of a judge of the Court of King's Bench's Bankruptcy and Insolvency Panel.

[22] The auction occurred on March 9, 2026. Qualified bidders took part, after which UFA gave notice that it would exercise its topping right and submitted a bid of \$48.2 million.

[23] The Monitor and the AgraCity Group then applied for the SAVO. The application was served on FNA and James Mann on March 16, 2026, and was scheduled to be heard on March 19, 2026.

[24] A different judge of the Court of King's Bench adjourned the application for the SAVO to March 25, 2026, on the strength of James Mann's assertion that he had retained counsel and that his lawyer was not available because he was on holidays.

[25] James Mann then served two without notice applications attempting to forestall the approval of the sale, on the basis that he had been working with investors to put together a competing bid. One of those applications was for an order allowing him to make applications (give the Costs and Restrictions Order that prohibited him from doing so until costs were paid). The two applications were served about an hour prior to the March 25, 2026 hearing in respect of the application for the SAVO. James Mann attended that hearing, but again did not have counsel.

[26] The judge hearing the application for the SAVO dismissed James Mann's applications, holding that, in the context of the Costs and Restrictions Order, "emergencies arise when

something new happens. Nothing new has happened” and “[o]n that basis alone, you will not be given leave to bring the applications you are seeking” (SAVO at para 2).

[27] The judge also held that even if he were to entertain the applications, they were, in substance, the same as applications that had previously been dismissed, saying:

[2] ... To the extent that they seek to extend the sale approval order or to amend the changes in the sale approval order and give you time and other investors who you have suggested are interested an opportunity to bring some kind of an additional proposal or plan forward, I think the simple answer to that is the ship has sailed. This order that we are working with today or the sale that has been generated by it has been out there since December. You have known about it since then. ... The time frames were set out in that order. If you wanted to make this work, you had to work within those time frames. And even now, Mr. Mann, the suggestion that you might have a better plan or a better proposal, and clearly your evidence does not even refer to one, the best that all of these people in these affidavits say is they are prepared to invest in some way, which is yet to be determined. ...

[3] ... Frankly, Mr. Mann, even if there was some certainty in what you might be able to put before the Court, there is plenty of jurisprudence that says that even if you showed up with a cheque today for a better amount than what I am asked to approve, the chances are almost nil of even entertaining it because the courts have consistently said that late bids are not going to be considered because to do so would really shake the integrity of the process, and that ought not to be entertained.

[4] So, your without notice applications and objections to the sale approval ... are dismissed.

[28] The evidence in the Monitor’s Fifth Report dated March 18, 2026, which was before the judge hearing the SAVO application, included, among other things, that:

- (a) the SISP was approved by the Court of King’s Bench, and conducted by the Monitor, with the assistance of a sales advisor;
- (b) the SISP thoroughly and broadly exposed the assets to the market, and attracted significant interest;
- (c) the original SISP timeline was extended on two occasions at the request of competing bidders with the consent of the interim lender (UFA), providing additional time for prospective bidders to prepare and finalize their bids to ensure value was maximized;
- (d) given an unsuccessful pre-filing sales process, the Monitor did not believe that further marketing would result in a higher value;

- (e) the Monitor confirmed that the SISP was conducted in good faith, with due diligence, and in accordance with the SISP;
- (f) the Monitor opined that the completion of the sale would be more beneficial to the AgraCity Group and their creditors than a sale or disposition in bankruptcy proceedings;
- (g) there was an extensive consultation with affected stakeholders and creditors; and,
- (h) the purchase by UFA was the only going concern transaction resulting from the SISP. It would result in repayment in full of the AgraCity Group's obligations to Business Development Bank of Canada, preserve 30 jobs in Saskatchewan, minimize the professional fees borne by the AgraCity Group's creditors by addressing substantially all of the AgraCity Group's property in a single transaction, provide approximately \$3 million of additional consideration over that available under any competing proposed transaction, and result in the satisfaction of all Farmer Reconciliation Obligations through the "Farmer Replacement Credit" mechanism under the asset purchase agreement [APA] at no risk to the AgraCity Group's estate.

[29] While James Mann, on behalf of FNA, argued against approval of the SAVO, the judge granted the SAVO, authorizing the sale of the vast majority of the debtors' assets to UFA for approximately \$48 million.

[30] Thereafter, FNA and James Mann filed an application for leave to appeal the SAVO and the Costs and Restrictions Order, and also applied for a stay of proceedings.

[31] The applications before this Court were scheduled to be heard on April 8, 2026, but were adjourned to April 22, 2026, at the request of FNA and James Mann.

III. ANALYSIS

[32] I now turn to considering the importance and merit of the proposed grounds of appeal.

[33] I have concluded that leave to appeal the SAVO should not be granted because the proposed grounds of appeal demonstrate the frivolity of the appeal.

[34] To begin, the judge's decision to grant the SAVO was an exercise of discretion under the CCAA: 9354-9186 *Québec inc. v Callidus Capital Corp.*, 2020 SCC 10 at footnote 3 [*Callidus Capital*].

[35] When considering whether there is merit to a proposed appeal, it is necessary to consider the standard of review that would be employed if the appeal went ahead. In *Re Harmon International Industries Inc.*, 2020 SKCA 95, this Court quoted from *Callidus Capital*, which describes the standard of review for proceedings under the CCAA, as follows:

[40] With respect to the second aspect of the appeal, in my view, it too is destined to fail. I say this because of the nature of the matter at stake and the discretionary nature of the order. Bankruptcy and insolvency matters stand apart from other forms of secured debt collection and are governed by their own standard of review, which accords considerable deference to the Chambers judge. In 9354-9186 *Québec inc. v Callidus Capital Corp.*, 2020 SCC 10, the Supreme Court commented upon the standard of review to apply to the exercise of discretion by a supervising judge in proceeding under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA]:

[53] A high degree of deference is owed to discretionary decisions made by judges supervising CCAA proceedings. As such, appellate intervention will only be justified if the supervising judge erred in principle or exercised their discretion unreasonably (see *Grant Forest Products Inc. v. Toronto-Dominion Bank*, 2015 ONCA 570, 387 D.L.R. (4th) 426, at para. 98; *Bridging Finance Inc. v. Béton Brunet 2001 inc.*, 2017 QCCA 138, 44 C.B.R. (6th) 175, at para. 23). Appellate courts must be careful not to substitute their own discretion in place of the supervising judge's (*New Skeena Forest Products Inc., Re*, 2005 BCCA 192, 39 B.C.L.R. (4th) 338, at para. 20).

[54] This deferential standard of review accounts for the fact that supervising judges are steeped in the intricacies of the CCAA proceedings they oversee. In this respect, the comments of Tysse J.A. in *Canadian Metropolitan Properties Corp. v. Libin Holdings Ltd.*, 2009 BCCA 40, 305 D.L.R. (4th) 339 (*“Re Edgewater Casino Inc.”*), at para. 20, are apt:

[O]ne of the principal functions of the judge supervising the CCAA proceeding is to attempt to balance the interests of the various stakeholders during the reorganization process, and it will often be inappropriate to consider an exercise of discretion by the supervising judge in isolation of other exercises of discretion by the judge in endeavoring to balance the various interests. ... CCAA proceedings are dynamic in nature and the supervising judge has intimate knowledge of the

reorganization process. The nature of the proceedings often requires the supervising judge to make quick decisions in complicated circumstances.

[36] Thus, a deferential standard of review applies to any consideration of the SAVO and the Costs and Restrictions Order. In matters of mixed fact and law requiring the exercise of judicial discretion, such as here, the applicable standard of review is palpable and overriding error.

[37] As I will explain, in my view, there is no merit to the arguments that the judge who granted the SAVO, or the judge who granted the Costs and Restrictions Order, committed a palpable and overriding error, or even an error of principle, that would merit the hearing of an appeal concerning the SAVO and/or the Costs and Restrictions Order.

[38] First, the proposed grounds of appeal relate to issues decided by final orders earlier in the CCAA proceedings, which have not been appealed. Specifically, the grounds of appeal relating to the corporate actions taken by the AgraCity Group, the inclusion of the Genesis Entities in the SISP, and the approval of the Topping Bid under the SISP are narrow, fact-specific questions which seek to challenge the provisions of the ARIO and the SISP, each granted in December of 2025, and having appeal periods that have now expired. In my view, these grounds of appeal represent a collateral attack on orders that have not been appealed and, as such, I am not persuaded that they are of sufficient importance or merit to justify granting leave.

[39] Second, with respect to the grounds of appeal which deal with the extinguishment of third-party proprietary and trust claims, I agree with the respondents that these grounds of appeal do not raise unsettled question of law, nor do they raise issues that are significant to insolvency practice. Even if FNA and James Mann had established a proprietary interest in any purchased assets, which is not proven on the evidence, it is well established that third-party proprietary interests may be vested out in CCAA insolvency transactions under s. 36(6) of the CCAA, which explicitly allows the jurisdiction of a court to authorize a sale of assets free and clear of “any security, charge or other restriction”. Further, in cases where s. 36(6) does not apply, s. 11 of the CCAA grants a supervising court the discretionary jurisdiction to make any order that it considers appropriate in the circumstances. It follows that there is clear jurisdiction for a court making orders under the CCAA to vest third-party interests in insolvency proceedings: see also *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727, 4 OR (3d) 1 (ONCA).

[40] In this case, the judge who granted the SAVO considered the proper legal tests and was presented with a substantial body of evidence addressing the statutory and common law factors. As such, I cannot see any merit to the argument that the judge erred in his exercise of judicial discretion.

[41] Third, the proposed grounds of appeal respecting the scope of the release granted under the CCAA concern settled questions of law. While FNA and James Mann assert that the judge who granted the SAVO erred in granting a “broad, non-standard release in Paragraph 32 of the SAVO”, no authority is cited for this proposition. On its face, the release at issue is consistent with the statutory requirements of the CCAA. It is certainly well established that a court exercising its discretion under the CCAA may grant a release of parties involved in restructuring. It follows that this ground of appeal lacks sufficient importance and merit to warrant granting leave.

[42] Fourth, I see no reviewable error in the costs award made in the Costs and Restrictions Order, which barred the applicants from bringing further applications until the costs were paid (except on an emergency basis). In considering the judge’s exercise of discretion here, it is notable, and the judge clearly understood, that FNA and James Mann had previously been declared vexatious litigants in the Court of King’s Bench and had incurred significant costs, which were unpaid, in other litigation against AgraCity. The Costs and Restrictions Order, which prohibited FNA and James Mann from taking part at the adjourned sale approval application was an exercise of discretion based on the judge’s knowledge of FNA and James Mann’s litigation conduct. Such decisions are afforded a high degree of deference. I see no merit in the argument that the costs award made in the Costs and Restrictions Order was unfairly punitive or procedurally unfair and therefore made through an error in principle.

[43] Fifth, while FNA and James Mann argue that they were denied procedural fairness because the SAVO application was heard and adjudicated without FNA and James Mann having legal counsel, I do not agree, given the facts on the record, that a breach of procedural fairness could be made out even at a threshold level. I note that the SAVO hearing was initially adjourned so FNA and James Mann could engage legal counsel. When legal counsel never ultimately appeared on the adjourned to date, James Mann was given an opportunity to make submissions. In this regard, and as I noted in the Background section above, FNA and James Mann had their cross-applications

considered by the judge on the merits (while he refused leave to hear their applications, he considered the merits in the alternative). Overall, the judge's decision to proceed, with a total of nine days' notice of the relief being sought, was an exercise of discretion that was reasonable. It is also an exercise of discretion that does not have any impact on the restructuring/insolvency legal practice as a whole. Thus, again, this ground fails on merit and importance.

[44] Sixth, FNA and James Mann also alleged a reasonable apprehension of bias on the part of the judge making the SAVO order. However, this was not argued at the hearing before this Court and FNA and James Mann have not provided any specifics of bias to make out a threshold meritorious case. This allegation is also not of significance to the insolvency practice or the action. As such, it clearly cannot carry the day in respect of the leave application.

[45] In conclusion on the importance and merit of the proposed grounds of appeal, FNA and James Mann's strongest argument is that the threshold merit of the proposed appeal of the SAVO is demonstrated by the wrongful inclusion of certain assets and entities in the SISP. However, I agree with the respondents that these arguments are not meritorious at a threshold level because FNA and James Mann had notice of the SISP and its terms since December of 2025. The terms of the SISP included the inclusion of certain entities and the sale of certain assets, which FNA and James Mann now, after the completion of the SISP and approval of the SAVO, dispute being entities properly included under the SISP and/or being assets belonging to the AgraCity Group. Nevertheless, FNA and James Mann participated in the SISP and tried to submit a bid to buy the assets. As such, any suggestion that the Genesis Entities or other entities and assets should have been excluded from the SISP is, as I previously noted, a collateral attack on the SISP, which was not appealed. There is no evidence in this case that FNA and/or James Mann held any registered interests, nor did they seek to have this issue determined in relation to the SAVO or the ARIIO.

[46] Finally, unwinding the transactions under the APA at this time would require, as the Ontario Court of Appeal noted in *Laurentian University of Sudbury (Re)*, 2021 ONCA 448 at para 47, an attempt to "unscramble the egg". On the evidence before me, I am persuaded that it would create significant prejudice to UFA and to other AgraCity Group stakeholders, particularly now that the sale has closed. At this point, granting leave would jeopardize the many benefits that the sale has provided for stakeholders, including: (a) higher aggregate consideration than any other

offer received under the SISP; (b) continued employment for 30 people in Saskatchewan; (c) the sale of substantially all the AgraCity Group's assets, minimizing post-costing risks to the estate and avoiding expensive and uncertain marketing process for stranded assets; (d) a credit bid of the AgraCity Group's interim financing obligations, removing a significant, super-priority claim from the creditor pool; (e) no Break Fee, avoiding \$1,000,000 in super priority liabilities; and (f) the continuation of the AgraCity Group's business as a going concern. Further, I note that the sale to UFA was the only bid that contemplated the continuation of the business, promoting the CCAA's purpose of avoiding the harmful social and economic effects of commercial bankruptcies.

[47] In sum, the proposed grounds of appeal advanced by FNA and James Mann fail at each stage of the leave test. They are not significant to the insolvency practice, nor are they significant to the action itself at this stage of the proceeding. Further, they are not *prima facie* meritorious. Finally, allowing an appeal to go ahead would unduly hinder the progress of the action. As such, leave to appeal must be denied.

IV. CONCLUSION

[48] In the result, leave to appeal is denied.

[49] With respect to costs, some of the respondents argued that costs of \$35,000 should be awarded against FNA and James Mann to compensate the AgraCity Group estate for costs incurred as a result of the adjournment, including penalties and interest owed to the Canada Revenue Agency, and additional professional fees. In addition, AgraCity contended that a costs order of \$20,000 should be made for costs thrown away because of the first adjournment of the leave and stay applications.

[50] In the circumstances, I am not persuaded that an award of legal costs to compensate for non-legal costs of \$35,000 incurred as a result of the adjournment is appropriate. In addition, I am not convinced that it is fair to award \$20,000 for costs thrown away. In my view, an ordinary costs award should follow.

[51] As such, I order that UFA and AgraCity shall each have one set of costs for each of the two applications (leave and stay), payable by FNA and James Mann, and calculated in the usual manner.

“McCreary J.A.”

McCreary J.A.