

Clerk's Stamp:

COURT FILE NUMBER 2001-12731

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF SECTION 193 OF THE *BUSINESS CORPORATIONS ACT*, RSA 2000, c B-9, AS AMENDED

AND IN THE MATTER OF A PROPOSED ARRANGEMENT INVOLVING AGJUNCTION INC., KUBOTA CORPORATION AND THE SHAREHOLDERS AND OPTIONHOLDERS OF AGJUNCTION INC.

APPLICANT AGJUNCTION INC.

RESPONDENTS Not Applicable

DOCUMENT **INTERIM ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. 51434-160

DATE ON WHICH ORDER WAS PRONOUNCED: Tuesday, October 19, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice B. Johnston

LOCATION OF HEARING: Calgary, Alberta

UPON the Originating Application (the "**Originating Application**") of AgJunction Inc. (the "**Applicant**" or "**AgJunction**");

AND UPON reading the Originating Application, the affidavit of M. Brett McMickell, President and Chief Executive Officer of AgJunction sworn October 18, 2021 (the "**Affidavit**") and the documents referred to therein;

AND UPON hearing counsel for the Applicant;

FOR THE PURPOSES OF THIS ORDER:

- (a) the capitalized terms not defined in this Order (the "**Order**") shall have the meanings attributed to them in the draft information circular of the Applicant (the "**Information Circular**") which is attached as Exhibit "A" to the Affidavit; and
- (b) all references to "**Arrangement**" used herein mean the arrangement as set forth in the plan of arrangement attached as Schedule A to the Arrangement Agreement, which is attached as Appendix C to the Information Circular.

IT IS HEREBY ORDERED THAT:

General

1. The Applicant shall seek approval of the Arrangement as described in the Information Circular by the holders (the "**Company Shareholders**") of common shares of AgJunction (the "**Company Shares**"), including holders of Company Shares issued pursuant to AgJunction's RSA Plan, in the manner set forth below.

The Meeting

2. The Applicant shall call and conduct the Meeting on or about November 24, 2021. At the Meeting, the Company Shareholders will consider and vote upon a resolution to approve the Arrangement substantially in the form attached as Appendix A to the Information Circular (the "**Arrangement Resolution**") and such other business as may properly be brought before the Meeting or any adjournment or postponement thereof, all as more particularly described in the Information Circular.
3. A quorum shall be present at the Meeting if two or more persons holding not less than 5% of the outstanding Company Shares entitled to vote at the Meeting are present either in person or by duly appointed proxy. If within 30 minutes from the time appointed for the Meeting a quorum is not present, the Meeting shall be adjourned to such date as may be determined by the Chair of the Meeting, provided that the date of the adjourned Meeting shall not be less than two (2) and not more than 30 days later.

No notice of the adjourned Meeting shall be required and, if at such adjourned meeting a quorum is not present, the Company Shareholders present in person or by proxy at the adjourned meeting shall be a quorum for all purposes.

4. Each Company Share entitled to be voted at the Meeting will entitle the holder to one vote at the Meeting in respect of the Arrangement Resolution and shall be entitled to one vote on any other matters to be considered at the Meeting.
5. The record date for Company Shareholders entitled to receive notice of and to vote at the Meeting shall be October 21, 2021 (the "**Record Date**") and will not change in respect or as a consequence of any adjournment(s) or postponement(s) of the Meeting. Only Company Shareholders whose names have been entered in the register of Company Shares as at the close of business on the Record Date will be entitled to receive notice of and to vote at the Meeting. Holders of Company Shares who acquire Company Shares after the Record Date will not be entitled to vote such Company Shares at the Meeting unless, after the Record Date, a holder of record transfers his, her or its Company Shares and the transferee, upon producing properly endorsed certificates evidencing such Company Shares or otherwise establishing that he, she or it owns such Company Shares, and demands at least 10 days before the Meeting that the transferee's name be included in the list of Company Shareholders entitled to vote, in which case such transferee shall be entitled to vote such Company Shares at the Meeting.
6. The Meeting shall be called, held and conducted in accordance with the applicable provisions of the *ABCA*, the articles and by-laws of the Applicant in effect at the relevant time, the Information Circular, the rulings and directions of the Chair of the Meeting, this Order and any further Order of this Court. To the extent that there is any inconsistency or discrepancy between this Order and the *ABCA* or the articles or by-laws of the Applicant, the terms of this Order shall govern.
7. AgJunction is authorized and directed to send the Information Circular and other materials relating to the Meeting to the Company Shareholders as described at paragraphs 23 and 24 of this order.

Conduct of the Meeting

8. The Chair of the board of directors of AgJunction or, in her absence, any director or officer of AgJunction shall be Chair of the Meeting. If no such person is present within fifteen (15) minutes from the time fixed for holding the Meeting, or declines to be Chair of the Meeting, the persons present and entitled to vote shall choose one of their number to be Chair of the Meeting.
9. The only persons entitled to attend the Meeting shall be Company Shareholders or their authorized proxy holders, the Applicant's directors and officers and its auditors, the Applicant's legal counsel, representatives and legal counsel of other parties to the Arrangement, and such other persons who may be permitted to attend by the Chair of the Meeting.
10. The number of votes required to pass the Arrangement Resolution shall be not less than: (i) 66 2/3% of the aggregate votes cast by the Company Shareholders, either in person or by proxy, at the Meeting; and (b) a simple majority of the aggregate votes cast by the Company Shareholders, either in person or by proxy, at the Meeting after excluding the votes cast in respect of Company Shares held by Company Shareholders whose votes may not be included in determining if such minority approval is obtained in accordance with Part 8 of MI 61-101.
11. Holders of Company RSAs (which are outstanding Company Shares) will be entitled to vote on the Arrangement as Company Shareholders in accordance with paragraph 10 above.
12. To be valid, a proxy must be deposited with Computershare Trust Company of Canada in the manner and by the deadline described in the Information Circular.
13. The accidental omission to give notice of the Meeting or the non-receipt of the notice shall not invalidate any resolution passed or proceedings taken at the Meeting.
14. AgJunction, if it deems it to be advisable, may adjourn or postpone the Meeting on one or more occasions (whether or not a quorum is present, if applicable) and for such period or periods of time as AgJunction deems advisable, without further order of this

Court and without the necessity of first convening such Meeting or first obtaining any vote of Company Shareholders respecting the adjournment or postponement. Notice of any such adjournment or postponement may be given by such method as AgJunction determines appropriate in the circumstances (provided that such method shall not derogate from the rights of Kubota Corporation (the "**Purchaser**"), as the other Party to the Arrangement Agreement). If the Meeting is adjourned or postponed in accordance with this Order, the references to the Meeting in this Order shall be deemed to be the Meeting as adjourned or postponed, as the context allows.

Amendments to the Arrangement

15. The Applicant and the Purchaser are authorized to make such amendments, revisions or supplements to the Arrangement as they may together determine necessary or desirable, provided that such amendments, revisions or supplements are made in accordance with and in the manner contemplated by the Arrangement and the Arrangement Agreement. The Arrangement so amended, revised or supplemented shall be deemed to be the Arrangement submitted to the Meeting and the subject of the Arrangement Resolution, without need to return to this Court to amend this Order.

Amendments to Meeting Materials

16. The Applicant is authorized to make such amendments, revisions or supplements ("**Additional Information**") to the Information Circular, applicable form of proxy (the "**Form of Proxy**"), notice of the Meeting ("**Notice of Meeting**"), form of letter of transmittal ("**Letter of Transmittal**") and notice of Originating Application ("**Notice of Originating Application**") as it may determine, and the Applicant may disclose such Additional Information, including material changes, by the method and in the time most reasonably practicable in the circumstances as determined by the Applicant. Without limiting the generality of the foregoing, if any material change or material fact arises between the date of this Order and the date of the Meeting, which change or fact, if known prior to mailing of the Information Circular, would have been disclosed in the Information Circular, then:
 - (a) the Applicant shall advise the Company Shareholders of the material change or

material fact by disseminating a news release (a "**News Release**") through a widely-circulated news service in accordance with applicable securities laws;

- (b) provided that the News Release describes the applicable material change or material fact in reasonable detail, the Applicant shall not be required to deliver an amendment to the Information Circular to the Company Shareholders or otherwise give notice to the Company Shareholders of the material change or material fact other than dissemination and filing of the News Release as aforesaid; and
- (c) unless determined to be advisable by the Applicant, the Applicant shall not be required to adjourn or otherwise postpone the Meeting as a result of the disclosure of any Additional Information, including any material change, as contemplated by this paragraph.

Dissent Rights

- 17. The registered holders of Company Shares are, subject to the provisions of this Order and the Plan of Arrangement, accorded the right to dissent under Section 191 of the *ABCA* with respect to the Arrangement Resolution and the right to be paid an amount equal to the fair value of their Company Shares by the Purchaser in respect of which such right to dissent was validly exercised.
- 18. In order for a registered Company Shareholder (a "**Dissenting Company Shareholder**") to exercise such right to dissent under section 191 of the *ABCA*:
 - (a) the Dissenting Company Shareholder's written objection to the Arrangement Resolution must be received by the Applicant, care of its counsel Burnet, Duckworth & Palmer LLP, 2400, 525 – 8th Avenue, S.W., Calgary, Alberta, Canada T2P 1G1, Attention: Joanne Luu, by 5:00 p.m. (Calgary time) on November 22, 2021 (or 5:00 p.m. (Calgary time) on the business day that is two business days immediately preceding the date of the Meeting if it is not held on November 24, 2021, but adjourned or postponed);
 - (b) a vote against the Arrangement Resolution, whether in person or by proxy, shall

not constitute a written objection to the Arrangement Resolution as required under paragraph 18(a) herein;

- (c) a Dissenting Company Shareholder shall not have voted his, her or its Company Shares at the Meeting, either by proxy or in person, in favour of the Arrangement Resolution;
 - (d) a Company Shareholder may not exercise the right to dissent in respect of only a portion of the Company Shareholder's Company Shares, but may dissent only with respect to all of the Company Shares held by the Company Shareholder; and
 - (e) the exercise of such right to dissent must otherwise comply with the requirements of section 191 of the *ABCA*, as modified and supplemented by this Order and the Plan of Arrangement.
19. The fair value of the Company Shares to which a Dissenting Company Shareholder may be entitled pursuant to the Arrangement shall be determined as of the close of business on the last business day before the day on which the Arrangement Resolution is approved by the Company Shareholders and shall be paid to the Dissenting Company Shareholders by the Purchaser as contemplated by the Plan of Arrangement and this Order.
20. Dissenting Company Shareholders who validly exercise their right to dissent, as set out in paragraphs 17 through 19 above, and who:
- (i) are determined to be entitled to be paid the fair value of their Company Shares, shall be deemed to have transferred such Company Shares as of the effective time of the Arrangement (the "**Effective Time**"), without any further act or formality and free and clear of all liens, claims and encumbrances to the Purchaser in exchange for the fair value of the Company Shares; or
 - (ii) are, for any reason (including, for clarity, any withdrawal by any Dissenting Company Shareholder of their dissent) determined not to be entitled to be paid the fair value for their Company Shares, shall be deemed to have participated in

the Arrangement on the same basis as a non-dissenting Company Shareholder and such Company Shares will be deemed to be exchanged for the consideration contemplated under the Arrangement,

but in no event shall the Applicant, the Purchaser or any other person be required to recognize such Company Shareholders as holders of Company Shares after the Effective Time, and the names of such Company Shareholders shall be removed from the register of Company Shares.

21. Subject to further order of this Court, the rights available to Company Shareholders under the *ABCA*, this Order and the Plan of Arrangement to dissent from the Arrangement Resolution shall constitute full and sufficient dissent rights for the Company Shareholders with respect to the Arrangement Resolution.
22. Notice to the Company Shareholders of their right to dissent with respect to the Arrangement Resolution and to receive, subject to the provisions of the *ABCA*, this Order and the Plan of Arrangement, the fair value of the Company Shares to which a Dissenting Company Shareholder is entitled pursuant to the Arrangement shall be sufficiently given by including information with respect to this right as set forth in the Information Circular which is to be sent to Company Shareholders in accordance with paragraph 23 of this Order.

Notice

23. The Information Circular, substantially in the form attached as Exhibit "A" to the Affidavit, with such amendments thereto as counsel to the Applicant may determine necessary or desirable (provided such amendments are not inconsistent with the terms of this Order), and including the Notice of Meeting, the Form of Proxy, the Notice of Originating Application and this Order, together with any other communications or documents determined by the Applicant to be necessary or advisable including the Letter of Transmittal (collectively, the "**Meeting Materials**"), shall be sent to those registered Company Shareholders who hold Company Shares as of the Record Date, the directors of the Applicant and the auditors of the Applicant by prepaid ordinary mail, or otherwise delivered, at least 21 days prior to the date of the Meeting at the addresses for such holders recorded in the applicable records of AgJunction at the close of

business on the Record Date and to the directors and auditors of AgJunction. In calculating the 21-day period, the date of mailing or delivery shall be included and the date of the Meeting shall be excluded. In the case of non-registered Company Shareholders, the Meeting Materials shall be delivered by providing sufficient copies of the Meeting Materials to intermediaries in accordance with National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* of the Canadian Securities Administrators.

24. Delivery of the Meeting Materials in the manner directed by this Order shall be deemed to be good and sufficient service upon the Company Shareholders, the directors and auditors of the Applicant of:
- (a) the Originating Application;
 - (b) this Order;
 - (c) the Notice of the Meeting; and
 - (d) the Notice of Originating Application.

Solicitation of Proxies

25. AgJunction is authorized to use the Form of Proxy enclosed with the Information Circular, subject to its ability to insert dates and other relevant information in the final form of such proxy. AgJunction is authorized, at its expense, to solicit proxies, directly and through its officers, directors and employees, and through such agents or representatives as AgJunction may retain for that purpose, and such solicitation may be by mail or such other forms of personal and electronic communication as they may determine.

Final Application

26. Subject to further order of this Court, and provided that the Company Shareholders have approved the Arrangement in the manner directed by this Court and the directors of the Applicant have not revoked their approval, the Applicant may proceed with an application for a final Order of the Court approving the Arrangement (the "**Final Order**") on November 29, 2021 at 3:00 p.m. (Calgary time) or so soon thereafter as

counsel may be heard. Subject to the Final Order and to the issuance of the proof of filing of the Articles of Arrangement, the Applicant, all Company Shareholders and all other persons affected will be bound by the Arrangement in accordance with its terms.

27. Any Company Shareholder or other interested party (each an "**Interested Party**") desiring to appear and make submissions at the application for the Final Order is required to file with this Court and serve upon the Applicant, on or before 4:00 p.m. (Calgary time) on November 18, 2021 (or the Business Day that is four Business Days prior to the date of the Meeting if it is not held on November 24, 2021), a notice of intention to appear ("**Notice of Intention to Appear**") including the Interested Party's address for service (or alternatively, a facsimile number for service by facsimile or an email address for service by electronic mail), indicating whether such Interested Party intends to support or oppose the application or make submissions at the application, together with a summary of the position such Interested Party intends to advocate before the Court, and any evidence or materials which are to be presented to the Court. Service of this notice on the Applicant shall be effected by service upon the solicitors for the Applicant, Burnet, Duckworth & Palmer LLP, 2400, 525 – 8th Avenue S.W., Calgary, Alberta T2P 1G1, facsimile: (403) 260-0332, Attention: Joanne Luu.
28. In the event that the application for the Final Order is adjourned, only those parties appearing before this Court for the Final Order, and those Interested Parties serving a Notice of Intention to Appear in accordance with paragraph 27 of this Order, shall have notice of the adjourned date.

Leave to Vary Interim Order

29. The Applicant is entitled at any time to seek leave to vary this Order upon such terms and the giving of such notice as this Court may direct.

Court Filed Documents

30. A signed copy of this Order shall be sufficient to provide with the Information Circular and other Meeting Materials, as directed herein, even if it does not yet bear a filing stamp from the Court of Queen's Bench of Alberta.

(signed) "*Justice B. Johnston*"

Justice of the Court of Queen's Bench of
Alberta